RESEARCH REPORT

An Examination of Life Lease Housing Issues

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An Examination of Life lease Housing Issues

FINAL REPORT

Prepared

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Abstract

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 an initial lump sum payment and subsequent monthly payments. Because this is a new form of tenure there exist consumer protection issues related to life lease housing. This research involved 15 case study site visits to life lease developments in provinces from Ontario west. The researchers interviewed sponsors of the developments and held focus group sessions with residents in each residence. Interviews were also conducted with others knowledgeable about various aspects of life lease development. Based on this information, a number of recommendations are put forward regarding methods to improve consumer protection for residents and sponsors.

Executive Summary:

Introduction:

Freehold ownership, rental, condominium and co-operative housing have been the most popular types of tenure in Canada for many years. In response to emerging consumers' needs and preferences and new economic and government policy trends, Canada's housing industry has taken new approaches to housing tenure in the last decade. As a result, new types of tenure are being made available to Canadians, notably, leaseholds, shared equity ownership and life leases. 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 an initial 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).

Currently all life lease housing projects are located west of the Ontario-Quebec border. With the rapid aging of the Canadian population, it is possible that the popularity of life leases will continue to grow into the future and expand into other parts of Canada. The exact number of life lease projects in Canada is unknown; in 2003, the number was estimated at more than 200 (Lumina Services Inc. 2003). The total number of life lease developments can currently be estimated very conservatively at 287. These numbers are estimates since there is no requirement for life lease developments to be registered. This indicates an increase of at least 40% in three years.

Manitoba is the only province to have enacted legislation specific to life lease housing[1]: the Life Leases Act, December 1999, amended June 2005, although other provinces are studying the possibility of introducing similar legislation. Some regulatory mechanisms apply in provinces (other than Manitoba) within existing legislation not specifically developed for life lease housing.

As the number of life lease projects increases, there are questions about the attributes and the long-term performance of the life lease concept. One is that the life lease concept may not be well understood by all stakeholders, including consumers, sponsors, lenders, mortgage underwriters and policy makers. Another is the absence of legislation (except in Manitoba) specific to life leases which would protect and clarify both consumer and sponsor rights.

Life lease projects raise a variety of consumer protection issues as well as issues faced by sponsors of life lease developments and lenders and other advisors. These include, but are not limited to: legislation, financing, management, sustainability of operations and security of tenure. Clearly, these issues have the potential to cause major problems for seniors, sponsors, and lenders if something goes wrong in a project.

Objective

The objective of the study was to produce a comprehensive, well written and useful research report to provide target audiences with the information they need to better understand and respond to a number of issues related to life lease housing. The target audience includes

[1] B.C. has several pieces of real estate legislation that apply to life lease developments as well as other forms of real estate

prospective residents, sponsors, life lease development consultants, lenders, researchers and provincial, territorial and municipal governments. It is expected that the information in this report will be useful to these primary audiences and assist them in dealing with issues related to life lease housing.

Forms of Life Lease Housing:

Significant variation exists between and within provinces in how individual life lease projects are developed and managed. There are five basic forms of model:

- Zero Balance – The resident pays an amount up front designed to prepay rent for his/her expected remaining life. No residual value is repaid to the occupant or their estate at the time of departure or death. Consequently, the purchase price for an interest in this type of life lease is least expensive relative to other forms.
- Declining Balance – The resident pays an amount up front based on life expectancy. The estate is paid a residual value which declines each year to zero at the end of specific period of time. This type of life lease is slightly more expensive than the zero-balance form.
- No Gain - The amount redeemed at the time of sale remains the same as that paid at the time of initial occupancy in nominal terms, though declining in real terms, as there is no provision for annual inflationary increases to be taken into account. This is in essence a zero-interest loan to the sponsor for the time of occupancy of the unit.
- Price Index - Redemption value increases based on annual price index factor being applied to the purchase price, for instance, the Consumer Price Index (CPI). This has certain risks for the sponsor if real estate values are increasing more slowly than general inflation.
- Market Value - the life lease interest is redeemed at whatever price the market will bear at the time of sale. Purchasers pay an amount similar to that for a comparable condominium unit.

Methodology

Several perceived issues related to life lease housing were identified in the terms of reference for the study and through a literature review. Information was gathered through three mechanisms:

- Case studies of 15 life lease developments from BC to Ontario were conducted. This involved an in-depth interview with the project manager, a site visit and a review of materials gathered during the visit. While this number of case studies does not allow us to fully comment about life lease projects in general, the in-depth knowledge generated through this method was very useful. Many common themes emerged from the case studies, as well as individual concerns/features identified at each of the sites. The case studies were spread out as follows: Ontario (5), Manitoba (3), Saskatchewan (2), Alberta (2) and B.C. (3). In Ontario 2 case studies were completed in the greater Toronto area (GTA) and 3 outside Toronto in southern Ontario

- Focus Groups were set up in each of the 15 case study settings, with the cooperation of the sponsor. To encourage attendance, participants were offered the chance to win a cash prize at the end of the session by randomly drawing the name of one participant (in one case this money was donated to the resident's fund at the request of the residents). There were two components to the data gathering from focus group participants. The focus group interview guideline was used to generate a guided but open-ended discussion about issues affecting residents and their decision to live in life lease housing. There were six major topics covered (decision to purchase, financing, costs (initial and monthly fees), resident involvement in management, security of tenure and of invested capital, and overall satisfaction with life lease). The second component of data collection in the focus group sessions was completion of a brief questionnaire filled out by each focus group participant after the discussion. A total of 272 residents participated in focus group sessions and 238 usable questionnaires were received.

- Interviews were conducted with key informants knowledgeable about various aspects of life lease development, financing and management. A carefully constructed list of key informants was assembled. The names were obtained through our literature review, a thorough examination of contributors to recent reports and articles related to life lease housing, suggestions from the provincial representatives and an examination of life lease sites on the internet. This list was supplemented through referrals from other key informants as the interviews progressed. People on this list were interviewed (in person or by telephone) to get feedback on issues not covered in the case studies and focus groups. In total, over 50 key informants were contacted. Interview guidelines were developed for discussion with key informants, for interviews with project sponsors and for the focus group sessions with residents.

Findings and Conclusions:

There are several issues related to life lease stemming from the fact that there is no legislation covering most of the developments in Canada. Except in Manitoba, the tenure status of residents is a grey area, particularly for market value life lease. The sponsor holds title to the building and is responsible for ensuring it is well maintained and holds its value. Life lease holders have the right to occupy their unit. However, the life lease holder is also greatly concerned with ensuring the building is well managed, that there is continuing demand and a waiting list for units and that, ideally, the market value of the life lease interest increases over time (or at least does not diminish). In most complexes, however, the sponsor is the only entity that has any real control over how the building is managed. In most case studies, residents are informed about operating budgets and management decisions but have no input into how these are determined.

The life lease concept and operation is not clearly understood by some professional advisors, lenders and some occupants. There is a need for education about the pros and cons of owning a life lease interest relative to other forms of tenure. There is also a need for disclosure requirements before seniors purchase their interest to ensure they are aware of the potential risks they face in their particular development. Life lease purchasers need to understand their limited control over decisions about management of the building, compared to that of a condo owner for example, before they make their purchase. They also need to understand the risk they face that they may not receive their capital back in a timely manner (or at all if the sponsor becomes insolvent) if the real estate market is poor (market value model) or the sponsor has insufficient reserves/prospective new purchasers to pay all claimants (in a model where return of a specific amount of capital is guaranteed when the resident vacates). The risks relative to value of the asset at sale faced by those buying under the life lease model are greater than those of investing in a condominium due to lack of legislative protection and the added risk of being able to sell only to seniors.

Non-profit sponsors, for whom this may be their first real estate development, also need assistance with this process to avoid financial and reputation problems. Life lease agreements varied considerably across the country. In some cases this left residents unprotected in certain areas but in other situations, sponsors were vulnerable.

Recommendations:

Legislation:

- Consideration should be given in each province (except Manitoba where legislation has already been adopted) to creating life lease legislation in the way that condominium legislation was identified as a need when this form of tenure became popular. All 5 provinces have Condo or Strata title legislation; life lease housing needs similar attention. A single life lease act has the advantage that sponsors, residents and their advisors can find appropriate information in one place. Alternatively it is possible that the identified potential consumer protection gaps can be addressed through tweaking existing legislation; for example, B.C. has the Real Estate Development Marketing Act which identifies disclosure requirements for marketing all residential real estate including life lease units. There is a need for consumer protection legislation of some form to address the concerns cited above.

- any legislation developed should be flexible within each province to recognize existing variations in life lease form and continue to allow creativity in developing new forms of life lease housing

- legislation should include:

    - rescission period (7 days as for condominium purchases)
    - how life lease interest can be registered
    - tenant representation on Board
    - clarification of whether provincial rent control legislation affects increases in monthly occupancy fees
    - under what conditions deposits may be used by developer to fund construction (or for other purposes)
    - reserve fund requirements (analogous to condo legislation)
    - disclosure prior to marketing of: who the owner/operator of the housing will be (often this is a separate foundation rather than the parent non-profit company), term of the lease, investment requirement, method of sale of interest and/or other options for termination of the lease by either side, risks associated with obtaining

refund of entrance fee/leasehold cost, who is responsible for paying occupancy charges and property taxes, common areas and facilities to be included in the development, estimated date of construction start and completion, construction warranties, planning approval/building permit obtained, how development will be financed, (see Manitoba Life Lease Act and B.C. Real Estate Development Marketing Act)

Resident Involvement in Management

- Sponsors should be required by legislation to create a minimum number of spaces on the board for residents; this is likely to increase resident satisfaction and consequently, resale demand and value; these positions could be non-voting or could have voting rights.

Documentation:

- There is a role for a base life lease document that new sponsors could adapt for their project, to ensure they cover all clauses that should be included to protect their residents and the sponsor themselves. It may be that there are several versions – one for the "pure" market value model, one for the guaranteed buyback model, etc. These may not be province specific but rather life lease model specific.

Financing:

Construction financing:

- Criteria that must be met to get advances under this financing (number of units sold, time limits on these sales, etc.) need to be made clear to the sponsor up front. This is likely done by most lenders but recognition of the lack of real estate experience among sponsors may mean this information needs extra emphasis or frequent repeating. This becomes more important when purchaser's deposits are not protected against unlimited use in the construction process as they are in Manitoba.

- A development advisor and/or an experienced construction project manager are needed to ensure the construction costs are monitored and the marketing plan ensures units are sold on schedule

Long term mortgage financing for sponsors:

- If the sponsors need long term financing to cover some development costs, they will not want resident interests registered on title unless they are subordinate to the lender's debt. However, this puts the life tenant at risk as the mortgage may take priority over the life lease holder's interest and their capital investment could be lost.

- The priority of the loan relative to residents' deposits/investments needs to be clear in the legislation. Will lenders have access to deposits if the loan is in default? Whichever way this is decided it has implications for the residents or the lender.

Long term mortgage financing for residents would be easier to obtain if:

- Units were covered under provincial warranty programs

- A resident's interest in the life lease was somehow recorded on the title. This conflicts with the interests of the lender if the sponsor wants a long term mortgage on the property. However, this puts the life tenant at risk as the mortgage may take priority over the life lease holder's interest and their capital investment could be lost. It may be that the resident will not be allowed to finance his interest if the sponsor has a permanent mortgage loan, or that the resident will have to have a subordinated loan.

Professional Advice:

- Seniors should be strongly encouraged to seek professional advice before purchasing a life lease interest. The Manitoba legislation requires this advice be given in writing during the marketing phase. This recommendation is based on the complexity of this type of investment and the evidence from the focus group session that not all residents understood the nature of what they had purchased. It is critical however, that advisors be well versed in life lease issues, through the education process suggested below.

Education:

- Most seniors are not familiar with the life lease concept. Similarly, there is a lack of understanding among lenders, accountants, lawyers and others about what life lease is and the benefits and risks of investing in a life lease unit. Many seniors in the focus groups indicated they were advised by lawyers or accountants not to purchase their unit but did so anyway because they liked the design and location of the complex and trusted the sponsor. Some of this reluctance by advisors was based on lack of understanding and some on legitimate concerns. A web site and other sources of life lease information, operated by an independent body, would greatly assist in this education process.

New Sponsors

It is important for sponsors to carefully consider the intricacies of providing this form of housing. In particular, they need to:

- Carefully choose a location that will appeal to prospective residents and is accessible to services required by this age group. In some cases, sponsors acquired land on the outskirts of a community where it was plentiful and cheaper than land closer to the core. While this led to beautiful "nature" settings, which residents liked, it also meant that a car was required to get to services. Sponsors need to consider the implications of this as their population ages.

- Carefully consider what services to offer in the new building. The costs of these need to be borne by the residents (unless the sponsor consciously chooses to subsidize them). If they are too expensive, or too difficult to estimate costs for, residents may balk at paying for them; if they have to be discontinued, some residents who bought because these services were offered will be dissatisfied.

- Carefully choose the design for the building and units, in conjunction with someone familiar with senior's issues and preferably with a focus group of potential purchasers. While most buildings were designed to be accessible, with wider hallways and lever door handles etc., residents had complaints about other features in some units. For example, one building had high bathtubs and residents would have preferred walk-in showers and/or tubs with low sides and grab bars.

- Inform themselves fully (and very early in the planning process) about the intricacies of obtaining financing for the construction of a life-lease project.

Resumé

Introduction

La propriété absolue, la location, la copropriété et l'habitation coopérative sont depuis de nombreuses années les modes d'occupation les plus populaires au Canada. Au cours des dix dernières années, en réponse aux préférences et aux besoins changeants des consommateurs, ainsi qu'aux nouvelles tendances sur le plan de l'économie et de la politique gouvernementale, le secteur de l'habitation du Canada s'est mis à adopter de nouvelles options en matière de modes d'occupation. Par conséquent, les Canadiens ont maintenant accès à de nouveaux modes d'occupation, notamment, la location foncière, la propriété partagée et la location viagère. Un bail viager est un accord juridique qui permet à l'acquéreur d'occuper une habitation à vie (ou jusqu'à ce qu'il ne soit plus en mesure d'y vivre) en contrepartie d'une somme globale versée initialement et de mensualités subséquentes couvrant les frais de gestion de l'ensemble et les frais d'entretien et de fonctionnement (et dans certains cas, le loyer, selon l'importance du versement initial).

