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A Guide to Legal Structures
to Community-led housing

Introduction

The legal structure of your community-led housing group is the foundation on which your community will be built, so it is important to get it right. This Guide sets out the available legal structures and considers some of the principal advantages, disadvantages and limitations of each. Through gaining an understanding of the various options, you should be empowered to choose the most suitable structure to match the objectives of your particular community-led housing community.

What is community-led housing?

Community-led housing is a way for local communities to provide their own decent and affordable homes. Community-led housing is often designed to help certain groups – for example young people, older people, or those in need of affordable family homes - and provides a way for communities to take control of the areas in which they live.

There are various forms of community-led housing. The term includes cohousing, community land trusts, housing co-operatives and collective self-build. The common feature is some level of control by the local community over the design of the housing, how it is managed and who lives there.

The UK Cohousing Network defines **cohousing** communities as *intentional communities*. *They are created and run by their residents. Each household has a self-contained, personal and private home but residents come together to manage their community, share activities, eat together. Cohousing is a way of combating the alienation and isolation many experience today, recreating the neighbourly support of a village or city quarter in the past.*



The National CLT Network defines **community land trusts (CLTs)** as *a form of community-led housing, set up and run by ordinary people to develop and manage homes as well as other assets important to that community, like community enterprises, food growing or workspaces. CLTs act as long-term stewards of housing, ensuring that it remains genuinely affordable - based on what people actually earn in their area – not just for now, but for every future occupier.*



Housing co-operatives are member-led organisations, which own a home or homes. All residents in the house(s) owned by the co-operative are members, and all members are residents. Residents pay rent to the co-operative, which is used to pay off a collective mortgage and cover the running costs of the homes.

Some self-builders may also fall within the definition of community-led housing. However, there is less need for a specific legal structure for self-builders, unless they fall within one of the categories outlined above. For this reason, we have not considered self-build further in this guide.

There is often overlap between different forms of community-led housing. A community land trust may develop cohousing or lease homes it builds to a housing co-operative. A cohousing scheme may use a housing co-operative structure, or allocate a certain number of plots to self-builders. For this reason, we suggest that new community-led housing groups start by working out what their aims and priorities are, before moving on to consider specific legal structures.

A community-led housing community is not defined by its legal structure – instead, the structure should reflect the specific needs and aims of the group. It is important to give proper consideration to those needs at the beginning of the process of setting that community up. This Guide is intended to help you through that process.

This Guide does not provide a comprehensive statement of the law as it applies to the different structures and we do not include any advice or recommendation on tax or financial issues. Advice should be taken on your particular requirements at an early stage in your considering setting up a community-led housing project. In particular, we suggest that you take advice at an early stage from a VAT specialist, especially if you are renovating an existing building or building homes for rent, to assess the potential of a legal structure which allows you to reclaim the VAT costs you incur.

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Please respect that this guide is strictly for the use of clients and prospective clients only. Thank you.

About Wrigleys

Wrigleys Solicitors LLP have been advising on community-led housing projects since the mid-1980s and are nationally regarded as experts in the sector. Our work spans community land trusts, cohousing developments and housing co-operatives.

We have a dedicated community-led housing team, made up of lawyers from our social economy and property teams.

The social economy team consists of in excess of 20 lawyers working almost exclusively with clients in the charities and the wider social economy, with experience across charity, company and commercial, intellectual property, data protection, tax, housing, property, employment, banking and financial services.

The property team comprises lawyers with experience of residential, commercial and agricultural property.

We host regular gatherings around the country for community-led housing groups to come together and share their knowledge and experiences, and produce a quarterly newsletter to keep clients updated about legal issues relevant to community-led housing. Our lawyers are friendly and empathetic, and some are involved in community-led housing projects themselves, so have first hand experience of the issues that may arise.

Further information about Wrigleys and members of our community-led housing team can be found on our website at www.wrigleys.co.uk/charities-and-social-economy/co-housing-and-community-land-trusts/.

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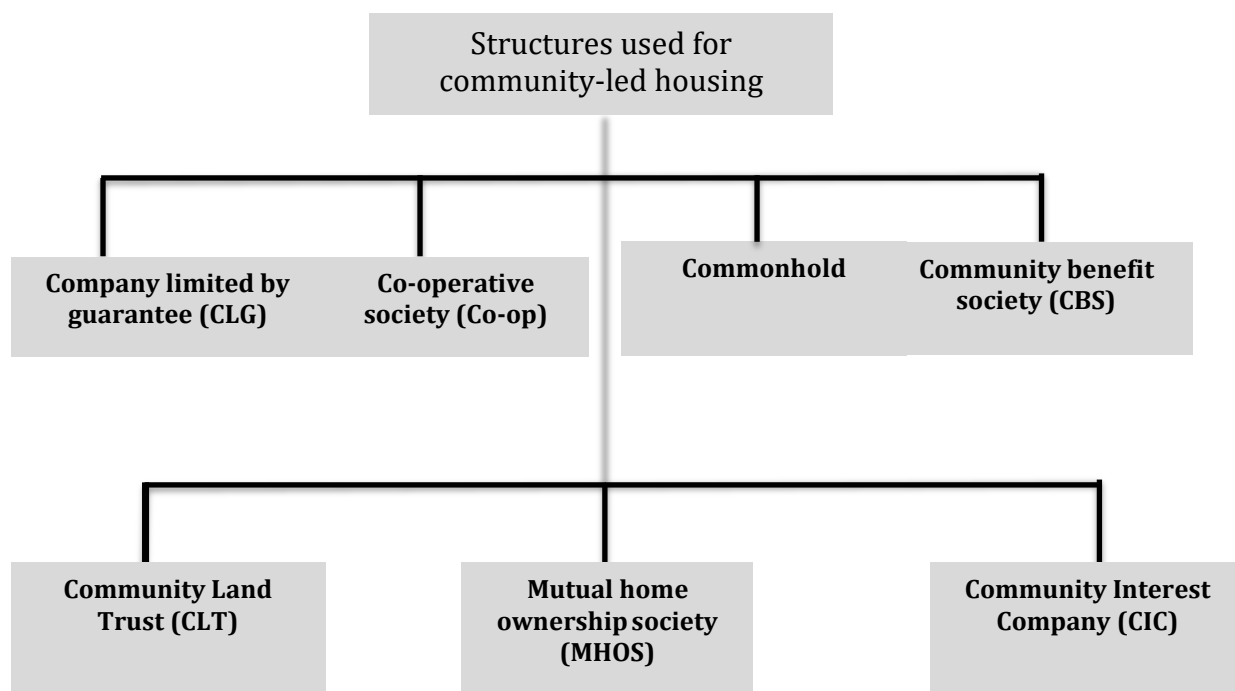
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A Guide to Legal Structures for community-led housing

