

# AN INTRODUCTION TO CONTINUING AND HOME OWNERSHIP HOUSING COOPERATIVES.

## A. THE COOPERATIVE

### What is a cooperative?

A cooperative is a democratic organization whose primary purpose is to provide goods and services to its members. It is owned and controlled by the members and operated on a cooperative basis. The Alberta Cooperatives Act SA C 28.1, 2001 defines cooperative basis as follows:

*“For the purposes of this Act, a cooperative is organized and operated, and carries on business on a cooperative basis if*

- (a) membership is available to persons who can use the services of the cooperative and who are willing and able to accept the responsibilities of and abide by the terms of membership.*
- (b) each member or delegate has only one vote,*
- (c) no member or delegate may vote by proxy*
- (d) interest on any member loan is limited to a maximum rate fixed in the articles;*
- (e) dividends on any membership share are limited to the maximum rate fixed in the articles,*
- (f) to the extent feasible, members provide the capital required by the cooperative,*
- (g) surplus funds rising from the cooperative’s operations are used
  - (i) to develop its business,*
  - (ii) to provide or improve common services to members*
  - (iii) to provide for reserves or the payment of interest on member loans or dividends on shares*
  - (iv) for community welfare or the propagation of cooperative enterprises, or*
  - (v) as a distribution among its members as a patronage return and**
- (h) provides education on the principles of cooperative enterprises.”*

## B. HOUSING COOPERATIVES

Housing cooperatives are a form of cooperative where the members occupy and jointly own and manage a housing development. In a resident owned housing cooperative, only people who live in the cooperative can be members of the cooperative. Members can only purchase one home within the project. Each member has one vote regardless of their investment in the project.

There are two types of cooperatives that have been developed in Alberta, the continuing housing cooperative and the home ownership cooperative.

## **1. CONTINUING COOPERATIVES**

Continuing housing cooperatives provide an alternative to renting and individual ownership. Continuing cooperatives are a form of housing in which the members jointly own and manage the complex they live in. Continuing cooperatives are associations of individuals who have come together to provide themselves with quality affordable housing. The main attraction of non-profit housing co-ops is that of stability and security of home ownership, together with greater flexibility and access. Most continuing housing cooperatives are mixed income communities.

### **How do continuing housing co-ops differ from private ownership?**

In a continuing cooperative, the cooperative retains title to the land, individual members purchase shares in the cooperative which gives them occupancy rights. As a result, unlike private ownership, members do not need to assume individual responsibility for getting a mortgage. The cooperative obtains the mortgage financing necessary to develop the housing project. Each month, the member makes monthly housing charge payments which covers, the mortgage, taxes, insurance, operating, maintenance, replacement and administration costs. Since the members are co-owners, the monthly housing charges are set to cover the coop's actual costs. The basic structure of a cooperative provides the members with additional benefits not offered on other forms of multiple ownership. Each cooperative member has only one vote. This provision ensures that the cooperative is a democratic organization and cannot be controlled by a small number of shareholders who have a majority of shares in the corporation. In addition, only residents can become members and maintain their membership in the cooperative, thereby protecting the members against absentee ownership. It is the cooperative who selects the new members of the cooperative; the members decide to whom the shares of a departing member will be sold. This enables the members of the cooperative to determine who will be part of their community.

### **How do continuing housing co-ops differ from rental?**

There are four important advantages to non-profit, cooperative housing:

1. Unlike rents, co-op housing charges rise only with increases in the operating costs and do not include any profits.
2. Cooperative housing ensures an equal voice among residents in the decisions affecting their housing. There is no landlord.
3. Cooperative housing provides a unique opportunity for people to build a community and to share and assist each other in ways beyond their housing needs.
4. Democratic control guarantees that money budgeted for maintenance is spent on maintenance.

## **Who can qualify for continuing co-op housing?**

Membership in a housing cooperative is open to anyone who can use the services offered by the cooperative and who is willing to take the responsibility to participate in the management and operations of the cooperative. To become a member of a housing cooperative households must purchase one or more shares in the association. When a member leaves the cooperative, the shares are sold back to the cooperative.

## **Who lives in continuing housing co-ops?**

Co-op housing is not a new idea. The first cooperatives, building cooperatives were very popular in the 1930's. Continuing housing cooperatives made an appearance in the late 1950's. Although slow to catch on, since the late 1970's, there have been over 90,000 units developed across the country. In Edmonton there are 45 housing cooperatives that have over 1,400 hundred units. Co-op housing includes single family housing, duplexes, townhouses, mobile homes and apartments. Families, couples and singles from all backgrounds, age groups and cultures live in housing co-ops. The thing they have in common is that they have discovered an alternative form of tenure.