À l'heure actuelle, tous les ensembles de logements en location viagère sont situés à l'ouest de la frontière qui sépare l'Ontario et le Québec. Étant donné que la population canadienne vieillit rapidement, il est possible que la location viagère continue de gagner en popularité dans l'avenir et s'étende aux autres régions du Canada. On ne connaît pas le nombre exact d'ensembles de logements en location viagère au Canada; en 2003, on les estimait à plus de 200 (Lumina Services Inc. 2003). En ce moment, on les estime de façon très prudente à 287. Il s'agit d'estimations, car rien n'oblige l'enregistrement des ensembles de logements en location viagère. Leur nombre aurait augmenté d'au moins 40 % en trois ans.

Le Manitoba est la seule province à avoir adopté une loi visant les logements en location viagère[2], la *Life Leases Act*, en décembre 1999, modifiée en juin 2005, mais d'autres provinces étudient la possibilité d'adopter des textes de loi semblables. Certains mécanismes de réglementation s'appliquent dans d'autres provinces, mais ils sont prévus dans des lois existantes qui ne portent pas précisément sur le logement à location viagère.

Compte tenu du nombre croissant d'ensembles de logements en location viagère, on s'interroge sur les attributs et sur le rendement à long terme du principe du bail viager. On se préoccupe en particulier de ce que le principe de la location viagère ne soit pas bien compris de toutes les parties intéressées, dont les consommateurs, les organismes de parrainage, les prêteurs, les souscripteurs hypothécaires et les décideurs. On se préoccupe aussi de l'absence (sauf au Manitoba) de textes de loi portant précisément sur la location viagère qui protégeraient et préciseraient les droits des consommateurs et des organismes de parrainage.

Les ensembles de logements à location viagère suscitent diverses questions liées à la protection des consommateurs et font également ressortir les problèmes que rencontrent les organismes de parrainage d'ensembles de logements à location viagère, les prêteurs et autres conseillers. Les

[2] La C.-B. a plusieurs textes de loi sur les biens réels qui s'appliquent aux ensembles de logements à location viagère de même qu'à d'autres formes de biens réels.

problèmes sont liés à divers aspects : dispositions législatives, financement, gestion, pérennité opérationnelle et sécurité d'occupation. Manifestement, si quelque chose tourne mal dans un ensemble de logements, les problèmes pourraient être majeurs pour les aînés, les organismes de parrainage et les prêteurs.

Objectifs

L'objectif de l'étude était de produire un rapport de recherche complet, bien écrit et utile qui dispenserait aux publics cibles l'information qu'il leur faut pour mieux comprendre un certain nombre de préoccupations liées à la location viagère et y réagir convenablement. Les publics cibles sont les résidents éventuels, les organismes de parrainage, les conseillers en aménagement d'ensembles de logements à location viagère, les prêteurs, les chercheurs et les administrations provinciales, territoriales et municipales. On s'attend à ce que l'information que contient ce rapport soit utile à ces principaux publics cibles et les aide à traiter les questions liées au logement en location viagère.

Types de logement en location viagère

Il existe des différences importantes entre les provinces et au sein de chacune d'elles dans les façons dont les ensembles de logements en location viagère sont aménagés et gérés. Voici les cinq types de base :

- **Solde nul –** Le résident verse un montant initial en guise de paiement anticipé du loyer en fonction d'une estimation de sa durée de vie restante. Aucune valeur résiduelle n'est remboursée à l'occupant ou à sa succession au moment de son départ ou de son décès. Par conséquent, le prix d'achat d'un intérêt de ce type de bail viager est moindre par rapport aux autres types de baux viagers.
- **Solde décroissant –** Le résident verse un montant initial s'appuyant sur l'espérance de vie. La valeur résidentielle qui serait versée à la succession en cas de décès diminue d'année en année jusqu'à devenir nulle à la fin d'une période donnée. Ce type de bail viager est légèrement plus coûteux que le bail viager à solde nul.
- **Gain nul –** Le montant remboursé au moment de la vente correspond au montant versé au moment de l'emménagement en termes de valeur nominale, car aucune hausse annuelle en fonction de l'inflation n'est prise en compte. Il s'agit essentiellement d'un prêt sans intérêt à l'organisme de parrainage pour la durée d'occupation du logement.
- **Indice des prix –** La valeur de rachat augmente en fonction de l'application au prix d'achat d'un indice annuel de prix, par exemple, l'indice des prix à la consommation (IPC). Cette méthode comporte certains risques pour l'organisme de parrainage, si la valeur des propriétés augmente plus lentement que l'inflation générale.
- **Valeur marchande –** L'intérêt sur le bail viager est racheté au prix du marché au moment de la vente. L'acheteur paie un montant correspondant au prix d'un logement en copropriété comparable.

Méthode

Plusieurs problèmes perçus concernant le logement à location viagère étaient signalés dans le cadre de référence de l'étude et sont ressortis dans l'étude documentaire. Trois mécanismes ont servi à recueillir l'information.

- Des études de cas ont été menées pour quinze ensembles de logements à location viagère, de la C.-B. à l'Ontario. Dans chaque cas, on a réalisé une entrevue approfondie avec le gestionnaire de l'ensemble, visité l'ensemble et examiné le matériel recueilli au cours de la visite. Le nombre d'études de cas ne nous permet pas de faire des observations complètes sur les ensembles de logements à location viagère en général, mais les connaissances approfondies que cette méthode nous a permis d'acquérir ont été très utiles. Les études de cas ont fait émerger de nombreux thèmes communs, ainsi que les préoccupations et les caractéristiques propres à chaque ensemble. Les études de cas étaient réparties de la façon suivante : cinq en Ontario, trois au Manitoba, deux en Saskatchewan, deux en Alberta et trois en Colombie-Britannique. En Ontario, deux des études de cas ont été réalisées dans la Région du Grand Toronto et trois, à l'extérieur de Toronto, dans le sud de l'Ontario.

- Des groupes de discussion ont été organisés dans le cadre de chacune des quinze études de cas avec la collaboration de l'organisme de parrainage. Pour attirer les participants, on leur a offert une chance de gagner un prix en argent à l'occasion d'un tirage au hasard à la fin de la séance (dans un cas, l'argent a été remis au fonds des résidents à la demande des participants). La collecte de données auprès des participants aux groupes de discussion s'est faite en deux volets. On a utilisé un guide d'entrevue pour une discussion dirigée mais ouverte avec les participants. La discussion portait sur les problèmes des résidents et sur leur choix d'un logement à location viagère. Six grands thèmes ont été abordés : la décision d'achat, le financement, les coûts (initiaux et mensuels), la participation des résidents à la gestion, la sécurité d'occupation et la sécurité du capital investi et, enfin, le degré de satisfaction générale en ce qui concerne la location viagère. Pour le deuxième volet de la collecte de données dans le cadre des discussions de groupes, les participants ont été invités à répondre à un bref questionnaire après les discussions. Au total, 272 résidents ont participé aux discussions de groupes, et 238 questionnaires remplis ont pu être utilisés.

- On a mené des entrevues auprès de spécialistes qui connaissent bien les divers aspects de l'aménagement, du financement et de la gestion de logements à location viagère. On a dressé avec soin la liste des spécialistes à consulter. Les noms ont été obtenus grâce à une étude documentaire, à un examen approfondi des personnes ayant contribué à des rapports et à des articles récents sur le logement à location viagère, aux suggestions des représentants provinciaux et à une exploration des sites Web portant sur la location viagère. Au fil des entrevues, des recommandations d'autres spécialistes ont permis d'ajouter des noms à la liste. On a interrogé les personnes inscrites sur la liste (en personne ou au téléphone) pour obtenir leurs commentaires sur des questions que les études de cas et les groupes de discussion n'avaient pas couvertes. On a joint au total plus de cinquante spécialistes. Des guides d'entrevue ont été préparés pour les discussions avec les spécialistes, les entrevues avec les organismes de parrainage et les séances de discussion avec les résidents.

Constatations et conclusions

Plusieurs problèmes liés à la location viagère découlent du fait qu'aucune loi ne régit la plupart des ensembles résidentiels aménagés au Canada. Sauf au Manitoba, le mode d'occupation des résidents se trouve dans une zone grise, particulièrement en ce qui concerne les baux viagers fondés sur la valeur marchande. L'organisme de parrainage détient le titre de propriété de l'immeuble et doit veiller à ce qu'il soit bien entretenu et conserve sa valeur. Le détenteur d'un bail viager a le droit d'occuper son logement. Cependant, il tient nettement à ce que l'immeuble soit bien géré, à ce qu'il fasse l'objet d'une demande continue et d'une liste d'attente et, idéalement, à ce que la valeur marchande du bail viager augmente avec le temps (ou à tout le moins ne diminue pas).Or, dans la plupart des complexes, l'organisme de parrainage est la seule entité qui exerce un contrôle réel sur la gestion de l'immeuble. Selon les résultats de la plupart des études de cas, les résidents sont informés des budgets d'exploitation et des décisions de gestion, mais ne peuvent intervenir dans la prise de décisions.

Certains conseillers professionnels, prêteurs et occupants ne comprennent pas bien le principe du bail viager. Il faut fournir de l'information sur les avantages et les inconvénients du bail viager par rapport aux autres modes d'occupation. Il faut aussi que les exigences soient divulguées aux aînés avant qu'ils achètent un tel intérêt, car ils doivent connaître les risques possibles dans leur ensemble de logements particulier. Avant d'acheter un bail viager, la personne intéressée doit comprendre qu'elle exercera un contrôle restreint sur les décisions relatives à la gestion de l'immeuble par comparaison au propriétaire d'un logement en copropriété, par exemple. L'acheteur doit aussi être au fait du risque qu'il court de ne pas récupérer la somme investie au moment opportun (ou pas du tout, si l'organisme de parrainage devient insolvable), si le marché de l'immobilier est faible (modèle fondé sur la valeur marchande) ou si l'organisme de parrainage n'a pas les réserves ou les acheteurs potentiels qu'il lui faut pour payer tous les demandeurs (modèle selon lequel le remboursement d'un montant de capital donné est garanti au moment où le résident quitte le logement). Les risques liés à la valeur de l'actif au moment de la vente que prennent les personnes qui optent pour la location viagère sont supérieurs à ceux que courent les personnes qui investissent dans un logement en copropriété en raison de l'absence de dispositions législatives qui les protègent et du surcroît de risque attribuable à l'obligation de vendre à des aînés.

Les organismes de parrainage sans but lucratif qui s'attaquent à leur premier aménagement immobilier ont aussi besoin d'aide à cette fin, pour éviter les problèmes financiers et ne pas entacher leur réputation. Les conventions de location viagère varient considérablement à l'échelle du pays. Dans certains cas, les résidents ne sont pas protégés et dans d'autres, ce sont les organismes de parrainage qui sont vulnérables.

Recommandations

Dispositions législatives

- Dans chaque province (sauf le Manitoba, qui possède déjà des dispositions législatives), il faudrait envisager d'adopter des dispositions législatives visant la location viagère comme on l'a fait pour la copropriété quand ce mode d'occupation a gagné en popularité. Les cinq provinces soumises à l'étude ont des dispositions législatives visant la copropriété; il faut accorder la même attention à la location viagère. Si une loi traitant exclusivement de la location viagère était adoptée, les organismes de parrainage, les résidents et leurs conseillers pourraient trouver toute l'information requise à un seul endroit. Il est également possible de combler les lacunes relevées sur le plan de la protection des consommateurs au moyen d'adaptations aux lois existantes. Par exemple, la C.-B. a la *Real Estate Development Marketing Act*, dans laquelle sont énoncées les exigences de divulgation concernant tous les immeubles résidentiels, y compris les logements à location viagère. Il faut donner suite aux préoccupations décrites précédemment par l'adoption de dispositions législatives protégeant les consommateurs.

- Les dispositions législatives adoptées par chaque province devront être souples et, ainsi, tenir compte des divers types de baux viagers, tout en laissant libre cours à la créativité qui mènera à de nouvelles formes de logements à location viagère.

- Les dispositions législatives devront prévoir :

    - la période d'annulation (7 jours, comme pour l'achat d'un logement en copropriété);
    - la façon d'enregistrer le bail viager;
    - la représentation des résidents au conseil;
    - si les dispositions législatives provinciales sur le contrôle des loyers influent sur les augmentations des droits d'occupation mensuels;
    - les modalités à respecter pour que les promoteurs puissent appliquer les dépôts au financement de la construction (ou à d'autres fins);
    - les exigences en matière de fonds de réserve (comme pour les logements en copropriété);
    - la divulgation des renseignements suivants avant la mise en vente : l'identité du propriétaire ou de l'exploitant de l'ensemble (souvent, il s'agit d'une fondation distincte, et non de la société sans but lucratif mère), les modalités du bail, l'investissement requis, la méthode de vente de l'intérêt ou les autres options de résiliation du bail par l'une ou l'autre des parties, les risques relatifs à l'obtention du remboursement des droits initiaux ou du coût du bail, les personnes auxquelles incombe la responsabilité de payer les droits d'occupation et les impôts fonciers, les aires communes et les installations que comprendra l'aménagement, la date estimative de mise en chantier et d'achèvement, les garanties de construction, l'approbation de la planification et le permis de construire obtenus, le mode de

financement de l’aménagement (voir la *Life Lease Act* du Manitoba et la *Real Estate Development Marketing Act* de la C.-B.)

Participation des résidents à la gestion

- Les organismes de parrainage devraient être obligés par la loi de réserver pour les résidents un nombre minimum de places au conseil d’administration. Cela aurait pour effet de hausser le degré de satisfaction des résidents et, de là, la demande et la valeur de revente. Les personnes qui occuperaient ces postes au sein du conseil pourraient ou non avoir droit de vote.

Documentation

- Il pourrait être utile de créer un document de base décrivant la location viagère que les nouveaux organismes de parrainage pourraient adapter en fonction de leur ensemble de logements. Ce document leur permettrait d’inclure toutes les dispositions nécessaires pour protéger leurs résidents et se protéger eux-mêmes. Il pourrait y avoir plusieurs versions, dont une pour le modèle purement axé sur la valeur marchande, une autre pour le modèle de rachat garanti, etc. Ces versions se fonderaient sur les modèles particuliers de location viagère plutôt que sur les modèles propres aux différentes provinces.

Financement

Financement de la construction

- Il faut dès le début préciser à l’organisme de parrainage les critères à respecter pour obtenir des avances (nombre de logements vendus, période de validité de ces ventes, etc.). La plupart des prêteurs le font vraisemblablement, mais il faut mettre encore plus l’accent sur cette information et la répéter souvent en raison du manque d’expérience des organismes de parrainage dans le domaine de l’immobilier. Cela devient plus important si on ne limite pas l’utilisation des dépôts des acheteurs comme on le fait au Manitoba.

