

# **Financing Seniors' Housing Projects Using Resident Equity**



**Final Report**

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## Chapter One – Introduction and Acknowledgements

Today there are 530,000 British Columbians over the age of 65. By 2031 there will be 1.3 million – almost three times as many. Where are all those seniors going to live? While many will want to stay right where they are, many others will decide to move. They will grow tired of mowing lawns and shoveling snow; they will feel isolated or lonely; the stairs will become increasingly difficult to manage; they will want to be closer to their children; they may need help with cooking or cleaning. They will look for housing that meets their particular needs in the community where they want to live.

How is this specialized housing created? In Canada and in BC, housing projects that are geared to seniors can be produced in a variety of ways. For instance:

- Governments may encourage the development of seniors' housing by subsidizing its construction and ongoing operation. For many years in Canada thousands of seniors' housing units were developed this way, and they continue to provide good quality housing on a very affordable basis. However, the federal government, as the major funder of this kind of housing, has been considerably less active over the past 15 years, and provincial governments are not in a position to pick up the slack, particularly as the number of seniors continues its inexorable growth. Government funding will not likely play a major role in financing the development of seniors' housing in the future.
- Developers may acquire a site, construct a building and sell the units to individual residents on a strata title (condominium) basis. The residents then manage the building themselves and if they want to move, sell their units on the open market for whatever price they can obtain. Although most strata title developments cannot legally restrict occupancy to seniors, some are designed and marketed in such a way that render the building unattractive to non-seniors: the developments may become Naturally Occurring Retirement Communities (or "NORCs").
- Developers or non-profit sponsors may develop and operate rental buildings, though this is less frequent. As explored later in this report, the economics of rental construction are generally unfavorable in most places in Canada – rents are too low to justify the cost of construction. That is why few rental projects of any kind have been developed anywhere in the country for over 30 years.
- Equity co-ops for seniors exist in a few places in the province and will be discussed at more length later in this report.
- Non-profit sponsors, and in a few cases for-profit sponsors, may create, own, and manage seniors' housing via a model known as life lease, which is financed by the equity provided by incoming residents. Life lease is more common in Manitoba and Ontario than in any other province.

From the perspective of non-profit and community based organizations, the most potentially useful mechanism of these five is life lease, a concept that will be described and explored throughout this report.

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## The Goal of This Report

The funding application for this report reads as follows:

“The use of resident equity to fund non-profit housing developments for seniors is not as common in BC as it is in other provinces. There are a number of reasons for this, but the implication for seniors’ housing in the province is that fewer housing projects are developed than would otherwise be the case. As the population of seniors grows, it will become increasingly important to find ways of creating housing and health care for seniors that do not rely on public funding. This will especially be the case in non-metropolitan areas, where market-funded solutions may be limited and where retention of the seniors’ population may be important for community economic viability.”

The application goes on to observe that with respect to finding solutions:

“Every community that is interested in encouraging the development of seniors housing must find out for itself what mechanisms are available, what the risks associated with the mechanism may be, how each mechanism functions, what the pros and cons are, and whether or not they would be suitable in that particular community. There are significant costs associated with these individual searches for information and there may also be significant risks created by inadequate or imperfect information. Communities must understand when a particular mechanism may work in the context of its local housing market and when it may not. They must also understand the regulatory and financial aspects associated with each mechanism. For example, several of the available mechanisms require the filing of disclosure statements with the Superintendent of Real Estate, which may be a daunting exercise for communities not familiar with disclosure statements.”

As a result, the study was launched to improve real estate practices in British Columbia by:

- Identifying and describing best practices in the use of resident equity funded models to create seniors housing projects, particularly in non-metropolitan areas.
- Reducing risks involved in the use of resident equity models by thoroughly describing the risks and challenges associated with each available mechanism so that communities and organizations can make fully informed decisions about whether or not to proceed with a housing project.
- Fostering stability in real estate markets, particularly non-metropolitan markets, by increasing opportunities for home ownership where local housing market conditions permit, and by clearly identifying risks in less appropriate markets.
- Assisting communities to enhance their social capital by making it easier for seniors to remain in their communities as their housing needs change and by providing a mechanism to redistribute the existing housing stock to more appropriate uses by freeing up larger homes for families.

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- Providing as much information as possible so that the development process is made somewhat simpler. For example, disclosure statements will be described in detail and a disclosure statement template will be included with the final document.
  - Facilitating the development of more seniors' housing projects throughout the province.

### **Notes to Reader**

Some of the information in this report is quite technical, e.g., Chapters Four and Five. This report is intended to provide basic information for sponsors who may have just started thinking about an equity funded project, and therefore will provide more in-depth information for sponsors actively interested in an equity funded project.

There is a great deal of practical information contained in the case studies.

### **Funders**

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## **Principal Researcher**

The principal researcher of this report was Kate Mancer of Lumina Services. Paul Rollo of G.P. Rollo and Associates provided invaluable assistance on the financial analysis sections of the report.

## **Acknowledgements**

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- Peter Grimmett of the Superintendent of Real Estate’s office for patiently answering a long list of questions;
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We would also like to thank our Steering Committee – Karen Hemmingson of BC Housing, David Brown of Coast Capital, Terry Alleyn of the Maple Ridge Legion and Michael Litchfield of Redwood Law Corporation.

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## Chapter Two - Equity Co-operatives

An equity co-op is a co-op financed by its members; no government subsidies are involved. In some parts of the world, equity co-ops have existed for many, many years.<sup>i</sup> In New York City for example, some of the most expensive real estate operates on an equity co-op basis because that structure allows residents to control who lives in their buildings. In Canada, these kinds of co-ops are uncommon.<sup>ii</sup> Until the development of an equity co-op in the 1990s in Magog, 70 miles from Montréal, and one in Winnipeg, equity co-ops existed only in British Columbia and in Alberta. In BC, although 14 purpose built equity co-ops have been developed since the late 1980s, only four or five have survived.<sup>iii</sup> In addition, over 50 projects in Vancouver and Victoria somewhat resemble equity co-ops. These were created before the advent of the first condominium legislation in 1968, when the only way that people could own apartments was by buying shares in “apartment corporations.” This is how these projects are structured.

The geographic concentration of equity co-ops in BC and Alberta was initially due to two main factors. One was the existence of resource groups (development consultants) that promoted the concept of equity co-ops in their respective provinces and worked with groups that wanted to develop equity co-ops. In BC, Columbia Housing, usually in partnership with Progressive Homes, developed of the first three equity co-ops in the province as well as two of the more recent ones. In Alberta, Communitas developed most of the projects in that province. In other provinces, most resource groups simply disappeared with the cessation of federally funded housing programs in the early 1990s. The other reason for the emergence of equity co-ops in BC, was that some municipalities and government agencies saw equity co-ops as a way of achieving housing goals, specifically the creation of good quality seniors’ housing at prices somewhat below market. In BC, land was occasionally leased to co-ops at 75% of market value.

Equity co-ops in BC face a number of challenges. In fact, beginning in the first half of the 1990s, several equity co-ops in BC ran into problems, which was compounded by the fact that real estate markets were very weak at that time. Some co-ops found that the combination of an equity co-op structure and leased land made marketing of the project to prospective clients extremely difficult in the context of weak and very competitive real estate markets. In addition, it can be difficult for individuals to raise sufficient capital to join an equity co-op because shares in a co-operative cannot normally be used as security for a mortgage. Members may have to pay cash for their shares, which is one reason why there are more seniors’ equity co-ops than family equity co-ops, seniors generally having greater access to capital. An additional difficulty facing equity co-ops in BC is that members are jointly liable for all debts. If a member were to default on a mortgage obligation, the remaining members would be liable for the debt. One solution is for co-ops to arrange a blanket mortgage and charge individual members for their share of the mortgage, but that route creates its own difficulties. The administration of a joint mortgage can be complicated and require careful matching of financial capacity between outgoing and incoming members.



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A look to Alberta offers a contrasting situation of equity co-ops. Because Alberta equity co-ops are structured differently than equity co-ops in BC, they are able to avoid many of the problems faced by their neighbours to the west. In Alberta, strata titles are enabled under the Land Titles Act, while in other provinces, strata titles are governed under Condominium Acts or Strata Title Acts. This means that in Alberta, unlike other provinces, strata titled properties do not have to be governed as condominiums. In fact, strata titled properties can be governed in a number of ways, including, as co-operatives. Thus the creation of strata title equity co-operatives is possible where co-op members have title to their own units. Members may finance their units as readily as financing a condominium unit and joint liability is not a concern. As with any other co-operative, the co-op controls membership, so it can limit residency to seniors if desired. Yet, notwithstanding a more accommodating legal structure, there are only a few equity co-ops in Alberta and none are geared specifically to seniors.

For British Columbians interested in creating resident equity funded seniors' housing in their communities, there is no compelling reason to develop a conventional seniors' equity co-op – in fact, there are several good reasons *not* to go in that direction.

Unlike traditional equity co-ops, projects such as the Cottonwoods Co-op in Kamloops and the Grandview Heights Co-op in Castlegar, are life lease projects that are strata titled where all titles are in the name of the co-op. In these co-ops, cases buyers purchase units on the basis of a life lease occupancy agreement between the buyer and the co-op – they do not buy shares in the co-op equivalent to the value of their unit as they would in a standard equity co-op. Most life lease projects in BC follow a similar model to Cottonwoods Co-op and Grandview Heights Co-op, but are owned by non-profit housing societies. Life leases will be explored in depth in Chapter 3, the next chapter.

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## Chapter Three – Life Lease Housing: A Description<sup>iv</sup>

### What is Life Lease Housing?

Life lease housing is relatively new as a housing model. The first life lease projects in Canada were built in Manitoba and Saskatchewan in the 1980s.

Canada Mortgage and Housing Corporation (CMHC) recently published a report on life lease housing,<sup>v</sup> Called “An Examination of Life Lease Housing Issues” in 2007. In that report, life lease is defined this way:

“A life lease is a legal agreement that permits purchasers to occupy a home for life (or until they are no longer capable of living there) in exchange for a lump sum payment and subsequent monthly payments to cover the ongoing project management fees and maintenance and operating expenses (and in some cases rent, depending on the size of the initial payment.)”

While this definition sounds much like it is describing a condominium, the major difference between a life lease and a condominium is that the title to life lease units remains with the sponsoring organization, not with the occupant. In the case of almost all life leases in Canada, the sponsoring organization (sponsor), which owns and operates the life lease are non-profit organizations.

No one knows exactly how many life leases there are in Canada. The CMHC report cited above estimates the total number of Canadian life leases “very conservatively” at 287. Most of these life leases are in Manitoba and Ontario, partly because life leases are well-known in those two provinces and partly because there is a well-developed infrastructure available to assist new sponsors eager to establish them. Manitoba is the only province with legislation specific to life lease housing,<sup>vi</sup> though the Ontario government’s Ministry of Municipal Affairs and Housing is currently conducting a public consultation process into life lease housing. Its consultation document outlines the project’s purpose, which is to take “...a lead role in developing possible strategies to recognize best practices, improve consumer protection, and support a viable, healthy life lease housing sector in Ontario.”<sup>vii</sup> Both Manitoba and Ontario see life lease housing as a good way of providing housing for seniors.

### Life Lease in BC

BC has had rather a checkered history with life lease. At one point in the late 1990s there were about 20 life leases in the province – today there are 14: three in Abbotsford, three in the Lower Mainland (comprising a number of separate buildings), two in Victoria, two in Kamloops, one in Penticton, one in Naramata, one in Kelowna (two phases), and one in Vernon. In some parts of the province, life leases have struggled, while in others they have been a success.

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On Vancouver Island, for example, almost all life leases failed. Four of them, which were nominally sponsored by the Lions Club, were all developed by the same development consultant, apparently without due regard for local market conditions. Marketing difficulties arose and bad publicity exacerbated the public's already established concern about these projects.

Once the Lions Club became aware of what was happening, they withdrew their sponsorship, though by that time it was too late. All four of these Vancouver Island Lions projects failed and were eventually converted to strata title properties. Two other life leases on Vancouver Island fell prey to leaky condo syndrome and had to be converted to strata title units so that their occupants could qualify for assistance from the Homeowner Protection Office. Another life lease failure happened in Rossland, on the mainland, and is now operating as a rental. The fate of these failed life leases has resulted in suspicion about life lease in BC, one of the reasons there are so few of them compared to Manitoba and Ontario.

On the positive side of the ledger, the Maple Ridge Legion has a five year waiting list for its two life leases, the Elim Housing Society is building its fourth and fifth life lease phases, the Good Samaritan Society has built life leases in both Kelowna and Vernon, the Cottonwoods life lease in Kamloops has a waiting list 100 names long, the Penticton life lease never has a vacancy, the Naramata life lease is full and the Society is planning Phase II, and the Abbotsford life leases are likewise full. The CMHC report referenced at the outset of this chapter asked focus group participants: "Would you buy a life lease unit again or advise a friend to purchase?" The response was positive:

"Everyone in all 15 focus groups indicated that they would purchase a life lease unit again or advise a friend to purchase. While some had mild concerns about their units or the financial arrangements, the strong sense of community in these complexes more than offset any of these concerns. Residents indicated that they were extremely happy in their choice of housing."<sup>viii</sup>

It seems that in BC, life leases have the potential to be successful, given, of course, that the right ingredients are at play in development stages.

## **Different Types of Life Leases**

In theory there are five types of life leases:

- **Zero Balance** – the resident pays an upfront amount and no residual value is repaid to the resident or the estate when occupancy ceases. This model is extremely rare in Canada and there is none of this type in BC.
- **Declining Balance** – the resident pays an upfront amount based on life expectancy. This model is also extremely rare in Canada and there is none in BC.
- **No Gain** – outgoing residents or their estates get back exactly the same amount as they paid when they moved in, less an amount for refurbishing and other similar costs, and incoming residents pay the same initial entrance fee as did the outgoing

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resident. This model is often used by sponsors wanting to create and maintain affordable seniors' housing in their communities. In BC, the Maple Ridge Legion, the Naramata Seniors' Housing Society, and the Good Samaritan Society all use this model. The Elim Housing Society uses a variation of the No Gain model – outgoing residents get back the same amount they paid when they moved in but units are resold to incoming residents at market levels. If prices have increased, the Society uses the gain to further the objectives of the Society; if prices have fallen, the Society funds the redemption from other sources.

- **Price Index** – redemption value increases based on the Consumer Price Index or some other index. There are no examples of this approach in BC although in Elim, there is a life lease where unit value is tied to the value of condos in the local market and the Abbotsford life leases provide for limited capital appreciation for outgoing residents.
- **Market Value** – units change hands throughout the life of the building at whatever the market will bear. This is the model almost universally used in Ontario and Manitoba but it is less common in BC. Two partial exceptions are the Grandview Heights Co-op life lease in Castlegar and the Cottonwoods life lease Co-op in Kamloops. In both cases, units change hands for whatever the market will bear. However, unlike the situation in Ontario, outgoing residents and the life lease share any capital gain. The co-ops then use their share of the gain to buy units that are then rented at Shelter Aid for Elderly Renters (SAFER)<sup>1</sup> levels to low income seniors.

## Life Lease Sponsorship

Almost all life leases in Canada have been sponsored by churches or various kinds of service clubs. There are very few private life lease projects – Villa Royale in Saskatoon is one, and there are a few in Ontario and Alberta, although there seem to be a number of private developers who are increasingly interested in this market.

Consumers who are attracted to life lease projects invariably cite the reputation of the sponsor organization as one of the major incentives for becoming involved, which is one reason non-profit community based organizations have successfully developed life lease projects in many communities.

In addition, the very nature of a life lease project implies an ongoing role for the sponsor<sup>2</sup> which may not be appealing for some private developers. The owners of Saskatoon's Villa Royale, who *are* interested in a long term investment, have hired a non-profit housing provider, the Lutheran Sunset Home of Saskatoon, to manage Villa Royale and to provide services for its residents.

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<sup>1</sup> BC Housing's Shelter Aid for Elderly Renters program helps make rents affordable for BC seniors with low to moderate incomes by providing monthly cash payments to subsidize rents for eligible BC residents who are age 60 or over and who pay rent for their homes.

<sup>2</sup>An exception is The Meridian in Ottawa, which was developed by the former municipality of Nepean and then turned over to the residents as a condominium.

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Atypical sponsors of life leases include a group of retired teachers in Winnipeg (Fred Wyatt Place), a non-profit property management firm, also in Winnipeg (Riverbend Plaza and Colorado Estates), the municipality of Nepean (The Meridian), and the Performing Arts Lodge of Vancouver.

### **Renter or Owner?**

One of the many rather dramatic differences among life lease projects in Canada is the renter/owner dichotomy. In other words, are the residents considered renters or owners of their homes? In Manitoba, life lease residents are considered tenants and the provisions of the Residential Tenancies Act apply to them. A 1997 discussion paper published by the Minister of Consumer and Corporate Affairs entitled “Life Lease Rental Housing Discussion Document” explains that: “[l]ife leases are a useful way of raising money for rental housing.”<sup>ix</sup> In contrast, in BC, life lease purchasers qualify for the Home Owner grant, a grant intended to help homeowners defray property taxes. In BC, life lease residents are not covered by the Residential Tenancy Act, which only applies to lease terms under 20 years.<sup>x</sup>

In most provinces other than Manitoba, life lease residents are described by sponsors not as owners, but as *purchasers* of a life interest in their units. They are required to pay annual property taxes and the sponsors take pains to emphasize the ownership nature of their residency. This is particularly the case where residents capture all or part of any appreciation in the market value of their unit. These life lease projects are very similar to condominiums, although residents do not have title to their units and are not responsible for project operation.

### **Required Investment**

In many provinces, consumers must pay the full purchase price of their life lease unit upon occupancy. In contrast, the so-called “Manitoba model” allows for a minimum investment of much less than the full purchase price, although consumers may, if they wish, pay the full amount. If they do, their monthly rent is substantially lower than tenants who pay less than the full purchase price. However, the monthly rent in the Manitoba model is never reduced to operating costs only, which is often the case in other provinces. In Manitoba, only the interest earned on investments over the minimum is used to reduce monthly payments. Minimum entrance fees are used partly to pay for the construction cost of the building, and partly to fund a trust account called the Entrance Fee Refund Fund, established to allow a tolerance for entrance fund repayments. Interest earned on the Refund Fund is used to offset monthly operating costs.

