

# Jonesville: Legal Options

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# Collection Action: What is it?

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- Action taken together by a group of people whose goal is to enhance their condition and achieve a common objective.
- It's neighbors combining their concerns with their neighbor concerns, and reaching a consensus on how to address the issue.
- Despite, conflicting interests.



# What is a Community Land Trust?

- A Community Land Trust (CLT) is an organization, usually made up of community members, that owns land and holds it for a particular purpose.



A CLT structures ownership in several distinctive ways:

- Land is treated as a common heritage, not as an individual possession. Title to multiple parcels is held typically by a single nonprofit owner that manages these lands on behalf of a particular community, present and future.
- Land is removed permanently from the market, never resold by the nonprofit owner. Land is put to use, however, by leasing out individual parcels for the construction of housing, the production of food, the development of commercial enterprises, or the promotion of other activities that support individual livelihood or community life.

## The Origins

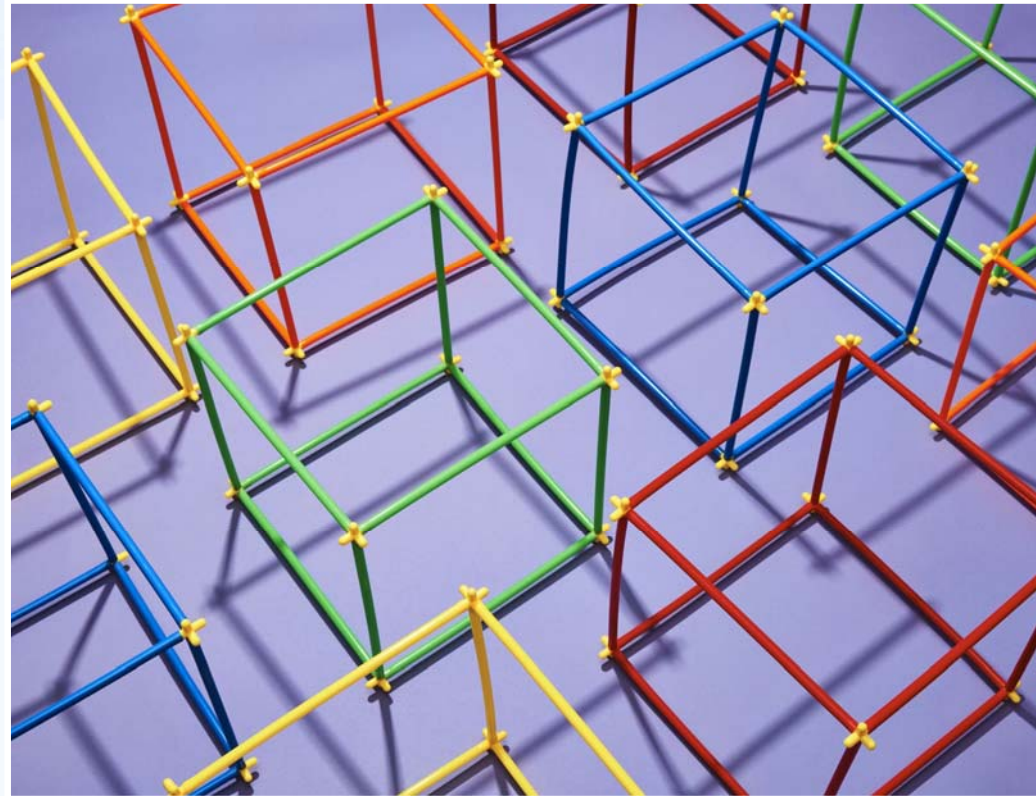
Community Land Trusts

•All structural improvements are owned separately from the land, with title to these buildings held by individual homeowners, business owners, housing cooperatives, or the owners of any other buildings located on leased land.

•A ground lease lasting many years gives the owners of these structural improvements the exclusive use of the land beneath their buildings, securing their individual interests while protecting the interests of the larger community.

## The Origins

Continued...



- All CLTs are organized as either a business corporation, LLC, Inc, Non-profits, Not-for-profits

Most CLTs models are 501(c)3 non-profit organizations



# Board of Directors

- A CLT is (usually) made up of community members.
  - The organization that runs the CLT gets to decide who governs the group
    - may be completely community run
    - may tap experts (inside or outside the community) to help run the board or specific projects
  - The most effective CLTs tend to have, at least some, community representatives, business leaders, and experts in financing, development, etc.