Having advised community-led housing groups over a number of years, we have developed an appreciation of which legal structures are likely to be most suitable for community-led housing. The diagram below sets out those options.



**Co-operative Societies and Community Benefit Societies were formerly known as Industrial and Provident Societies*

Some of these legal structures are more suitable for "resident-owned" developments. By this, we mean community-led housing structures whose members are the people who directly benefit from the organisation's housing assets (i.e. the members live there).

Other legal structures are more appropriate for "community-owned" developments. By this, we mean community-led housing structures whose members may include people who live in the homes they develop, but there are also members from the wider community within which the community-led housing group is situated. A community land trust must adopt a community-owned structure.

Crucially, this means that the people who live in a resident-owned structure's housing assets will ultimately control decision making of the structure, whilst the wider community will ultimately control decision making of a community-owned structure. For this reason, housing co-operatives and many cohousing groups are set up as resident-owned structures: residents want to control and manage their own homes without being subject to the control of the wider community.

The majority of resident-owned structures are set up as companies limited by guarantee or co-operative societies. A Mutual Home Ownership Society (MHOS) is a type of co-operative society.

Community-owned structures, such as community land trusts, are usually set up as community benefit societies, charitable companies or community interest companies (CICs).

In addition to the structures detailed above, you may also hear people talk about housing associations or registered providers. Housing associations generally use a company limited by guarantee or a community benefit society structure, and would usually be charitable. "Housing association" is a legal status specified under the Housing Acts and "registered provider" means the housing association is registered with the Homes and Communities Agency, the regulator of social housing in England and Wales. You may also hear the term "registered social landlords" or "RSL": this is the old name for registered providers.

Some of the structures set out above are not truly structures, but are more like "wrappers" that sit on top of a legal structure. An example includes the community land trust which can sit on top of a community benefit society or other legal structure. Charitable status is another example of a "wrapper". Only community-owned structures can be charitable and more detail on this is below.

We have set out below a set of practical questions that community-led housing groups may wish to consider when determining which legal structure to implement for their group. However, firstly we consider some headline features which apply to the legal structures.

Some Common Features

Legal Status

Most of the legal structures set out in the diagram above are "incorporated". The only exceptions are the trust and the unincorporated association.

An incorporated entity has a separate "legal personality" or identity from those involved in its membership or management, i.e. its directors*. This limits the members' potential personal liability for debts and liabilities which arise in the course of an organisation's activities. It also means the organisation can enter into contracts – and buy property – in its own name. This means that, generally, any liability is the liability of the organisation and not of the individuals involved.

For these reasons, we would usually recommend that a community-led housing group uses an incorporated legal structure.

*The term "directors" is often used interchangeably with "trustees" and the "members of the management committee", although the correct term will depend on the status of the organisation.

Limited Liability

Corporate bodies have both members and directors (these may be the same people). Limited liability gives the directors and members protection in the event that the organisation goes into liquidation or if other claims are made against it, provided they act in accordance with the relevant governing documents (its Rules or

Memorandum and Articles of Association, depending on its legal status) and also act in accordance with any duties imposed on them.

Company limited by guarantee – Members' liability is limited to the financial contribution they have agreed to put in, or "guarantee".

Company limited by shares – Members' liability is limited to the price payable for their shares.

Community benefit society or co-operative – Members' liability is limited under the rules, usually to the value of their share capital.

It is rare for any further liability to be imposed on members but this could exist where a member fails to follow the rules set out in the organisation's constitution or acts contrary to the law. Personal liability for directors may arise in certain circumstances, for example if they continued to incur liabilities on behalf of their organisation when they knew, or ought to have known, that there was no reasonable prospects of it being able to pay its debts as they fall due. This is known as fraudulent, wrongful or insolvent trading. Personal liability is also imposed on directors or employees by specific laws, such as those protecting the environment, the health and safety of employees and data protection.

Detailed consideration of the duties of a director is outside the purpose of this Guide. These duties have been codified for companies as part of the Companies Act 2006 and also arise for both directors of companies and of registered societies (such as the Co-operative Society and the Community Benefit Society) through decided case law.

Regulation

Incorporation brings with it certain obligations. An incorporated organisation must use its full name, and give details of its registered number and address, on all formal papers. This does not stop you adopting a trading name, but certain formalities do need to be followed. The incorporated organisation must also file an annual return and/or confirmation statement, giving details of its directors and secretary, and annual accounts, which must contain certain required information. However, the burden of disclosure and the formalities involved differ depending upon which particular legal structure you choose.