## **2. HOME OWNERSHIP COOPERATIVES**

In a home ownership cooperative, members own their individual homes and the cooperative, which is owned by the members, owns the land and the common property. The legal tools to facilitate home ownership cooperatives come from two Alberta Statutes.

- The first is the Land Titles Act, through which individual strata lots can be created. All of the units have a separate title and thus can be conveyed to the individual residents. Each resident is responsible for securing the financing for their own unit.
- The second is the Cooperatives Act, under which the cooperative is created and governed.

As a result, there are basically two sets of documents: one set creates the cooperative corporation (constating documents), and the other set deals with matters related to the tenure arrangement. The constating documents are filed with the Province (currently Government Services), and the documents dealing with the matters relating to the tenure arrangement are registered on title and run with the land.

Home ownership cooperatives can be market based or can be set up in such a way that the

resale price is capped. Cooperatives where the resale price is capped are referred to as limited equity cooperatives.

### **The Constating Documents**

The following table provides a summary of the constating documents.

<b>TITLE</b>	<b>DESCRIPTION</b>
Articles of Incorporation	The Articles set out the objectives of the cooperative, outline any restrictions on its business, define who can become members of the cooperative, detail the capital structure of the cooperative, outline the general distribution of powers in the cooperative and outline the requirements for dissolution. It should be noted that once a project is under development, membership is limited to those who are purchasing a home in the project. Membership and ownership are linked.
By-law Number One, A By-law Dealing with the Administration and Management of the Affairs of the Cooperative	This bylaw basically sets out the organizational and management framework for the cooperative. It also outlines the membership application process and on what grounds the application can be refused; procedures for withdrawal and termination for cause.

TITLE	DESCRIPTION
<p>Bylaw Number Two, A Bylaw Dealing with the Administration and Management of the Property of Members and the Property and Property Interests of the Cooperative</p>	<p>This bylaw outlines both the member's and the cooperative's rights and responsibilities. It details how a member can use the home, lease the home, and sell the home. It describes the monthly fees and the members responsibility to pay the fees. It outlines the insurance requirements of the cooperative as the insurance trustee for the members. It describes how the cooperative may exercise its option to purchase and details the rights of lenders. Lenders don't have to be members, are exempt from having to use the home as a principle residence and may rent a unit without obtaining permission from the cooperative. Lender's have the right to inspect the books and attend and speak at meetings. In addition, the cooperative agrees it will not exercise its option to purchase unless the amount paid to the lender covers all of the lender's costs.</p>

**The Land Titles Documents**

The following table provides a summary of the documents that are registered on title. All of the documents registered on title run with the land, and thus apply regardless of who owns the property.

<b>TITLE</b>	<b>DESCRIPTION</b>
Easement for Access, Emergency Equipment, Repairs and Support	This easement guarantees the owner of the unit entry and exit to their unit and the use of all of the sidewalks, driveways, vestibules, entrances, stairways, elevators and corridors located on or forming part of the Co-op property. It ensures that the cooperative is always the owner of any emergency equipment and continues to maintain all such equipment. It also ensures that the cooperative always has access to the all of the property and equipment that it owns and to maintain it and repair or replace the building envelope as required. Finally, through this easement, the owners of the units recognize the fact that they are living in a multiple building with shared walls, ceilings and floors and that neither they nor the Co-op will do anything that will negatively impact any other owner.
Utility Right of Way	This right of way guarantees the Co-op the right to access the individual member's unit to maintain the common building systems. It also defines the dividing line between what portion of the systems the members are responsible for and what the Cooperative is responsible for.
Restrictive Covenant	This limits the ownership and occupancy in the building to owner occupants. Without the prior written consent of the Co-op, no units can be occupied or used for any purpose other than as a private residential dwelling, to be used by the owner and their household. Without the prior written consent of the Co-op, no part of any unit can be leased. In the case of a cooperative with various restrictions, these would be included in this document.
Encumbrance	This instrument gives the Co-op the right to collect the monthly fees from the member, including the costs associated with the green loan or mortgage bond. It also obligates the Co-op to maintain the property, obtain the necessary insurance for the property, pay taxes as requires, set up a capital reserve account, and to provide the services required to maintain the property.