# *CLT's and subsidies for the land, and Operating Expenses*

- *Cities have donated land for a \$1 to CLT's – Example Raleigh Area Land Trust.*
- *CLTs have to cover their operating expenses via earned income.*
  - *Monthly lease fees paid by unit owners*
  - *Membership dues*
  - *Resale fees*

# What Keeps It Affordable?

- *§ 105-277.17. Taxation of community land trust property.(a) Classification. – Community land trust property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.*
- *Under the law, assessors are directed to take price restrictions into account when assessing the value of CLT homes. Furthermore, in calculating the value of CLT property, the implicit subsidy (called a “silent mortgage” in the act) is not added to the price-restricted value of the property.*
- *To qualify as a CLT property under the act, the land must be owned by a 501(c)(3) nonprofit housing development entity. Improvements on the property must be transferred subject to a ground lease of at least 99 years, and the nonprofit agency must retain some interest in the property following any such transfer (usually through the ground lease). The ground lease must include resale restrictions to ensure that the property may be transferred only to qualifying households (those earning the median wage or less) or back to the nonprofit entity.*

# Can a Homeowner Donate Their Homes to a CLT?

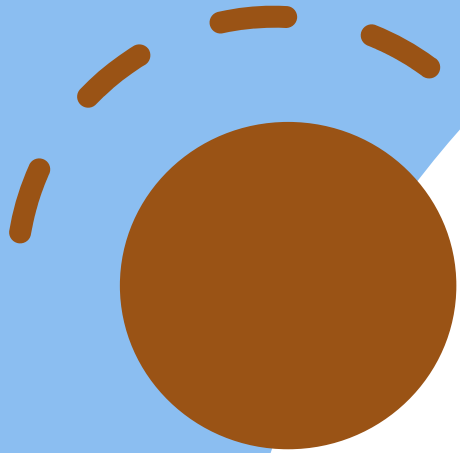
- *Conceivably a homeowner could sell its home to a CLT for its full market value or maybe work out a deal if the homeowner wishes to remain in the home to sell it below the current market rate. The homeowner may then have to execute a 99 Ground Lease Agreement with the CLT—and then move forward under the Share Equity Model.*



## Pros vs. Cons

- **Pro:** Could address the issue of permanent affordability because of special tax treatment and the requirement that the home be affordable for low to moderate income people.
- **Con:** Homeowners would give up full equity in exchange for shared equity. Will no longer own the land. The land would be own by for example: The Jonesville Community Land Trust.
- **Flag:** Like any nonprofit board, the CLT will be governed by whoever is on the board. The Bylaws could have have restrictions or criteria for who could be a director.
- **Flag:** Would need legal and tax expert help to create. Would also need help in creating housing preference policies or selection criteria for housing as well as the 99 Ground Lease Agreement. May need to speak with leaders of other CLTS and go through training with technical assistance experts like Grounded Solutions.





# Limited Liability Company (LLC) vs. Corporations

The Pros and the Cons

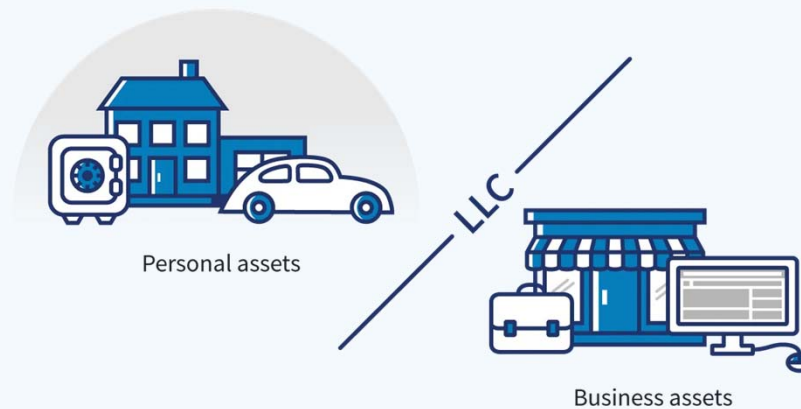
# What is a LLC

## *Limited Liability Company.*

- *It's a creation of State Law. Hybrid between a partnership and corporation.*
- *Very popular because its more flexible for small business owners.*
- *Less formalities-like annual meetings of members and minute taking. Operating Agreement-Members are the owners. Can be member managed.*
- *Flow throw taxes- flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. Can be taxed as a S Corp or C Corp.*
- *Profits and losses can get passed through to your personal income without facing corporate taxes. However, members of an LLC are considered self-employed and must pay self-employment tax contributions towards Medicare and Social Security.*