- Il faut un conseiller en aménagement ou un gestionnaire de projet de construction qui veillera au suivi des coûts de construction et s’assurera que le plan de marketing garantit la vente des logements au moment déterminé.

Financement hypothécaire à long terme pour les organismes de parrainage

- Les organismes de parrainage qui ont besoin d’un financement à long terme pour certains frais d’aménagement ne voudront pas que les intérêts des résidents soient inscrits au registre des titres, sauf s’ils sont subordonnés à la créance du prêteur. Cependant, le détenteur d’un bail viager court un risque, car le prêt hypothécaire pourrait avoir préséance sur son intérêt, ce qui pourrait lui faire perdre son investissement.

- Les dispositions législatives doivent énoncer clairement la priorité du prêt par rapport aux dépôts ou aux investissements des résidents. Les prêteurs auront-ils accès aux dépôts en cas de défaut? Quelle que soit la décision, il y aura des incidences pour les résidents ou pour le prêteur.

Les résidents pourraient plus facilement obtenir du financement hypothécaire à long terme dans les conditions suivantes :

- Si les logements étaient couverts par les programmes provinciaux de garantie.
- Si l'intérêt du résident était inscrit au registre des titres : cela entre en conflit avec les intérêts du prêteur dans le cas où l'organisme de parrainage souhaite obtenir un prêt hypothécaire à long terme pour la propriété. Or, le locataire viager court un risque, car la créance hypothécaire peut avoir préséance sur son intérêt et il pourrait perdre son investissement. Si l'organisme de parrainage a un prêt hypothécaire à long terme, il se peut que le résident ne puisse pas obtenir le financement de son intérêt ou qu'il doive se contenter d'un prêt de rang inférieur.

Conseils professionnels

- On devrait fortement encourager les aînés à obtenir des conseils professionnels avant d'acquérir un bail viager. La loi manitobaine exige que des conseils soient donnés par écrit à l'étape du marketing. Cette recommandation s'explique par la complexité de ce type d'investissement et par le fait que les résidents qui ont participé aux groupes de discussion ne comprenaient pas tous la nature de ce qu'ils avaient acheté. Il faut absolument que les conseillers soient des experts en matière de location viagère, grâce au processus d'information décrit ci-dessous.

Information

- La plupart des aînés ne connaissent pas le principe de la location viagère. Les prêteurs, comptables, avocats et autres professionnels ne comprennent pas très bien non plus ce principe et ne connaissent pas les avantages et les risques liés à l'investissement dans un logement à location viagère. Bon nombre des aînés qui ont participé aux groupes de discussion ont indiqué que des avocats et des comptables leur avaient conseillé de ne pas acheter le logement; ils l'ont quand même fait parce qu'ils aimaient la façon dont l'ensemble était conçu et son emplacement et qu'ils faisaient confiance à l'organisme de parrainage. Les conseillers étaient réticents en partie parce qu'ils ne comprenaient pas très bien le principe et en partie parce qu'ils avaient des préoccupations légitimes. Un site Web et d'autres sources d'information sur la location viagère, dont la responsabilité serait assumée par un organisme indépendant, contribueraient beaucoup au processus d'information.

Nouveaux organismes de parrainage

Il est important que les organismes de parrainage se penchent sur les subtilités de la production de ce type de logements. En particulier, ils doivent faire ce qui suit :

- Choisir avec soin un emplacement qui sera attrayant pour les résidents éventuels et à portée des services qu'il faut aux personnes de ce groupe d'âge. Dans certains cas, les organismes de parrainage ont acquis des terrains en périphérie d'une collectivité, car les terrains y étaient abondants et moins chers que plus près du centre. L'environnement naturel y est merveilleux, et les résidents l'apprécient, mais il leur faut une voiture pour se rendre aux services. Les organismes de parrainage doivent penser aux conséquences pour leurs résidents vieillissants.

- Penser sérieusement aux services à offrir dans le nouvel immeuble. Ce sont les résidents qui assument les coûts liés à ces besoins (à moins que l'organisme de parrainage choisisse de les subventionner). Si ces coûts sont trop élevés ou s'il est trop difficile de les estimer, les résidents pourraient ne pas vouloir les payer; s'il faut interrompre les services, certains résidents que ces services ont attirés seront insatisfaits.

- Choisir avec soin le style d'immeubles et de logements, avec la contribution d'une personne qui connaît les préoccupations et les besoins des aînés et, de préférence, d'un groupe de discussion composé d'acheteurs éventuels. La plupart des immeubles sont accessibles et ont entre autres des corridors plus larges et des poignées de porte de type bec-de-cane, mais les résidents se sont plaints d'autres aspects de certains logements. Par exemple, dans un immeuble, les baignoires sont élevées et les résidents auraient préféré des douches de plain-pied ou des baignoires basses munies de barres d'appui.

- Se renseigner sur toutes les subtilités de l'obtention de financement en vue de la construction d'un ensemble de logements à location viagère, et ce, très tôt dans le processus de planification.

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Introduction/Background:

Freehold ownership, rental, condominium and co-operative housing have been the most popular types of tenure in Canada for many years. In response to emerging consumers' needs and preferences and new economic and government policy trends, Canada's housing industry has taken new approaches to housing tenure in the last decade. As a result, new types of tenure are being made available to Canadians, notably, leaseholds, shared equity ownership and life leases. 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 an initial 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).

Currently all life lease housing projects are located west of the Ontario-Quebec border. With the rapid aging of the Canadian population, it is possible that the popularity of life leases will continue to grow into the future and expand into other parts of Canada. The exact number of life lease projects in Canada is unknown; the number was estimated at more than 200 in 2003 (Lumina Services Inc. 2003). The total number of life lease developments can currently be estimated very conservatively at 287. These numbers are estimates since there is no requirement for life lease developments to be registered. This indicates an increase of at least 40% in three years.

As of May 2005, there were an estimated 125 completed life lease projects (8200 units) in Ontario alone (Ontario Ministry of Municipal Affairs and Housing); there were others in the planning stages. Data provided by the Manitoba provincial government indicated 88 life lease developments in the province containing 2827 units as of December 2005. Alberta estimated there were 29 completed developments as of January 2004, with at least three in the planning stages. Saskatchewan's provincial officials estimate that there are 25 projects currently operating and several developments are being considered. B.C. has approximately 20 life lease projects currently operating and this number is declining, as interest in new projects is low in this province and a couple of buildings have converted to condominium ownership.

Manitoba is the only province to have enacted legislation specific to life lease housing: the Life Leases Act, December 1999, amended October 1, 2006, although other provinces are studying the possibility of introducing similar legislation. If the landlord had entered into any life leases before proclamation of the legislation in 1999, only certain provisions of the act apply. For any life lease developments where all leases were signed after the legislation was proclaimed, all provisions of the act apply. Other provinces, such as Ontario, are undertaking research and developing options for consideration of the development of a framework for consumer protection issues affecting life leases.

Some regulatory mechanisms apply in provinces (other than Manitoba) within existing legislation not specifically developed for life lease housing. For example, in the Province of Ontario, Ontario Regulation 282/98, made under the Assessment Act, clarifies that life lease housing falls within the residential property tax class and Ontario Regulation 88/04, made under the Land Transfer Tax Act provides for an exemption from land transfer tax if the owner of the life lease development is a non-profit organization or a registered charity. The regulation also stipulates that the purchaser of the life lease interest must use the unit as their principle residence or as a principal residence for a parent or spouse or same-sex partner. As well, B.C.'s legislated disclosure requirements have always been applied to life lease developments as they do to other forms of residential real estate. The Financial Institutions Commission recently (January 2005) issued Policy Statement 9 which outlines disclosure requirements for marketing leasehold units, including life leases, in complexes that are not strata-titled. This is a policy statement, not legislation.

Significant variation exists in how individual life lease projects are developed and managed. The original impetus for the life lease concept, as developed in the U.K., was to provide a form of affordable housing for seniors. The theory was that the purchase of the right to occupy the unit for life would be cheaper for the senior than alternative rental or purchase options. As well, the senior's heirs would not have the responsibility of selling a piece of real estate when the senior left the residence. The older the senior was when they moved in, the cheaper the life lease interest would be, because their life expectancy would be shorter. In this pure life lease model (i.e. zero balance model), when the resident vacated the unit they would get no money back. For some seniors, the thought of "losing" all their investment was unpalatable so a variety of options for return of at least some of the senior's equity came into being when the life lease model was put into practice. In Canada now, there are at least 5 basic models for life lease arrangements (zero balance; declining balance; no gain; price index; and, market value) that affect the purchase price for the life lease interest, the way such projects are managed and the redemption value established for units. These are described later in this report

As the number of life lease projects increases, there are questions about the attributes and the long-term performance of the life lease concept. One is that the life lease concept may not be well understood by all stakeholders, including consumers, sponsors, lenders, mortgage underwriters and policy makers. Another is the absence of legislation (except in Manitoba) specific to life leases which would protect and clarify both consumer and sponsor rights.

This report summarizes the information gathered through the completion of:

- 15 case studies of life lease projects in Ontario, Manitoba, Saskatchewan, Alberta and B.C. and focus groups with residents in these facilities
- interviews with over 50 key informants who deal with life lease issues/complexes in the five provinces
- reviews of various reports and studies related to life lease housing in Canada

Part of the information gathered and conclusions reached related to consumer protection issues were based on the 15 focus group sessions noted above. Given the large number and variety of life lease complexes in Ontario and west, both within and between provinces, these focus groups do not necessarily provide statistically generalizable results. This is particularly true given that some sponsors refused to allow us to conduct focus group sessions in their complexes, because they feared this would stir up concerns among residents. However, this is the first study to directly ask residents of life lease about their housing and given the in-depth nature of the discussions, the results are rich in detail.

There have been several previous studies of life lease housing. The list of literature reviewed is included in the bibliography at the end of the document. This was gathered through a search of the Canadian Housing Information Centre site, a literature search at the University of Guelph and an online search for other documents. A careful review of these documents gave us a clear view of the issues related to life lease housing prior to developing the interview guidelines. We also uncovered other documents as we talked to key informants throughout the study.

The aging of the population in North America is well documented and the need for specialized housing for seniors is growing. (Anikeeff and Mueller 1998, Sakburskis 2002) In fact, the need for collective housing is expected to grow more rapidly than the rate of growth in the senior population itself; the number of people over age 55 is expected to grow 116% between 1996 and 2036, while the demand for collective housing is expected to grow by 140% (Baxter and Ramlo 1999). They expect the most significant increase in demand to be for "residency in care facilities and seniors residences" (Baxter and Ramlo p. iii). This increase in demand has led to a wide variety of market and government provided housing with different levels of services provided and different tenure forms. Life lease housing is a relatively recent addition to this category.

Life lease projects raise a variety of consumer protection issues as well as issues faced by sponsors of life lease developments and lenders and other advisors. These include, but are not limited to: legislation, financing, management, sustainability of operations and security of tenure. The results section of this report is divided by issue. Each subsection begins with the questions asked through the study and the answers uncovered.

Clearly, these issues have the potential to cause major problems for seniors, sponsors, and lenders if something goes wrong in a project. The recommendations section suggests some approaches to mitigating possible problems that might arise with life lease developments.

Objective

The objective of the study was to produce a comprehensive, well written and useful research report to provide target audiences with the information they need to better understand and respond to a number of issues related to life lease housing. The target audience includes prospective residents, sponsors, life lease development consultants, lenders, researchers and provincial, territorial and municipal governments. It is expected that the information in this report will be useful to these primary audiences and assist them in dealing with issues related to life lease housing.

Detailed Study Methodology

The issues identified and questions asked are listed throughout the results section of the document. These are based on the literature search and the terms of reference for the study. Interview guidelines were developed for discussion with key informants, for interviews with project sponsors and for the focus group sessions with residents.

Some questions were on more than one interview guide. This helped us understand what consumers understand is happening with their life lease versus the understanding that sponsors and other key informants have. For example, while residents may feel uninvolved in the management of their complex, sponsors may feel, because they have set up a resident advisory board, that residents have an appropriate say in the management of their complex.

Case Studies and focus groups:

We conducted 15 case studies of life lease projects in 5 provinces; we also conducted focus groups with residents in each of these projects (see next section). While this number of case studies does not allow us to fully comment about life lease projects in general, the in-depth knowledge generated through this method was expected to be, and was, very useful. Many common themes emerged from the case studies, as well as individual concerns/features identified at each of the sites. These case studies also involved in-person interviews with the sponsors of the projects. We asked for copies of the agreements between the sponsors and the residents at each location; some sponsors were not willing to disclose their agreement to us.

The initial proposed methodology indicated a total of 15 case studies spread through 5 provinces. As we conducted the literature review, we came to the conclusion that there would be differences by province because of the history of how life lease developed in each area and how the provincial government has been involved (or not) in overseeing/financing life lease projects. However, we expected there also to be differences between large city developments where seniors have many housing choices and smaller communities where the life lease option may have been the only available form of housing providing some services. We oriented our list of case study locations to reflect this. The case studies were spread out as follows: Ontario (5), Manitoba (3), Saskatchewan (2), Alberta (2) and B.C. (3). In Ontario 2 case studies were completed in the Greater Toronto Area (GTA) and 3 outside the GTA in southern Ontario.

The interviews with sponsors were conducted using the interview guide in Appendix 1. Again because these were personal interviews, the format allowed for delving into issues that seemed of particular interest because of the personal experience of the sponsor. We covered all questions in the interview guide with each respondent.

Focus Groups were set up in each of the 15 case study settings, with the cooperation of the sponsor. To encourage attendance, we offered participants the chance to win a cash prize at the end of the session by randomly drawing the name of one participant (in one case this money was donated to the residents' fund at the request of the residents). Given the large number of life lease complexes Ontario and west, these focus groups will not necessarily provide statistically generalizable results; however this is the first study to directly ask residents of life lease about their housing and given the in depth nature of the discussions, the results are rich in detail.

We initially approached some of the proposed GTA projects to complete a trial focus group, with little response. Due to concern about this lack of response, we drafted a letter for CMHC to sign to send out to sponsors prior to contacting additional sites. This helped gain support but getting agreement from sponsors to conduct focus groups with residents proved to be very difficult and time consuming. Many phone calls and explanatory discussions were necessary to gain cooperation from a full set of 15 sites. Some on our original list turned us down; they did not want their residents "stirred up" through the discussion we were proposing. This might have led to some bias in that the sites visited had more satisfied residents than the average for life lease complexes. However, the discussion in each focus group was very frank and residents were not reticent about expressing any concerns they had about their housing and how it was being managed. We are confident that the sites visited represent a broad range of the types of structure and sponsorship of life lease housing available and the results of the focus groups add significantly to the body of knowledge about resident's perceptions about their housing in these communities.