Constitution

Each legal structure has a particular type of constitution, which acts as its internal rule book. The constitution governs the organisation's internal proceedings such as the appointment of directors and the holding of members' meetings. Companies and registered societies both have this two tier system of directors and members. In small organisations (particularly companies), they can be the same people.

Objects

The objects set out the ethos of the community-led housing group, and legal entities which are established for community-led housing purposes will include specific restrictions in the objects on what the entity can do. The

objects are therefore perhaps the single most important provision in the constitution. A company or registered society with defined objects cannot act outside of those objects.

Asset Locks

Asset locks refer to the way in which assets are locked into the organisation and held in perpetuity for its objects. In other words, the asset lock ensures that any property which the organisation owns can only ever be used for the purpose of its objects and not, for example, sold for private gain. It usually means assets can't be given away or sold for less than market value, unless this is to another asset-locked body or for the benefit of the community. It would prevent assets being sold to members or residents of the organisation for less than full market value.

There are different ways assets may be locked such as:

- rules which prohibit or limit the return on investment or rules which prevent the distribution of profits or assets;
- rules requiring a large majority of members to agree changes to particular rules, for example the rules which restrict distribution of assets for private benefit; and
- legal requirements to obtain the consent of the Financial Conduct Authority (FCA), the CIC Regulator or the Charity Commission to certain rule changes.

Asset locks are found in charities, some community benefit societies and community interest companies. Community land trusts need to have an asset lock.

There is sometimes confusion over what the asset lock actually means. It does not stop an organisation engaging in its ordinary business nor would an asset lock prevent a disposal (for example a gift or transfer at below value) to some other asset locked body, for example a charity. The asset lock, in its simplest form, is intended to protect the assets of an organisation for its community or public purpose rather than for any private or personal gain of the members of the organisation.

It would be unusual for an asset lock to apply to a resident-owned structure, such as a housing co-operative or most cohousing groups. This is because an asset lock can cause an issue in the event that the co-operative or cohousing community dissolves, because the assets which are held by the organisation would be preserved for the wider community rather than being divided up between the members. In other words, members would not be able to take out their share of the property. The organisation would also be unable to transfer assets to its members for less than full market value.

The "strength" of the asset lock differs depending on the structure used and some are easier to break than others. Consideration should be given to the value of the assets held by the organisation, how important it is to protect those assets and what measures a particular structure permits to protect those assets from distribution amongst the members.

How to choose a legal structure

Choosing a legal structure for your community-led housing project can be a mind boggling experience. To help you make a decision as to which legal structure to use we have identified three key questions:

- Who will benefit from, and control, the group's assets? – **people**
- Where is the group's funding coming from? – **pounds**
- How should the group's property be owned? – **property**

People - Who will benefit from, and control, the group's assets?

Whatever legal structure you set up, it will have members. Will these members be limited to the people who live in the properties, or will membership be open to others living and working in the area, or even further afield? The answer to this question will determine who has control of the community-led housing project, and whether you need a resident-owned structure or a community-owned structure.

There is also a question about what your priorities are. Do you want to create an intentional community, made up of people who choose to live together and have responsibility for managing the space they live in? Or are you trying to benefit the wider area - whether that's economically, socially, environmentally or all three? It could be a bit of both – you might want to create a community, at the same time as improving the area.

Once you have answered these points, there are other questions to consider.

- Do people want to have an equal say over how the organisation is run, regardless of how much money they have put in - what is referred to as "one member, one vote"? Or is this not important?
- In a community-owned structure, are there any external stakeholders who want a say in the running of the organisation, such as the Parish Council? If so, what rights do they want: will they expect to appoint a certain number of the board members?
- In a resident-owned structure, will all members of the household be a member and have a vote? Or will each household have an equal number of votes, to ensure large households don't dominate decision-making processes?
- How will decisions be made? Will you want to use consensus decision-making, or some other form of decision-making such as sociocracy?
- Will you be partnering with a third party, such as a housing association or local authority? If so, will they want nomination rights to specify who should live in the homes you develop?

Pounds - Where is the funding coming from?

Funding for a community-led housing project is likely to come from the following sources:

- grants
- community shares/bonds
- individuals
- bank/commercial lender loans
- in kind support

We look at each of these in more detail below.

Grants – you might be more likely to receive grant funding if you have an asset lock of some sort. This might mean you are a charity, or have some other limitation on what you can do with your assets, built into your legal structure. The National CLT Network has grant funding available to help groups, especially in their early stages, and others crop up from time to time e.g. Locality.

Community shares/bonds - are you hoping to raise finance from the wider community? Issuing shares or bonds to the public is a tightly regulated area but certain legal structures benefit from exemptions in the legislation (e.g. registered societies). If you might raise finance this way, you need to make sure you have the right legal structure in place at the outset, to enable you to do it.

Individuals – people might lend money to the organisation, or might help fund a development by buying into it using their own money from savings, or their existing property once that has been sold. You might cross-subsidise the cost of a development by selling some properties at market value.

Bank/commercial lender loans – there are a number of specialist lenders in this area, such as Charity Bank, Ecology Building Society and Triodos. Loan finance might also be provided by local authorities or the HCA.

In-kind support - this can be a crucial element of creating a financially-viable development. Land is likely to be a big part of the development's cost, so securing free or cheap land would be a substantial help. However, in-kind support could also take the form of professional advice (fees for architects, planners, lawyers, accountants, project managers etc.) or other forms of support, such as the building materials used, technologies employed and so on.