Projects in provinces other than Manitoba are starting to introduce this partial payment model. The Good Samaritan Society uses the Manitoba model at its life leases in Alberta and BC. Purchasers of life lease units in Naramata may pay 33%, 66%, or 100% of the value of their unit.

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## **Affordability**

Life lease projects generally promote themselves as (and are generally perceived to be) providing affordable housing, usually because of the non-profit nature of their operation, because of a contribution of land, capital or labor from the project sponsor to the life lease itself, or a combination of both.

Life lease projects that never raise the level of entrance fees (the No-Gain model) will become increasingly affordable over time. For example, the Maple Ridge Legion life leases (less than 10 years old) currently sell for prices that are equivalent to two-thirds the cost of comparable condominiums.

Some life leases buy back units when the opportunity arises and rent them out at affordable rental levels to lower income households. The Cottonwoods life lease in Kamloops has bought back two units that are now rented out at SAFER levels.

From the perspective of purchasers, the projects that permit deposits of less than the value of the unit (the Manitoba model) are more affordable in a capital cost sense than projects that require the full purchase price, although the resulting level of monthly rent in the Manitoba model may be relatively high.

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## Chapter Four - Life Lease Housing: Legal Perspectives

The popular view of life lease development and operation in BC is that life lease consumers are largely unprotected in a legal sense. In fact, this is not really true. In many ways, consumers in BC are just as well off as their counterparts in Manitoba, the only province that has enacted life lease legislation. The Life Leases Act received Royal Assent in Manitoba on June 29, 1998, about midway through that province's experience with life leases.

In Alberta and Saskatchewan there are no legislative requirements pertaining to any aspect of life lease development or operation beyond statutes that affect all residential developments – planning acts and so on. The situation is similar in Ontario. The Ontario government recently exempted life leases owned by non-profits from paying land transfer tax with a view to increasing affordable housing options for seniors. As mentioned in Chapter 3, the Ontario government has also just launched a public consultation process with a view to develop, in the words of the consultation document “...possible strategies to recognize best practices, improve consumer protection, and support a viable, healthy life lease housing sector in Ontario.”<sup>xi</sup>

In this chapter we will explore the legislative framework in place in BC and Manitoba, describe the practical implications of those frameworks for life lease developers and consumers, and discuss some areas that might benefit from additional legislative attention in BC. One of the advantages of legislation is its mere existence – people feel more comfortable when legislation pertaining to their housing situation is in place, especially for seniors. Additionally we will refer where relevant to the Ontario discussion paper and to the report on life lease housing very recently published by CMHC,<sup>xii</sup> which recommends that provinces other than Manitoba consider “creating life lease legislation in the way that condominium legislation was identified as a need when this form of tenure became popular.”<sup>xiii</sup>

### Legislative Framework in BC

In BC, the major piece of legislation affecting the development and operation of life lease projects is the **Real Estate Development Marketing Act (REDMA)**. The REDMA also applies to condominiums, equity co-ops, time shares, and bare land stratas. It mostly governs the pre-occupancy period, although security of tenure provisions continue throughout the life of life lease projects. Specific provisions of the REDMA as they affect life leases will be discussed in the next section of this chapter.

Other BC legislation that does or may affect life leases includes:

- **The Strata Property Act.** Some life leases are stratified although all titles remain in the name of the sponsor. These projects are subject to all provisions of the Strata Property Act including the provision that grants renters the same rights as owners where leases are three years or longer.

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- **Home Owner Grant Act.** Life lease residents are eligible for the home owner grant.<sup>3</sup>
  - **Property Transfer Tax Act.** Leases registered at land title offices that are less than 30 years long are exempt from the requirement to pay property transfer tax. This is a significant saving for life lease buyers compared to condominium purchasers.
  - **Tenant Protection Act.** Because leases longer than 20 years are not covered by the Tenant Protection Act, life lease units are usually excluded as well. This Act would apply to units in a stratified life lease project that were rented for some reason.
  - **Homeowner Protection Act.** Some life leases in BC are covered by the HPA and others are not. Sponsors that do not wish to obtain warranty insurance must register a covenant on title in favor of the Homeowner Protection Office restricting any sale of units for 10 years, which is the length of warranty protection under the act. Conventional rental buildings are treated the same way, the assumption being that if rental buildings leak or encounter other structural challenges the landlord will be in a financial position to make necessary repairs whereas a condo owner might not be. Some life lease sponsors might also face financial difficulty in the event of building failure in which case they might choose to obtain warranty insurance despite its high price.

## Legislative Framework in Manitoba

As mentioned at the outset of this chapter, Manitoba is the only province in Canada that has legislation specifically dealing with life leases. The Life Leases Act governs many areas of life lease development and operation, as will be discussed at more length in the next section.

Unlike other provinces, life leases in Manitoba are considered a form of rental tenure. In other provinces, life leases are considered a hybrid that is somewhere along the continuum between owning and renting but definitely closer to owning. As a result of the Manitoba position, life leases are also subject to the Residential Tenancies Act. How these two acts operate together is also explored at more length later in this section.

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<sup>3</sup> As explained later in this chapter, the REDMA requires that life lease purchasers be provided some assurance of title by project sponsors, also a requirement for HOG eligibility.



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## Impacts of Legislative Framework on the Development and Operation of Life Lease Projects in BC and Manitoba

### *Pre-Occupancy Disclosure*

In BC, the Real Estate Development Marketing Act (REDMA) requires that any leasehold project of five or more units cannot be marketed until a disclosure statement has been filed with, and accepted by, the Superintendent of Real Estate. Units in these projects cannot be sold unless purchasers acknowledge in writing that they have read and understood the disclosure statement. Fees for disclosure statements vary by size of building from \$300 for nine or fewer units to \$1,800 for buildings of 100 or more units.

The form and content of disclosure statements is defined in great detail in the REDMA Policy Statement 9, which is appended to this document. In summary, disclosure statements must include:

- Details about the developer of the project – name and address, incorporation details, names of directors.
- Description of the development – number of units, location, plans, zoning details.
- Details about the lease – copy of lease required with accompanying explanation about occupancy restrictions if any, termination provisions, prepayment costs, repayment provisions, registration of lease, assignment and subletting provisions, occupancy charges, taxes, management, common areas and facilities, parking, utilities and services, and insurance. In addition, the following clause must be included in disclosure statements (original document wording in bold):

#### “Risks Associated with Repayment

If a portion of the prepaid leasehold cost is repayable, **describe all risks associated with obtaining a refund in conspicuous type**, including the following, as applicable:

- **If real estate sales are slow, it may be difficult to sell a house or condominium. Similarly, if few people are interested in leasing in the development, it may be difficult to find new tenants;**
- **If the condition of the building has deteriorated, it may be difficult to find new tenants; and**
- **If the landlord has insufficient funds and cannot find new tenants, you may not be repaid or you may have to wait for your repayment.”**

It is interesting to note that notwithstanding Clause (a), similar warnings are not required by Policy Statement 1, which applies to disclosure statements for condominiums. Nor are they required by Policy Statement 2, which applies to bare land stratas, or by Policy Statement 10, which applies to co-operatives or by Policy Statement 8, which applies to

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time shares. In fact the marketing of leasehold interests are the only ones that require the following warnings.

- Title and Legal Matters – legal description, ownership, encumbrances, contingent liabilities, environmental matters.
- Construction and Warranties – estimated or actual beginning and completion of construction, warranties, details of previous occupation, if relevant.
- Approvals and Finances – development approval (building permit or approval under Policy Statement 5, discussed below under Marketing), construction financing.
- Miscellaneous – deposits (name of trustee, deposit insurance contract if applicable), developer’s commitments and any risks thereof, other material facts.
- Signatures verifying the accuracy of the disclosure statement.

In Manitoba, the Life Leases Act requires that landlords (how sponsors in Manitoba are referred to) must disclose:

- Estimated entrance fees.
- Projected completion date.
- Name of trustee who will hold entrance fees until they can be used by the landlord and who will hold the entrance fee refund fund.
- The amount of the entrance fee refund fund. Note that the size of this fund is entirely up to the landlord.
- The rent for the first year.
- Features of each unit.
- Features of the complex.
- Landscaping information.
- On site management and caretaking (i.e., hours when these services will be available).

For the pre-occupancy period, disclosure statements are less detailed in Manitoba than they are in BC.

In Ontario, where there are no disclosure requirements in marketing (although reputable development consultants generally encourage the practice), the Ontario Ministry of Municipal Affairs and Housing consultation paper referred to at the outset of this chapter, suggests that a consistent approach to pre-occupancy disclosure would be useful for both consumers and sponsors.

The CMHC report recommends that pre-occupancy disclosure requirements be included in life lease legislation.

### ***Post-Occupancy Disclosure***

In BC, the provisions of the REDMA as they apply to disclosure continue throughout the life of the building as long as the sponsor is involved in the marketing of units. This is because the sponsor is considered to be a developer and the REDMA governs marketing activities by developers. Sales from an individual owner to another individual owner are

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not covered by the REDMA so ongoing disclosure does not apply to condominiums for example.

In Manitoba, post-occupancy disclosure is more closely related to governance issues, covered later in this section, than to marketing issues.

The Ontario discussion paper also frames post-occupancy disclosure in terms of governance issues.

The CMHC report is silent on post-occupancy disclosure although there are some governance recommendations, discussed elsewhere in this section.

### ***Marketing Restrictions***

In BC, Section 5 of the REDMA states that a sponsor must not begin marketing a leasehold unit until a sketch plan has been deposited in a land titles office or until a municipality has issued a building permit. However Section 10 of REDMA permits a sponsor to begin marketing in advance of complying with Section 5 as long as certain requirements are met. These requirements are set out in Policy Statement 5.

Policy Statement 5 permits marketing as long as a municipality or other governing body has issued approval in principle for the project and as long as the Superintendent of Real Estate has given his approval to begin marketing. The Superintendent will accept the issuance of a development permit (where they exist, development permits are generally issued in advance of building permits) as signifying approval in principle. Alternatively, written confirmation from a municipality that the proposed development conforms to applicable zoning and development bylaws and official community plans is also acceptable to the Superintendent.

Other requirements of Policy Statement 5 include:

- The estimated date for the issuance of a building permit must be within nine months of the date of the disclosure statement.
- The project can only be marketed for nine months unless the building permit is issued.
- The purchaser has the right to cancel if the amendment to the disclosure statement issued once the building permit has been approved indicates that changes have made to the design of the project.
- If a building permit has not been issued, deposits cannot be more than 10% of the purchase price.

In Manitoba, as long as a disclosure statement as described above is available and pre-lease payments are deposited with a trustee (see #5 deposits) there are no other restrictions on marketing activities. However, Manitoba requires landlords to provide an irrevocable letter of credit equivalent to the first year's rent for all unleased units. This requirement encourages sponsors to understand their market, to be cautious about project

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size, and to pre-lease most of the units before construction is started. Otherwise the letter of credit becomes very expensive.

The Ontario document does not refer to marketing activities beyond the disclosure discussion, nor does the CMHC report.

### ***Right of Rescission***

In BC, the REDMA gives purchasers of life lease units seven days from the date of signing a purchase agreement to change their minds and get their money back (i.e. a “cooling off period)

In Manitoba the Life Leases Act likewise provides for a seven day cooling off period.

The Ontario discussion paper identifies the need for a mandated cooling off period

The CMHC report recommends a seven days rescission period.

### ***Deposits***

Until very recently, one of the major differences between BC and other provinces was that unlike BC, deposits in other provinces are routinely used for construction purposes (in Manitoba, once certain requirements are met). In BC, deposits formerly had to be held with a trustee until units were occupied. The REDMA changed that by allowing deposits (for condominiums as well as for life leases) to be used for construction, as long as sponsors have entered into a deposit protection contract with a bona fide insurer. Although there was some initial concern that deposit insurance would be prohibitively expensive, it need not be as long as insurance company due diligence indicates that the project in question is a sound one.

As mentioned elsewhere in this section, deposits in BC cannot be more than 10% of the purchase price until a building permit has been issued, and in BC, consumers are at no risk of losing their deposits, unless consumers themselves default on their legal obligations in some way. Deposits are either held in trust until project occupancy or they are insured.

Manitoba landlords may use deposits for development and construction purposes but only after the landlord has provided to the trustee:

- Notification of the landlord’s legal interest in the land;
- Projected costs of the development;
- The availability of funds to complete the development;
- Registration of any mortgages to finance the project’s development;
- Contracts for development and security;
- Notice of regulatory approvals;
- Insurance coverage;

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- Any other prescribed matter and;
  - The previously mentioned irrevocable letter of credit equivalent to the first year's rent for all unleased units.

The Ontario Ministry of Municipal Affairs and Housing discussion paper notes that many sponsors identify the ability to use deposits for construction purposes as a major economic advantage of life leases. However, since deposits are usually at least 25% of the purchase price, the paper points out that project failure could lead to major losses for consumers and suggests that the issue deserves some debate. The 2007 CMHC report, "An Examination of Life Lease Housing Issues," suggests merely that life lease legislation should indicate under what conditions deposits may be used by developers.

### ***Security of Tenure***

In BC, Section 11 of the REDMA forbids a sponsor from marketing a development unit unless it has made adequate arrangements for purchasers of the units to have assurance of title. Generally the Superintendent will require that leases be registered on title or that an equally satisfactory (to the Superintendent) mechanism be in place. For example, the Superintendent considers the registration of a mortgage on title in favour of the resident an acceptable way of assuring title.

Registering something on title does not mean registering every lease or every mortgage on one title. That would make title searching extremely time-consuming. Titles can be registered on a fee simple title (freehold), on a strata title, or on an explanatory plan. An explanatory plan can be used in multi-family buildings that are not strata titled. A surveyor will measure units and outline them on a plan of the whole building, but s/he does not take measurements of common areas as s/he would for a strata plan. Then it is relatively simple to register a lease or a mortgage against the explanatory plan for that particular unit.

The registration of a lease at a land titles office makes people aware that there is an interest in the property. However, the actual protection this affords someone is always subordinate to the financing on a building. For example, if a bank has an outstanding loan of \$5 million on a building that has a number of leases registered on title, and the owner of the building was unable to repay the loan for some reason, the bank could legally take possession of the units. To avoid this situation, so-called non-disturbance agreements are commonly incorporated into lease documents. Non-disturbance agreements say that even if a lender should take over a building, residents will not be disturbed. Once the outstanding financing is paid off non-disturbance agreements are unnecessary and lease registration ensures the continued occupancy of the resident.

Some sponsors may prefer to register mortgages on title instead of leases. In this situation, if a sponsor defaults, a resident would foreclose on the sponsor and either get his or her money back, which may not be possible if the sponsor is in financial difficulty, or get title to his or her unit and essentially become a condominium owner. The resident may wish to stay or may wish to sell the unit, potentially at a loss, and move out. The

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problem with this approach is that buildings must be stratified for the mechanism to work, even though all the titles remain in the name of the sponsor unless a financial crisis arises. When buildings are stratified in BC, renters (which is how life lease residents would be viewed because title is not in their name) with leases longer than three years (that is, all life lease units) have the same rights as the owner would have if the owner were living in the unit. This means that a sponsor could lose control of the building and the residents could take over. In fact, a situation similar to this scenario has already happened in BC.<sup>xiv</sup> While this turn-of-events is unlikely, it is certainly possible.

In summary, whether via lease registration or mortgage registration, the tenure of life lease residents in BC is secure. The safety of entrance fees is a separate issue discussed in the next section of this chapter.

In Manitoba, the majority of life leases are strata titled at the insistence of lenders,<sup>xv</sup> although all titles remain in the name of the landlord under normal operating conditions. If residents desire, they may register their lease on title whether or not projects are strata titled but there is no requirement to do so. Landlords must file a notice on title indicating that rental units in their complex are subject to the Life Leases Act.

Tenure is protected primarily through the tenants' right to renew leases for the term of the lease, which must be a minimum of 50 years. This protection is afforded by the Residential Tenancies Act, not the Life Leases Act.

There are some exceptions. In the event of a foreclosure or mortgage sale in Manitoba, life leases are terminated and there is no obligation to repay any of the entrance fees although residents may remain in occupancy under a "deemed tenancy agreement" for up to two years. If a landlord wants to convert his or her complex to a condominium residents must be given first right of refusal to buy a unit. Landlords wishing to make major renovations may cancel life leases but must get the approval of the Director of the Residential Tenancy Branch before doing so.

The Ontario discussion paper does not address legal measures to secure tenure, such as registration of leases or mortgages on title. Rather, the discussion is framed in terms of occupancy agreements and their provisions as they relate to security of tenure. For example, the document points to provisions that allow a sponsor to terminate a life lease due to the physical or mental incapacity of the resident. It suggests that some security of tenure protections should be put in place to safeguard resident rights while still taking into account a sponsor's ability to manage a project.

The CMHC report does not make any recommendations on this topic beyond noting that residents would find long term mortgage financing easier to obtain if their interest in their unit were recorded on title, which, as previously discussed, is already the case in BC.

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## ***Safety of Entrance Fees***

In the same way that any other real estate transaction involves risk, entrance fees are always potentially at risk as well. However there are ways to reduce some of the risk.

In BC, entrance fees are secured in a legal sense if mortgages were registered on title instead of leases. In this case, residents would be in the same position as Manitoba and Good Sam residents in Alberta – if a default occurred, they might get all, some, or none of their entrance fees back depending on what happens to the value of the building. The problem with that approach is that it is necessary to stratify the building and some sponsors do not want to go the stratification route for reasons previously explained. An alternative would be lease registration in concert with a second mortgage registered against the title to the building in the name of all the residents equivalent to the total value of entrance fees – the Manitoba and Good Sam Alberta model.

The lease registration mechanism does not affect the safety of entrance fees although it provides security of tenure. If a sponsor were to default on his obligations, a trustee would be appointed who would determine the best way of resolving matters. Secured creditors such as first mortgage lenders would have priority over unsecured creditors such as residents. The fate of entrance fees in these circumstances would depend on a number of factors although security of tenure would be assured (in BC). If the value of the building had increased, entrance fees would likely be safe. If the value had decreased, because, for example, normal maintenance had not been undertaken by the sponsor, entrance fees could be at risk.