There were two components to the data gathering from focus group participants. The focus group interview guideline (Appendix 2) was used to generate a guided but open-ended discussion about issues affecting residents and their decision to live in life lease housing. There were six major topics covered: decision to purchase, financing, costs (initial and monthly fees), resident involvement in management, security of tenure and of invested capital, and overall satisfaction with life lease, with questions for the interviewer to use to generate discussion in each topic area. The guideline was followed to ensure that all issues were covered, but the focus group set up also allowed for exploration of issues in more depth than is indicated in the list of questions. While there were some main common findings, different groups also had some individual concerns given the variety of forms of life lease projects across the country, differences in sponsor type and the differences in provincial legislation affecting life lease.

The second component of data collection in the focus group sessions was completion of a brief questionnaire filled out by each focus group participant after the discussion (also contained in Appendix 2). This asked some sensitive questions about age and financing of the purchase of the life lease which participants might have felt uncomfortable answering before the group. It also contained more quantifiable questions that were more efficient to ask in this format than through the focus group discussion. Seniors that required assistance to complete the questionnaire were helped by the focus group leader at the end of the session. A total of 272 residents participated in focus group sessions and 238 usable questionnaires were received.

Key Informant Interviews:

We assembled a carefully constructed list of key informants. The names were obtained through our literature review, a thorough examination of contributors to recent reports and articles related to life lease housing, suggestions from the provincial representatives and an examination of life lease sites on the internet. This list was supplemented through referrals from other key informants as the interviews progressed.

We interviewed people on this list (in person or by telephone) to get feedback on issues not covered in the focus groups. In total, we contacted over 50 key informants.

We developed an interview guideline for the key informants as well (Appendix 3). Only those parts of the questionnaire relevant to each respondent's area of expertise were asked in each case.

Results

Residents' perceptions below are taken from the focus group sessions conducted. Since there were between two and five focus groups conducted in each province, the results can not necessarily be extrapolated to all life lease developments in a province or in the country as a whole. As noted above, we had some sponsors refuse to allow us access to conduct a focus group; it may be that residents of these developments are less satisfied than those we were able to interview. Where a particular comment was commonly made across all focus groups, we have indicated the strength of this perception below.

Forms of Life Lease Housing:

Significant variation exists in how individual life lease projects are developed and managed. There are five basic forms of model:

- Zero Balance – The resident pays an amount up front designed to prepay rent for his/her expected remaining life. No residual value is repaid to the occupant or their estate at the time of departure or death. Consequently, the purchase price for an interest in this type of life lease is least expensive relative to other forms.
- Declining Balance – The resident pays an amount up front based on life expectancy. The estate is paid a residual value which declines each year to zero at the end of specific period of time. This type of life lease is slightly more expensive than the zero-balance form.
- No Gain - The amount redeemed at the time of sale remains the same as that paid at the time of initial occupancy in nominal terms, though declining in real terms, as there is no provision for annual inflationary increases to be taken into account. This is in essence a zero-interest loan to the sponsor for the time of occupancy of the unit.
- Price Index - Redemption value increases based on annual price index factor being applied to the purchase price, for instance, the Consumer Price Index (CPI). This has certain risks for the sponsor if real estate values are increasing more slowly than general inflation.
- Market Value - the life lease interest is redeemed at whatever price the market will bear at the time of sale. Purchasers pay an amount similar to that for a comparable condominium unit.

This section describes the most common model in each province, although there are substantial variations within provinces as well as between provinces. Manitoba and Ontario represent two ends of the spectrum for types of life lease housing in Canada.

Ontario

In most Ontario life lease developments, residents pay market value for the life lease up front. These complexes look very much like condominium units and the prices are comparable. When the resident leaves his/her unit, they or their estate sell the life lease interest for whatever "market value" is at that time. This is done through the sponsor if the sponsor has reserved the 'right of first refusal' to match an offer to purchase the unit and/or maintains a waiting list of interested purchasers. The project sponsor retains a fee from the sale proceeds and reserves the right to approve a new purchaser; residents may also have to pay a real estate commission if they use a broker for the sale. In terms of financial responsibility, these residents act in a similar manner to owners of a property. They are responsible for paying the property taxes for the unit and also pay a monthly maintenance fee, similar to the fee paid by condominium residents. As long as they hold the life lease interest, even if they have moved out, they or their estate are responsible for the monthly maintenance fee. Other projects developed in Ontario have been a no gain model where residents pay the full unit cost up front and when they leave they are guaranteed return of this amount.

Manitoba

In the Manitoba life lease concept, life lease residents of a new project pay upfront costs for their life lease interest in the range of 25%-50% of the cost of the unit; they then pay rent while they occupy the unit. The sponsor uses the upfront funds as equity and once a sufficient number of units are spoken for, they arrange with a private lender for a mortgage loan to cover the balance of construction costs. Early life lease projects received provincial loans under the RentalStart program. While living in the complex, the residents' monthly rent covers mortgage payments, property taxes and maintenance. When they vacate their unit, their initial investment is returned; legislation requires that these funds be held in a refund fund. This is a version of the no gain model with a smaller up front investment; we will refer to this as the Manitoba model. Most life lease developments in Manitoba are registered as condominiums at the behest of the lender. Manitoba also has some market value life lease complexes.

Saskatchewan

The financial structure of life lease projects we visited in Saskatchewan was similar to those in Manitoba. Residents pay an upfront cost and monthly rent. One project we visited restricted its units to lower income seniors; the other varied the entry cost of the unit based on income level of the senior (this project was owned by the province and managed by Regina Housing). This was the only province where we found the income of the senior was taken into account in admitting residents or in the price of the unit to the resident. In all other provinces, units were not geared toward low income seniors in any way. There are also life lease projects in Saskatchewan registered as condominiums.

Alberta

For the projects we visited in Alberta, the model was somewhat similar to Ontario. However, when the resident wishes to sell, the unit is sold back to the sponsor at market value determined by a local real estate appraiser or broker, less a fee of 5-8%. The sponsor is then responsible for resale of the life lease interest. The resident is guaranteed his/her money within 90 days. This model clearly places considerably more risk on the sponsor than the Ontario model, where all sale risk remains with the resident or their estate. The sponsor needs a reserve fund to buy back units and in a time of slow real estate sales, this fund could be depleted. This model will be referred to subsequently as the modified market value model.

British Columbia

B.C. has a variety of models. In one case study site, residents sell their interest through the sponsor for what might be called a modified market value; they are guaranteed at least 90% of their initial price; the maximum they will receive is 110% of the original price. A fee of 3% is due to the sponsor unless the resale price is less than 110%. This model will be referred to as the modified market value model with caps. In another project, the unit is sold for market value, as assessed by a real estate agent (similar to Alberta). The resident or their estate is paid when the unit is sold; if the sale does not occur within 6 months, interest is paid on the sale price. This will be referred to as the market value model with guaranteed interest.

Why Life Leases?

> Research Questions
>
> Why life leases? Why proponents (those who argue in favor of the life lease concept), sponsors (those who assume responsibility for a life lease project) and consumers (life lease holders) choose life lease over other forms of tenure, such as condominium? What are the advantages and disadvantages to proponents, sponsors and residents?

Residents: Many of the residents in the focus groups chose their housing based on its location, price and amenities rather than because of the tenure form. Proximity to shopping, restaurants, public transit was considered important. Features such as new attractive housing designed with seniors in mind, building amenities, services offered and high security also influenced the "purchase" decision. Proximity/involvement of the sponsor with adjacent higher maintenance care senior's facilities (retirement homes or nursing homes) was also an incentive. In some cases, the fact that the sponsor was a known non-profit group helped confirm the purchase decision. Many respondents indicated they did not fully understand the implications of the life lease tenure form when they moved in. The level of input into management, issues related to the sale of the unit and overall control of their environment were all areas they did not feel they were fully informed about when they signed the contract. In some cases this was because they had not carefully reviewed the life lease document. Greater disclosure by some sponsors would help this situation and education of professional advisors such as accountants and lawyers would also improve the understanding of residents before they commit to life lease. The Manitoba legislation requires landlords to disclose important information to prospective purchasers prior to purchase.

The main benefit of the life lease format, as voiced by residents, was seen to be the ability to create a community of residents of similar ages and backgrounds. The sponsor markets the units based on services, physical design and lifestyle attractive for seniors. The link among residents might be just age; sometimes ethnicity and/or religion were also common bonds. Every focus group we met with spoke vehemently about the strength of community in the complex, which made it a very attractive and supportive place to live. For those who moved from a condominium, they found the sense of community much stronger in the life lease development.

For residents of market value life lease complexes, the interest in the life lease was not perceived to be particularly easier or harder to sell than a comparable condominium unit. (This is a possible misperception; life lease interests may be more difficult to sell since the units can only be sold to seniors and the purchasers are buying a life interest rather than actual title.) For those in a guaranteed return of capital project (e.g. Manitoba, Alberta, B.C.) residents did feel it would be easier for their estate to deal with return of the life lease deposit or guaranteed sale than it would be to sell a piece of real estate, particularly for those whose family was located at a distance.

Sponsors: The reasons sponsors chose life lease were varied. Life lease provides a way for sponsors to develop housing for seniors in smaller communities so that they can remain in their home town when they can no longer stay in their own home. Some sponsors had a surplus piece of land next to a church they had built, a retirement home they ran or land which had been donated to them. Part of the organization's mission was to provide services to seniors. Life lease is a way of financing development of housing with little commitment of capital from the sponsor. With the market value model, costs of developing the building are raised through the sale of residents' life lease interests. In some cases the funds raised through sale of life lease units may pay for the construction costs and the land value, returning funds to the organization for other purposes. In developments where the resident pays a part of the unit cost and then pays rent, the upfront payment provides equity and the rent covers the cost of mortgage payments. The sponsor also retains ownership of the property, allowing for a change of use or sale of the asset in the future, although no sponsor indicated that this was a motive for choosing this form of development financing.

It is also possible that the ability to use deposits to finance construction, absence of strict requirements for plans, specifications and surveys, legal and other costs related to the registration of a condominium-type development are all factors that make life lease development attractive to sponsors, although these were not cited as reasons for choosing life lease in our interviews in the 15 case studies.

The sponsors in several cases had very altruistic motives in creating the life lease housing; they wanted to provide "Cadillac" facilities and services for seniors. The reality of the cost of this often meant scaling back on the features of the building or on services offered as the project proceeded. Some early residents felt they had been oversold on what would be provided in their complex. If services were kept, the cost of maintaining these was often underestimated which meant that first year monthly operating fees paid by residents were not covering costs and a large increase was necessary in the second year. Again, residents felt they had been misled about the cost of their housing, even if it was unintentional. This is one impact of the lack of involvement of residents in the management of life lease developments. It is also likely that sponsors would be more careful in their predictions of monthly maintenance costs if there were regulations regarding disclosure of information to prospective purchasers of units (as in Manitoba).

An example of a service that might be offered and then withdrawn was meal provision. Some tried offering meals a few times a week; too few residents signed up to make them cost effective and some of those who signed up forgot they had. Most who had offered this service have since discontinued it in the case studies. In one case, there was a teaching restaurant in the complex nearby where residents could get a reasonably priced meal if they chose to. Another had a restaurant open to the public to help it survive economically; residents were required to pay a certain amount per year (included in their monthly fee) to the restaurant. This could be used as a credit to buy meals whenever was convenient for the resident. As well, complexes that have adjacent retirement homes may allow life lease residents to purchase meals in their dining rooms; here the marginal cost is small, since the facilities are operating anyway.

Most life lease residents we talked to felt strongly that the developments they lived in should continue to be independent living facilities. If a new service would raise their monthly fee, they were generally not interested in having it provided. Optional services were acceptable, or residents could find necessary services privately. If residents needed more care than was provided, most sponsors and residents felt they should move to more supportive housing. Attitudes may change as residents get into the position themselves where they have to move, but this opinion was consistent throughout the focus groups (which had some very elderly but healthy participants in them).

Resident Involvement in Operation

Research Question
How much involvement do life lease holders have in the operation of their housing? What is the demand from residents to participate in the management of their housing?

Manitoba

The landlord in Manitoba is required to hold annual meetings in which residents can participate; this is their opportunity to voice any concerns about how the complex is managed. There is not any requirement, however, for the landlord to act on their concerns. As tenants, residents could ask for mediation or determination of a dispute under The Residential Tenancies Act. Recent amendments to the life lease act require the sponsor to allow tenants to select one or two representatives to attend Board meetings and to receive minutes. Our focus groups in Manitoba took place before this amendment came into effect. While most tenants were satisfied with little input to management, there were a number of residents in one Manitoba focus group who expressed a strong desire to have more involvement in the management of their building, despite the lower investment requirement in this province and guaranteed return of capital. Residents do have the right in Manitoba to ask the Residential Tenancies Branch for a rent review if they feel the landlord's proposed increase is not proper/required.

Landlords in Manitoba are now also required to provide audited financial statements to tenants, if a majority of the tenants in the development request this in writing. A recent amendment to the Life Lease Act, which came into effect October 1, 2006, requires the owner of the life lease development to attend the annual meeting in person rather than send a representative.

Other provinces:

In the majority of the case study buildings, residents were not allowed a seat on the board. Where resident involvement in the Board is specifically prohibited, it is because sponsors feel that, since they own the property, they have responsibility for its financial wellbeing. A board of directors is chosen based on the skills the sponsor feels are required to effectively manage the development and maintain proper control over the asset (e.g. accountants, lawyers).

It is important to recognize that residents of life lease housing are, by definition, able to live independently. Most have lived long productive lives and have owned their own home. In the market value model, they view themselves as very similar to condominium owners. They have a significant portion of their family assets tied up in the investment in the life lease. They feel they have the competency to participate productively in the management of their housing. The lack of input most have into the annual maintenance budget and how it is spent is a source of significant frustration. They sometimes feel money could be saved in certain areas and more should be spent in another area. When the budget is announced, usually with an accompanying monthly fee increase, it is presented as a final document with no room for comment or adjustment. Residents would like input into the day-to-day management of the building – for example, response times for maintenance problems. These concerns were not only expressed by market value residents; they were commonly expressed in many of the focus groups, regardless of the form of life lease.