We consider funding your community-led housing group later in this Guide.

Property - How should the property be owned?

The nature of property ownership in a community-led housing development can affect the legal structure you choose. There are a number of different models and we suggest you research and, if possible, visit other communities to see how it works in practice. Some questions to consider include:

- Will there be personal property ownership whereby residents own the freehold or a long leasehold of their individual unit, which they can sell and recoup the value of the property when they move out?
- Do you want the legal structure to own the property, with individuals paying rent to live there? Conventionally this would mean those individuals don't build up any capital in the property, and have no individual mortgage because the legal structure itself takes out the loan and grants the mortgage. However, there are exceptions to this, such as MHOS, where individuals build up equity in return for paying rent.
- Will the legal structure retain an ownership stake in the property, to ensure it has control over it in the long term? If so, what is the purpose of this:
 - Is it to control who can move into the property, with people needing to be approved by the existing residents before they are accepted as a resident?
 - Is it a means of ensuring perpetual affordability? By perpetual affordability we mean houses which stay affordable in the long term, not just for the first person who lives there but the second, third, fourth and so on.
- Do you want to provide affordable housing, whether this is social or affordable rent or shared ownership?

Having answered these questions we hope you will then be able to identify:

- the basic legal structure you wish to use (e.g. company or community benefit or co-operative society);
- whether you wish to add any optional "wrappers" to that structure (if applicable) (e.g. non-charitable asset lock, charitable status, community land trust); and
- any amendments you may wish to make to your organisation's constitution.

Legal structures

The most common legal structures for community-led housing groups are the company limited by guarantee and the registered society. Each of these form the basis of some of the other legal structures covered in this Guide. The table below summarises the key features of each.

	Company limited by guarantee	Registered society (co-operative or community benefit)
Constitution	Articles of association	Rules
Regulator/Registrar	Companies House	Financial Conduct Authority
Democratic structure	Flexible – may have votes allocated by member or by household, with multiple votes for each	One member, one vote
Asset lock?	Yes - if CIC status is obtained Yes - if charitable (need to register with the Charity Commission if income over £5,000)	Yes - if statutory non-charitable asset lock included in rules Yes - can qualify for charitable status by registering with HMRC (exempt from registration with the Charity Commission)
Time taken to register	Once articles agreed, can be same day	Once rules agreed, allow at least three weeks
Principal benefits	Simple, well known structure	Benefits from certain exemptions from usual FSMA regulated activity and financial promotion rules (subject to conditions). This makes it easier, for example, for a community benefit society to undertake a community share issue
Community-led housing uses	Cohousing; community land trust (if charitable company or a CIC); commonhold association	Community land trust; MHOS; housing co-operatives; cohousing (uncommon)

Company Limited by Guarantee (CLG)

The CLG is the most common form of legal structure for cohousing groups. It could be used for community land trusts, provided it includes an asset lock (by also registering as a charity or as a community interest company - more detail below). It is also often used for charities, not-for-profit companies and social enterprises.

There are two principal types of company, each with limited liability: the CLG and the company limited by shares ("CLS"). The CLS is usually used for profit-making companies where it is intended that a return will be generated for shareholders. It is not generally considered appropriate for community-led housing, so is not included in this Guide.

Constitution

A company is governed by two documents: the memorandum of association and the articles of association. Since 1st October 2009 for new companies, the memorandum has become a one page statement of the company's main details (e.g. its initial members), with the articles containing what was formerly in both the memorandum and the articles.

Advantages

The principal advantage of establishing a community-led housing group as a CLG is its ease and familiarity. The CLG provides a flexible structure which allows it to be shaped to satisfy the needs of any organisation. Its familiarity also extends to funders who can gain great comfort from the ease of access to information concerning the organisation's objects, structure and appointed officers through the public register at Companies House.

Disadvantages

The CLG is limited as a means of attracting outside investors, meaning it is less commonly used for community owned structures. The CLG does not have share capital and so cannot raise equity. It can effectively raise funds only by debt (including through bond or loan-stock issues – again these terms are often used interchangeably).

Democratic structure

Although it is usual to find that voting is democratic with "one member one vote", the CLG structure is flexible and can allow for different classes of membership and different voting rights attaching to the different classes.

A company limited by guarantee can permit a membership based on households, so that there is one vote per household. Alternatively there could be a vote given for each person in the household, or even a number of votes for each household, so these can be shared among the people who live there. This flexibility is not available for a co-operative or community benefit society.

The members' liability is limited to a requirement (the guarantee) to contribute a certain amount (usually £1 or £10) in the event of the company being wound up.

Asset lock

A CLG can include an asset lock by registering as a community interest company or as a charitable company. Further details on this are below.

Registration

Setting up a CLG is relatively straightforward and inexpensive. Once the articles of association have been agreed, form IN01 is completed and sent, with the required fee, to Companies House. On that form, a CLG which is not-for-profit may seek exemption from the need to use the word "limited", although there are certain conditions which must be satisfied.

Provided all is in order, incorporation/registration usually takes no more than a couple of days (and can be done same-day if required). Registration fees start from £40, if registering by post.

In terms of ongoing fees, as at November 2017, the fee payable on filing the annual return is £13 for online filing and £40 by postal application. Further fees are set out on the Companies House website (e.g. registering a charge on assets costs £15 online and £23 by post and late filing fees are up to £1,500 if your annual accounts are overdue).

Uses

The majority of cohousing groups are set up as CLGs. This is because of the extra flexibility which CLGs permit with respect to weighted voting rights (for example, with a set number of votes per household, rather than per member), and the fact that the assets of the CLG may be distributed among the members in the event it is wound up.