## LLC's Continued...

- Owners pay a lower tax rate than in a business corporation.
- Articles of Organization-\$125
- Shields its owners/Members from personal liability.



# What is a Business Corporation?

- A legal entity that's separate from its owners. Corporations can make a profit, be taxed, and can be held legally liable. C-Corp by default.
- More formalities than a LLC, like the issuance of shares and stockholders.
- Bylaws are required.
- Corporations pay income tax on their profits. The profit of a corporation is taxed to the corporation when earned, and then is taxed to the shareholders when distributed as dividends. (Double Taxation)
- Separate identity from its shareholders.
- Articles of Incorporation \$125
- Shields its members from Liability.



## *C corp vs. S Corp: Tax Designations*

- *The C corporation is the standard (or default) corporation under IRS rules.*
- *The S corporation is a corporation that has elected a special tax status with the IRS and therefore has some tax advantages. Both business structures get their names from the parts of the Internal Revenue Code that they are taxed under. S corps allow profits, and some losses, to be passed through directly to owners' personal income without ever being subject to corporate tax rates.*

# B Corporations: Serving the Community Ahead of Stakeholders

B Corporations are a business that balances purpose and profit. They are legally required to consider the impact of their decisions on their workers, customers, suppliers, community and environment.

B Corporations or Public Benefit Corporations do have shareholders who own the company—unlike a nonprofit.

The Certificate of Incorporation of a benefit corporation commits the company to spending some of its profits or resources (or both) in support of a specific public benefit. If a benefit corporation decides to stop doing business and dissolves, the shareholders receive the proceeds of the sales of assets, after liabilities are paid.

The shareholders of a benefit corporation actually own the company as well as its assets.

# Special Note: Traditional Legal Entities vs. Social Enterprises

*Traditional Legal Entities have been created primarily for the the purpose of shielding individuals from personal liability, running a business, and making a profit for the owner or shareholder.*

*However, a Social enterprise is an activity aimed at creating a social or environmental good and, in doing so, also generates income or sustenance for those engaged in the activity.*

- Therefore, a Social Enterprise is a business with social objectives.*
- Maximizing profits is not the primary goal of a social enterprise as is with a traditional business.*
- Unlike a charity, social enterprises pursue endeavors that generate revenues, which fund their social causes.*
- Regarding employment, preference is given to job-seekers from at-risk communities.*
- Funding for a social enterprise is often obtained by selling services and goods.*

# Considerations or Cons of Creating a Legal Entity like a LLC or Business Corporation.



A stylized landscape illustration. The foreground features rolling green hills in various shades of green. On the left, a tree with a dark brown trunk and several rounded, overlapping leaves in shades of purple and pink stands on a small orange mound. The background consists of layered, wavy bands of light blue and white, suggesting a sky or distant hills. The word "Nonprofits" is written in a brown, cursive font in the center of the image.

*Nonprofits*

# What is a nonprofit?

- A nonprofit is a group organized for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers.. It's incorporated under the laws of a state and is designated as an "Inc."
- Articles of Incorporation must be filed with the NC Secretary of State. Filing Fee is a \$125.
- Bylaws are required to govern the operations of the nonprofit; board members, officers, voting rights, purpose, meetings, etc. If no Bylaws, then NC. Nonprofit Act is the default governance.
- Must be governed by a Board of Directors. Recommendation at least 5 directors. Must have meetings to make decisions and take minutes.

# A nonprofit is not automatically a 501(c)(3)

- 501(c)(3) is a section of the IRS Code that regulates charitable tax exempted organizations.
- The IRS says it's the organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates
- A nonprofit must apply to become a 501 (c)(3) and must be determined by the IRS that the nonprofit would have the charitable tax exempted status. Can also apply for the same with the Department of Revenue.
- Donors like to give money that's tax deductible to them and would want your nonprofit to have this charitable tax exempted status.