In Manitoba, a second mortgage that is equivalent to the total value of entrance fees is registered on title in the name of all the residents and held by a trustee. This is the same process that is used by the Good Samaritan Society (see case study chapter, Chapter 7) for its Alberta life leases.<sup>xvi</sup> In the event of sponsor default, entrance fees would be repaid under the terms of the second mortgage as long as the value of the building allowed for the repayment of all the financing. If the value had declined, the first mortgage lender would have precedence and the residents would get the remainder.

Landlords in Manitoba are required to maintain a refund fund, though its size is unspecified. If funds are available either from the refund fund or from an incoming tenant, entrance fees must be repaid within 30 days. If a landlord fails to refund an entrance fee in the prescribed time period, the trustee will commence mortgage sale and foreclosure proceedings. The new landlord may agree to honor the entrance fees but if s/he doesn't, the trustee will distribute whatever is left in the refund fund among the tenants. Residents might get all, some, or none of their entrance fees back.

In Ontario, safety of entrance fees is not an issue. Life lease units are sold at market levels and residents take the same risks as condo owners do – if prices rise, they benefit and if they fall they do not.

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The 2007 CMHC report does not discuss the issue of entrance fee safety in any depth. Instead, it notes that the priority of long term financing relative to entrance fees needs to be made clear in any legislation.

### ***Replacement Reserves***

In BC, there are no legislative requirements mandating the creation and maintenance of replacement reserve funds for life lease projects although good sponsors follow this practice anyway. The Strata Property Act requires the establishment and ongoing funding of contingency reserve funds for condominiums. The absence of replacement reserves could have serious consequences for life lease purchasers. Sponsors should certainly establish replacement reserve funds and ensure their adequacy throughout the life of the project.

In Manitoba, the Life Leases Act requires the maintenance of replacement reserve funds.

In Ontario, the discussion paper says that almost all life lease projects in Ontario maintain a capital reserve fund but there is no requirement about the size of the fund, as there is for condominiums (10% of monthly maintenance fees must be placed in a reserve fund). Furthermore condominiums must also conduct regular studies to ensure adequacy of the fund. The paper suggests that these same provisions might be appropriate for life leases as well.

The CMHC report recommends that replacement reserves be part of life lease legislation.

### ***Governance***

In BC, there are no legislative provisions covering governance of an occupied life lease building.

In Manitoba, life lease governance issues are viewed through the lens of landlord/tenant relations notwithstanding the significant capital expenditures made by residents. Residents are tenants, not owners. Two tenant representatives are entitled to attend Board meetings but do not have voting rights, unless specifically given to them by the Board. In addition, a project's sponsor must attend the Annual General Meeting, in addition to the property manager.

Ongoing disclosure of financial information is also required in Manitoba. Every year tenants must be provided with detailed information about the operation of their project including revenue by source (rental income, parking, laundry, etc.), expenditures by type, and contributions to various reserve funds (bad debts/vacancies, replacement reserve fund, utilities reserve fund and others).

Tenants must also receive an annual report about the size of the refund fund, how it was invested during the preceding year, and how much income the refund fund earned. Furthermore, if a majority of tenants so desire, they must be provided with audited legal statements.

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The Ontario Ministry of Municipal Affairs and Housing discussion paper makes no particular suggestions about resident involvement in project management but does highlight that residents have a definite financial interest in the upkeep of their project and its financial status because they pay a significant amount of money to buy units and are responsible for selling their unit upon termination of the life lease agreement. The paper is seeking public input on what roles sponsors and residents should play in the financial and operational management of life lease projects.

The CMHC report suggests that legislation should address resident representation on boards of governance. It puts forth that sponsors should be required to create a minimum number of spaces on the board for either voting or non-voting residents.

### ***Dispute Resolution***

In BC, there is no legislation governing dispute resolution in life lease projects (or in strata properties either). Some sponsors include a dispute resolution clause in their occupancy agreement.

In Manitoba, dispute resolution is covered by the Residential Tenancies Act

The Ontario discussion paper suggests that effective dispute resolution mechanisms would be beneficial for both sponsors and residents.

The CMHC report does not address dispute resolution.

### ***Stratification***

As indicated in Section 6, in BC, the Strata Property Act confers all the rights of an owner on tenants who have leases that are longer than three years. The implication of this for life lease sponsors who stratify their projects is that they could lose control of their projects entirely if the residents chose for whatever reason to exercise their rights.

In Manitoba, stratification does not confer owner rents on tenants.

In Ontario, stratification does not appear to be an issue. There is only one life lease project in Ontario that is strata-titled.

The CMHC report does not address the implications of strata titling.

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## **Summary**

From the perspective of BC life lease consumers, legislative protection in the pre-occupancy period is equally as good as the protection afforded condominium purchasers in BC and in most respects, better than the protection afforded life lease consumers in Manitoba, the only province in Canada with specific life lease legislation.

Post-occupancy, security of tenure is guaranteed for BC consumers and ongoing disclosure is required whenever a unit changes hands. The safety of entrance fees in the event of post-occupancy default depends on the nature of individual occupancy agreements. Ongoing disclosure of financial information is entirely up to the sponsor.

In Manitoba, legislation provides for ongoing disclosure of financial information and mandatory replacement reserve funds. However tenants have no voting rights unless Boards choose to give it to them. Security of tenure is provided through the Residential Tenancies Act. Entrance fees may be protected via a second mortgage registered on title in favor of the tenants although the value of that mechanism depends on the value of the building. The Life Leases Act provides for mandatory foreclosure and mortgage sale proceedings where landlords are unable to repay entrance fees.

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## Chapter Five – Financial Perspectives

### The Impact of Equity

One of the attractions of life lease development is that it directly addresses the major problem inhibiting the development of rental housing – the requirement for equity investment that many housing providers cannot meet.

The underlying economic problems of rental projects as well as the solution offered by life lease developments will be demonstrated in this chapter by illustrating the different financial characteristics of a hypothetical 25 unit project developed as rental versus life lease. Highlights of the analysis are illustrated in Table 1, Rental vs. Life Lease Economics (at the end of this section), while the detailed financial analyses are contained in Appendix C.

### ***Case Study Project – Overview***

A project with the following characteristics will be used to illustrate the different financial characteristics between a rental and a life lease project.

- 1) The Developer: a non-profit housing provider.
- 2) Location: interior BC community
- 3) Site size: half acre or 21,780 sq.ft.
- 4) Floor space ratio and gross building area: 1.086 and 23,522 sq.ft.
- 5) Number of units and useable area of each unit: 25 units at 800 sq.ft.

### ***Project Viability as a Rental Project***

The absence of new privately initiated rental housing projects throughout BC and Canada attests to the fact that generally they are not viable investments. For non-profit housing providers, rental projects typically have prohibitively high equity requirements as illustrated below.

- 1) Determining project viability

The key issues relating to project viability for non-profit housing providers are:

- a) Is the value of the project equal to or greater than its cost?
- b) Is the amount of equity required realistically attainable?
- c) Does the project have positive cash flow after paying for operating expenses and mortgage payments?

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2) Key financial assumptions

- a) Building construction costs = \$140 per sq.ft. of gross building area.
- b) Rental rates are \$850 per unit<sup>(xvii)</sup>.
- c) Vacancy rate = 2%.
- d) Operating expenses = 35% of effective gross income<sup>(xviii)</sup>.
- e) 90% of construction costs can be financed if insured.
- f) The permanent mortgage which is put in place after the project is built is based on:
  - i) A 35 year amortization period.
  - ii) A debt service coverage ratio of 1.2. This means that net operating income must be 1.2 times greater than the project's net operating income in order to provide the lender a "cushion" in the event that future revenues were to decline and put the sponsor's ability to pay the mortgage at risk.

3) Resulting Project Cost, Value and Equity Requirement

- a) Project cost comprises land (\$560,000), construction (\$3,495,000), development or soft costs (\$1,017,000) plus interest costs (\$158,000) = \$5,230,000
- b) Project value is determined by "capitalizing" the net operating income. A market capitalization rate is the return that similar rental projects earn on their purchase price. Rental housing projects earn in the order of 5%. Therefore, the value of a rental project with an income of \$162,000 is \$162,000 divided by the 5% capitalization rate or  $\$162,000 / .05 = \$3,249,000$ .
- c) On completion of construction, cost exceeds project value ( $\$5,230,000 - \$3,249,000 = \$1,981,000$ ), demonstrating that the project is not economically viable. Viability could only be improved by adding equity to make up the cost shortfall.
- d) The final equity requirement which is determined when the permanent financing is put into place to take out or replace construction financing, is project cost – mortgage = equity or  $(\$5,230,000 - \$2,116,000 = \$3,113,000$ . This is 60% of the project cost and an impossible requirement for non-profit housing providers to meet.

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- 4) Net operating income, cash flow and return on investment
    - a) The viability of the project is determined by examining its financial performance in a typical or “normalized” year as represented by year 2 net operating income. The project produces a “normalized” net operating income of \$158,000 realized in year 2.
    - b) Subtracting the mortgage payment of \$135,000 results in a normalized cash flow of \$27,000<sup>(xix)</sup>. Thus a non-profit housing provider is able to operate with a modest and positive cash flow producing a return on investment (cash flow divided by the equity investment of \$3,113,000) of 0.71%, assuming the sponsor was able to obtain \$3 million in equity – a completely unrealistic assumption for almost all non-profit sponsors.
  - 5) Conclusions
    - a) Non-profit housing providers have a difficult time creating viable rental housing projects because of a combination of high construction costs and low rental rates. That combination results in project value being lower than project cost, which necessitates prohibitively high cash equity requirements. These circumstances will not change in the foreseeable future.
    - b) A similar situation exists for private investors developing market rental housing<sup>(xx)</sup>, i.e., low rental rates produce the same problem. However, there are some areas, e.g., downtown Vancouver and Victoria, where renters have the income to pay the higher rents required to support the construction of new rental buildings.
    - c) Given the prospects that rental housing will not be a viable alternative for most non-profit housing providers, life lease development, as illustrated in this report, may be a solution well worth pursuing.

### ***Project Viability as a Life Lease Development***

The key to life lease projects focused on producing good quality seniors’ housing is that they may attract households who can contribute equity that will make up the cost-less-revenue deficiency illustrated in the rental project analysis above.

- 1) Assumptions for Life lease Project:
  - a) Building construction costs = \$140 per sq.ft. of gross building area.
  - b) Market prices for selling the units = \$175,000 per unit.
  - c) 90% of project costs (land and construction) can be financed if insured.

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- d) The housing provider is responsible only for construction financing and uses purchaser deposits to meet these needs. Purchasers of the individual units secure their own financing to buy their units, most by selling a house.
- 2) Housing Provider Strives to Break-Even on Development
- a) Initially, the housing provider seeks to realize no profit on development (i.e., s/he seeks to break even).
- b) Project cost comprises land (\$560,000), construction (\$3,495,000), development or soft costs (\$1,024,000) plus interest costs (\$167,000) = \$5,079,000.
- c) Project value is the gross sale value (average unit “market” sales price = \$175,000) of the sold units less commissions = \$4,336,000.
- d) On completion of the project, cost exceeds project value (\$5,079,000 - \$4,336,000 = \$743,000). To break even, the housing provider must raise the average unit sales price from \$175,000 to \$215,000.
- e) From a housing purchaser perspective:
- i) With 25% equity (i.e. a variation of the Manitoba model):
- Downpayment = \$53,750
  - Mortgage = \$161,000, 25 year amortization period and 5.5% interest rate
  - Annual housing costs = \$18,369,300
  - Annual income required to purchase housing = \$55,600
- ii) With 100% equity:
- Downpayment = \$215,000
  - Mortgage = \$0
  - Annual housing costs = \$7,039 (taxes, utilities, management fees)
  - Annual income required to purchase housing = \$21,300

### ***Conclusions: The Advantages of Life Lease Development***

The case study analysis above demonstrates the advantages of life lease projects for providing senior’s housing.

- 1) Life lease projects do not require huge amounts of equity from non-profit sponsors – incoming residents provide the equity. However in most cases, land or cash equity will still be required, either to fund predevelopment activities or to qualify for lender financing or both.

- 2) Housing providers do not include profit as a development cost. Life lease providers may operate on a break-even basis or may choose to accumulate some surplus funds for other objectives (to buy back units to rent for example).
- 3) With insurance provided, construction financing and purchaser mortgage financing is adequately available.

**Table 1**  
**Rental Versus Life-Lease Economics**

<b><u>1.0 Project Characteristics</u></b>	<b><u>Rental</u></b>		<b><u>Life-Lease</u></b>	
Site area	21,780	sq.ft.	21,780	sq.ft.
Gross building area	23,522	sq.ft.	23,522	sq.ft.
Number of units	25		25	
Size of units	800		800	
Monthly rental rate	850		n/a	
Market sales price	n/a		175,000	
Break-even sales price	n/a		215,000	
			<b><u>Market</u></b>	<b><u>Break-even</u></b>
			<b><u>Prices</u></b>	<b><u>Prices</u></b>
<b><u>2.0 Project Cost vs Value</u></b>				
Value	3,249,000		4,336,200	5,319,000
Cost	5,230,000		5,080,000	5,319,000
Surplus/Deficit	-1,981,000		-743,800	0
<b><u>3.0 Final Housing Provider Equity Requirement</u></b>	3,113,000		none	none
<b><u>4.0 Cash Flow and Return on Investment</u></b>				
Year 2 cash flow	27,000		n/a	n/a
Indicated return on investment	0.87%		n/a	n/a
IRR on equity investment	3.95%		n/a	n/a
<b><u>5.0 Resident Household Incomes</u></b>	0		0	0
25% equity	n/a		16,800	21,300
100% equity	n/a		38,700	55,700

## **Predevelopment Financing**

Life lease sponsors must be aware that significant amounts of money – usually hundreds of thousands of dollars - are required before construction financing may become available. Predevelopment funding may be needed for activities such as the following:

- Market studies
- Land options (if land is not already owned)
- Soils tests
- Geotechnical tests
- Phase 1 Environmental tests
- Topographical surveys
- Appraisal of land
- Appraisal of complete project

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- Preliminary design work
  - Capital and operating budgets
  - Legal issues
  - Management Plan
  - Marketing activities

Although support from CMHC and BC Housing may be available to cover some of these costs, sponsors must have access to other sources of funds. Some of the life leases explored in the case study, borrowed money from their members (Elim, Maple Ridge Legion); another borrowed money from community residents and fund-raised (Naramata); while another sponsor was large enough to fund predevelopment activities from its own resources and to partner with for-profit developers who provide the necessary funds for predevelopment activities (Good Samaritans). Partnering with for-profit developers may be an option for other sponsors as well.

### **What will Lenders Look for?**

All lenders want to be sure that their loans will be repaid and will analyze applications very carefully to satisfy themselves that repayment is probable. In some cases, local credit unions may be good partners for life lease sponsors – this was the case in Naramata with the Valley First Credit Union providing financing for the construction and ongoing financing. In the Lower Mainland, the Royal Bank is the lender for the Elim Housing Society and kindly provided the following advice for potential life lease sponsors seeking financial support:<sup>xxi</sup>

1. The Life Lease Sponsor must be financially strong and established. This may include experience in operating multi-residential housing, a stable financial picture which may include land equity but also cash equity, surplus income to expenses (an operating profit), a board of directors capable of taking on the challenge of construction and operations.
2. The Life Lease Sponsor should have a good reputation in the community, with community connections and support. They may need to fundraise equity for the project to succeed, and to add experts to their board of directors to round out the skills needed for the life lease project.
3. The Life Lease Sponsor needs to draw on the board of directors and use professionals for all essential elements of the project: design, feasibility study, development planning and liaison with city planning department, accounting services – including assistance in applying for finance and forecasting the operating budget, marketing – pre-leasing sign ups, legal contracts and operating agreements, construction, lease up and ongoing operations of the housing complex.



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4. Life lease purchasers should fully understand the nature of the project, including acquiring independent legal advice before committing to a lease contract. A life lease project is a unique form of housing
  5. Life lease sponsors must carefully consider the nature of their redemption model (as described in Chapter Three).
  6. Sponsors must assess market risk and recognize that pre-sales/pre-leasing is a measure of support. They should determine what price levels and redemption models are acceptable and ensure the project design can be built for what units will sell for. Otherwise it may be necessary to adjust the design/amenities or the structure of the life lease.
  7. The construction phase of a project involves a number of risks, so sponsors must do a careful plan and eliminate uncertainty as much as possible. They should consider the cost of construction – fixed price on majority of trades or a fixed price contract, choose a general contractor carefully and use a quantity surveyor to help validate the cost to construct budget. Once the project is under construction, use a project monitor and/or project advocate to help navigate the construction phase.
  8. Financial risk: identify sources of additional equity to cover cost overruns or interest costs if project time line expands, or if preleasing/presales do not close.
  9. Closing risk: Pre-sales may not close if the final project is not what the buyer expected or was promised during the marketing stage. Consider the reputation risk of pre-sales not closing or if buyers lose confidence in the project.
  10. Life lease communities have a special quality as communities, so special care and attention is needed in planning and delivering a community feel of the complex when residents move in.
  11. Operations are the next challenge in ensuring satisfied residents and ongoing demand for units for re-sale. During the operations phase, the cost recovery from owners, similar to strata or service fees, must cover all operating expenses and provide an asset replacement reserve. The reserve fund should be enough to pay for future repairs and maintenance – seek a professional estimate on what is appropriate.
  12. Lending Requirements: New life lease construction should meet all the usual requirements of the lender's construction financing: 70-85% pre-sales in units and dollars (enough to repay the construction loan), cash and land equity (20-35% of the cost to construct), and acceptable strategies for managing the construction risk of the project. A project monitor is required and construction loans are advanced in monthly draws based on a cost to complete basis. It is also usual to identify a source of cash for cost overruns.

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13. Pre-sales have minimum non-refundable deposits in the 15-25% range. These cash deposits are generally used to partially fund the costs of construction (part of the cash equity). Although deposits used for construction purposes must be insured in BC, it is essential that purchasers obtain independent legal advice and understand the nature of their commitment and associated risks.
  14. The proposed life lease agreement and pre-sale contracts must be reviewed and found satisfactory by the lender's legal counsel.
  15. The project must have a draft condominium or strata plan created at the outset, capable of registration upon completion of the project. This is an important feature, in case it is necessary to remarket the project as a standard condominium project. (*Note to reader:* this is an RBC requirement that may not be required in other cases.)
  16. For life lease projects there are sometimes limited options for long term financing (either by way of residential or commercial mortgages) If the project is relying on long term financing, investigate the options early in the process.
  17. Life lease projects are often sponsored by charitable or religious organizations. It is essential to ensure that the life lease agreements are non-discriminatory and do not violate the Canadian Charter of Rights and Freedoms or other Human Rights Legislation.