Wrigleys have our own model articles for a cohousing CLG, which includes options for weighted voting rights for members/households and permits decisions to be made by consensus.

Societies registered under the Co-operative and Community Benefit Societies Act 2014 (registered societies)

There are two different types of registered society: the co-operative society and the community benefit society (CBS or bencom). These were formerly known as Industrial and Provident Societies (IPs) and both are registered by the Financial Conduct Authority (FCA).

The main difference between the two is that the co-operative society will conduct its business for the mutual benefit of its members, while the CBS must operate for the benefit of persons other than its own members and act in the interests of the wider community.

For this reason, it is more usual for resident-owned structures such as housing co-operatives and some cohousing groups to use the co-operative society model. However, larger cohousing communities/housing co-ops or cohousing communities/housing co-ops which do lots of community outreach activities may consider using the CBS structure.

The CBS is commonly used for community-owned structures such as community land trusts. It is also common amongst housing associations and organisations such as credit unions, responsible finance institutions and community shops.

Constitution

A registered society is governed by its rules which form a contract between the registered society and its members. The rules set out the objects of the registered society, its powers, the rights and duties of the members, the admission and withdrawal of members, appointment and removal of directors and decision-making. There are various model rules which can be used by community-led housing groups.

Advantages

A registered society is a popular choice for groups wanting to do a community share issue. Share offers by registered societies benefit from exemptions from the usual rules around making a share or bond offer to the public set out in the Financial Services and Markets Act 2000, provided certain conditions are satisfied (for example, the shares offered must be withdrawable only and non-transferable).

Consideration of those exemptions is outside the scope of this Guide and specialist advice is available from Wrigleys, if required. However, the exemptions, if they apply, give substantial cost and time advantages and allow the registered society a means of raising substantial capital from investors which is unavailable to other legal structures. Such investors may seek social as opposed to financial reward, but a limited interest (similar to, and sometimes referred to as, dividends) can be paid on shares.

Disadvantages

The incorporation fees are higher than for a company, and range from £40 - £950 depending on how many amendments are made to a set of model rules registered with the Financial Conduct Authority.

There is less flexibility with the constitution of a registered society, because any changes must be approved by the Financial Conduct Authority.

Democratic structure

Registered societies are democratic entities, usually with a one member, one vote structure.

A registered society has share capital and is therefore similar to the CLS, although for resident-owned structures often only one membership share of £1 is issued to each member. Shares are usually either withdrawable or transferable (as in a company).

A co-operative society should adhere to the International Co-operative Alliance principles of one member one vote, limited return on capital, and open membership. It does not allow therefore one vote for each property unit which is possible with a company limited by guarantee. This would also be difficult to achieve with a CBS, because the FCA generally expects the one member, one vote principle to be upheld for CBSs.

A CBS would usually have a wide membership, including people who don't live in the homes the organisation builds. The members appoint the directors and make other key decisions about the running of the society, such as decisions about amending the rules or winding up. For this reason, it is not commonly used for resident-owned communities (including most cohousing communities), whose residents want to retain control over the homes they own and manage, so want to be the only members.

Asset lock

It is possible to include a statutory asset lock in CBS rules, which prohibits the transfer of assets to a non-asset locked body.

It is also possible for a CBS to register with HMRC as a charity. A charitable CBS is exempt from registration with the Charity Commission, but benefits from the same tax reliefs and must comply with the same charity law principles as a registered charity.

Registration

A registered society may adopt any rules it wishes, provided the rules meet certain statutory requirements. Most choose to adopt "model rules", which are standardised governing documents that have previously been approved by the FCA, with amendments to adapt the model to the particular circumstances of the society if necessary. These model rules are submitted via a sponsoring body and a fee will usually be payable to the sponsor for use of the model rules, as well as to the FCA for registration.

A completed application form, signed copies of the rules and the registration fee are sent to the FCA. As at November 2017, the registration fee is £40 where the registered society adopts model rules without amendment, with the fee increasing where amendments to those rules are sought (up to a maximum of £950 for eleven or more amendments). Sponsor fees for model rules will vary but may be expected to cost in the region of £300-£500, payable to the sponsor.

Periodic fees (annual) are charged, calculated with reference to asset value but are generally £65 pa for a registered society with assets of less than £50,000, increasing to £480 pa for a registered society with assets of more than £1million.

Uses

Many community land trusts are set up as CBSs. The structure is a good fit for the statutory requirements to become a CLT, with a clear community purpose and a wide membership, drawn from the community, which controls the structure. The ability to undertake a community share issue is also a useful addition for many CLTs.

Wrigleys has its own model rules for both charitable and non-charitable CBSs. Both of these are suitable, and have been used a number of times, for community land trusts. We do not charge a separate sponsor fee if we register you as a CBS using our model rules.

Community Interest Company (CIC)

The CIC is designed specifically for those interested in establishing social enterprises.

It is a company with some extra features designed to ensure that assets and profits are used in the interests of the community:

- Firstly, all CICs will have a compulsory statutory asset lock, so that the assets of the CIC may only be distributed to some other specified CIC or to a charity and not to its members or investors.
- Secondly, to register as a CIC, a company must satisfy the community interest test, to ensure that the CIC will not benefit an unduly restricted group of beneficiaries.

As with the CBS, the CIC exists for the benefit of the community. This feature, and the existence of the compulsory asset lock, means that CICs would not generally be suitable for resident-owned structures such as cohousing groups or housing co-operatives. However, we know of some groups who have adopted the CIC structure (because it allowed them to access grant funding that would otherwise not be available to them and they were not intending to transfer individual properties to members at less than full market value), so we have included brief details about CICs in this Guide for completeness.