## Pros

- Can seek grants from government, grantor organizations and philanthropic donations.
- Easy to create, and does a public good.

## Cons

- If you become a 501(c)(3), limitations on activities.
- Regulated, reporting, record keeping, adopting and implementing policies to ensure compliance.
- Funds can not be used reward investors, and they cannot be used to provide :excess benefit: to a private person or business
- Public scrutiny.



A stylized landscape illustration. The background consists of several layers of wavy, horizontal bands in shades of blue and light blue, suggesting a sky or distant hills. In the foreground, there are rolling green hills of varying shades of green. On the left side, a tree with a dark brown trunk and several rounded, overlapping leaves in shades of purple and pink stands on a small mound of brown earth. The overall style is simple and graphic.

# Homeowners Association

*Pros vs. Cons*

# What Is a Homeowners Association?

- *Simply put, an HOA is a nonprofit entity that maintains common areas for the neighborhood. The HOA's rules are made and enforced by a board of directors, usually made up of residents of the neighborhood, and its bylaws. Most neighborhoods governed by an HOA require mandatory membership and payment of HOA fees for people who purchase a home there.*

# Governing Law: NC Planned Community Act.

- The North Carolina Planned Community Act governs all HOAs. This Act governs homeowners' associations in North Carolina, including how they must be created, managed, and operated. If your planned community was formed on or after January 1, 1999, it will follow this Act.
- North Carolina HOA's rules applicable to its members' rights and responsibilities, often referred to simply as the HOA's covenants, are set forth in a legal document called its Declaration of Covenants, Conditions and Restrictions ("CC&R"). The CC&R is filed in the recorder's office(s) of the county(ies) in which the HOA is located as a real estate record that "runs with the land" that is part of the community. A copy of the current CC&R is also provided to each HOA homeowner at or before the closing on their purchase.

# North Carolina Planned Community Act

- Some HOA covenants may be perks for some who live in an HOA community. They include provisions whereby the HOA agrees to provide services such as property maintenance and general upkeep, landscaping and/or snow removal. Of course, the HOA's costs for such services are passed through to the homeowners, one way or another.
- Most often, however, covenants work the other way; they impose obligations and restrictions on the homeowners. While every HOA's covenants are different, they typically include rules that address most or all of the following: vehicles, dues, fines, grass/landscaping, trash, home insurance, home appearance, occupancy limits.
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# Pros and Cons

- *Declarations and Covenants Must Be Created:*
- *Can be restrictive covenants.*
- *HOAs normally manage things like trash, grass, pools, parks, etc. (common and shared spaces)*
- *HOAs can't avoid local ordinances but can be more restrictive on what can be built in the neighborhood.*
- *In North Carolina, an HOA may impose a reasonable fine on a homeowner for violating a covenant. Before levying a fine, It must first give the homeowner written notice of the violation and an opportunity to be heard. If the fine is imposed, it cannot exceed \$100 per violation. If any fine remains unpaid for more than 5 days, the HOA may impose an additional fine of up to \$100 per day. Foreclosure Action for unpaid fines and assessments.*

# HOA's and Zoning Law

- A zoning ordinance is a rule set forth by a municipality or county that specifies how a particular region of land can be used. Generally, a zoning ordinance identifies the land that can be used for industrial, residential, or commercial purpose.
- HOAs covenants can control what can be built in a company or how it looks. Because HOAs are private entities that own the entire community, they can institute their own “private zoning” and other rules outside of local government regulations.

# Exclusionary History of HOAs

- “HOAs played a critical role in the initial segregation of the suburbs, and they continue to exclude residents of color. In the 1960s, white residents used these associations to prevent Black families from moving into white suburban neighborhoods, often with explicit racial covenant language that some maintain.
- Despite the end of these racial restrictions’ enforcement, white and Asian residents disproportionately inhabit HOAs compared with non-HOA areas, including other communities with high rates of homeownership. This may be because “demand for HOAs is driven at least in part by a desire for exclusion,” as the authors of one study wrote.” -Urban Institute

Community Movements: Are not always formalized as a legal entity—they are also a bunch of people who simply decided to fight for a cause.



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