Evidently, there are many financial considerations that potential sponsors of life leases must note before they pursue a project.

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## Chapter Six – Should You Consider a Life Lease?

When considering the possibility of sponsoring a life lease, there are many important issues to consider, including:

- Need in the community – Is there a need in the community for seniors’ housing that is not being met?
- Nature of the local housing market and community demand. There are three things to consider here. First, sponsors must be confident that the life lease concept will be acceptable to people in their community. Second, because life leases depend for their success in the market place on the ability to sell units on an ongoing basis, sponsors must be sure not only that the units will sell in the first instance but that they will continue to sell in the future. Third, sponsors must consider the level of house prices in the community – if the cost to build new life lease units exceeds the level of prices in the existing housing market, the project will not work. Incoming residents need to be able to sell their houses for substantially more than what they will have to pay for a life lease unit.
- Strength of the sponsoring organization – Life leases are complex and time-consuming to develop. Sponsors must not only be committed to the time it will take to develop a life lease, they must have appropriate expertise among their board members.
- Nature of affiliation – Although this is not an absolute truism, life leases seem to be easier to develop successfully when they are sponsored by groups with strong affiliations – for example, churches, ethnic groups or service clubs. To some extent this is because there is a built-in market. Nonetheless, other kinds of sponsors may be equally successful – the Naramata case study provides a very good example of a sponsor that originated in a church but expanded its membership to the broader community.
- Community support – strong community support is essential for life leases to be successful. This can apply to the sponsoring community itself; for example, the Maple Ridge Legion, or to the broader community as in the case of Naramata. Many sponsors have found that the very best way to gauge community support is to ask for financial help and assess the response.
- Financial strength – As discussed elsewhere, predevelopment funding requirements are substantial. Sponsors must be able to obtain the necessary funds in some way and must be prepared to spend the money in the realization that there is no guarantee of eventual project success. In addition, sponsors and projects must be strong enough and sound enough to persuade lenders to commit millions of dollars.

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## Chapter Seven – Key Success Factors: Lessons from the Case Study Projects

The case studies that appear in the appendices of this document offer a detailed portrait of four life leases in BC. In this chapter, the reasons behind the successes of these life leases will be outlined. The similarities between the four life leases are remarkable.

### Good Samaritan Society

- Trust in the sponsoring organization is critical.
- The sponsor must have sufficient development expertise within its own staff or must be able to identify qualified external resources.
- Partnerships with for-profit organizations have worked very well.
- Sponsors must try as hard as they can to educate potential residents about what a life lease project is and how it operates. This is a challenging exercise – many people do not truly understand what they are buying notwithstanding detailed disclosure statements.
- Organizations must have access to substantial amounts of equity, either from their own resources or from their partners' resources.
- Potential sponsors should become familiar with programs that are available from CMHC and BC Housing – for example, seed funding and proposal development funding.

### Elim Housing Society

- It is critical to have the strong support of the community, whatever kind of community is involved – faith-based, service club, ethnic, or other. The whole community needs to be committed. It is a good idea to do a survey of the members before any further steps are taken to gauge their level of support. One good way of gauging support is to fund raise. The community should have a history of working together to achieve goals – not necessarily housing but some kind of goal.
- Professionals who are involved with the project also need to have a sense of commitment and not just be in it for the money. They need to be well qualified and they also need a sense of service.
- The Building Committee or Board needs to be passionately committed to the project but must also have relevant expertise. It is also a good idea to make it clear that their commitment will have a time limit and not be indefinite, or a “life sentence.”
- In terms of financing, sponsors must be creative, particularly in view of the large amount of predevelopment funding that will be required – CMHC’s predevelopment funding is not nearly enough. It is extremely helpful to be able to obtain venture capital from the supporting community, particularly if the capital can be obtained at favourable interest rates. Supporting communities may include investors who are willing to accept lower than market returns because of the

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- social objectives of the project – investors who want to make a return, but not a huge return, and investors who are willing to take a risk because they are committed to the project’s objectives. At Elim, 70 people contributed \$25,000 each. The money was secured by a promissory note at competitive rates, but the investors understood clearly that the money was essentially completely at risk.
- Sponsors may be able to create charitable foundations, in which investments can be RRSP eligible. Sponsors with property can do this.
  - The Planning Department of the municipality in which the project is located has to want the project to happen.
  - Community support for rezoning – it is very important to deal effectively with the surrounding community if rezoning is necessary. Part of this means having the support of the Planning Department, but part of it also means reaching out to the community and keeping community members informed of events as they progress.
  - Design issues – be careful to know what your market wants. The first Elim building is 54 units, of which 42 are two-bedroom and 12 are one-bedroom units. The second building contained more two-bedroom units, which is what the market wanted.

### **Naramata Housing Society**

- “If you will give up when the going gets tough or darned slow, do not start!” It took four years and 83 meetings to get the project off the ground.
- Perseverance, creativity, resourcefulness, community support and a refusal to quit in the face of obstacles are extremely important.
- Careful selection of board members is essential. Societies should think about the skills and expertise they need for their project and choose board members accordingly. People with legal, accounting, and construction skills are extremely valuable.
- Investigate all available sources of money, including government agencies and foundations. The society relied on a combination of low interest loans from community residents, volunteer labor, equity from incoming residents and some grant funding from the Real Estate Foundation and BC Housing.
- Recognize from the outset the amount of work that will be required of board members and make sure you have enough people to carry the load without burnout. The society believes it could have raised significantly more money from the community if board members had had more time to talk to community residents.
- The process of producing a Working Paper was vital to the success of the project.
- Education about what life lease is and is not is very important. Many people, including lawyers, do not understand the concept.
- Include in your budget a substantial amount for divine intervention.

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## Maple Ridge Legion

- It is critical that sponsoring organizations have deep roots in the community. Otherwise the trust that is so essential to the development of a successful life lease project will be absent.
- Competent, knowledgeable and trustworthy development consultants and project managers are essential, although they can be hard to find. Potential sponsors need to be very careful about the professional resources they recruit. Referrals and recommendations from reputable sources are the best way to identify people who are familiar with the development process and who know how to access the right resources.
- Organizations must have access to substantial amounts of equity. If they have no equity, or very little equity, they are just wasting their time. Predevelopment funding is necessary for market studies, land acquisition, zoning, soils and other environment tests, financial feasibility analysis, preliminary architectural drawings, and so on. Some money is available from government organizations (see next point) but not enough.
- Partnering with other community organizations can be an excellent way to get a project off the ground. A life lease in Surrey was sponsored by 12 different churches, and one in Winnipeg was sponsored by three different service clubs that came together to create the project.
- Potential sponsors should become familiar with programs that are available from CMHC and BC Housing – for example, seed funding and proposal development funding.

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## **Chapter Eight – So You Want to Build a Life Lease? Summary List to Development**

1. Be very sure that the group is committed to the idea of building a life lease and is aware of the resources that will be required in terms of time and money.
2. Prepare a business plan that includes a vision statement. Discuss all aspects of the project's development and operation including issues such as board expertise (is it adequate? Are new board members necessary?); financial issues (where will the money come from to fund predevelopment activities? What fund-raising activities should be planned?); site and design considerations (is site acquisition necessary? How many units and what kind of units make sense in the market area?); redemption policies (gain or no-gain); governance (will residents have any control over project operation?); pets, smoking, warranty protection – the list is a long one.
3. Identify outside professional resources that will be necessary to support the board through development, construction, and initial operations. This could include development consultants, project managers, architects, market analysts, mortgage brokers, lawyers, and marketers.
4. If not already available, conduct a market analysis to make sure life lease housing will appeal to enough local seniors to ensure project viability.
5. Discuss project with municipality.
6. Prepare site plans, concept drawings, preliminary capital and operating budgets, and preliminary marketing plans.
7. Prepare disclosure statement and submit to Superintendent of Real Estate.
8. Initiate marketing.
9. When adequate presales are achieved revise budgets and review project feasibility.
10. If project feasibility is positive, prepare final working drawings, finalize pricing and financial commitment, and secure non-refundable deposits from purchasers.
11. Construction process.
12. Occupancy – occupancy schedule, deficiencies, final budgets.

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## Appendix A: Case Studies

### Case Study #1 – Good Samaritan Society

#### Good Samaritan Society

- Mountainview Village, 1540 KLO Road Kelowna
- Heron Grove, 4900 20<sup>th</sup> Street Vernon

c/o the Good Samaritan Society  
8816-75<sup>th</sup> Street  
Edmonton AB T6H 5A2  
(780) 431-3600

#### *Year Occupied*

Mountainview Village Phase 1 – 2002, Phase 2 December 2006

Heron Grove – December 2006

#### *Project Sponsor*

The Good Samaritan Society is a non-profit Lutheran Social Service Organization, established in 1949. The Society<sup>xxii</sup> operates seniors' housing and health care projects in Alberta and British Columbia. Most of its projects are long term care and assisted living facilities. In BC, its life lease projects are located in combined use life lease/assisted living buildings. As a result of that proximity, life lease residents may buy optional on-site services such as meals and housekeeping.

#### Project Summary

<b>Name of Project</b>	Mountainview Village and Heron Grove
<b>Location</b>	Kelowna and Vernon, BC
<b>Structure Type</b>	Wood frame apartment buildings; combined life lease and assisted living
<b>Number of Units</b>	82 (Mountainview) and 15 (Heron Grove)
<b>Client Group</b>	Fairly independent seniors
<b>Entrance Fees (equivalent to approx. 35% of-unit cost)</b>	MVV – from \$46,900 (1 bed); \$120,750 (2 bed) Heron Grove - from \$50,000 (1 bed) to \$99,500 (2 bed)
<b>Monthly Fees (includes amortization of remaining unit cost)</b>	MVV – from \$642 (1 bed); \$1,475 (2 bed) Heron Grove – from \$730 (1 bed); \$1,458 (2 bed)



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## ***Origins and Objectives***

Since its establishment in 1949 the Good Samaritan Society has grown to provide services to over 4,000 seniors in communities throughout BC and Alberta. Its major focus is on funded (i.e. subsidized by government) long term care and assisted living. It has developed life lease projects for more independent seniors in situations where development economics favour larger projects – for example, where land costs must be spread over a greater number of units. The Society does not develop free-standing life lease projects.

## ***Basic Life Lease Model***

Unlike most other life lease projects in BC, Mountainview Village and Heron Grove operate on what is known as the “Manitoba Model”, which basically means entrance fees that are less than 100% of the cost of building the unit. The Good Samaritan Society (GSS) refers to the monthly payment as “rent” and considers its residents tenants, as is the case in all Manitoba life lease projects. The Society finances the difference between the entrance fees and total project cost. Debt service costs (mortgage payments) are treated as operating costs and are paid by the tenants in their rent. When residents leave, entrance fees are refunded at the same level paid at move-in less an administrative fee of up to 6% (not applicable to Phase I). Equity gains through paying down the mortgage and changes in market value of the property are not passed on to the tenants. More detail about how the model works is included elsewhere in this document.

## ***Physical Description of Project - Services***

- Mountainview Village Phase 1 is a three storey building with 37 assisted living units on the main floor and 67 life lease units on the second and third floors – 33 one bedroom units (567 to 741 square feet) and 34 two bedroom units (900 to 1,546 square feet).
- Mountainview Village Phase II is a three-storey building with 89 assisted living units and 82 independent living suites (Life Lease) The Life Lease suites are comprised of 37 one-bedroom units (567 to 741 square feet) and 45 two-bedroom units (900 to 1,546 square feet).
- Heron Grove Phase 1 is a three storey building with 38 assisted living units on the main and second floors and 15 life lease units on the third floor – six one bedroom units (five are 574 square feet and one is 804 square feet), two one bedroom and den units (992 square feet) and seven two bedroom units (811 to 1,147 square feet). Phase 2 of Heron Grove will consist of 76 complex care beds. Although life lease buyers tend to prefer larger units, the one bedroom units in Heron Grove were very popular with Vernon seniors.
- All units are fully self-contained and accommodate aging in place – for example, there are grab bars in the bathrooms and levers on most doors and plumbing fixtures.

- Because of the combined nature of Mountainview Village and Heron Grove, life lease residents have the option of buying services such as meals, laundry services and housekeeping on an “a la carte” basis. Full services at Mountainview Village (three meals per day, weekly housekeeping, flat and personal laundry, and the emergency response system) cost \$635.00 per month for one person in a one-bedroom apartment. A couple in a two bedroom apartment would pay \$1190.00.
- “A la carte” price list:

<b><u>Meals</u></b>	
Breakfast	\$90.00/month
Lunch	\$150.00/month
Dinner	\$240.00/month
<b><u>Laundry</u></b>	
Common machine use	\$9.00/month
Linens and personal (1 bedroom)	\$60.00/month
Linens and personal (2 bedroom)	\$80.00/month
<b><u>Housekeeping</u></b>	
One visit per week (1 bedroom)	\$60.00/month
One visit per week (2 bedroom)	\$80.00/month
<b><u>Other</u></b>	
Additional parking stall*	\$15.00/month
Storage locker*	\$10.00/month
*Subject to availability	
Telecare Emergency Response System	\$35.00/month

- At Heron Grove a comparable package will cost the same as above
- Approximately 20% of the Phase 1 life lease residents at Mountainview Village buy some or all the available services. In 2002, this percentage started at approximately 10%, and has increased annually as the resident population ages.



Mountainview Village, Phase 1



Heron Grove (under construction)

### ***Occupancy Agreement***

- Occupancy is restricted to people aged 55 and over, although for couples, only one partner must be over 55.
- The life lease is for a term equal to the life of the tenant but in no case will be longer than 30 years less a day in order to eliminate the requirement to pay Property Transfer Tax (PTT). PTT operates on a sliding scale in BC but to take an example, would amount to \$3,000 on a \$250,000 unit.
- An initial deposit of \$5,000 is required when an offer to lease is signed. The balance of the entrance fee is required prior to occupancy. Some flexibility is allowed in how the balance is paid, but most often it is paid in a lump sum 1-2 weeks prior to occupancy. This gives enough time for the lease to be registered at the Land Title Office prior to occupancy. The Offer to Lease has spaces for payment dates and amounts to be filled in, after some negotiating with the prospective tenant, if necessary.
- Entrance fees are deposited in a trust account. The GSS may use the funds in the trust account *post-occupancy* to repay construction financing or to refund entrance fees owed to outgoing residents.<sup>xxiii</sup> The Entrance Fee Refund Account is intended to total approximately \$309,000 in the case of Mountainview Village and \$100,000 in the case of Heron Grove.

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- Residents may terminate the lease by providing 60 days notice. Upon termination, entrance fees less an administrative fee of up to 6% (this fee was not identified in the Disclosure Statement for the original development of Phase 1, therefore the fee is waived for the “original tenants”), are returned to the outgoing resident within 90 days as long as there is sufficient money in the Entrance Fee Refund Account to permit refunding or entrance fees are available from incoming residents. If neither of these conditions exists, then entrance fee refunds will be paid within 30 days of the GSS receiving entrance fees from a new resident, or within 12 months from the Society’s own funds, in which case interest will be paid on the outstanding amount to the former resident. If all sources of repayment funds are exhausted, entrance fee refunds will be paid when units are re-leased.
  - Life leases are registered on title at the Land Titles Office at the residents’ expense.
  - Because both Mountainview Village and Heron Grove include assisted living units subsidized by the province, an option to purchase in favour of the Provincial Rental Housing Corporation (PRHC) is also registered on title. The PRHC is BC Housing’s landholding company. The option to purchase is registered on title in the event of default by Good Samaritan Canada. Life lease tenants not themselves in default will not have to move if this should happen.
  - Residents are not involved in the management of the project but they may form a Residents’ Council to plan social and recreational activities and to provide collective input to the GSS.
  - Residents who are no longer able to live independently are encouraged and assisted to move.
  - Sub-letting is permitted with the approval of Good Samaritan Canada.
  - Although the legal documents use the terms “lessor” and “lessee”, in practice the people who live in the building are called “residents.” They do not like the term “tenant.”
  - Pets are allowed; smoking is not.

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## ***Legal Perspectives***

Neither of the GSS projects are strata titled. However an Explanatory Plan<sup>xxiv</sup> has been registered at Land Titles Office and a short form of the lease is registered at Land Titles to protect the tenure of residents. In the event of default by the sponsor, residents would not have to move but there is no explicit protection for entrance fees. That does not mean entrance fees would necessarily be in jeopardy in the event of default; only that there is no explicit protection for them. In Alberta, the Society registers a second mortgage on the project in favour of the residents equal to the amount of the combined value of entrance fees. In the event of default, the first mortgage would be called by the first mortgage lender and the second mortgage by the residents. The residents could get some or all of their money back, depending on the assets available after the first mortgagee is paid, and assuming the value of the project had not declined, but they might have to move depending on what the first mortgage lender decided to do. A similar mechanism has not been permitted to date by the Superintendent of Real Estate in BC, but this position may be changing.

Both buildings are covered by home warranty insurance under the terms of the Homeowner Protection Act, although this is not required by the legislation. An exemption from the requirement for home warranty insurance and the reconstruction levy (\$750 per unit) is available for newly constructed, multi-unit residential buildings held by one party and built by a Licensed Residential Builder, if an appropriate covenant is placed on title confirming that the building will be used for rental purposes for a period of 10 years from the date of first occupancy. The notion behind this exemption appears to be that landlords of rental buildings will be financially capable of repairing buildings that prove to be defective, whereas an individual owner of a strata title unit might not be. This might be true of some non-profit sponsors but not of others.

## ***Development Model/Partnership Arrangements***

The Good Samaritan Society has a dedicated project development arm as well as an operations arm, with staff in both Alberta and BC. The project development team functions as the development consultant for new projects, although its specific role varies depending on who else is involved in particular projects.