Constitution

The CIC can have the structure of a CLS, CLG (which makes up the majority of CICs now registered) or Public Limited Company (PLC). Although it is possible to use a company limited by shares as the basis of the CIC, dividends and other payments to shareholders are subject to a statutory cap as part of the asset lock in order to protect the CIC's assets. If a return to investors is not anticipated, then the CIC limited by guarantee will be a more appropriate structure.

Note that a CIC cannot be a charity and will not have the benefits of charitable status, such as charitable tax concessions.

Asset lock

As the asset lock is statutory, members cannot simply agree to change the rules to allow distribution, unlike with the CLG. One of the key advantages of the CIC is that the members, financial backers, customers and others can be sure that the organisation is intended for the benefit of the community and not for private gain.

The asset lock means that the CIC's assets cannot be sold for less than market value, unless it is to another asset-locked body, or otherwise benefits the community. If the CIC is wound up, the remaining assets will be preserved for the community rather than being divided up between the members. The asset lock can therefore be an issue for resident-owned structures, so is not commonly used for cohousing communities. It would be suitable for community land trusts.

Registration

The CIC is registered with Companies House in the same way as an ordinary company (CLG and CLS), but a community interest statement (identifying how the CIC will benefit the community) must also be filed with the CIC Regulator.

The rules governing CICs require that specific provisions are contained in the articles of association of the CIC - such as the asset lock (including a dividend cap for the CIC limited by shares) and the manner of appointment and removal of directors.

In addition to the accounts, financial audit and confirmation statement (all similar to the CLS and CLG), the CIC will be required to produce an annual community interest statement and report for the public record. The report must demonstrate what the CIC has done to pursue the community interest during the year. The report must also include details of payments to directors.

On-going costs will be similar to the CLG. The community interest statement is likely to incur additional costs although this is unlikely to be significant as many organisations will already include something to this effect in their annual report and accounts or reports to key funders.

Uses

A CIC would be suitable for a non-charitable CLT. It would not usually be appropriate for resident-owned structures, including most cohousing groups, for the reasons outlined above.

Commonhold association

Commonhold is a relatively new way of owning property in England and Wales, introduced by the Commonhold and Leasehold Reform Act 2002. Commonhold enables freehold ownership of individual flats or houses within a property development, as an alternative to long leasehold ownership. In addition to each unit owner having a freehold estate in the unit, they automatically become members of a 'commonhold association' which owns and manages the common parts of the commonhold development. This means that residents can take ownership of common areas within a development and make joint decisions in relation to the management of those assets.

However, we would not usually recommend it as a legal structure for community-led housing. It is still relatively rare, so funders may be reluctant to lend to a commonhold association, and a commonhold community-led housing group may not be able to impose any restrictions on the transfer of a unit by an existing member (e.g. via a vetting procedure for new members), as explained below.

Advantages

The main benefits of commonhold over leasehold are that the commonhold does not lose its value over time in the same way as a leasehold, and does not have a diminishing lease term. There is no need for a landlord as the commonhold association and the unit holders manage the commonhold. The documentation is standardised making it easy to identify the unit holders' rights and obligations and there is only one set of documentation for the whole commonhold.

Disadvantages

A commonhold association is a CLG, governed by articles of association which are prescribed by law (set out in the Commonhold Regulations 2004). Although certain prescribed provisions of these articles may be amended, these are limited to minor administrative amendments, such as the quorum for directors' meetings and the notice period for general meetings.

A commonhold association is also governed by a Commonhold Community Statement (the CCS). Again, the CCS is in a prescribed form, set out in the Regulations. Although additional 'local rules' may be added to the CCS, for example, rules to deal with use of the common areas, the Commonhold and Leasehold Reform Act 2002 explicitly states that the CCS cannot prevent or restrict the transfer of a unit. This would cause difficulties for resident-owned structures, including most cohousing groups.

It would not therefore be possible to add a local rule in the CCS which prohibited the transfer of a unit to anyone other than a member of the association, or to anyone who had not been approved by the existing members of the association. Although it may be possible, in theory, to add something to this effect in the articles, in light of the explicit statutory prohibition on including a provision to this effect in the CCS, we think it would be open to challenge. The articles must be registered with the Land Registry, so there would potentially be a risk that the Land Registry would refuse to register articles with a restriction in this form. Even if the

articles were accepted by the Land Registry, the risk would be that a unit holder, who wants to sell to a non-member or a non-approved person in the future, challenges this provision of the articles. Similarly, if a restriction was included on the property title, to prevent the transfer of a unit to a non-member, this would potentially be open to challenge.

Given the rarity of commonhold, there are few case studies to look at and interpretation of the legislation is open to debate. If a community-led housing group wanted to adopt a commonhold structure, we would recommend taking counsel's advice on the issues highlighted above.

Please contact Wrigleys for more information if you are considering commonhold as a legal structure.

Mutual Home Ownership Societies (MHOS)

Mutual Home Ownership is a form of property tenure that seeks to increase the supply of relatively affordable housing and enable those on a low or intermediate income to obtain an equity stake in residential property.

The residents interested and eligible for housing are admitted into the membership of an MHOS, which is generally a co-operative society. The MHOS is therefore controlled by its members, who live in the housing assets it provides. The members will elect a board of directors who control the day to day management of the MHOS within policy set by the members.