Residents did not express concern about reserve funds for future capital needs. Again, without disclosure requirements (except for non-profit life lease buildings in Manitoba), residents may be unaware of the nature or size of their development's reserve fund or of its capacity to deal with future capital requirements.

This desire for participation in management is not, however, a unanimous view. Some residents moved from condominium units and are happy to abdicate responsibility for management; they did not like the friction between neighbours that contentious issues in their previous housing raised. They see the lack of involvement in management as a positive aspect of life lease living.

One complex we visited has residents filling three (of 9) spaces on the Board. In two others, a resident could be an elected member of the board managing the property. While this leaves voting control with the independent Board members, residents feel they have considerably more input into management under this system.

In one B.C. case study, residents formed the majority of the board members; residents become members of the society managing the complex when they buy their life lease; this makes them eligible to be elected to the Board. Currently 8 of 12 Board members are residents. This was the only situation we found where residents had control of a management board.

In a Saskatchewan project, residents have formed a tenant's group and have become actively involved in trying to make management more efficient. For example, they took on the negotiations for a cleaning contract for the building and feel they have helped control operating cost increases as a result of this type of involvement.

To some extent the desire to have increased involvement in the operation of the housing was related to the perceived quality of current management. An onsite property manager (at least part-time) was related to lower resident concerns about management quality. The manager in a life lease project needs to have strong property management and accounting skills but also strong social skills. Residents spend more time in the project than most residential tenants and have their own strong social network. This makes for considerable interaction between residents and the manager both individually and in groups. Communicating effectively about how resident's concerns are being addressed, or why they cannot be, enhances resident satisfaction with management of the complex.

When asked if the identity of the sponsor was important, many respondents indicated that it was not a major factor in their decision to choose life lease housing. They may feel more comfortable that a non-profit group would be less likely to “rip them off” but they realized that ownership of the complex could change if the goals of the sponsoring organization changed. Some also felt non-profits had “deep pockets”; if the project had initial financial problems, the sponsor would find a way to resolve them. Some felt a private developer would let the development go bankrupt if costs exceeded expectations or sales were lower than expected.

This demonstrates a misconception held by many life lease residents. While a non-profit sponsor may initiate the life lease development, most incorporate a separate foundation to own and manage the housing. If financial problems become severe, the only recourse for those with claims against the development is the foundation, not the parent company. This is obviously a prudent approach for any non-profit agency but residents may not be aware of this distinction. Some B.C. developments have developed “leaky building” syndrome. The non-profit foundation typically does not have sufficient reserves to deal with the major costs of rectifying this type of problem.

Unit Value and Financing

Research Questions

How can the lending value of a life lease home be established? How did life lease holders finance their life lease purchase? How are consumers financing the purchase of a life lease? Are there sufficient financing options for them? Although lenders may make mortgage loans for the construction of life lease projects, they may not be prepared to provide financing for the purchase of an individual life lease unit due to concerns about loan security. What issues exist in terms of interim construction financing for lenders and sponsors?

There are three aspects to financing a life lease project. The first is a short term loan taken out by the sponsor during the construction phase to finance development. Once construction is complete, this loan is either paid off through unit sales (market value model) or replaced with a long term mortgage loan (Manitoba model). Residents purchasing a life lease interest, particularly market value, may require a mortgage loan to finance part of this purchase.

Individuals:

The vast majority (over 90%) of life lease purchasers in our focus groups bought their life lease interest through selling their family home. Financing was not an issue for them except possibly bridge financing while waiting for the home to sell. The lenders we talked to had no problem issuing bridge loans for the time it took to sell the home. These loans were secured by the original home; lenders were comfortable registering a loan since these were freehold or condominium properties.

Mortgage loans for individual units were available for one case study we visited when the units had a guaranteed buy-back from the sponsor; residents could obtain a loan for up to 50% of the purchase price. The lender was comfortable with this arrangement because of the backing of the sponsor. Since the resident was not selling the unit for market value, the amount received for the lease interest was a predetermined amount.

Lenders have been more reluctant to lend on market value units. However, this reluctance seems to be decreasing as the tenure form becomes better known. Life Lease Associates (LLA), a life lease development consultant, has been able to arrange with individual lenders to offer loans for specific projects. In Alberta, where individual leases are registered on title, the TD bank has developed a policy allowing lending on these units and it was suggested that the Bank of Montreal was also in the process of developing a similar policy. Of the 47 participants in the two Alberta focus groups, 7 indicated they had arranged financing from a bank. The literature from the sponsor of one of the developments indicated a relationship with both of these financial institutions. The guarantee of buyback of the unit by the sponsor also makes the financing of these units more attractive to the lender. The only differences from regular lending is that the maximum loan to value ratio is 75% (value or the life lease interest), the maximum amortization period for these loans is 20 years and it must be a mortgage loan rather than a secured line of credit.

When lenders are willing to lend to individual life lease holders, the loan amount for fixed price life lease units is based on the unit cost. For market value units, lenders use either recent sales of similar life lease interests in the building or values of comparable condominium units nearby. Security issues surrounding life lease lending are significantly different from regular lending since life lease holders have no title to the underlying real estate. In fact, their life lease interest may not be registered; sometimes registration is prohibited by the sponsor to avoid complications with their own financing of the development.

Construction financing for sponsors: Because most sponsors of life lease housing may have little experience in real estate development, the lender may require that they hire various specialists to help manage the construction phase, such as a life lease consultant to help with the feasibility analysis and marketing program and a construction project monitor to ensure the development is completed on time and within budget.

Typical requirements before approval of a construction loan is presale of approximately 75% of the units; the sponsor then uses the deposits and their own equity (which may be land value) as the equity in the project and the construction loan will be approximately 65-70% of project costs. There is a risk that, if the marketing process takes longer than expected, the fixed prices set for the life lease interest will be insufficient to cover what might be rising construction costs, since the contracts for these will not be signed until the appropriate number of units have been sold. A strong marketing program is important for financial success of life lease projects. There is also a risk that the construction will take longer or cost more than initially anticipated. The contingency in the budget is usually small (3-5%); a skilled project manager is important during the construction phase to minimize this risk. Even though sponsors are perceived as having deep pockets by the prospective residents, they usually have a set budget committed to the life lease development and do not want to exceed this. Frequently the development is done under a separate foundation that has restricted amount of funds. The developer/landlord must go through several steps in Manitoba in order to get deposits released by the trustee for construction purposes.

The construction loan is generally paid out with unit sales in the market value or fixed price model, where the resident is essentially paying the full cost of their unit up front. Because of the non-profit nature of the sponsor and the low contingency in most life lease construction budgets, approximately 95% of the units need to be sold to pay out the construction loan. If sales lag, interest on this loan can quickly eat up any contingency built in. The lender will have a time limit on repaying the loan; for sponsors that are asset rich but cash poor, momentum in the marketing of the units is particularly critical, since they may be unable to pay out the balance of the construction loan from other resources, if sales do not materialize as rapidly as anticipated. We are aware of one development where the construction loan had to be repaid before all the units had been sold. This required borrowing funds from wealthy members of the parent non-profit organization. If this type of back-up funding is not available, there is a risk of bankruptcy of the development.

Because most sponsors use resident deposits to assist in financing the construction of the building, and these are at risk if the sponsor is unable to complete the development for any reason, the lender may require evidence that prospective purchasers have received independent legal advice before submitting their deposit. Forms required to be given to life lease tenants who pay entrance fees in Manitoba suggest that they have the documents reviewed by independent legal counsel.

Long term mortgages for sponsors: In provinces where the contribution by the unit holder does not cover the full cost of the development (e.g. Manitoba), the sponsor usually requires long term financing. If sponsors wish to have a combination life lease/rental project, they would also require a long-term mortgage loan for the rental portion of the property. There is long-term market risk for this type of property, both for the rental and life lease interest portion. Lenders may be concerned about reputation effects of foreclosing on this demographic group; limited cash flow from life lease units after the lump sum purchase payments; their ability to foreclose on or sell life lease units; and priority issues between mortgage and occupancy agreements.

Lenders face other issues with financing life lease developments. If they have to foreclose on a sponsor's long term loan, they now have an asset with sitting elderly tenants who have paid up front for the right to occupy the unit for life. In order to recover their outstanding loan, they need to sell the building. This could lead to reputation effects if they cannot find another life lease sponsor to take over the building. It is also possible that they would not recoup their full loan proceeds if the building is sold as a life lease complex, rather than as condominium units.

The relative value of life lease units and condominium units was studied by Simmons (1999). He found life lease interests to be as expensive as or more so than comparable condo units. This study is somewhat dated and was restricted to a small geographic area in Ontario. To the extent that life lease interests are valued by the market at less than condo values, this may impact the lender's security.

There were no specific remedies mentioned to avoid these situations, except ensuring a high proportion of units were sold before advancing any mortgage funds and ensuring the non-profit sponsor had professional development advice as they proceeded with construction.

Lease Term; Security of Tenure:

Research Questions
According to the agreements in each of the case studies, what happens when life lease holders have to leave their home due to their deteriorating health, or other circumstances? As compared to condominium owners: What is the level of security among life lease holders with respect to the tenure of their housing and their investments? If life leases do not have a fixed term, are they considered to be valid leases in British Columbia, Saskatchewan, Alberta, Manitoba and Ontario? If so, what provisions apply? If life leases have a fixed term, what happens when they expire, e.g., are they renewable? Can life lease housing developments be built on land that is leased for a fixed term?

Unlike condominium purchases, purchasers of life lease interests have no rescission rights; once they have signed their purchase agreement, they are committed to completing the sale, except in Manitoba and B.C.. Under Manitoba legislation, tenants who have not yet received possession of their unit have 7 days to rescind their offer. In B.C., purchasers of a life lease interest have rescission rights if purchasing from a developer (but not if purchasing an existing unit from the current resident).

If condominiums are built on leased land, the minimum length of the lease is 40 years in Ontario. There is no regulated minimum length for a life lease interest, although we did not find leases for less than 49 years in Ontario case studies. New Manitoba life lease developments may not be built on leased land.

Initially, many life lease projects in Ontario had terms of 49 years established primarily to avoid the payment of the Land Transfer Tax. In 2004, the Ontario Government, through Ontario Regulation 88/04 made under the Land Transfer Tax Act, provided an exemption from land transfer tax if the owner of the life lease project is a non-profit organization or registered charity. The regulation applied retroactively to July 1989. Based on this regulatory change to the Land Transfer Act, there has been a noticeable movement away from referencing a specific term for a life lease agreement in Ontario - agreements now tend to be silent on the duration of the agreement and refer to the agreement being in effect for the life of the resident or until such time as the resident sells their interest in the unit.

In Manitoba, the length of the life lease is 50 years or the life of the tenant. The length of lease term did not seem to be an issue in other provinces, for the case study sites we visited. The initial term was far longer than the senior's life expectancy and terms for new residents started at the same length as the original lease term. In Manitoba and Saskatchewan, the lease term is for the senior's life or until they move out (giving appropriate notice). The lease can be terminated by the sponsor if the resident is delinquent in required rent.

In B.C. one development had a term of the full life of the resident. For another, the lease term was 99 years from the date of registration of the strata plans for the development in the land titles office. Theoretically, a purchaser buying a life lease interest in this building in 80 years could be left with a lease term less than his/her life expectancy, unless the agreement is revisited at that time. The agreement can also be terminated by 6 months notice by the resident or by the sponsor, with 30 days notice, if the resident is considered incapable of living in the unit or is delinquent in payments. This is a very short time frame for residents in poor health to be able to find appropriate supportive housing and suggests that security of tenure is low in this type of development. Sponsors we talked to indicated they work with families as residents deteriorate to find appropriate housing, but technically seniors in these complexes could be asked to leave with little notice.

Some case study buildings were registered as strata title buildings. In one agreement, the possibility of turning the complex into a condominium is explicitly referred to, citing it as a possibility but not one the sponsor intends to act on. Implications for the residents in this situation are not clear. Since they have bought a life lease, their interest would not automatically be turned into the ownership to the condo unit (although this was done at one development in B.C. we visited and we understand has been used for other developments there to deal with the leaky condo problem). They would either have to be refunded the current value of their life lease interest (or actual capital contribution if that is the life lease arrangement) or they may be offered units in the condominium. There could be an additional cost for this conversion of interest, which may be beyond the resources of some residents. Tenants in Manitoba have first right of refusal to buy their unit if their building is converted to a condominium.

Residents in the focus groups all expressed comfort with their level of security of tenure even though all are aware there is a clause in their agreement that legally allows the sponsor to ask them to leave if they are considered unable physically or mentally to continue living in the building. However, the sponsors we talked to indicated they use this clause with great discretion. They usually work with the family of the resident to identify more appropriate housing, rather than summarily “evicting” the tenant. Residents are still required to leave but are given time to work with their family and other resources to find appropriately supportive housing. Some residents hire personal care workers to assist them with daily living to extend their stay in the life lease complex.

It was more common, in the sentiments expressed in the focus groups, for residents to be irritated that management was not acting quickly enough to enforce these clauses to remove a resident from the building who was bothering other tenants, than to be concerned that they may face eviction themselves. In Manitoba, tenants can be asked to leave because of breach of a clause in their lease but not because they require greater care than the building provides.

Sponsors all expressed the need to proceed with caution and tact in enforcing this aspect of the life lease contract. As the populations in these buildings age, managers are likely to face this situation more and more frequently.

Annual Operating Expenses and Capital Reserves

Research Questions
How do sponsors calculate the initial balance, monthly fees and escalation rate of life lease holders' contributions towards the reserve fund for major repairs of the property? How much do sponsors actually keep in the reserve fund? What processes are used to raise or lower charges to life lease holders to keep the fund at the appropriate level? What is covered by monthly fees? Were life lease holders clearly advised on this? Did they know what costs their monthly payments would cover? What are the average monthly fees for life lease holders? What happens upon default by individual life lease holders? What types of regulation or legislation apply in British Columbia, Saskatchewan, Alberta, Manitoba and Ontario? What are the implications for the other life lease holders in the affected housing project? If a project experiences ongoing vacancies due to default by individual life lease holders, what protections would remaining life lease holders need to ensure that they get all the maintenance and services they are paying for?

Annual operating costs varied substantially across the country in the sites we visited depending on factors such as the life lease model, facilities and services offered and what costs are covered in the fee. In the case studies conducted in Ontario, Alberta and B.C., the monthly fee commonly covers maintenance, insurance on the building, landscaping and snow removal and other operating costs, as specified in each operating agreement. Property taxes were sometimes included in the monthly fee but more commonly they are billed separately, payable either directly by the resident or through the sponsor.