For example, in Lacombe, Alberta, the Society joined forces with a well-established Alberta developer and builder, Christenson Developments, in what was essentially a turnkey arrangement. The company bought the land, built the project, marketed the life lease component and then turned it over to the Society. The advantages for the company of this arrangement are that it earns a fee for the various functions it performs, it allows the company to meet goals of its own (building projects it owns that are part of larger campuses under the well-trusted and well-known name of the Good Samaritan Society), and its association with the Society is good public relations. The major advantages for the Society are the availability of capital and expertise. Although the Good Samaritan Society is a large and very capable organization, like many non-profits it does not have large amounts of capital at its disposal. These societies tend to put their money into

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project operation, which means that finding the cash for new projects can be difficult. This is particularly the case with land acquisition and predevelopment costs, which can easily amount to several hundreds of thousands of dollars.

In Lethbridge, the Society partnered with FWS Construction Ltd. and Sunstone Resort Communities Corporation, companies with experience in the Manitoba life lease market. FWS assembled the site, a financial undertaking and a risk beyond the resources of the Society.

The Society has found that joining forces with its private sector partners is a good way of getting developments underway. The costs and the risks of project development are major issues for any non-profit community based organization. Predevelopment costs can easily reach \$200,000 to \$300,000 or more for securing land, preparing preliminary architectural drawings, rezoning (if necessary), and market analysis. Predevelopment funding is one of the biggest single limiting factors for non-profit community organizations wanting to develop housing projects.

Occasionally, if the circumstances are appropriate, the Society will use its own resources to acquire land (on an option basis) or finance predevelopment costs. However its resources are not only limited, they are subject to many competing demands. In both Kelowna and Vernon, BC Housing provided the construction financing. BC Housing also handles the process of finding a lender for the take-out (long term) financing.

### ***Marketing Perspectives***

Residents of GSS projects are attracted by:

- The reputation of the Society.
- The campus nature of projects and the availability of optional services on site.
- The location and design of projects.
- Competitive pricing relative to alternatives such as congregate housing.
- The ability to conserve capital because of entrance fees that are substantially lower than unit cost.
- The lower level of entrance fees compared to projects with entrance fees equivalent to unit cost.
- The relative ease of leaving – residents need only give 60 days written notice to the Society before leaving.

The fact that no capital appreciation accrues to residents is not a deterrent to them. Residents often say things like: “This is our last place,” in reference to their GSS life lease. By choosing to live there, they are making a lifestyle choice, not an investment choice.

Likewise, the fact that residents have only limited involvement in the operation of their life lease community is not a concern for most people. In fact, many people prefer this to

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the strata title option. Resident committees are in place, but their functions are mostly related to social and recreational activities.

***Lessons Learned/Advice from the Good Samaritan Society***

- Trust in the sponsoring organization is critical.
- The sponsor must have sufficient development expertise within its own staff or must be able to identify qualified external resources.
- Partnerships with for-profit organizations have worked very well for the GSS.
- Sponsors must try as hard as they can to educate potential residents about what a life lease project is and how it operates. This is a challenging exercise – many people do not truly understand what they are buying, notwithstanding detailed disclosure statements.
- Organizations must have access to substantial amounts of equity, either from their own resources or from their partners' resources.
- Potential sponsors should become familiar with programs that are available from CMHC and BC Housing – for example, seed funding and proposal development funding.



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## Case Study #2 - Elim Village

**Elim Village (life lease; supportive housing and assisted living; long term care).**

**Life Lease components are:**

**North and South Duplexes (36 units)**

**The Atlin (49 units)**

**The Bowron (42 units)**

**The Carmanah and The Diamond (197 units)**

**c/o The Elim Housing Society**

**9055 160th Street**

**Surrey, British Columbia V4N 2X7**

**(604) 582-5579**

### ***Year Occupied***

Duplexes – 2001

The Atlin – 2003

The Bowron – 2001

The Carmanah and The Diamond - 2007

### ***Project Sponsor***

The Elim Housing Society was incorporated in 1994. It is a registered Canadian charitable organization with roots in the Dutch Canadian community and the Christian Reformed Church. By the time its 20-acre development in Surrey is complete, it will include 1,100 units/beds of housing and health care for seniors.

### **Project Summary**

<b>Name of Project</b>	Elim Village
<b>Location</b>	Surrey, BC
<b>Structure Type</b>	Duplexes and wood frame apartment buildings
<b>Number of Units</b>	197 in total
<b>Client Group</b>	Independent seniors
<b>Entrance Fees</b>	\$135,000 to \$265,000 (apartments)
<b>Monthly Fees</b>	Older phases: \$224 to \$365 Carmanah and Diamond: \$332 to \$552

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## ***Origins and Objectives***

This is how the first Elim disclosure statement dated August, 2000 describes how and why the Society began:

“In 1992, a group of men and women engaged in a Bible study realized that although their church had done much for various segments of society, one overlooked need was that of seniors. Personal observation of the growing segment of seniors in the population and seniors’ needs for particular kinds of housing and care components challenged the Bible-study group to put their thoughts into action. The first step was the establishment of the Elim Foundation in 1994. . . . . With donations from a small group of dedicated members, the Foundation began to develop its concept for the size and nature of a complex that would meet the changing needs of seniors as they aged. In 1996 the members of the Elim Foundation established the Society with its mandate to actively pursue the acquisition of land and to engage the services of both an architect and a project manager to give substance to their ideas. After seriously considering several sites, the Society determined that the Burnaby Lake Greenhouses Lands met their criteria for a site.”

The next disclosure statement, issued on June 12, 2006 with reference to The Carmanah and The Diamond, contains additional information about the Society’s philosophy and guiding principles:

“The basic philosophy of the founders of the Society is that seniors belong in the communities of which they have been a part all their lives. Family, church and community are all integral to the well being of seniors and any housing arrangement that the Society established would have to integrate all three. The Society’s desire is that when the care needs of seniors became too great for them and their families to manage, there would be a community in which these seniors could spend the remainder of their lives sharing their memories and experiences with each other, their families, and the community.”

The disclosure statement makes the very good point that by providing for their parents and grandparents, the generation that is developing Elim Village is also providing for themselves.

The Society raised \$2 million in equity over a three year period and has put uncountable volunteer hours into the development of the Village.

### ***Basic Life Lease Model***

Elim Village describes its entrance fees as either “prepaid rent” or “Life Lease Capital Payment” and refers to its residents as “life tenants.”

When residents leave, entrance fees are refunded at the prepaid level within 30 days. Leases that have been in place for fewer than five years may be subject to a

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Marketing/Refurbishing fee of up to 5%. The Society has the right to limit redemptions in any 12 month period to 15% of the number of dwelling units. Life Tenants are unsecured creditors with respect to the return of their prepaid lease payment.

Units are re-leased at market levels, which are determined with the assistance of real estate agents who work with Elim. If market levels move up between entrance and exit, Elim retains the balance and uses accrued funds for construction purposes and for refunding purposes. If market levels move down, Elim absorbs the difference.

### ***Physical Description of Project***

- The Atlin is a three storey building with 49 units; nine one-bedroom units (789 square feet) and 40 two-bedroom units (1,050 square feet to 1,257 square feet).
- The Bowron is a three-storey building with 42 units; 12 one-bedroom units (752 to 820 square feet) and 30 two-bedroom units (1,175 to 1,285 square feet).
- Parking for all the apartment life lease units is underground.
- The Carmanah and The Diamond are three-storey buildings containing a total of 70 units, all but one of them two- or three-bedroom units ranging from 960 square feet to 1,690 square feet.
- The duplexes range in size from 1,519 square feet to 1,569 square feet.
- All units are fully self-contained and accommodate aging in place – there are grab bars in the bathrooms and levers on most doors and plumbing fixtures.
- With 24 hours notice, life lease residents can have dinner in the dining room of The Emerald, the supportive housing/assisted living component of Elim Village.

### ***Occupancy Agreement***

- Occupancy is generally restricted to people aged 60 and over, although for couples, only one partner must be over 60. There are some provisions related to younger people who may be in need of special care.
- The life lease is for a term that is the lesser of the life of the resident and 29 years in order to eliminate the requirement to pay Property Transfer Tax (PTT). PTT operates on a sliding scale in BC but would amount to \$3,000 on a \$250,000 unit, for example.
- An initial deposit of 10% of the Life Lease Capital Payment is required when an offer to lease is executed. The remainder is payable upon the completion date (for buyers who enter into a lease while projects are still under construction).
- Residents may terminate the lease by providing 90 days notice. Upon termination, entrance fees less a 5% marketing/refurbishment fee are returned to the outgoing resident within 45 days although the lease agreement allows the Society to limit redemptions to a maximum of 15% of the dwelling units within any 12 month period.
- In the earlier phases, entrance fees were returned at par for lease terminations that occurred longer than five years post-occupancy. If lease termination occurred less than five years after occupancy, the Society could, at its discretion, deduct an amount for Marketing and Refurbishing ranging from 1% of the entrance fee (for

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- occupancies terminated in the fifth year) to 5% of the entrance fee (for occupancies terminated in the first year).
- The Society established a Legacy Fund for the purpose of funding the construction of future amenity space and facilities and a complex care facility within Elim Village. The Legacy Fund is \$105 per unit per month for residents of The Carmanah and The Diamond.
  - Life leases are registered on title at the Land Titles Office at the resident's expense.
  - Monthly maintenance charges include an amount for the replacement reserve fund.
  - Residents cannot serve as directors of the society but are members of the Tenants' Council.
  - Residents who are no longer able to live independently are encouraged and assisted to move.
  - Sub-letting is not permitted.
  - Small pets were allowed initially but the policy has since been changed to prohibit pets in the apartment buildings (not including small caged birds or small fish tanks). This new policy exempts those who were residents before the policy change.
  - Smoking is allowed in units and on balconies.

### ***Legal Perspectives***

None of the Elim projects are strata titled, however an Explanatory Plan<sup>xxv</sup> has been registered at Land Titles Office and a short form of the lease is registered on the Explanatory Plan. The projects are not strata titled because the Society feels very strongly that strata titling is not consistent with their vision for a true community at Elim Village. This feeling is partly related to the provisions of the Strata Property Act that give renters in strata title projects the same rights as owners if leases are longer than three years. The Society could lose control of the project if life lease residents chose to exercise their rights under the Strata Property Act, an outcome that would destroy much of what the Society was established to achieve. Furthermore, the Society believes that the sense of the Village as a community could be jeopardized as a result of strata titling – the collective good might be lost to more individual perspectives. And after all, there is no shortage of options for seniors who prefer to have title to their unit in a conventional strata title project.

The outstanding mortgages on the property contain non-disturbance provisions, meaning residents cannot be disturbed (i.e., their occupancy rights will be protected) if the lender had to take action to ensure the repayment of its outstanding loans.

The buildings are exempt from the provisions of the Homeowner Protection Act because of a covenant registered on title in favour of the Homeowner Protection Office. The covenant restricts the developer from selling individual units for at least 10 years, which is the standard length of home warranty insurance.

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A Housing Agreement between the Society and the City of Surrey restricts occupancy to qualified occupants (which generally means people over the age of 60). The Housing Agreement was required under the terms of the Comprehensive Development Zoning bylaw passed by the City to permit development of Elim Village.

Currently, purchasers of units must be members of the Society, for which they pay a one-time member fee of \$1,000. This provision may change in future.

Any disputes that arise are directed in the first instance to the BC International Commerce Arbitration Centre. If the dispute remains unresolved after mediation, it is referred to arbitration.

The bylaws of the Elim Housing Society provide for membership in the Society of the residents but residents cannot be directors. Residents are members of the Residents' Council. The Society cannot borrow money without the approval of 75% of the members of the Society. Annual general meetings must be held annually, at which financial statements are presented.

### ***Development Model/Partnership Arrangements***

The development of Elim Village is managed by the Elim Management Corporation as General Partner for the Elim Housing Limited Partnership (EHLP). The EHLP is composed of the church members who provided the financing necessary to get the project underway. Their financial contribution, which is repayable as units are leased, is secured by a mortgage on the property.

The Royal Bank provided construction financing, insured by CMHC, for all phases of Elim Village.

Subsequent to the development of the first three phases of the project, the Society issued bonds to individual investors under a trust indenture secured by a mortgage. The mortgage secures a maximum of \$10 million of bond investments. Funds borrowed will be used to continue the development of the campus.

### ***Marketing Perspectives***

People who move into Elim Village are making an investment in community, not an investment in real estate. They do not care that they will not have title to their unit – no adjustment to entrance fees has been necessary relative to the value of comparable condominiums.

They are also attracted to the notion that their future well-being will not be dependent on government. Other attractive features for prospective residents are that they will be able to stay in the Village no matter what their physical condition may be, and that couples will not be separated beyond a few metres.

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The Society believes that life lease is a viable form of housing for seniors that would work equally well for other communities.

### ***Lessons Learned/Advice from the Elim Housing Society***

- It is critical to have the strong support of the community, whatever kind of community is involved – faith-based, service club, ethnic, other. The whole community needs to be committed. It is a good idea to do a survey of the members before any steps are taken to gauge their level of support. The community should have a history of working together to achieve goals – not necessarily housing but some kind of goal. One good way of gauging support is to fund-raise.
- Professionals that are involved with the project also need to have a sense of commitment and not just be in it for the money. They need to be well qualified but they also need a sense of service.
- The Building Committee or Board needs to be passionately committed to the project but must also have relevant expertise. It is also a good idea to make it clear that their commitment will have a time limit and not be a “life sentence”.
- Financing: Sponsors must be creative, particularly in view of the large amount of predevelopment funding that will be required – CMHC’s PDF is not nearly enough. It is extremely helpful to be able to obtain venture capital from the supporting community, particularly if the capital can be obtained at favourable interest rates. Supporting communities may include investors who are willing to accept lower than market returns because of the social objectives of the project – investors who want to make a return, but not a huge return, and investors who are willing to take a risk because they are committed to the project’s objectives. At Elim, 70 people invested \$25,000 each. The money was secured by a promissory note at competitive rates but the investors understood clearly that the money was basically completely at risk.
- Sponsors may be able to create charitable foundations, in which investments can be RRSP eligible. Sponsors with property can do this.
- The Planning Department of the municipality in which the project is located has to want the project to happen.
- Community support – it is very important to deal effectively with the surrounding community if rezoning is necessary. Part of this means having the support of the Planning Department, but part of it also means reaching out to the community and keeping them informed of events as they progress.
- Design issues – be careful to know what your market wants. The first Elim building is 54 units, of which 42 are two-bedroom and 12 are one-bedroom units. The second building contained more two-bedroom units, which is what the market wanted.

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## Case Study #3 - Naramata Seniors Society

**Naramata Seniors Housing Society**  
**375 Gwendolyn Avenue**  
**Naramata, British Columbia V0H 1N0**  
**(250) 496-5526**

### ***Year Occupied***

2007

### ***Project Sponsor***

The Naramata Seniors Housing Society (NSHS).

### **Project Summary**

<b>Name of Project</b>	Naramata Seniors Housing Society
<b>Location</b>	Naramata, BC
<b>Structure Type</b>	One storey row housing units
<b>Number of Units</b>	4 (phase one of two phase project)
<b>Client Group</b>	Independent Seniors
<b>Entrance Fees</b>	1040 sq. \$208k 880 sq. \$176k
<b>Monthly Fees</b>	Presently the large units are \$120/month; the small one is \$100/month. Fees will be reset with actual experience
<b>Occupancy/Waiting List</b>	All units are occupied

### ***Origins and Objectives***

The need for seniors' housing in Naramata was first identified during a visioning exercise at the Community Church. The Church had recently lost four members who had to move away from the community because they could no longer maintain their single detached houses. The Church missed the four members and the four members missed their community.

Subsequently a community charity, the Naramata Community Fund, was established. The Fund identified the need for seniors' housing as part of its mandate and set about to meet the need. A Working Group sub-committee under the umbrella of the Fund was

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formed. The Naramata Centre, a well-known and long established religious education institution in the community, provided meeting space and clerical assistance for the Working Group, free of charge.

The Working Group's first step was to gather information about the housing needs of community residents. Survey results identified a need for modest sized semi-detached or row housing. More than half the survey respondents indicated a willingness to take an equity position under a life lease arrangement of some kind. This was an important finding because the Working Group recognized that the days of BC Housing funding for independent seniors' housing were probably over (at least in the short term).

The Working Group incorporated as a Society so it could receive funds from charitable organizations. Most importantly, it launched the process of producing a Working Paper so that it would be ready to answer the inevitable questions from potential funders. The Society believes that the production of the Working Paper was the most important part of the process because it forced them to think hard about vision and purpose, what to build, how to operate, and how to make the project work in an economic sense. The Board of the Society was carefully structured so that it had the capability to act as its own contractor. Key board appointments included a retired builder, a retired engineer, a lawyer, and an accountant.

In order to meet as wide a range of community housing needs as possible the Society decided to include a rental unit in its first phase. The remaining three would be sold on a life lease basis.

### ***Physical Description of Project***

- Four attached housing units: One is 1,050 square feet, two are 880 square feet, and the fourth, the rental unit, is 750 square feet.





### ***Basic Nature of Occupancy Agreement***

1. For the three life lease units, the Society decided to use the so-called Manitoba Model, which provides for a variety of entrance fee payments ranging from 33% to 100% of unit cost.
2. The Society's objective is to create seniors' housing in the community that will be as affordable as possible over the long term. Hence no capital appreciation is possible for residents. In the Society's words: "Naramata took the position that it really only wanted buyers who were committed to the notion of community owned not-for-profit housing and decided that if folks wanted a chance to profit from real estate they should invest and live elsewhere."
3. Entrance fees are returnable within 90 days as long as the Society is able to find a new buyer.
4. Leases may be registered at Land Titles if the buyer so wishes.
5. Services such as meals and housekeeping will not be available on site but can be arranged on an individual basis from community resources such as the Naramata Centre.
6. The Society wants to create an enduring and strong relationship with its residents. A resident will be on the Board of Directors.

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## ***Development Model, Partnership and Financing Arrangements***

In order to get the project off the ground, the Society had to find enough equity (20% of costs) so that a financial institution would be prepared to lend them the necessary construction financing. Once the project was started, the plan was that as completion grew nearer, life leases would be sold, thereby eliminating the need for ongoing mortgage financing for much of the building (as indicated previously, three of the four units were designated life lease; the remaining unit is a rental unit).