The cost of buying the land, and building the homes, owned by the MHOS (probably financed by a bank loan) is divided into property equity shares. Residents may pay a deposit and will be allocated equity shares pro rata to the development costs of their home to those of the wider project.

Residents then pay off their equity shares through monthly rental payments under the terms of a lease with the MHOS (the term of the lease typically being for 20 years with the right to remain in the property after this period if the resident would like to do so). The monthly rental payment will cover management, maintenance, insurance and service costs of the property along with interest and capital repayments to the bank or other lender. The level of payments are linked to income and ability to finance them, generally set at around 35% of the residents' net take home pay after tax, national insurance and other deductions.

A resident's lease with the MHOS sets out their occupancy rights and responsibilities as well as their right to an equity payment when they leave. This equity payment may be index-linked e.g. to national or local average earnings.

Advantages

Benefits of an MHOS includes lower charges to residents to reside in the property, based on income rather than property value. The structure provides an opportunity for those on an intermediate income to gain a foothold on the property ladder. The structure is flexible in that it enables residents to purchase more shares as their incomes rise and transaction costs on buying into and leaving the project are reduced because homes are not bought and sold.

Disadvantages

MHOS is a reasonably complex and sophisticated structure which may be unfamiliar to many funders (particularly those not operating in the community-led housing space). This means that it may be expensive and time intensive to establish and operate.

Lilac in Leeds is a community-led housing development which uses the MHOS structure. Their website has useful information on it: <http://www.lilac.coop/>

Other Considerations

Community land trusts (CLT)

A community land trust is not a legal structure: instead it is a status or "wrapper" which sits "on top" of another legal structure (e.g. a CBS).

CLTs are defined by section 79 of the Housing and Regeneration Act 2008. This details the key requirements of a CLT, as follows:

- It must be a corporate body (i.e. a separate legal entity).
- It must be established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order to provide a benefit to the local community.
- It must ensure that its assets are not sold or developed except in a manner which the members think benefits the local community.
- The profits from the activities of the organisation must be used to benefit the local community rather than being paid directly to members (i.e. non-profit distributing). This therefore precludes a CLT from being a CLS, a limited liability partnership and some forms of CIC. The legal structures which are appropriate to be used as a CLT are a CLG, CBS and a CIC that uses a CLG structure.
- A CLT must be set up so that individuals who live or work in the specified area have the opportunity to become members (in addition to those people who benefit directly from the CLT's housing assets).

Registration as a CLT may enable community-led housing groups to access sources of funding which would otherwise be unavailable, including grants from the Homes and Communities Agency (HCA).

Charitable status

A charity in itself is not a legal structure but a recognised status or "wrapper" and a charity can be, or charitable activities can be carried out by, many of the legal structures identified above.

For charitable status to exist, the organisation must have exclusively charitable purposes and exist for the public benefit.

- Charitable purposes: the provision of housing is not, in itself, a charitable purpose. If housing is provided by a charity, it must be to relieve a charitable need, such as poverty, old age or disability. In assessing whether the provision of housing meets a charitable need, a careful analysis needs to be undertaken of local property values and incomes, and the cost and nature of the housing being provided. This is a technical area of law and further advice may be required. There is also useful guidance on affordable home ownership and charitable status, produced jointly by the Charity

Commission, HMRC and the HCA, available here: <https://www.gov.uk/government/publications/affordable-home-ownership>.

- Public benefit: most resident-owned structures, including housing co-operatives and most cohousing groups, would not qualify for charitable status, because they are set up to benefit their members rather than the general public. Community-owned structures, including CLTs, may qualify as charitable as they are set up to benefit the wider community, although it will depend on exactly what activities are being undertaken by the organisation.

In some cases, a non-charitable community-led housing group may undertake some charitable activities. For example, some cohousing groups deliver education and learning sessions and/or make their common house available to the general public for recreational purposes. In such cases, it may be possible to register a separate charity to carry out these activities, to take advantage of the substantial tax benefits available to charities (e.g. tax relief on profits, business rates relief and tax relief on donations). Registering a charity may also open up new sources of grant funding, only available to charities. This is a technical area of law with governance and tax implications and further advice should be taken.

A great deal of guidance is available to charities (much of which is good practice for non-charities and social enterprises as well), on the Charity Commission website at www.charitycommission.gov.uk.

Funding

This Guide does not seek to discuss particular sources of funds for community-led housing although you can find further details on our website. However, here we have set out some of the common features.

Loans

Each of the structures can borrow money, and can give security against any assets it owns. Before borrowing money an organisation must ensure that it can pay the interest and repayments as they become due – so robust business planning is essential. Patient capital or social venture capital in loan finance includes low interest or extended repayment terms. In the development phase of community-led housing where sites are being sought and investigations made, loans can often be at risk. In more social purpose community-led housing it is not unknown for public bond issues to be made, particularly with a co-operative society or community benefit society, due to the Financial Services and Markets Act 2000 (FSMA) financial promotion prohibition exemptions that can apply to these structures.

Grants

Each of the structures can receive grants. However, some organisations, including some large grant-making charities, will only give grants to an asset locked body or a charity. Although gifts to a charity can also benefit from tax relief (for example Gift Aid), it is very unlikely that most resident-owned structures, including housing co-operatives and most cohousing groups, would qualify for charitable status.

Structuring as a CIC or CLT may also open up routes to grants, as well as charitable status.