In the Manitoba and Saskatchewan case studies, residents pay a monthly rent which sponsors use to cover the operating costs specified in the operating agreement and mortgage payments for the property; property taxes are also paid out of these revenues.

There are two types of funds life lease sponsors may set aside – a refund fund and a reserve fund. The refund fund is a reserve to fund repurchase of life lease interests if this is a feature of the life lease agreement. In Manitoba, for developments completed after 1999, these deposits must be kept in a refund fund administered by a third party trustee to have funds available to redeem units.

In all provinces the amount in this fund is not regulated.[3] Residents have no say over how large this fund is, how it is funded or what it may be used for. For one Ontario case study, the sponsor buys back units when the resident leaves but takes a fee that increases the longer the resident lives in the unit. This money goes into a fund that is used to fund repurchases of life lease interests when there is no new purchaser. It is also used to fund other activities of the parent organization, unrelated to the residents of the development. Some residents view this as a forced charitable donation they make without choosing how their funds are spent or who benefits from them. The fund is now quite large. Although the sale criteria were specified in their lease agreement, they would like to see a reduction in the fees when interests are sold.

[3] In Ontario, for market life lease units, there is no reserve fund. Unit holders bear the risk for not being able to sell their interest for an acceptable value.

The second type of fund is a capital reserve to fund improvements to the building and equipment over time. The amount put aside for capital reserves also varies substantially from development to development in the case study sites. Some Ontario properties are registered as condominiums and use the Ontario Condominium Act requirements to set their reserve fund contributions. This act requires annual contributions sufficient to fund anticipated capital improvements based on an independent review of the physical structure. This review is repeated every 5 years and the annual contribution adjusted if necessary. Other sites not registered as condominiums put aside what they feel are appropriate amounts without consultation with residents.

In Manitoba, all non-profit sponsors of life lease properties are required by legislation to have a capital reserve fund. The landlord decides what an appropriate amount is for the reserve fund; there is no minimum amount. The landlord is required by legislation to disclose the amount in the fund to prospective tenants and annually to existing residents. He also reports the reason for any expenditure from the fund. This allows residents to assess whether the fund is sufficient for future requirements. The reserve fund can be used for non-capital expenses as well. If there are unanticipated costs or a shortfall in revenue due to vacant units, the landlord can cover costs from the reserve fund. After a rent review, the Residential Tenancies Act may order the landlord to use reserve funds rather than enforcing a large rent increase, although this is unlikely to happen.

In other provinces, all sponsors interviewed indicated that they had a reserve fund, but the amount contributed seemed somewhat arbitrary. Whether the reserve fund is sufficient or not has not been tested, since most developments are quite new. If the building needs a roof replacement in 20 years and there are insufficient funds to pay for this, the residents face a requirement to inject more capital or increased monthly fees to cover payments on debt used to fund the work.

A requirement through legislation to have regular inspections and estimates of required capital costs done by professionals, and an appropriate amount set aside annually to cover these predicted costs, would seem prudent to protect residents, sponsors and lenders. This would mimic the legislation for condominiums in Ontario.

In the Ontario developments we visited, the resident or his/her estate are responsible for the monthly fee until the unit is sold, leaving little risk of operating shortfall for the sponsor/lender.

In Manitoba, fees can now be increased twice a year if necessary if costs have risen unexpectedly. However, if a unit is vacant, the sponsor does not receive rent. If a building were to experience high vacancy for any reason, this could affect the ability of the sponsor to maintain their mortgage payments. Landlords in Manitoba do have the right to rent units to non-life-lease tenants temporarily if they are unable to find a “purchaser” for the unit, which would help mitigate this problem.

Whether the monthly fee is due on a vacant unit is specified in the operating agreement. If residents are not responsible for fees while the unit is vacant and up for sale, the sponsor will face a shortfall in projected revenue. This leads to a risk of default by the sponsor or a risk for residents of increased fees in future years to cover the shortfall.

Connections between Shelter and Service Components

Research Questions
What are the connections between the shelter and service components in the life lease case studies that offer support services such as meals, housekeeping and monitoring? What recourse do life lease holders have if their residency depends on receiving these services but the services are, or become, unsatisfactory?

Most life lease buildings do not offer supportive services; they explicitly advertise that they are providing housing for seniors able to live independently. In some cases, where seniors need extra help with daily activities, they are arranging for this help individually, the way they would in their own home or condominium. Either through government services or through paid help, they arrange for someone to come into their unit to provide the necessary assistance.

In one Saskatchewan case study, a fee for additional services is charged separately from the monthly maintenance fee, even though services were not optional. This fee covers 24-hour emergency call service, the services for an Activities/Social Coordinator, services of Home Care Coordinator (Monday to Friday), the availability of a meal served daily and security entrance systems. This fee is charged whether the residents use the services or not. Residents may also buy additional meals at the adjacent nursing home. A similar charge is levied in the Victoria case study property for a coordinator's salary, pastor's fee and wellness clinic. In Manitoba, if a service is offered initially in a development, it becomes a term of the lease and cannot be withdrawn; the landlord can apply to the Residential Tenancies Branch to substitute a similar service.

A number of life lease developments in Ontario have adopted a continuum of care approach to meeting the needs of residents. As residents age and the level of care services required increases, the life lease sponsor either provides these services to the resident or has arrangements in place to have the services provided through a 3rd party

Where additional services are offered on an optional basis, these are often provided by a sister organization such as a nursing home or retirement home. While it is possible that access to meals, for example, could be restricted at some point, it is unlikely that these services would be withdrawn, since they can be offered at a breakeven cost by the sister organization.

We found little evidence from the case studies that residents had much input into decisions about what services are offered in most cases (developments where residents are on the Board presumably have more say). If they suggest a service that they feel will be useful/required, they are often put off by the cost estimate. In the questionnaire residents were asked if they were interested in additional services. For meal service, for example, only 5% were interested at the present time; 27% thought it might be of some interest in the future. Sponsors who have tried optional sign-up meal programs have not found them to be economically feasible.

In order for services to be breakeven, sponsors generally require the costs to be split among all residents; i.e. costs for services are part of the monthly fee whether residents use them or not. If a service is being underused, a sponsor may decide to discontinue it. The resident who requires it would then have to find it privately or move to different accommodation.

There is no regulation requiring the life lease operator to disclose the services that will be offered in the development (except in Manitoba). This has led to some residents feeling they were "oversold" on what they could expect. They were led to believe in the sales meetings that various services would be available and after they moved in found these were not available due to the cost of providing them. Requirements to disclose the types of services offered in the complex before selling the unit would alleviate this problem. In Manitoba, promise of a service to a prospective life lease resident becomes a term of the lease and cannot be rescinded.

Property and Land Transfer Taxes

Research Questions
How do property and land transfer taxes apply to life lease housing projects? Are life lease holders directly responsible for these taxes? Who receives the property taxes assessment notice, the sponsor or the life lease holder? How are life leases assessed for property taxes compared to other forms of tenure?

Property Taxes:

Saskatchewan: There are two types of life lease developments in Saskatchewan. The ones which follow the Manitoba model are considered rental properties for assessment purposes and are taxed at the same rate as rental buildings, even though they could be considered higher quality than most rental properties (similar to condominiums). Those registered as condominiums are assessed based on the value of comparable condominiums and are taxed at the single family housing rate. The single family housing tax rate is lower than the rental tax rate (2.0848% versus 3.089% in 2004), but the assessed value is higher; in general property taxes would be lower on units taxed at the single family rate.

Manitoba: Properties are assessed as rental buildings using the income approach. The rental revenue minus expenses is capitalized to estimate value. Since rental rates for life lease units may be lower than market, due to the non-profit nature of the sponsor and the capital contribution by the resident, an estimate of market rents is developed. The tax rate for rental properties is used. This was taken to the Assessment Appeal Tribunal which ruled that it was too risky to assess units at condominium values since individual units cannot be sold, only the entire property.

Some senior's buildings in Manitoba are exempt from school taxes. One life lease development received this exemption but it was later reversed as the exemption was not meant to apply to high end condo-type units.

Ontario: Market value model units are assessed in a similar manner to condominiums and are taxed at single family rates. Values are based on sales of life lease interests in the building or on sales of similar condo units nearby.

B.C.: Values are based on sales of life lease interests in the building, on values of 99-year lease properties or condominium sales in the area. Sale prices are adjusted downwards slightly to account for the form of tenure; they are not considered as strong in market value as condominiums. Selling prices for some life lease units have been less than the assessed value of the unit in the B.C. case study sites. This concerns remaining residents; they feel they are overpaying on their property taxes and that the provincial assessment authority does not fully understand the life lease model in B.C.

In all the case study sites, the tax bill is received by the sponsor. In Manitoba and Saskatchewan, the sponsor pays taxes out of rental revenues. In the other provinces, the bill is allocated to the individual leaseholders, usually based on the size of their unit. They then pay the taxes directly or, more commonly, through the sponsor. The sponsor then knows if any portion of the taxes is not paid and can deal with the problem directly.

Alberta: Properties are assessed based on values of similar condominiums and pay taxes at the single family rate. Bills are sent to the sponsor who then splits them among the residents.

Land Transfer Taxes:
Alberta: Alberta has registration fees but not land transfer taxes. There are no exemptions from these fees, but they are relatively minor (approximately .02% of value.)

Ontario: Recent legislation exempts life lease interest transfers in Ontario from land transfer taxes (LTT) if:

- the sponsor is a nonprofit agency or registered charity
- the life lease purchaser acquires the unit as a principal residence or as the principal residence of a parent or spouse and the term of the life lease is at least 20 years
- The unit is sold back to a non-profit sponsor as long as the transaction follows from the original agreement and the sponsor intends to resell the unit.

Saskatchewan: There are no Land Transfer Taxes in Saskatchewan.

Manitoba: Registered charities are exempt from land transfer taxes. The first person acquiring a life lease is exempt. If the leaseholder returns his/her interest to the sponsor and it is then transferred to a new resident, no land transfer taxes are paid. Only if the transfer went directly from the exiting resident to a new resident would land transfer taxes be paid. Our key informant indicated that they had never seen this happen. However, if the resident registered their interest on the title, they would be subject to land transfer taxes on sale.

B.C.: Land transfer taxes are incurred on life lease interests and are payable by the transferee. These can be avoided if the land lease interest is not registered in the land titles office. There are no exemptions from land transfer taxes unless the sponsor is a registered charity (with CCRA) and the land is being used for charitable purposes. Given the relative high-end nature of the life lease units, it seems unlikely that this would be approved.

Resale of Life lease Interest

Research Questions

What are the most common provisions for the resale of life lease interests? What have the experiences been? Are there any implications?

There are a variety of formats for resale of the life lease interest/recovery of initial entrance fee. In the market value model, the resident (or his/her estate) is entirely responsible for selling the interest. The sponsor may provide access to the waiting list if there is one or may have an arrangement with a local realtor to help with the sale. However, the risk of timing of sale and the amount received rests entirely with the resident. They must also pay the monthly operating cost and property taxes until the interest is sold. In one of the case studies in a market value development, a one bedroom unit had been for sale for a year. The perception among residents was that this size unit was less popular than larger units, delaying its sale. 9 units had recently come onto the market at one time in this complex due to residents passing away or moving to higher care facilities. This risk of problems with resale timing or amount received on sale is similar to that faced in a condominium, except that residents of life lease units face a smaller market for their units. They can only sell to someone who fits the age criteria of the agreement. As well, because they are selling a life lease interest rather than title to the property, this may further narrow their pool of potential purchasers.

Under Manitoba legislation, at least 95% of the entrance fee must be refunded if the lease is for the tenant's life or if the landlord is not a non-profit landlord. Before the complex is occupied the landlord must set up a refund fund with the third party trustee. If the landlord has not repaid the full entrance fee owing to a resident within three months of their vacating their unit[4], they are to be repaid the balance from the refund fund. It is still possible that this fund may not be sufficient to cover all claims at a point in time if several units become vacant at once. Refunds are processed according to priority date so the tenant who gives notice first, receives his refund first.

In Saskatchewan, the two developments we visited were run by the municipal and provincial governments respectively. Residents are guaranteed their entrance fee back and given the backing of the government, the financial risk is not great. A debenture in the resident's name for the amount of the deposit is registered on title.

In the Alberta modified market value model for the two case studies we visited, the resident is guaranteed to receive the appraised value within 90 days. There is more risk for the sponsor in this model if several units become available at once and demand is low. They will need to fund redemptions without money from new life lease residents coming in. There is also the risk for the resident that the sponsor might default on their obligation in this situation; although they are promised their unit value back, if the sponsor has insufficient funds, they may declare bankruptcy or delay payment to residents until the unit actually sells.

In B.C.'s market value model with interest, the risk is primarily one of when the sale proceeds will be received. If the sale takes longer than 6 months, interest is paid; again if there were a

[4] A recent amendment to the Manitoba legislation requires a refund of the entrance fee by three months after the priority date, usually the date of giving notice.

number of units for sale at one time and/or the market was slow, it would likely take longer for the sale proceeds to be received, making it difficult for the senior leaving the life lease unit to acquire/fund their subsequent housing. As with the market value model common in Ontario, the vendor of the life lease interest faces a smaller market than is typical in a real estate transaction. They must find a senior in the appropriate age bracket who is interested in this form of tenure. This results in greater market risk than for a similar condominium unit.

Requirements to set up reserve funds in projects where the unit is guaranteed to be bought back would help alleviate problems for sponsors and leaving residents but there is a cost to having these funds tied up and estimating the size of the required fund is difficult. As well, disclosure requirements describing clearly how units will be sold and the risks both sides are taking in the transaction would ensure purchasers are aware of the real estate risks before purchasing.

Deposits

Research Questions
In the five provinces: Are pre-occupancy deposits in life lease housing projects held in trust? What are the refund and interest provisions? Are there any concerns?

In Manitoba, the maximum pre-lease payment is $1000. Before they can be collected, the sponsor has to tell the prospective tenant the projected completion date of the complex, the estimated entrance fee and other prescribed information. These pre-lease payments must be refunded if the landlord cannot complete the complex by the date specified. Entrance fees must be held in trust by a third party trustee; the developer does not have access to these funds until he’s met the requirements under the act.