The Society decided that approaching the community for low interest loans could be a good way of raising money. This approach would have the added benefit of testing the community's commitment to the project. An Offering Memorandum was prepared by the Society's lawyer (see next section for more details) and eventually, \$220,000 was raised. Other funds were contributed by the Real Estate Foundation of British Columbia (\$40,000), by BC Housing (\$120,000 loan forgivable over a 30-year period under strict conditions) and by various donors. Volunteer equity<sup>4</sup> provided by Community members (e.g., free legal work) was carefully tracked. Once all these sources of equity were in place, the Valley First Credit Union agreed to provide the construction financing and any subsequent mortgage financing.

The location for Phase One is a quarter-acre site purchased from the Naramata Centre for market value. The total cost of the site including site preparation and rezoning was \$170,000. Funds raised through the promissory note mechanism were used to pay for the land.

The total cost of the entire project was \$655,180.

Because of its emphasis on volunteer labor and sweat equity, the Society was careful about its choice of contractor. It sought out and found a contractor who was comfortable working with volunteers. Wherever possible, local sub-contractors were hired.

### ***Legal Issues***

- **Tenure:** The Society initially considered creating the housing project on a strata title basis but was concerned about losing control. Even if the Society implemented an option to purchase structure, property transfer tax would be payable on each transfer, in effect doubling the amount of property transfer tax payable. Renting all four units would have been impossible with the amount of equity the Society had. Rents would be so high that no one would move in. The remaining option was life lease and the Society chose to proceed on that basis. Units are not strata titled (i.e., with all titles in the name of the society, as some other life leases have done, generally at the insistence of lenders).

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<sup>4</sup> NSHS decided on the term "volunteer equity" as this case study writing progressed. It is not only more polite, but also it more accurately reflects the nature of what happened, as opposed to what happens with a Habitat project.

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- **Low interest loans:** The Society raised \$220,000 from the community through \$5,000 loans offering below-market interest rates (five years at 2% per annum, interest payable starting in year four) that were secured by a promissory note. Fund-raising mechanisms like this are subject to provisions of the BC Securities Commission. An Offering Memorandum for sale of the promissory notes had to be issued. The Memorandum was prepared by the Society's lawyer on a no-fee basis. The Memorandum clearly outlines the risks that community members were assuming by lending the Society money.
  - **Disclosure Statement:** At the outset, the Society prepared a Disclosure Statement in accordance with the Real Estate Development Marketing Act because the project at that point included eight units – any project of five or more units is subject to the Act. Once the decision was made to build in two phases of four units, each the Act no longer applied.

### ***Marketing Issues***

The Society has never used paid advertising – everything has been accomplished by word of mouth.

### ***Lessons Learned/Advice from the NSHS***

- “If you will give up when the going gets tough or darned slow, do not start!” It took four years and 83 meetings to get the project off the ground.
- Perseverance, creativity, resourcefulness, community support and a refusal to quit in the face of obstacles are extremely important.
- Careful selection of board members is essential. Societies should think about the skills and expertise they need for their project and choose board members accordingly. People with legal, accounting, and construction skills are extremely valuable.
- Investigate all available sources of money including government agencies and foundations. The NSHS relied on a combination of low interest loans from community residents, volunteer labor, equity from incoming residents and some grant funding from the Real Estate Foundation and BC Housing.
- Recognize from the outset the amount of work that will be required of board members and make sure you have enough people to carry the load without burnout. The NSHS believes it could have raised significantly more money from the community if board members had had more time to talk to community residents.
- The process of producing the Working Paper was vital to the success of the project.
- Education about what life lease is and is not is very important. Many people, including many lawyers, do not understand the concept.
- Lastly – include in your budget a substantial amount for divine intervention.

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## Case Study #4 – Legion Gardens and Legion Manor

**Legion Gardens and Legion Manor**  
12127 224<sup>th</sup> Street & 22408 121<sup>st</sup> Street  
c/o The Maple Ridge Legion  
12101 224th Street  
Maple Ridge, British Columbia V2X 6B7  
(604) 463-5101

### ***Year Occupied***

Legion Gardens – August, 1996

Legion Manor – December, 1998

### ***Project Sponsor***

The sponsor and owner of both projects is the Royal Canadian Legion, Maple Ridge Branch #88. Branch 88 also owns and operates three other housing projects in Maple Ridge – the 22-unit Earl Haig, the 89-unit Legion Towers, and the 19-unit Legion House.

<b>Project Summary</b>	
<b>Name of Project</b>	Legion Gardens and Legion Manor
<b>Location</b>	Maple Ridge, BC
<b>Structure Type</b>	Four storey wood frame apartment buildings
<b>Number of Units</b>	56 (Gardens) and 84 (Manor)
<b>Client Group</b>	Independent Seniors, 50% couples, early to mid 70s on move in; average age of residents early 80s
<b>Entrance Fees</b>	1 bedroom - \$98,000 2 bedroom - \$120,000 to \$151,000 (for the largest 2 bedroom 2 bathroom unit). These prices are about 65% of Maple Ridge condo prices.
<b>Monthly Fees</b>	\$170 - \$190 per month includes cable, natural gas and other fees similar to condominium strata fees.
<b>Occupancy/Waiting List</b>	5 year waiting list

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## ***Origins and Objectives***

Because of its long exposure to the local seniors' market (Legion Towers opened in 1974) Branch 88 recognized in the early 1990s that additional seniors' housing was needed in Maple Ridge. Initially, the plan was to develop rental housing. However it quickly became apparent that even though the Legion owned the land, the rents that would have been required to operate on an economic basis were too high for the Maple Ridge market.<sup>xxvi</sup> Terry Alleyn, the Secretary/Manager of Branch 88, was aware of life lease housing and decided to investigate the feasibility of developing a project using the life lease mechanism.

## ***Physical Description of Project***

- The two buildings are kitty-corner to one another. Legion Gardens is adjacent to the Legion itself, Legion Manor is across the street. Both are one flat block from downtown Maple Ridge. The 26,000 square foot Ridge Meadows Seniors' Activity Centre is nearby.
- Legion Gardens contains 48 two-bedroom apartments (890 to 1,130 square feet) and 8 one-bedroom apartments (735 square feet). Legion Manor contains 80 two-bedroom apartments (890 to 1,050 square feet) and 4 one-bedroom and den apartments (808 square feet). The one-bedroom units in Legion Gardens were more difficult to market than the two-bedroom units, which is why there are no one-bedroom units in Legion Manor.<sup>5</sup>
- Units in both buildings have full stoves and fridges, dishwashers, gas fireplaces, in suite laundry rooms, and balconies or sundecks. Most parking is underground and costs \$15 per month.
- Units accommodate aging in place – there are grab bars in the bathrooms and levers, not knobs, on most doors and plumbing fixtures.
- There are no services provided in either building. Meals are available at the Legion and at the Ridge Meadows Seniors' Centre.

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<sup>5</sup> Generally speaking, life lease purchasers prefer two-bedroom to one-bedroom units.



Legion Gardens



Legion Manor

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### ***Basic Nature of Occupancy Agreement***

1. Residents must pay for their units in cash – no financing is available from the Legion although some lenders will provide mortgage financing for life lease units. Most residents are able to pay cash because they are moving from higher priced houses.
2. Within 90 days of lease termination, residents receive their entrance fee back, less any expenses required to refurbish the unit so it can be sold again. Normally this costs approximately \$1,000 for carpet cleaning, painting, etc.
3. One of the Legion’s guiding principles is affordability – as the brochure for Legion Manor states: “The Legion is devoted to providing seniors with safe, affordable housing”. The fact that entrance fees do not rise (or fall) with general market trends means that over time, units in Legion Gardens and Legion Manor will become more and more affordable relative to the market - they are already about 30% less expensive than comparable condos.
4. Residents who are no longer able to live independently are encouraged and assisted to move.
5. Sub-letting is not permitted.
6. The length of the lease is currently 99 years but the Legion may change this to 30 years less a day in order to avoid the payment of Property Transfer Tax.
7. Although the legal documents use the terms “lessor” and “lessee”, in practice the people who live in the building are called “residents”. They do not like the term “tenant”.

### ***Legal Perspectives***

Neither building is strata titled. Between the development of Legion Gardens and Legion Manor the Superintendent of Real Estate instituted some changes affecting Legion Manor in that building leases are registered at the Land Titles Office whereas those for Legion Gardens are not.

### ***Development Model/Partnership Arrangements***

The Maple Ridge Legion functioned as the developer for both Legion Gardens and Legion Manor. The Legion bought the land, obtained the necessary zoning changes, arranged the financing, hired the architect and contractor, and marketed the projects. Now the Legion manages them as well.

The costs and the risks of project development are major issues for any non-profit community based organization. Predevelopment costs can easily reach \$200,000 to \$300,000 for securing land, preparing preliminary architectural drawings, rezoning (if

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necessary), and market analysis. Predevelopment funding is one of the biggest single limiting factors for non-profit community organizations wanting to develop housing projects.

In the case of Branch 88, Legion members provided project financing at attractive interest rates (for the Legion, not the members). The Legion also qualified for \$56,000 in proposal development funding from CMHC (for Legion Gardens, but not Legion Manor). The Legion was able to secure 75% of financing for Legion Gardens from a local credit union on the strength of its other real estate assets – Legion Towers and Earl Haig. The remaining 25% was borrowed from Legion members. In the case of Legion Manor, 100% of land purchase and construction financing was provided by Legion members and was repaid from entrance fees upon completion and occupancy of the building. Purchaser deposits of \$10,000 were originally intended to be used for construction purposes but the Superintendent of Real Estate would not allow that to happen.<sup>xxvii</sup>

### ***Marketing Issues***

In advance of the development of Legion Gardens, Branch 88 conducted a survey of 100 interested people. The survey indicated significant interest in the concept. It also suggested that the first unit distribution (46 one-bedroom units and 16 two-bedroom units) should be reversed. The success and demand for suites in Legion Gardens resulted in the development of Legion Manor two years later.

It has always been made very clear to people that what they are buying is a lifestyle investment, not a real estate investment. Some people chose not to move in because appreciation is not possible, but for others, that was not an important factor. The fact that the units are now selling at two-thirds of the cost of a comparable condo unit means people are able to sell their current home and invest the resulting savings in other things or use them for other purposes.

Aside from the cost issues, people are attracted to the Legion life leases for a number of reasons, including:

- People trust the Legion.
- They like the fact that they don't have to be involved on a day-to-day basis with project management as they might have to do in a condo.<sup>6</sup>
- Its location to local amenities (grocery stores, banks, etc.) without the need for automobile transportation and physical quality of buildings.
- Resident's potential inability or disinclination to maintain single family home and yard.
- Greater ease of travel: "Lock the door and go."
- Security - less concerns about robbery or other crimes.

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<sup>6</sup> The Legion meets with residents once a year and provides them with financial statements. Throughout the year a Legion Housing Committee meets monthly to review financial statements and deal with any issues that have arisen. Residents are not permitted to serve on the committee – experience has shown that some residents are inclined to focus on issues only of relevance to themselves.

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- Sense of community provided by other residents.
  - Simplicity of move-out.
  - Knowing exactly how much money will be refunded in the event of move-out or death. While there is no possibility of capital appreciation, there is no possibility of loss either.
  - There are no legal fees and no real estate fees.
  - Fewer responsibilities than required in a condominium. This includes not only the absence of strata council responsibilities, but also maintenance responsibilities within individual units. The Legion repairs and maintains all appliances and plumbing, electrical, and heating systems at no cost to the resident (although the cost of such repairs is included in the monthly fee).

### ***Lessons Learned/Advice from Branch 88***

- It is critical that sponsoring organizations have deep roots in the community. Otherwise the trust that is so essential to the development of a successful life lease project will be absent.
- Competent, knowledgeable and trustworthy development consultants and project managers are essential although they can be hard to find. Potential sponsors need to be very careful about the professional resources they recruit. Referrals and recommendations from reputable sources are the best way to identify people who are familiar with the development process and who know how to access the right resources.
- Organizations must have access to substantial amounts of equity. If they have no equity, or very little equity, they are just wasting their time. Predevelopment funding is necessary for market studies, land acquisition, zoning, soils and other environment tests, financial feasibility analysis, preliminary architectural drawings, and so on. Some money is available from government organizations (see next point) but not enough.
- Partnering with other community organizations can be an excellent way to get a project off the ground. A life lease in Surrey was sponsored by 12 different churches while one in Winnipeg was sponsored by three different service clubs that joined forces.
- Potential sponsors should become familiar with programs that are available from CMHC and BC Housing – for example, seed funding and proposal development funding.

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## Appendix B – Disclosure Statements

- Real Estate Development Marketing Act
- Policy Statement 9
- Disclosure Statement Requirements for Development Property Consisting of Five or More Leasehold Units in a Residential Leasehold Complex

Effective January 1, 2005

Interpretation

In this Policy Statement:

- "Act" means the Real Estate Development Marketing Act;
- "Leasehold strata plan", "strata lot" and "strata lot lease" have the meanings as defined in the Strata Property Act; and
- Unless the context otherwise requires, other words and expressions have the meanings given to them in the Act.

### Disclosure Statement Filing

Unless exempted by the regulations, section 14 of the Act requires developers to file a disclosure statement with the superintendent before marketing a development unit in a development property. The disclosure statement must:

- Be in the form and include the content required by the superintendent;
- Without misrepresentation, plainly disclose all material facts;
- Set out the substance of a purchaser's rescission rights; and
- Be signed as required by the regulations.

The form and content required by the Superintendent for disclosure statements filed in relation to development property consisting of five or more leasehold units contained in a residential leasehold complex are set out in this Policy Statement. The onus is strictly on the developer to disclose plainly all material facts, including a fact or proposal that could reasonably be expected to affect the value, price, or use of the development property or a development unit.

Developers may market a development unit immediately after filing a disclosure statement that is prepared in accordance with section 14(2) of the Act. However, before entering into a purchase agreement, the developer must provide a copy of the disclosure

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statement to the purchaser, give the purchaser a reasonable opportunity to read the disclosure statement and obtain a written statement from the purchaser acknowledging that the purchaser had an opportunity to read it.

*Note:* Marketing includes engaging in any transaction or other activity that will or is likely to lead to a sale or lease. It is the superintendent's view that marketing includes the use of "letters of intent", "priority lists", "reservation agreements", "conversion rights", "rights of first refusal", or any similar agreement that carries with it the right to acquire a leasehold unit. Accordingly, developers must file a disclosure statement before using any such agreement or receiving any deposit or other consideration.

Developers may advertise a proposed development and communicate with potential purchasers so long as potential purchasers do not gain the impression that they have a right to acquire a leasehold unit. To avoid confusion, it is recommended that every advertisement contain the developers' name and address, the telephone number of at least one representative from whom information and a copy of the disclosure statement (when available) may be obtained, and a prominent disclaimer stating that the advertisement is not an offering for sale and that such an offering can only be made after filing a disclosure statement.

### **Form and Content of the Disclosure Statement**

Form 9 sets out the form and content required under section 14 of the Act for disclosure statements filed in relation to leasehold units contained in a residential leasehold complex. The information contained in each disclosure statement must be set out in the order contained in Form 9. If a section does not apply to a particular development property, the section must state "not applicable". Sections and subsections may be added by a developer, as required, to meet the developer's obligation to disclose plainly all material facts.

If the development units consist of leasehold interests in a freehold strata plan or strata lot leases in a leasehold strata plan, developers must use Form 1 specified under Policy Statement 1. In this case, the content specified in Part 3 of Form 9 will ordinarily contain material facts about the development units and it is, therefore, recommended that developers refer to Part 3 of Form 9 when fulfilling their obligation to disclose plainly all material facts in relation to the strata lots.

*Note:* If a change occurs that would have the effect of rendering any statement false or misleading or that brings into being a fact or proposal which should have been disclosed if the fact or proposal had existed at the time of filing, section 16 of the Act requires developers to file an amendment to the disclosure statement. If the change is in respect of the identity of the developer or the appointment of a receiver, liquidator, trustee in bankruptcy or other person, in respect of the original developer, then the new developer, who has the right to acquire or dispose of the development property, must file its own new disclosure statement.

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*Note:* Developers are exempt from the Act if the term of the leases for the leasehold units is 3 years or less, including any option or covenant for extension or renewal.

## **Enforcement**

The superintendent's staff will review disclosure statements to determine whether they are in the form and include the contents required by this Policy Statement. In addition, the superintendent's staff will conduct audits of selected disclosure statements to determine whether they contain any misrepresentations, or otherwise fail to comply with the requirements of the Act.

Where it is found that a disclosure statement contains a misrepresentation, or otherwise fails to comply with the requirements of the Act, a recommendation may be made to the superintendent to issue a cease marketing order. Before issuing a cease marketing order, the superintendent will provide a developer with an opportunity to be heard, unless the length of time required to complete an investigation or to hold a hearing is detrimental to the public interest, in which case an urgent order may be made.

After a hearing, if a developer is found to have filed a disclosure statement containing a misrepresentation, or to have otherwise failed to comply with the requirements of the Act, the superintendent may order the developer, and its directors, to pay an administrative penalty in the amount of, in the case of a corporation, not more than \$50,000 or, in the case of an individual, not more than \$25,000. The superintendent may also order the developer to pay enforcement expenses or choose to recommend prosecution under section 39 of the Act.

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## FORM 9

### Cover Page Disclosure

The following information must be included on the cover page of the disclosure statement:

- State the full legal name, address for service in British Columbia, and business address of the developer.
- State the name and business address in British Columbia of the real estate brokerage, if any, acting on behalf of the developer or describe whom the developer will use to market the leasehold units. If the developer intends to use its own employees to market the leasehold units, disclose that the employees are not licensed under the Real Estate Services Act and are not acting on behalf of the purchaser.
- Specify the date of the disclosure statement.
- Display the following disclaimer in conspicuous type:

*This Disclosure Statement has been filed with the Superintendent of Real Estate, but neither the Superintendent, nor any other authority of the government of the Province of British Columbia, has determined the merits of any statement contained in the Disclosure Statement, or whether the Disclosure Statement contains a misrepresentation or otherwise fails to comply with the requirements of the Real Estate Development Marketing Act. It is the responsibility of the developer to disclose plainly all material facts, without misrepresentation.*

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## Second Page Disclosure (Cancellation Rights)

- Display the following information about a purchaser's right to terminate a contract, in conspicuous type, on the second page of the disclosure statement:

### RIGHT OF RESCISSION

Under section 21 of the Real Estate Development Marketing Act, the purchaser or lessee of a development unit may rescind (cancel) the contract of purchase and sale or contract to lease by serving written notice on the developer or the developer's brokerage, within 7 days after the later of the date the contract was entered into or the date the purchaser or lessee received a copy of this Disclosure Statement.