Equity

In some cases, funds may be raised through equity investment. In this Guide we use the term 'equity' for money invested in an organisation, usually for some kind of profit or return based on the organisation's performance rather than for a pre-determined rate of return as would be the case with interest on a loan. The return is usually financial (a dividend or interest on share capital), but some investors may look for a social return, promoting the good works of an organisation with no, or a limited, expectation of any profit. For example there may be no return, or one that is low but over time accumulates to satisfy the investor; or shares that increase in value or allow the investor to sell without making a loss. A focus on social return may be referred to as 'social venture capital', or 'patient capital'.

Trading and other income

Each of the legal structures described in this Guide can trade and make a profit on that trade. Some existing community-led housing groups earn income through learning days, providing guest accommodation or through the generation of renewable energy. Profits arising from such trading activities are likely to incur liability for corporation tax (unless the trading entity is charitable and the trading is in pursuit of its charitable purposes). Community-led housing groups should also take advice on VAT issues which may arise.

In many resident-owned structures such as housing co-operatives and most cohousing arrangements, the members are trading with themselves by providing accommodation. This means that they can register for mutual trading status, meaning that profits are not subject to corporation tax. Any trade with non-members would risk jeopardising a group's mutual status and associated tax benefits.

Community-led housing and property ownership

Community-led housing structures permit different types of tenure for members. Some community-led housing organisations offer 999 year leases, which are considered almost the same as a freehold by mortgage providers. Housing co-operatives usually offer a tenancy agreement which is outside the protection of the assured shorthold tenancy regime. It is important in co-operative housing organisations to ensure that there is appropriate wording in both the tenancy agreement and the rules of the co-operative, otherwise a housing co-operative tenant may have far greater tenancy rights than was perhaps expected.

Enfranchisement

One issue which community-led housing clients should be aware of is enfranchisement. This refers to a legal mechanism by which a leaseholder (with a lease in excess of 21 years) may acquire a freehold interest in their property. It would involve a resident who has a lease of a unit making an application to the community-led

housing organisation to have the freehold of that unit transferred to them. Such an application could potentially be very disruptive to the community.

Enfranchisement is more common – and more of a risk – with flats. However, it is also possible with houses that are let on a long lease, under the Leasehold Reform Act 1967.

The risk for community-led housing communities of a community member or groups of members applying for enfranchisement is likely to be very low. In most situations, leaseholders would apply to buy their freehold because they do not have sufficient control over common areas or because they wish to maintain or enhance the value of their property by, for example, extending the length of their lease. A typical community-led housing community (and particularly one that is resident-owned) would not normally have these issues, because the leaseholder would already have a significant amount of control over the development as a member of the community-led housing organisation.

The main risk would come where a member wished to leave the community but finds that they could not sell their leasehold interest (either because they could not find someone approved by the rest of the community-led housing group or because the price was not right). They might then seek to enfranchise so that they could sell a freehold. If they did that, this would mean the community lost control over who lived in the relevant unit and nor would the new resident need to become a member of the community-led housing group.

This is probably a worst case scenario but it is a risk that community-led housing communities should be aware of, particularly as it is not possible to contract out of these legislative provisions.

Community rights

Community-led housing groups should be aware of the various community rights that exist in law. These are special rights, aimed at giving back control to communities of areas in which they live. Many of the rights are set out in the Localism Act 2011 and the following may be relevant to community-led housing groups:

- **Assets of community value:** a community group can apply to register a property as an 'asset of community value'. When the owner of the property wants to sell, the community group has the right to pause the sale, which gives them up to six months to raise enough funds to buy the property themselves. The group can't force the owner to sell to them, but it can give useful breathing space to allow fundraising to take place.
- **Neighbourhood planning:** this involves a local community setting out planning policies for their area, which are then used to decide whether or not to approve planning applications.
- **Community asset transfer:** this permits assets owned by a statutory body (such as a local authority) to be transferred to, or be managed or owned by, a community based organisation, potentially at less than market value, if it has social, economic or environmental benefits for the community.

- Community right to build: community groups can put together a planning proposal for their local area, which is then voted on in a local referendum. It avoids the need to go through your usual planning authority, with the community itself instead being in charge.

This is just a snapshot of the community rights which are available. For more information, the Locality website has lots of useful advice (<https://mycommunity.org.uk/>), or please contact Wrigleys.

Taxation and community-led housing

Resident-owned structures such as housing co-operatives and many cohousing groups can obtain special tax advantages because they are generally considered as only trading with their members. This is known as mutual trading, and enables exemptions from corporation tax on profits.

Where mutual trading status is obtained (from HM Revenue and Customs), care needs to be taken if any properties are let to non-members, or if other income-generating trading activity is undertaken with non-members (so as not to prejudice the mutual trading status).

Where loan stock is issued by a resident-owned structure to its residents, as happens in some housing co-operatives, this may count as the value of a person's principal private residence for Capital Gains Tax purposes.

Specialist advice should be taken on tax issues where necessary.

Choosing your structure

The purpose of the Guide has been to provide an overview of community-led housing structures. Wrigleys can assist you find the structure which suits you best. Please contact any member of the team, listed on the back page of this Guide.

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Please respect that this guide is strictly for the use of clients and prospective clients only. Thank you.

About Wrigleys:

Wrigleys Solicitors is a leading adviser to the Charity and Social Economy sector and has been advising co-operatives, charities and social enterprises since the mid 1980s, during which time we have acted as consultants to the European Commission on co-operatives.

The team is led by Malcolm Lynch who is also a former Chair of Ecology Building Society and is described in Chambers & Partners as:

“A dedicated charities lawyer who really knows the subject, and who also has a very charitable spirit - you need to be able to empathise, and Malcolm really can.”

Chambers & Partners also reports:

“Wrigleys have a reliable and efficient team that understand the charity sector and maintain a friendly and open approach”.

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