In one of the Saskatchewan case studies, the sponsor signs a debenture agreement with the resident, agreeing to repay the “lesser of the Original Sum or fair market value of the Holder’s right of use” within 90 days of death or vacating the unit. If payment is not made within 90 days, interest is paid on the amount owing. This is a separate document from the life lease agreement.

Until 2004, developers in B.C. were required to hold deposits in trust. After 2004, they were allowed to use deposits for construction if they had sufficient insurance to cover refunds of deposits in case of developer default.

In other provinces, where there is no requirement to hold deposits in trust, it was common for the sponsor to use the deposits as equity in their construction costs for the complex. If insufficient sales had materialized and the project went bankrupt, it is likely these monies would have been lost. They are not protected by Tarion (formerly known as the Ontario New Home Warranty program (ONHWP)) for example because the resident does not own the unit. As these deposits can be in the range of $25-30,000, this is not an insignificant risk for the life lease purchaser. This is a concern for lenders as well. Recent articles in the Ottawa Citizen discuss the failure of a life lease development in which prospective residents had not been refunded their deposits, some of which were used to hire an architect, for marketing costs and other predevelopment costs for a proposed life lease project for which insufficient sales were completed. Just recently, the prospective purchasers were refunded their initial deposits by the non-profit sponsor through sale of the property, but this took a couple of years to resolve.

Registration of Interest

Research Questions
How is the life lease interest registered on the land title in the five provinces? Can sponsors prevent life lease holders from registering their leases on title? What should a lender require regarding registration of life lease interests on the title?

Alberta: The developer/sponsor is listed as having fee simple interest in the property; individual leaseholders can be endorsed on the title.

Ontario: In our case studies, we encountered sponsors who would not allow leaseholders to register on title, others who recommended it and some who did not raise the issue. Residents in the focus groups often said they explicitly did not register even though advised to by their lawyer; they did not think it was worth the expense. This is an issue for both residents and lenders. If the sponsor were to sell the building without informing the new purchaser of the life lease nature of the development, the existing residents may not be able to continue their tenure and may not have their equity investments reimbursed.

If the life lease interest is registered on title, lenders would want it subordinated to their debt registration. However, if the life leases are subordinated, the life tenant's interest could be determined.

Saskatchewan and Manitoba: Only the sponsor is registered on title. However, a debenture in the resident's name is registered on title in Saskatchewan.

B.C.: The Superintendent of Real Estate requires that either title for the leaseholder or a debenture securing their financial interest be registered on title.

Default by Sponsor; Incidence of failure

Research Questions
What happens upon default by the sponsor of a life lease housing development? What types of regulation or legislation apply in British Columbia, Saskatchewan, Alberta, Manitoba and Ontario? If the project has to be sold, what are the rights of, and risks to, individual life lease holders? What are the implications for the lender and loan insurer? In the five provinces: Is there any data on the incidence of failure among life lease sponsors to give possession of the housing to life lease holders? If there is, what are the reasons for such failures, and the options to avoid them?

Default by the sponsor can occur during the construction phase of development or during the operating phase.

Construction phase: There is a risk here for life lease interest purchasers who put down a major deposit; if the developer is not able to sell sufficient units and has used their deposit money for marketing or construction costs, they have no protection. This type of failure has happened in Ontario (Ottawa Citizen 2004) and in Moose Jaw (Times Herald 2004). In the Ottawa situation, seniors recently were refunded their deposits with interest; this process took some time (approximately two years) while the non-profit sponsor found a purchaser for the site. Except in Manitoba, where deposits must be held in trust by a third party, the only recourse for lease holders is to go through the courts. This may not be feasible for seniors, particularly if they are trying to get funds from a sponsor who has declared bankruptcy. In Manitoba, sponsors are only permitted to use the entrance fees to fund construction once they have met a set of stringent criteria including ensuring the trustee that there are sufficient funds to complete construction and the project is financially viable through the first year of operation.

Operating phase: Projects can also fail during the operating phase. This can be a result of management problems or other unforeseen difficulties. A few developments in B.C. have faced financial difficulties due to the leaky condo syndrome (although there have been problems with others unrelated to the leaky condo issue). These construction flaws require major capital injections to fix. Sponsors do not have sufficient funds in their capital reserves or their own resources to fund the construction. In order to survive, these developments have had to convert to condominiums so that individual unit owners can qualify for assistance from the provincial government to correct the problems. As a result, the number of life lease developments has been decreasing in B.C. as they convert to condo tenure.

Lenders will be concerned that life lease interests in a sufficient number of units have been sold in order to provide adequate cash flow to fund the mortgage payments as well as the operating costs of the building. Their loans are also at risk if vacancies rise substantially in the building after opening, i.e. if units cannot be resold when they become vacant. While in Ontario, the estate is responsible for monthly costs until the unit is sold, if these payments are not made there is little recourse except to take the proceeds from the sale of the unit. If this sale is slow to happen, cash flow problems can arise.

One Toronto area life lease development could not sell enough units in the preconstruction phase for the development to be viable. Prospective purchasers received their deposits back in this case. No other specific example of project failure, other than those cited above, was mentioned by provincial staff contacted.

In Manitoba, all non-profit life lease complexes are required to have a reserve refund; in addition, all landlords must disclose information on the balance of the reserve fund to prospective tenants and, on an annual basis, to existing tenants. This allows tenants to know whether or not there is sufficient money to deal with unforeseen repair issues.

New Home Warranty Coverage

Research Questions
In the context of life leases, what protection is afforded by new home warranties and to whom? Are life lease holders directly involved and protected? Are there any concerns or implications? What actions could be taken to address these?

Ontario: The Tarion Warranty Program (formerly ONHWP) covers only freehold and condominium properties; life lease complexes are not considered either of these and are not covered under the warranty. This means investor deposits are not insured if the sponsor begins construction and is unable to complete the project. Also, construction flaws are not covered. Most sponsors require their contractor to warranty the work done for a period of time.

Manitoba: The New Home Warranty Program of Manitoba Inc. does not provide protection for any structures over 3 stories. As well, given the defined rental nature of life lease in the province, it is unlikely they would be covered even if under 3 stories.

However, the life lease legislation does reduce some of this risk through preventive measures, such as requiring entrance fees to be held in trust.

Saskatchewan: The Saskatchewan warranty program also only applies to freehold or condominium complexes. Life lease complexes are not considered to fall into either of these categories and are not covered under the warranty program. In addition, the warranty program is entirely voluntary in the province; even if life lease buildings were covered, prospective purchasers would have to check whether the complex was registered before purchasing. Builders tend not to register unless required to by CMHC for mortgage insurance.

Alberta: Life lease buildings can be registered under the Alberta New Home Warranty program. Some large developers who have built life lease in the province have registered them. Again, the program is voluntary for developers so purchasers would need to check whether the building was registered before buying.

B.C. New homes in B.C. must be covered by third-party home warranty insurance and constructed by a residential builder licensed by the Home Protection Office (HPO). However, if the complex is registered on title as a master society lease (non-market lease), it could apply to the HPO for an exemption from home warranty insurance requirements. Under certain specific conditions, life leases may qualify for HPO loans for leaky buildings under the Homeowner's Reconstruction Loan Program (HRLP); they should contact the agency to check eligibility. Some life lease developments have converted to condominium ownership in order to allow residents to more easily qualify for the HRLP.

Classification (renter/ owner) and access to government grants

Research Questions
In British Columbia, Saskatchewan, Alberta, Manitoba and Ontario: Are life lease holders considered to be renters or owners? What are the implications for life lease holders in each of these provinces with respect to current provincial legislation? For instance, if life lease holders are considered to be renters, would they fall under the Residential Tenancies Act and be subject to the provisions therein regarding security deposits, eviction notices, etc.? Would low or moderate income life lease holders be eligible for provincial rental subsidies? If life lease holders are considered to be owners, would they be less protected? Can life lease holders take advantage of government grants or tax credits, offered to homeowners and renters in British Columbia, Saskatchewan, Alberta, Manitoba and Ontario? What are the requirements? Who should apply for them, life lease holders or the sponsors?

Classification of ownership is still a very grey area, except in Manitoba where the legislation designates life lease residents as renters. They are covered by both the Life Leases Act and the Residential Tenancies Act.

In B.C. the marketing of residential properties, including life lease units, is covered under the Real Estate Development Marketing Act, as of January 2005 and was previously covered by the Real Estate Act, although neither act referred specifically to life lease units. The new act regulates the information that must be disclosed to prospective purchasers before they can purchase their units but does not classify them as tenants or owners. (see Regulatory Options below).

In other provinces, residents legally have the right to occupy their unit but nothing more tangible than that. They are neither quite renters nor quite owners. As an example, for property taxes in Ontario residents are considered to be owners by the sponsor and are responsible for paying the taxes. In terms of management of the development, residents are considered renters and, in most cases, have little say in how the complex is run. This dual role creates frustration for many residents. In market value units, where good management of the complex can affect their ability to sell their interest for more than they paid, the inability to influence management decisions is considered a drawback to life lease over condominiums. They feel if they have to pay property taxes and their unit value is affected by management decisions, they feel they should have a say in the management budget and process. (This is not true for all residents; see section on resident involvement in management).

In most cases, residents are eligible for government grants if they qualify in terms of income. For example, in B.C. residents may qualify for the Home Owners Grant which reduces property taxes by a maximum of $570 before age 65 and up to an additional $275 after age 65. Ontario residents can claim the Property Tax grant if they are eligible.

There is a proposal in Manitoba to exempt property owners over age 65 from school taxes. This would only apply to life lease residents who have their interest registered on the front of the title document; otherwise they would not be considered eligible.

In all cases, sponsors do not apply for grants or rebates; this is left to the individual resident.

Rental of Units

Research Questions
If sponsors of life lease housing projects were unable to lease some of their housing units, would they be legally allowed to rent them? What restrictions, if any, would apply, and what are the legal or regulatory sources of such restrictions (e.g.: provincial tenancy legislation)? Are there any restrictions preventing life lease residents from renting their units to others? What would the implications for the remaining life lease holders be?

We did not find a life lease complex in the case studies where the sponsor was allowed to rent units that did not sell in the initial marketing phase, except in Manitoba. In some cases, this caused some hardship for sponsors. The construction financing has a time limit on it after which it must be repaid. If insufficient units have been sold, the sponsor may not have sufficient funds to do this. In one situation we are aware of, the parent organization had to provide interim funds until the remaining units could be sold. In Manitoba, a landlord can rent a unit temporarily to a non-life-lease resident if he is unable to find a “purchaser”. In addition, he must provide an irrevocable letter of credit or equivalent security for an amount equal to the rent for the first year for any un-leased units.

In most of the case study sites we visited, rental of the unit by the leaseholder is not allowed by the lease agreement; this restriction was usually put in place to control who is living in the building. In one case study, rentals were allowed to people in the appropriate age group with the approval of the sponsor. There are restrictions in some agreements not allowing long term guests under the age limit of the building. Some buildings have a guest suite to allow family members to visit relatives in the building.

A few projects we visited allow rental of units. This has a couple of advantages for both the unit holder and the community at large. A child can own the life lease interest and rent it to his/her parents, giving the benefits of a real estate investment, claiming CCA to reduce taxable income on the rent. A working child is also more likely to be able to obtain financing on the unit if necessary. When the parent leaves, the child can move in if of appropriate age, rent the unit to another senior, or sell. This system also allows seniors with reasonable income but a lack of capital to occupy a unit in a life lease development. The sponsor retains the right of approval of the renter so that the age restriction remains in place. For residents who leave for a medical reason or for a vacation but who wish to return, the ability to rent the unit while they’re gone is a distinct financial advantage. Disclosure of the ability to rent the unit in the occupancy agreement is an important element for some seniors.

Conversion of use

Research Questions
If municipal land use approval is based on a project being life lease, what happens if the sponsor wants to convert it to condominium (strata) or rental?

We found one example of a life lease project conversion in B.C. initiated by residents. Once constructed, the residents felt they would have more control over the management if the building were in a condominium format, since they have title to their units. The sponsor allowed the conversion to proceed (based on a majority of residents asking for the change). The sponsor has since built a second life lease building; they provide services to both buildings although, in essence, they no longer have any interest in the first building. This is not an ideal result in their estimation.

Under the Manitoba legislation, a sponsor can sell the building but the new owner must run it as a life lease complex. If the property reverts to a new owner through foreclosure, a tax sale or mortgage sale, the new owner is not required to refund any entrance fees but the residents can remain as tenants under the Residential Tenancies Act; any increases in rent would be subject to the rules under this legislation, which could affect the value of the building for the purchaser.

In many cases, the life lease developments were approved as condominium units, rather than life lease. Municipalities seemed more concerned with the size and type of construction for buildings rather than the form of tenure. We did not find any municipalities concerned about the transfer of property use to rental or condo from life lease.

Life Lease Agreement

Research Questions
Current life lease agreement forms vary from province to province and from project to project with respect to the types of clauses and conditions that are included in the forms. Is this creating confusion among sponsors, lenders and seniors considering life lease housing? What benefits would result from developing a standard life lease agreement form that could be used by interested parties in, e.g., British Columbia, Saskatchewan, Alberta, Manitoba and Ontario? What would need to be done to develop and implement such a form?

Ten case study sites were not willing to share their life lease agreement with us. We received 1 agreement from Saskatchewan, 2 from B.C., 2 from Ontario. Agreements varied widely in the clauses included and ranged in length from 10 pages to over 25. The following comments relate to those agreements we obtained.

In Ontario, many sponsors hired Life Lease Associates (LLA) to assist them with the development process. In the case study sites visited, they took LLA's general form and added clauses as appropriate, so there is a common base among these. Often sponsors have their agreement reviewed by one or more lawyers before using it, to ensure their interests were protected and to identify any potentially contentious clauses. This has the added benefit in smaller communities of educating the local legal community about the life lease concept.

Other projects using variations of the market value model appear to base their agreement on a basic condominium agreement, modified where appropriate. These agreements are extremely long (25+ pages) and may include rules of occupancy, floor plans etc.

Manitoba legislation governs what must be disclosed through various forms to prospective and current residents; this would not need to be included in a standard life lease agreement in this province.

While it may be difficult to develop a standard life lease agreement that will work for the many models that have evolved across the country, there are certainly clauses that should be included in any agreement that would help protect the residents and/or the sponsors. This is discussed further in the recommendation section.

Regulatory Options

Research Questions
Given the particular characteristics of life leases, what are the most appropriate regulatory options? Should there be special regulations with respect to the relationship between sponsors and life lease holders?