The rescission notice may be served by delivering or sending by registered mail, a signed copy of the notice to

- (a) the developer at the address shown in the disclosure statement received by the purchaser,
- (b) the developer at the address shown in the purchaser's purchase agreement,
- (c) the developer's brokerage, if any, at the address shown in the disclosure statement received by the purchaser, or
- (d) the developer's brokerage, if any, at the address shown in the purchaser's purchase agreement.

The developer must promptly place purchaser's deposits with a brokerage, lawyer or notary public who must place the deposit in a trust account in a savings institution in British Columbia. If a purchaser rescinds their purchase agreement in accordance with the Act and regulations, the developer or the developer's trustee must promptly return the deposit to the purchaser.

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- If the developer is marketing the leasehold units pursuant to Policy Statement 5 or 6, insert the rescission rights contained in those Policy Statements immediately after the statutory right of rescission.
  - Describe any additional rescission rights applicable to the offering.

## **Table of Contents**

- Insert a table listing the contents of the disclosure statement.

## **The Developer**

- State the jurisdiction, date of incorporation, and incorporation number of the developer.
- State whether the developer was incorporated specifically for the purpose of developing the leasehold units and whether the developer has any assets other than the development property itself.
- State the address of the developer's registered and records office.
- List the names of all directors required by section 14 of the Act and section 9 of the regulations to sign the disclosure statement.

*Note:* If the developer is not incorporated, amend this item, as required, to disclose plainly all material facts about the developer. If the identity of the developer marketing the leasehold units changes, the new developer must file its own disclosure statement.

## **General Description**

### ***General Description of the Development***

- Describe the physical and legal form of the development property, including the total number of leasehold units in the development, the number being marketed by the developer and the civic location of the development. Attach a copy of the actual or proposed plans, showing the layout of the development property and the dimensions or areas of the leasehold units and common areas, as an Exhibit.

### ***Permitted Use***

- Describe the zoning applicable to the development property and the permitted use of all leasehold units in the development. State whether any of the leasehold units may be used for commercial or other purposes not ancillary to residential purposes.

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## **Lease Agreement**

### ***The Lease***

- Describe the term of the lease. Attach a copy of the lease and any offer to lease as Exhibits.

### ***Occupancy Restrictions***

- Explain any restrictions placed on occupancy pursuant to the lease agreement.

### ***Termination Provisions***

- Summarize the circumstances in which the lease may be terminated.

### ***Prepayment Cost***

- State whether any portion of the leasehold cost must be prepaid and, if so, describe the arrangements.

### ***Repayment Provisions***

- If a portion of the leasehold cost is prepaid, state whether any portion of the prepaid cost is repayable to the tenant and, if so, describe the arrangements including how the repayment amount is calculated, when the repayment is due, how priority to repayment is determined amongst tenants and whether a reserve fund or other arrangements exist to facilitate repayments.

### ***Risks Associated with Repayment***

- If a portion of the prepaid leasehold cost is repayable, describe all risks associated with obtaining a refund in conspicuous type, including the following, as applicable:
  - If real estate sales are slow, it may be difficult to sell a house or condominium. Similarly, if few people are interested in leasing in the development, it may be difficult to find new tenants;
  - If the condition of the building has deteriorated, it may be difficult to find new tenants; and
  - If the landlord has insufficient funds and cannot find new tenants, you may not be repaid or you may have to wait for your repayment.

### ***Registration***

- State whether the lease agreement is in registerable form and whether the tenant is permitted to register the lease in the applicable Land Title Office.



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*Note:* Under section 11 of the Act, a developer must not market a leasehold unit unless the developer has made adequate arrangements to ensure that a purchaser of the leasehold unit will have assurance of title or of the other interest for which the purchaser has contracted. Registration of the lease for a leasehold unit will generally provide the necessary assurance. If the developer does not intend to register the leases, the developer should contact the superintendent's office to determine what other arrangements are satisfactory to the superintendent.

### ***Assignment and Subleasing***

- Describe the tenant's ability, if any, to assign or sublease his or her premises.

### ***Occupancy Charges***

- Describe who is responsible for paying the cost of utilities and other services. Attach a copy of the estimated or actual operating budget for the development, including a schedule showing how the budget will be allocated amongst the tenants, as an Exhibit.

### ***Taxes***

- State who is responsible for property taxes, whether tenants are entitled to claim the homeowner grant in respect of their proportionate share of property taxes and whether the leasing of the premises attracts property transfer tax.

### ***Management***

- Describe the manner, if any, in which tenants are able to participate in the management of the leasehold units.

### ***Residential Tenancy Act***

- State whether the Residential Tenancy Act applies to the leasing arrangements.

### ***Common Areas and Facilities***

- Describe the common areas and common facilities in the development, including an explanation of any restrictions or privileges that relate to their use.

### ***Furnishings and Equipment***

- Describe any furnishings and equipment that are included with the leasehold units.

### ***Developer's Rights***

- Describe any rights or controls to be retained by the developer in relation to the leasehold units.

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### ***Parking***

- Explain the parking arrangements, including the number and location of parking stalls and the method of allocating the right to use the stalls.

### ***Utilities and Services***

- If the development is located outside a municipality, disclose particulars of the following services, including whether they are available, the required permits, who is responsible for obtaining the permits and installing the services, whether those permits have been obtained and the expected date of completion for the servicing:
  - Water;
  - Electricity;
  - Sewerage;
  - Natural gas;
  - Fire protection;
  - Telephone, and
  - Access
- If the development is located inside a municipality and any of the utilities or services listed above will not be provided, disclose which of them will not be provided.

### ***Insurance***

- Describe the insurance coverage to be placed on the development property and leasehold units by the developer and the insurance coverage that should be arranged by the tenant.

### **Title and Legal Matters**

#### ***Legal Description***

- State the legal description of the development property.

#### ***Ownership***

- State the name of the registered owner of the development property and, if the developer is not the registered owner, describe the legal arrangements that enable the developer to market the leasehold units.

#### ***Existing Encumbrances and Legal Notations***

- List and describe briefly all encumbrances and legal notations registered against title to the development property or a development unit. Explain the arrangements by which financial charges will be removed from title or describe alternative

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arrangements that provide adequate assurance to tenants of their interest in a leasehold unit. Attach a copy of any encumbrance that significantly restricts use or occupation of any leasehold unit as an Exhibit.

*Note:* Ordinarily, general encumbrances, such as easements for the supply of hydro, telephone or other services, do not significantly restrict the use or occupation of leasehold units. Consequently, it is only necessary to provide a brief description of such encumbrances. In contrast, encumbrances such as restrictive covenants that impose age, use or occupancy restrictions are significant. Accordingly, in addition to providing a brief description, a copy of the encumbrance should be attached as an Exhibit. It is permissible to attach a copy of the relevant pages if the encumbrance is lengthy.

### ***Proposed Encumbrances***

- List and describe briefly all encumbrances that the developer proposes to register against title. Attach a copy of any encumbrance that will significantly restrict use or occupation of any leasehold unit as an Exhibit.

*Note:* See previous note.

### ***Outstanding or Contingent Litigation or Liabilities***

- Describe any outstanding or contingent litigation or liabilities in respect of the development property or against the developer that may affect the residential leasehold complex or tenants.

### ***Environmental Matters***

- Disclose all material facts related to flooding, the condition of soil and subsoil, or other environmental matters affecting the development property.

### **Construction and Warranties**

#### ***Construction Dates***

- State the actual or estimated dates of commencement and completion of construction.

#### ***Warranties***

- Describe any construction or equipment warranties.

#### ***Previously Occupied Building***

- If any building containing a leasehold unit was built more than five years before filing the disclosure statement, or defects are known to exist, disclose all material facts related to the condition of the building.

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*Note:* The condition of a previously occupied building is ordinarily material to purchasers. Accordingly, in all cases, a general summary of a previously occupied building's condition should be disclosed, together with the basis on which the condition of the building has been summarized. Developers may choose to attach a copy of a building condition report to the disclosure statement as an Exhibit or to make it available to purchasers or the superintendent on request.

## **Approvals and Finances**

### ***Development Approval***

- State the facts which establish that the developer has met the preliminary requirements or approvals in Division 2 of Part 2 of the Act.

*Note:* Under section 5 of the Act, a developer must not market a leasehold unit unless a sketch plan has been deposited in a land title office or the appropriate municipal or other government authority has issued a building permit in relation to the leasehold unit. Section 10 of the Act permits developers to market a development unit before complying with section 5 if the appropriate municipal or other government authority has approved in principle construction of the development unit and the superintendent has given permission to the early marketing. Policy Statement 5 sets out the circumstances, including the applicable terms and conditions, in which the superintendent's permission is deemed to be granted. Developers who have not yet deposited a sketch plan or obtained a building permit should review Policy Statement 5 before completing this section.

### ***Construction Financing***

- Describe the financing the developer has arranged or proposes to arrange to construct the development.

*Note:* Under section 12 of the Act, a developer must not market a leasehold unit unless the developer has made adequate arrangements to ensure payment of the cost of utilities and other services associated with the development unit. Policy Statement 6 sets out the circumstances in which arrangements made under section 12 are deemed adequate for the purpose of installing utilities and services. Developers should review Policy Statement 6 before completing this section.

## **Miscellaneous**

### ***Deposits***

- State the name of the trustee who will be holding purchasers' deposits and that all money received from a purchaser will be held in trust by that person in the manner required by the Real Estate Development Marketing Act. If the developer has entered into a deposit protection contract, describe the subject matter and terms of the insurance, explain that the developer may use the deposit money to construct and market the development and state the aggregate and per claim limits of the insurance.

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In accordance with section 10 of the regulations, state the name and business address of the insurer, the name of the developer who entered into the deposit protection contract and the date on which the insurance takes effect.

*Note:* Under section 18 of the Act, deposits must be held in trust by a real estate brokerage, lawyer or notary public, unless the developer has entered into a deposit protection contract. Ordinarily, if the interest of the tenant is registerable in a land title office, leasehold deposits are held in trust or the deposit insurance contract remains in effect until the sketch plan is deposited in a land title office, the leasehold unit is capable of being lawfully occupied and an instrument evidencing the interest of the tenant in the leasehold unit has been registered in the appropriate land title office. If the interest of the tenant is not registerable in a land title office, leasehold deposits are ordinarily held in trust or the deposit insurance contract remains in effect until the leasehold unit is capable of being lawfully occupied and an instrument evidencing the interest of the tenant in the leasehold unit has been delivered to the tenant.

### ***Developer's Commitments***

- Describe any commitment made by the developer, other than a commitment to repay the leasehold cost on termination of the lease, that will be met after completion of the sale or lease and explain whether the developer has posted any security to meet the commitment. In conspicuous type, explain any risks associated with the developer's commitment.

*Note:* A developer's commitment to repay the leasehold cost, and any risks associated with that commitment, should be disclosed in sections 3.5 and 3.6.

### ***Other Material Facts***

- Disclose any other fact that affects, or could reasonably be expected to affect, the value, price or use of a leasehold unit or the development property.

*Note:* Material facts include material contracts entered into or proposed to be entered into by the developer, or a person associated with the developer, that impose obligations or restrictions on tenants or the residential leasehold complex, including contracts related to the management of the complex or the supply of support services. Key terms of material contracts should be summarized in the disclosure statement with the contract attached as an Exhibit.

## **Signatures**

### ***Deemed Reliance***

- State the following in conspicuous type:  
*Section 22 of the Real Estate Development Marketing Act provides that every purchaser who is entitled to receive this Disclosure Statement is deemed to have relied on any false or misleading statement of a material fact contained in this*

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*Disclosure Statement, if any, and any omission to state a material fact. The developer, its directors and any person who has signed or authorized the filing of this Disclosure Statement are liable to compensate the purchaser for any misrepresentation, subject to any defences available under section 22 of the Act.*

### **Declaration**

- State the following declaration, in conspicuous type, before the signatures of all persons who at the time of filing are developers or directors of corporate developers as required by section 14(2)(d) of the Act and section 9 of the regulations:

*The foregoing statements disclose, without misrepresentation, all material facts relating to the Development referred to above, as required by the Real Estate Development Marketing Act of British Columbia.*

Note: Disclosure statements must be signed by the developer(s). Additionally, if the developer is a corporation(s), all directors of the developer(s) must sign the disclosure statement, unless exempted by the superintendent. At least one director of each corporate developer will have to sign twice, once as the authorized signatory of the corporation and once in his or her personal capacity. Policy Statement 7 sets out additional information on signing disclosure statements.

### **Solicitor's Certificate**

- The disclosure statement must be accompanied by a certificate from a solicitor certifying that the contents of items 4.1, 4.2 and 4.3 are correct.

Note: It is not necessary to attach the solicitor's certificate to the disclosure statement.

### **Exhibits**

- Attach a copy of all Exhibits to the disclosure statement.

## Appendix C - Pro Formas

### ILLUSTRATIVE LIFE-LEASE DEVELOPMENT AT BREAK-EVEN

#### 1.0 Underlying Assumptions

##### 1.1 Development Characteristics

Site Area:	21,780	sq.ft. or	<b>0.50</b>	acres
Floor Space Ratio:	1.08			
Maximum Gross Building Area	23,522	sq.ft.		
Building Efficiency	<b>85</b>	%		
Saleable Area	20,000	sq.ft.		
Parking Rqmt, spaces per unit	<b>1.00</b>			

**Increase/(decrease) over market prices required to break-even on development** **22.6750%**

<u>Unit Type</u>	<u>Number</u>	<u>Size</u>	<u>Total</u> <u>Sq.Ft.</u>	<u>Price/Sq.Ft.</u>		<u>Price/</u> <u>Unit</u>	<u>Gross \$'s</u>	<u>GST</u>	<u>Sales</u>	<u>Net Sales</u> <u>Income</u>
				<u>Market</u>	<u>Required</u>			<u>Rebate</u>	<u>Comm.%=</u>	
Bachelor	<b>0</b>	<b>0</b>	0	<b>0</b>	<b>0</b>	0	0	<b>0.00</b>	<b>1.00</b>	0
1 Bdrm	<b>0</b>	<b>0</b>	0	<b>0</b>	<b>0</b>	0	0	0	0	0
2 Bdrm	<b>25</b>	<b>800</b>	20,000	<b>219</b>	<b>269</b>	214,927	5,373,165	0	53,732	5,319,433
2 Bdrm+den	<b>0</b>	<b>0</b>	0	<b>0</b>	<b>0</b>	0	0	0	0	0
Other	<u>0</u>	<u>0</u>	<u>0</u>	<b>0</b>	0	0	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	25		20,000				5,373,165	0	53,732	5,319,433

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## 1.2 Marketing Assumptions

Selling Period, Months	12.00	months
% Presales	80.00%	

## 1.3 Construction Cost Assumptions

Off Site Costs	0	
On Site Costs (demolition, site prep, landscaping)	100,000	
Construction Cost/Sq.Ft.	140.00	
Parking Stalls Required	25	
Construction Cost/Stall	0	
Planning Time	8	months
Construction Time	12	months

## 1.4 Financing Assumptions

Land Loan, Loan to Value Ratio	80.00	%
Land Loan, Interest Rate	6.00	%
Constuction Loan, Loan to Cost Ratio	80.00	%
Construction Loan, Interest Rate	6.00	%
Total project cost (excluding land)	5,318,217	
Mortgage	<u>4,254,574</u>	
Cash equity requirement	1,063,643	
Land value (0.5 acre development site) as security for construction financing	500,000	



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## 2.0 Developer Proforma

### 2.1 Value on Completion

Gross Sales Income		5,373,165	
Less Commissions+GST		<u>53,732</u>	
Net Sales Income			5,319,433

### 2.2 Construction + Development Costs

#### 2.2.1 Land

##### Per Acre

Purchase Price	1,000,000	500,000	
Property Transfer Tax		10,000	
Other Closing Costs		<u>50,000</u>	
Total Land Cost			560,000

#### 2.2.2 Construction Costs

Offsite Costs		0	
On Site Costs		100,000	
Building		3,293,136	
Parking (included in building costs)		0	
Contingency	<b>3.00</b> %	<u>101,794</u>	
Total Construction Cost			3,494,930

#### 2.2.3 Development Costs

A/E (architects+engineers)	<b>4.50</b> %	157,272	
Other Consultants	<b>1.00</b> %	34,949	
Construction Project Management	<b>2.00</b> %	106,364	
Development Project Management	<b>2.00</b> %	106,364	
Legal (Cost per Unit)	<b>500.00</b> per unit	12,500	
Survey, accounting		<b>15,000</b>	
Finance Fee (% Construction Loan)	<b>1.00</b> %	42,208	

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Advertising/Promotion/Show Suite			80,597	
DCC's	<b>7,613</b>	per unit	190,325	
Insurance			35,284	
Research and Appraisal			<b>25,000</b>	
Building and Development permit				
fees			34,949	
Utilities During Construction			<b>15,000</b>	
Property Taxes	<b>7.62</b>	tax rate	6,354	
Overhead	<b>2.50</b>	%	132,955	
Miscellaneous Development Costs	<b>0.00</b>	%	0	
Contingency (% development costs)	<b>10.00</b>	%	<u>99,512</u>	
Total Development Costs				1,094,635
<b>2.2.4 Interest Costs</b>				
Interest Cost, Land	<b>Included?</b>			
Financing	<b>Y/N</b>	<b>y</b>	47,488	
Interest Cost, Construction Financing			<u>121,165</u>	
Total Interest Costs				<u>168,653</u>
<b>2.2.6 Total Project Costs</b>				5,318,217
<b>3.0 Surplus Revenues over Costs</b>				1,216

#### 4.0 Purchaser's Perspective

Purchase price, average unit, including GST @

Down payment @

Price remaining for financing

Mortgage Insurance, legal, inspection

Amount of mortgage

Annual mortgage payment

Plus property tax, utilities and management fees

Annual housing costs

Equals annual pension income required assuming

annual housing costs = 40% of seniors household income.