TITLE	DESCRIPTION
Caveat- Option to Purchase	This option gives the Co-op the right to purchase the unit at market value (as defined in the option) acting in accordance with its Bylaws. The Board of Directors may resolve to exercise the Co-op's option to purchase a member's unit whenever it decides that the member has given cause for termination of membership as provided for in its Bylaws. The Co-op shall not expel a Member from membership except for sustained or repeated breach of the Share Subscription Agreement, the Articles, the Bylaws or the Policies or any agreements between the Member and the Co-op. Such expulsion shall require the approval of 75% of all of the members present at a duly called meeting at which a quorum is present. The quorum for such a meeting shall be 70% of the membership of the Co-op.

### 3. MIXED TENURE COOPERATIVES

It is possible to have both continuing cooperative and home ownership units within the same development. Under this arrangement, a proportion of the members will own their own units while the balance of the units will be owned by the cooperative. This arrangement enables both households who qualify for a mortgage as well as those who do not to live within a cooperative community. In such an arrangement, households who moved in on a continuing cooperative basis have the opportunity to purchase their units over time.

### 4. WHAT IS THE DIFFERENCE BETWEEN A CONDOMINIUM AND A HOME OWNERSHIP COOPERATIVE?

Condominiums are designed to enable a number of individuals or corporations to own a portion of a multiple unit development. Condominiums were not designed nor intended to ensure owner occupied communities, to allow residents to control sales, nor to let them cap sale prices. The concept of membership does exist within the condominium framework. The following table provides a summary of the differences between the two.

ITEM	COOPERATIVE	CONDOMINIUM
Governance	– 1 member equals 1 vote regardless of the number of shares	– voting is based upon unit factors, more unit factors equals more votes

ITEM	COOPERATIVE	CONDOMINIUM
	<ul style="list-style-type: none"> <li>– no proxy voting</li> <li>– control regarding policies, budgets, monthly fees etc. lies with the membership</li> </ul>	<ul style="list-style-type: none"> <li>– proxy voting is allowed</li> <li>– controls regarding policies, budgets and monthly fees lies with the board</li> </ul>
Ownership & Control	<ul style="list-style-type: none"> <li>– cooperative approves membership, and thus ownership of units</li> <li>– bylaws limits ownership and occupancy, unless co-op gives permission</li> <li>– cooperative can terminate membership and either repurchase or have the member sell their unit</li> <li>– generally no member can own more than one home</li> </ul>	<ul style="list-style-type: none"> <li>– no concept of membership in a condominium</li> <li>– the Condominium Property Act (32 (5)) prohibits any bylaw to operate or restrict the devolution of units or any transfer, lease, mortgage or other dealings with them</li> <li>– the provisions that the cooperative has regarding sale, purchase, use and termination as a result of membership are not available to a condominium.</li> <li>– there are no controls over the number of homes/units an individual can purchase. One person or company can own and control the majority of the homes/units.</li> </ul>

ITEM	COOPERATIVE	CONDOMINIUM
Capacity to Collect Monthly Fees	<ul style="list-style-type: none"> <li>– a cooperative has an encumbrance registered against each title which gives it the right to collect the monthly fees. This encumbrance is a first charge against the property and the cooperative can foreclose on a member who does not pay</li> </ul>	<ul style="list-style-type: none"> <li>– a condominium has the right to file a caveat on the title for unpaid contributions, and it has the same priority as a mortgage</li> </ul>
Powers	<ul style="list-style-type: none"> <li>– a cooperative is a corporation that has all of the powers of a natural person, unless limited by the membership</li> </ul>	<ul style="list-style-type: none"> <li>– a condominium corporation only exists for the purpose of managing and maintaining the condominium and as such its powers are limited by the Act.</li> </ul>
Legal/ Ownership Structure	<ul style="list-style-type: none"> <li>– While the individual units are subdivided out of the common property, the remaining property, being the land, the building shell surrounding the strata lots, and all of the non-subdivided buildings remain as a single title. This title is held by the Cooperative which is owned by the owner occupiers.</li> </ul>	<ul style="list-style-type: none"> <li>– The common property is not separated out by separate title. The common property comprised in a registered condominium plan is held by all of the owners of all of the units as tenants in common in shares proportional to the unit factors for their respective units.</li> </ul>

ITEM	COOPERATIVE	CONDOMINIUM
RENTING	<ul style="list-style-type: none"> <li data-bbox="618 275 1002 453">– a co-op member must obtain permission to rent their unit in accordance with the cooperatives rental policy</li> <li data-bbox="618 495 1002 674">– through its rental policies a cooperative has control over who can rent and the number of units that can be rented at any given time.</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="1031 275 1414 527">– a condominium owner only has to notify the corporation that they will be renting and giving an address for notices and the amount of rent that is to be charged.</li> </ul>

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