One Bedroom		Two Bedroom		Two Bedroom+Den	
100% equity	25% equity	100% equity	25% equity	100% equity	25% equity
0	0	214,927	214,927	0	
<u>100%</u>	<u>25%</u>	<u>100%</u>	<u>25%</u>	<u>100%</u>	
0	0	0	161,195	0	
<u>0</u>	<u>0</u>	<u>1,000</u>	<u>6,239</u>	<u>0</u>	
n/a	0	n/a	167,434	n/a	
0	0	0	11,330	0	
<u>0</u>	<u>0</u>	<u>7,039</u>	<u>7,039</u>	<u>0</u>	
0	0	7,039	18,369	0	
<b>0</b>	<b>0</b>	<b>21,329</b>	<b>55,663</b>	<b>0</b>	

Mortgage assumptions:

Stated annual interest rate

**5.50** %

Amortization period

**30** years

Mortgage constant

6.77

**ILLUSTRATIVE PROJECT AS MARKET RENTAL**

**1.0 Underlying Assumptions**

**1.1 Development Characteristics**

Site Area:	<b>21,780</b>	sq.ft. or	0.50	acres
Floor Space Ratio:	<b>1.08</b>			
Maximum Gross Building Area	23,522	sq.ft.		
Building Efficiency	<b>85</b>	%		
Rentable Area	19,994	sq.ft.		
Parking Stalls per Unit	<b>1.0</b>			

**1.2 Value Assumptions--Residential**

<u>Unit Type</u>	<u>Number</u>	<u>Size</u>	<u>Total Sq.Ft.</u>	<u>Monthly Market Rents</u>	<u>Annual Rental</u>
1 Bedroom	<b>0</b>	<b>0</b>	0	<b>0</b>	0
2 Bedroom	<b>25</b>	<b>800</b>	19,994	<b>850</b>	255,000
2 Bedroom + Den	<b>0</b>	<b>0</b>	<u>0</u>	<b>0</b>	<u>0</u>
Total	25		19,994		255,000

Vacancy	<b>2.00</b>	%
Operating Expenses, % NOI	<b>35.00</b>	%
Capitalization Rate	<b>5.00</b>	%

**1.3 Construction Cost Assumptions**

Off Site Costs	<b>0</b>
On Site Costs (demolition, site prep, preload, services, landscaping)	<b>100,000</b>

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Residential Cost/sq.ft.	<b>140.00</b>	
Parking Cost/Stall (in construction costs)	<b>0</b>	
Planning Time	<b>8</b>	months
Construction Time	<b>12</b>	months

#### **1.4 Financing Assumptions**

Land Loan, Loan to Value Ratio	<b>90.00</b>	%
Land Loan, Interest Rate	<b>5.50</b>	%
Construction Loan, Loan to Cost Ratio	<b>90.00</b>	%
Construction Loan, Interest Rate	<b>5.50</b>	%

Land value (0.5 acre development site) as security for construction financing	<b>500,000</b>
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#### **Take out financing based on mortgage underwriting criteria**

Debt Service Coverage Ratio		<b>1.20</b>	
Stated Annual Interest Rate	21,780 sa.ft.	<b>5.50</b>	%
Amortization Period		<b>35</b>	years
Mortgage Constant		<b>6.40</b>	
Take-out Advanced		0	months after completion of construction
Take-Out Financing Amount		2,116,514	
Annual Mortgage Payments		135,363	

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### 1.5 Value on Completion

Potential Gross Income	255,000	
Less Vacancy	<u>5,100</u>	
Equals Effective Gross Income	249,900	
Less Operating Expenses	<u>87,465</u>	
Equals Net Operating Income		162,435
Capitalization Rate		5.00 %
Indicated Value on Completion		3,248,700

### 2.0 Project Cost

#### 2.1 Land

	<u>Value per Acre</u>	
Purchase Price	1,000,000	500,000
Property Transfer Tax		10,000
Other Closing Costs		<u>50,000</u>
Total Land Cost		560,000

#### 2.2 Construction + Development Costs

##### 2.2.1 Construction Costs

Offsite Costs		0	
On Site Costs		100,000	
Building		3,293,136	
Parking		0	
Contingency (% Project Costs)	<b>3.00</b> %	<u>101,794</u>	
Total Construction Cost			3,494,930

##### 2.2.2 Development Costs

A/E (architects+engineers)	<b>4.50</b> %	157,272	
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Other Consultants	1.00	%	34,949	
Construction Project Management	2.00	%	104,599	
Development Project Management	2.00	%	104,599	
Legal			25,000	
Financing Fees (% Project Costs)	1.00	%	52,300	
Advertising/Promotion/Show Suite			25,000	
DCC's (per sq.ft. bld. area)	7,613	per unit	190,325	
Insurance			35,284	
Research and Appraisal			25,000	
Survey, accounting			15,000	
Development and building permit fees			34,949	
Property Taxes	7.62	tax rate	3,810	
Utilities and Operating Costs During Construction			12,000	
Corporate Overhead	2.00	%	104,599	
Miscellaneous Development Costs	0.00	%	0	
Contingency (% Development Costs)	10.00	%	92,469	
Total Development Costs				1,017,155
<b>2.3 Interest</b>				
2.3.1 Interest Cost, Land Loan			46,200	
2.3.2 Interest Cost, Construction Financing			111,674	
2.3.3 Total Interest Cost				157,874
<b>2.4 Total Project Cost</b>				5,229,959
<b><u>3.0 Surplus (Deficit) Project Value over Costs</u></b>				-1,981,259

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#### 4.0 Return to Cash Equity Investment

Project Cost	5,229,959			
Take Out Financing	<u>2,116,514</u>			
Required Equity	3,113,445	which is	59.53%	of project cost
Net income	162,435			
Less mortgage payments	<u>135,363</u>			
Cash flow	27,073			
Cash flow/equity (%)	0.87	%		



## **5.0 Project Cash Flow, Leveraged Equity Analysis**

### **5.1 Revenues**

Annual escalation, gross revenue	<b>2.00</b>	% per annum					
			<b><u>Year 0</u></b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>
Potential Gross Income			0	255,000	260,100	265,302	270,608
Less vacancy (%) @	<b>5.00</b>		<u>0</u>	<u>12,750</u>	<u>13,005</u>	<u>13,265</u>	<u>13,530</u>
Equals Effective Gross Income	<u>% escalation</u>		0	242,250	247,095	252,037	257,078
Less Owner's Operating Costs	<b>2.00</b>		<u>0</u>	<u>87,465</u>	<u>89,214</u>	<u>90,999</u>	<u>92,819</u>
Equals Net Operating Income			0	154,785	157,881	161,038	164,259
Building sale in Year 35, cap rate (%) =	<b>5.00</b>		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total revenues			0	154,785	157,881	161,038	164,259

### **5.2 Expenditures**

Equity Investment			3,113,445				
Mortgage payments		<u>Every 5 Years</u>	0	135,363	135,363	135,363	135,363
Additional Capital Expenditures	<b>50,000</b>		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total other expenditures			<u>3,113,445</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>

### **5.3 Total Cash Flow**

	3,113,445	19,423	22,518	25,676	28,897
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### **5.4 Net Present Value**

Discount rate	<u>Disc. Rate</u>	%	-
Net present value	<b>10.00%</b>		2,489,888

### **5.6 Internal Rate of Return**

3.42%

## **6.0 Project Viability, Discounted Cash Flow, All Cash Equity Analysis (Unleveraged)**

### **6.1 Cash Flow Basis**

	<b><u>Year 0</u></b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>
Net Operating Revenues	0	154,785	157,881	161,038	164,259

Capital Costs	<u>5,229,959</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net Cash Flow	5,229,959	154,785	157,881	161,038	164,259

Disc. Rate

**6.2 Net Present Value**

**10.00%** 3,300,944

**6.3 Simple Internal Rate of Return**

3.95%

	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>	<u>Year 8</u>	<u>Year 9</u>	<u>Year 10</u>	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>
	276,020	281,541	287,171	292,915	298,773	304,749	310,844	317,060	323,402	329,870
	<u>13,801</u>	<u>14,077</u>	<u>14,359</u>	<u>14,646</u>	<u>14,939</u>	<u>15,237</u>	<u>15,542</u>	<u>15,853</u>	<u>16,170</u>	<u>16,493</u>
	262,219	267,464	272,813	278,269	283,834	289,511	295,301	301,207	307,232	313,376
	<u>94,675</u>	<u>96,568</u>	<u>98,500</u>	<u>100,470</u>	<u>102,479</u>	<u>104,529</u>	<u>106,619</u>	<u>108,752</u>	<u>110,927</u>	<u>113,145</u>
	167,544	170,895	174,313	177,799	181,355	184,982	188,682	192,456	196,305	200,231
	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	167,544	170,895	174,313	177,799	181,355	184,982	188,682	192,456	196,305	200,231
<u>Year 5</u>										
167,544										
<u>0</u>	135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363
167,544	<u>0</u>	55,204	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	60,950	<u>0</u>	<u>0</u>	<u>0</u>
	<u>135,363</u>	<u>190,567</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>196,312</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>
	32,182	-19,671	38,951	42,437	45,993	49,620	-7,630	57,093	60,942	64,868

<u>Year 15</u>	<u>Year 16</u>	<u>Year 17</u>	<u>Year 18</u>	<u>Year 19</u>	<u>Year 20</u>	<u>Year 21</u>	<u>Year 22</u>	<u>Year 23</u>	<u>Year 24</u>
336,467	343,196	350,060	357,062	364,203	371,487	378,917	386,495	394,225	402,109
<u>16,823</u>	<u>17,160</u>	<u>17,503</u>	<u>17,853</u>	<u>18,210</u>	<u>18,574</u>	<u>18,946</u>	<u>19,325</u>	<u>19,711</u>	<u>20,105</u>
319,644	326,037	332,557	339,208	345,993	352,913	359,971	367,170	374,514	382,004
<u>115,408</u>	<u>117,716</u>	<u>120,071</u>	<u>122,472</u>	<u>124,922</u>	<u>127,420</u>	<u>129,968</u>	<u>132,568</u>	<u>135,219</u>	<u>137,923</u>
204,236	208,320	212,487	216,736	221,071	225,493	230,002	234,602	239,294	244,080
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
204,236	208,320	212,487	216,736	221,071	225,493	230,002	234,602	239,294	244,080
135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363
<u>0</u>	67,293	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	74,297	<u>0</u>	<u>0</u>	<u>0</u>
<u>135,363</u>	<u>202,656</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>209,660</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>
68,873	5,664	77,124	81,374	85,709	90,130	20,342	99,240	103,932	108,718
<b><u>Year 15</u></b>	<b><u>Year 16</u></b>	<b><u>Year 17</u></b>	<b><u>Year 18</u></b>	<b><u>Year 19</u></b>	<b><u>Year 20</u></b>	<b><u>Year 21</u></b>	<b><u>Year 22</u></b>	<b><u>Year 23</u></b>	<b><u>Year 24</u></b>
204,236	208,320	212,487	216,736	221,071	225,493	230,002	234,602	239,294	244,080
<u>0</u>	<u>67,293</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>74,297</u>	<u>0</u>	<u>0</u>	<u>0</u>
204,236	141,027	212,487	216,736	221,071	225,493	155,705	234,602	239,294	244,080

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<b><u>Year 26</u></b>	<b><u>Year 27</u></b>	<b><u>Year 28</u></b>	<b><u>Year 29</u></b>	<b><u>Year 30</u></b>	<b><u>Year 31</u></b>	<b><u>Year 32</u></b>	<b><u>Year 33</u></b>	<b><u>Year 34</u></b>
418,355	426,722	435,256	443,961	452,840	461,897	471,135	480,558	490,169
<u>20,918</u>	<u>21,336</u>	<u>21,763</u>	<u>22,198</u>	<u>22,642</u>	<u>23,095</u>	<u>23,557</u>	<u>24,028</u>	<u>24,508</u>
397,437	405,386	413,493	421,763	430,198	438,802	447,578	456,530	465,661
<u>143,496</u>	<u>146,366</u>	<u>149,293</u>	<u>152,279</u>	<u>155,324</u>	<u>158,431</u>	<u>161,599</u>	<u>164,831</u>	<u>168,128</u>
253,941	259,020	264,200	269,484	274,874	280,372	285,979	291,699	297,533
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
253,941	259,020	264,200	269,484	274,874	280,372	285,979	291,699	297,533
135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363	135,363
82,030	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>217,393</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>	<u>135,363</u>
36,548	123,658	128,838	134,122	139,512	145,009	150,617	156,336	162,170
<b><u>Year 26</u></b>	<b><u>Year 27</u></b>	<b><u>Year 28</u></b>	<b><u>Year 29</u></b>	<b><u>Year 30</u></b>	<b><u>Year 31</u></b>	<b><u>Year 32</u></b>	<b><u>Year 33</u></b>	<b><u>Year 34</u></b>
253,941	259,020	264,200	269,484	274,874	280,372	285,979	291,699	297,533
<u>82,030</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
171,911	259,020	264,200	269,484	274,874	280,372	285,979	291,699	297,533

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## Appendix D – Lease Clauses

The Lease could include, as applicable, some or all of the following:

- Definitions.
- Term of lease (in BC less than 30 years to avoid payment of property transfer tax but more than three years to avoid falling under the provisions of the Residential Tenancies Act).
- Termination procedures.
- Lease termination in event of physical and mental incapacity – how and who determines).
- Method of calculating monthly payments.
- Timing of monthly payments.
- Use of premises (no business use, etc.).
- Sub-letting and assignment.
- Repairs and replacement (who is responsible for what).
- Decorating (what is and is not allowed).
- Replacement reserve funds.
- Rules and regulations (how established – the actual rules can be an appendix).
- Management, taxes, insurance and utilities.
- Quiet enjoyment.
- Smoking policies (or may be included in the rules).
- Disclaimers and indemnities.
- Remedying of defaults.
- Right of entry, right to do work.
- Damages.
- Method of calculating refund of entrance fee and timing of refunds.
- Registration of lease on title (as applicable).
- Dispute resolution procedures.

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## Notes

<sup>i</sup> A 1996 article in the Wall Street Journal about an equity co-op under construction in Atlanta describes it as the first to be built anywhere in the US in the last 10 years and the first to be built in Atlanta ever. Other equity co-ops cited in the article are in New York City, where they have been popular for almost 100 years, Chicago, San Francisco, and Washington, D.C. The article identifies the ability to control who lives in the community as the chief advantage of these co-ops.

<sup>ii</sup> There are thousands of equity co-op units in Toronto, created by owners of rental projects who wanted to convert their properties to condominium status, but were thwarted by residential tenancy legislation from doing so. The properties were converted to equity co-op status as a second best solution. These projects have not been included in the analysis in this report because unlike the projects included in this report, they were not deliberately created as equity co-ops.

<sup>iii</sup> The five that survived are Crescent Downs, The Cedars, Avondale, Ambleview Place and Parkgate. There is a new seniors' co-op in Castlegar, Grandview Heights, but it is not an equity co-op like the five just mentioned. The Grandview Heights co-op holds title to all the units but residents purchase individual units on a life lease basis.

<sup>iv</sup> Some of the text in this chapter originally appeared in a report written by Kate Mancer for CMHC in 2000 called Alternate Tenure Arrangements.

<sup>v</sup> CMHC, An Examination of Life Lease Housing Issues, March 2007.

<sup>vi</sup> See Chapter X for more information on the Manitoba legislation.

<sup>vii</sup> Ontario Ministry of Municipal Affairs and Housing, Best Practices and Consumer Protection for Life Lease Housing in Ontario, March 2007.

<sup>viii</sup> *Ibid* page 46.

<sup>ix</sup> Manitoba Consumer and Corporate Affairs, Life Lease Rental Housing Discussion Paper, 1997 Document.

<sup>x</sup> Ironically, in BC life lessees are both owners as defined by the Home Owner Grant Act and renters as defined by the Shelter Aid for Elderly Renters Act and so technically qualify for both subsidies.

<sup>xi</sup> Ontario Ministry of Municipal Affairs and Housing, Best Practices and Consumer Protection for Life Lease Housing in Ontario, March 2007.

<sup>xii</sup> CMHC, An Examination of Life Lease Housing Issues, March 2007.

<sup>xiii</sup> *Ibid* page 48.

<sup>xiv</sup> Although it wasn't a case of stratification a life lease project in Kelowna developed by a church on the basis of promissory notes was essentially taken over by the residents and the church lost ownership of the project.

<sup>xv</sup> The Condominium Act in Manitoba does not give renters of strata titled units the rights of owners as the Strata Property Act in BC does.

<sup>xvi</sup> At the time the Good Samaritans were developing their Manitoba projects, the Superintendent of Real Estate would not allow a similar mechanism to be used in BC. This position has since been changed.

<sup>xvii</sup> Assuming a monthly rental rate of \$850 which includes electricity and gas, and that housing costs comprise 33% of household gross income, these rental units would require households with an annual income of \$30,900.

<sup>xviii</sup> Gross income less vacancy = effective gross income.

<sup>xix</sup> In some circumstances BC Housing will assist housing providers experiencing negative net operating income by providing on-going subsidies.

<sup>xx</sup> There are further disincentives for private developers to produce rental housing caused by hurdles imposed by Canada Revenue tax regulations.

<sup>xxi</sup> Advice provided by Monica Bird, Senior Account Manager, Housing and Health Care, RBC.

<sup>xxii</sup> The legal developer of the projects is Good Samaritan Canada. The Good Samaritan Society is an entity related to the developer that provides operational services to the projects.

<sup>xxiii</sup> As noted elsewhere in this document, recent amendments to the Real Estate Development Marketing Act now permit deposits to be used for construction purposes as long as they are insured.

<sup>xxiv</sup> An explanatory plan provides additional flexibility and methodology to define a secondary interest in land. The purpose of an explanatory plan is to provide a graphical representation of an interest in an entity

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to create a secondary interest without any field survey. The plan is based upon mathematical calculations so that, if required in the future, the secondary interest could be identified and marked on the ground.

<sup>xxv</sup> An Explanatory Plan is similar to a strata plan in that a land surveyor physically measures individual units and marks them on a plan of the building. It differs from a strata plan in that only the apartments are measured, not the common spaces.

<sup>xxvi</sup> For decades, very little rental housing has been developed anywhere in Canada for precisely the same reason – rents are too low to justify the cost of construction and operation.

<sup>xxvii</sup> Up until very recently, BC was the only province that would not allow life lease sponsors to use purchaser deposits for construction purposes. Amendments to the Real Estate Development Marketing Act proclaimed in 2005 permit this practice but only if deposits are insured.