There are several ways that consumer protection issues related to life lease could be regulated. One is to have no regulation; allow the industry to self-regulate and life lease residents to use the courts to enforce contracts where necessary. Given the risks for consumers, especially in this age group, this does not seem reasonable in the long term.

The second option is to provide separate legislation for life lease housing. Manitoba has separate legislation for life lease housing and units are also specifically covered under the Residential Tenancies Act. This has the advantage of allowing prospective life lease tenants to find out about rights in one specific place and was the approach used in most provinces when condominiums became a popular form of tenure.

The third option is to include life lease housing specifically under existing legislation affecting housing (e.g. rent control legislation; in fact Manitoba uses this legislation to cover aspects of annual rent increases.) British Columbia has amended the Real Estate Development Marketing Act to specifically regulate what needs to be disclosed before marketing residential units; this is a revised act replacing previous legislation with a similar purpose. While it does not specifically cover life lease housing, marketing of life lease interests is covered under the act. The Ontario legislation regarding land transfer taxes has been amended to specifically address life lease transfers. Each piece of legislation should be specific about how life lease housing should be treated. For example, increases to the monthly fees could be regulated by the Residential Tenancies Act in Ontario. The disadvantage to this approach is that consumers or their advisors need to reference several pieces of legislation to find out their rights.

There were mixed responses from residents to the question of whether there was a need for legislation specific to life lease housing. Residents in successful projects felt their sponsor did not need regulation. Some could see the general consumer protection issues facing purchasers of life lease interests and thought legislation similar to that for condominiums would be advantageous.

Sponsors had mixed reactions to the questions; they felt it might be necessary for other developers but they did not require it. There was also concern that the legislation would be so specific that the creativity in providing different forms of housing would be lost. Any legislation developed needs to recognize that there are a large variety of formats for life lease housing, even within each province. Legislation that did not allow for a Manitoba type format to be developed in Ontario would be unnecessarily restrictive.

One key informant in B.C. indicated that life lease was going “the way of the dodo” because residents are not protected under the residential tenancies act or under the condominium act.

Other than Manitoba and B.C.’s disclosure requirements, there are no current provincial initiatives for life lease legislation. All provinces have considered the need for life lease legislation. Alberta has no plans to legislate; their view is that seniors have recourse to the courts if there are problems with their agreement. Saskatchewan has looked at the need for legislation seriously but as they have had no problems there is no current pressure to introduce a life lease act.

Would you buy a Life lease Unit again?

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 they were extremely happy in their choice of housing. (see satisfaction ratings in questionnaire section following).

Summary: Focus Group Questionnaires

It should be kept in mind that those completing the questionnaires were elderly. They had a variety of education levels and English was not a first language for some. It was not clear that they always understood what the questions were asking. The questionnaires were completed onsite at the end of each of the focus group discussions to ensure high response rate. Thus, respondents were relying on memory for things such as unit cost, size and monthly fees, so this could have led to inaccuracies. As well, some respondents indicated verbally that their children had handled the financial arrangements for them and they were estimating what they thought the numbers had been.

Questionnaires were completed by a total of 238 of the 272 residents of life lease housing who participated in the focus groups. Those who did not complete questionnaires had prior commitments after the focus group, did not have glasses with them or were not willing to commit the additional time required for this task.

These questionnaires were designed to ask questions that residents might not be comfortable answering in front of their neighbours. The following summarizes their responses:

Previous housing: Most life lease residents (79%) moved to their units from single family homes. The remainder lived in townhouses or apartments, often through condominium ownership. Those who had lived in both forms of housing tended to prefer life lease because of the ability to restrict residency to those over 65. 93% of life lease residents owned their previous housing.

Demographics: Half (50%) of residents reported their age when they moved into their unit at over 75, 37% were between 65 and 74 and just 12% were 55-64. The average age of entering residents is thus over 75, much older than was anticipated when the life lease concept was developed. While they may be healthy and physically active when they move in, the probability of residents encountering health problems of some sort within 5 years of moving in is relatively high. This fact was commented on by several sponsors we interviewed. Approximately half (47%) of residents share their unit with their spouse; 52% live alone and find the supportive nature of the life lease community very attractive.

Units: The average number of bedrooms in the life lease units was 1.8; average square footage 1104 sq ft. Prices varied considerably across the country as would be expected given the different formats. The average price in Manitoba was reported as $64,392. Residents pay rent in addition to this capital contribution; rents in 2005 averaged $997. In some of these complexes, residents can increase their deposit in exchange for paying a lower monthly rent. For example, a resident occupying a 1 bedroom plus den in a complex can pay as little as $34,000 and a monthly rent of $800 or can put down as much as $84,000 (full value) and lower his rent to $612. Saskatchewan units averaged $61,569; for these units as well, residents pay a monthly rent as well as their up front cost. The average rent in 2005 was reported as $467.

The units in other provinces cover more of the capital costs of the developments and are therefore higher. British Columbia units averaged $159,000, with monthly fees averaging $230. In Toronto the average unit price was $215,366, with monthly fees of $492. Outside the GTA in Ontario, unit prices averaged $163,000, with fees of $455. Prices of Alberta units averaged $161,747 with monthly fees of $347.

Satisfaction: Satisfaction ratings were high for the 6 categories we queried. The average rating for “quality of life” was 6.5; although one respondent recorded a rating as low as 2 for this, the median was a 7 (all questions were rated on a scale from 1 to 7 where 1 was extremely dissatisfied and 7 was extremely satisfied).

Satisfaction ratings areas are displayed in the table below:
Satisfaction with:

	Design	Building	Services provided	Maintenance	Quality of Life	Value for money
Mean	6.1	6.31	5.71	5.55	6.32	6.04
Median	6	6	6	6	7	6
Std. Dev.	1.1	4.22	1.6	1.58	0.98	1.2

Conclusions:

There are several issues related to life lease stemming from the fact that there is no legislation covering most of the developments in Canada. Except in Manitoba, the tenure status of residents is a grey area, particularly for market value life lease. The sponsor holds title to the building and is responsible for ensuring it is well maintained and holds its value. Life lease holders have the right to occupy their unit. However, the life lease holder is also greatly concerned with ensuring the building is well managed, that there is continuing demand and a waiting list for units and that, ideally, the market value of the life lease interest increases over time (or at least does not diminish). In most complexes, however, the sponsor is the only entity that has any real control over how the building is managed. In most case studies, residents are informed about operating budgets and management decisions but have no input into how these are determined.

The life lease concept and operation is not clearly understood by some professional advisors, lenders and some occupants. There is a need for education about the pros and cons of owning a life lease interest relative to other forms of tenure. There is also a need for disclosure requirements before seniors purchase their interest to ensure they are aware of the potential risks they face in their particular development. Life lease purchasers need to understand their limited control over decisions about management of the building, compared to that of a condo owner, before they make their purchase. They also need to understand the risk they face that they may not receive their capital back in a timely manner if the real estate market is poor, or at all if the sponsor becomes insolvent (market value model) or the sponsor has insufficient reserves/prospective new purchasers to pay all claimants or becomes insolvent (in a model where a specific capital return or return of original capital is guaranteed when the resident vacates). The risks faced by those buying under the life lease model are somewhat higher than for those investing in a condominium; their pool of prospective purchasers of their unit when they leave is smaller because they are selling the life lease interest only and they can only sell to seniors.

Non-profit sponsors, for whom this may be their first real estate development, also need assistance with this process to avoid financial and reputation problems. Life lease agreements varied considerably across the country. In some cases this left residents unprotected in certain areas but in other situations, sponsors were vulnerable.

Recommendations:

Legislation:

- Consideration should be given in each province (except Manitoba where legislation has already been adopted) to creating life lease legislation in the way that condominium legislation was identified as a need when this form of tenure became popular. All 5 provinces have Condo or Strata title legislation; life lease housing needs similar attention. A single life lease act has the advantage that sponsors, residents and their advisors can find appropriate information in one place. Alternatively it is possible that the identified potential consumer protection gaps can be addressed through existing legislation; for example, B.C. has the Real Estate Development Marketing Act which identifies disclosure requirements for marketing residential real estate including life lease units, although these are not specifically identified in the act. There is a need for consumer protection legislation of some form to address the concerns cited above.

- any legislation developed should be flexible within each province to recognize existing variations in life lease form and continue to allow creativity in developing new forms of life lease housing

- legislation should include:

    - rescission period (7 days as for condominium purchases)
    - how life lease interest can be registered
    - tenant representation on Board
    - clarification of whether provincial rent control legislation affects increases in monthly occupancy fees
    - under what conditions deposits may be used by developer to fund construction (or for other purposes)
    - reserve fund requirements (analogous to condo legislation)
    - disclosure prior to marketing of: who the owner/operator of the housing will be (often this is a separate foundation rather than the parent non-profit company), term of the lease, investment requirement, method of sale of interest and/or other

options for termination of the lease by either side, risks associated with obtaining refund of entrance fee/leasehold cost, who is responsible for paying occupancy charges and property taxes, common areas and facilities to be included in the development, estimated date of construction start and completion, construction warranties, planning approval/building permit obtained, how development will be financed, (see Manitoba Life Lease Act and B.C. Real Estate Development Marketing Act)

Resident Involvement in Management

- Sponsors should be required by legislation to create a minimum number of spaces on the board for residents; this is likely to increase resident satisfaction and consequently, resale demand and value; these positions could be non-voting or could have voting rights.

Documentation:

- There is a role for a base life lease document that new sponsors could adapt for their project, to ensure they cover all clauses that should be included to protect their residents and the sponsor themselves. It may be that there are several versions – one for the "pure" market value model, one for the guaranteed buyback model, etc. These may not be province specific but rather life lease model specific.

Financing:

Construction financing:

- Criteria that must be met to get advances under this financing (# of units sold, time limits on these sales, etc.) need to be made clear to the sponsor up front. This is likely done by most lenders but recognition of the lack of real estate experience among sponsors may mean this information needs extra emphasis or frequent repeating. This becomes more important when purchaser's deposits are protected against unlimited use in the construction process as they are in Manitoba.

- A development advisor and experienced construction project manager may be needed to ensure the construction costs are monitored and the marketing plan ensures units are sold on schedule

Long term mortgage financing for sponsors:

- If the sponsors need long term financing to cover some development costs, they will not want resident interests registered on title unless they are subordinate to the lender's debt. However, this puts life lease holders at risk as the mortgage may take priority over the life lease holder's interest and their investment could be lost.
- The priority of the loan relative to residents' deposits/investments needs to be clear in the legislation. Will lenders have access to deposits if the loan is in default? Whichever way this is decided it has implications for the residents or the lender.

Long term mortgage financing for residents would be easier to obtain if:

- Units were covered under provincial warranty programs

- A resident's interest in the life lease was somehow recorded on the title. This conflicts with the interests of the lender if the sponsor wants a long term mortgage on the property. However, this puts life lease holders at risk as the mortgage may take priority over their interest and their capital investment could be lost. It may be that the resident will not be allowed to finance his interest if the sponsor has a permanent mortgage loan, or that the resident will have to have a subordinated loan.

Professional Advice:

- Seniors should be strongly encouraged to seek professional advice before purchasing a life lease interest. The Manitoba legislation requires this advice be given in writing during the marketing phase. This recommendation is based on the complexity of this type of investment and the evidence from the focus group session that not all residents understood the nature of what they had purchased. It is critical however, that advisors be well versed in life lease issues, through the education process suggested below.

Education:

- Most seniors are not familiar with the life lease concept. Similarly, there is a lack of understanding among lenders, accountants, lawyers and others about what life lease is and the benefits and risks of investing in a life lease unit. Many seniors in the focus groups indicated they were advised by lawyers or accountants not to purchase their unit but did so anyway because they liked the design and location of the complex and trusted the sponsor. Some of this reluctance by advisors was based on lack of understanding and some on legitimate concerns. A web site and other sources of life lease information, operated by an independent body, would greatly assist in this education process.

New Sponsors

It is important for sponsors to carefully consider the intricacies of providing this form of housing. In particular, they need to:

- Carefully choose a location that will appeal to prospective residents and is accessible to services required by this age group. In some cases, sponsors acquired land on the outskirts of a community where it was plentiful and cheaper than land closer to the core. While this led to beautiful "nature" settings, which residents liked, it also meant that a car was required to get to services. Sponsors need to consider the implications of this as their population ages.

- Carefully consider what services to offer in the new building. The cost of these need to be borne by the residents (unless the sponsor consciously chooses to subsidize them). If they are too expensive, or too difficult to estimate costs for, residents may balk at paying for them; if they have to be discontinued, some residents who bought because these services were offered will be dissatisfied.

- Carefully choose the design for the building and units, in conjunction with someone familiar with senior's issues and preferably with a focus group of potential purchasers. While most buildings were designed to be accessible, with wider hallways and lever door handles etc., residents had complaints about other features in some units. For example, one building had high bathtubs and residents would have preferred walk-in showers and/or tubs with low sides and grab bars.

- inform themselves fully (and very early in the planning process) about the intricacies of obtaining financing for the construction of a life-lease project.

Appendix 1 Discussion Guide for Personal Interviews with Sponsors (Case Studies)

Introduction

- Consultant introduces him/her self. Explains is an independent researcher/consultant conducting a study for CHMC. Purpose of the research is to identify issues which have emerged around life lease projects. We want to get a range of perspectives including those of those of organizations who are sponsoring life lease projects.
- Research results will be used to help make positive changes (to policy, regulation) for those building, sponsoring, and living in life lease projects and for other Canadian seniors like them.
- Request a copy of the life lease agreement (preferably before visit so it can be reviewed and any clarifications sought during the interview)
-

Attractiveness of life lease tenure

- Describe the life lease project(s) you have been involved with , particularly the case study property – number of units and design, use of developer/advisor, financing, mix of tenure types, services provided, marking, types of residents, issues that came up during construction, marketing, operation. (Ask for copy of agreement if not already obtained)

- What are advantages and disadvantages to life lease over other forms of tenure? Why did you become involved in this project?

  (Identify what other forms of tenure sponsor has direct experience in, or which sponsor has examined in detail. Focus discussion on these forms , emphasizing life lease and why it was chosen.)

Involvement of life lease holders in operation of housing

- How much involvement do life lease holders have in the operation of their housing? i.e. is there a resident advisory committee of some form?

- What is the demand from residents to participate in the management of their housing. (Probe discreetly whether this is superficial involvement or actual decision making on the residents behalf)

- What is sponsors' reaction to this demand, e.g. are residents demanding to participate more/less than sponsors would prefer and in what ways?

Value of the life lease and Provisions for Resale

- How can/should the lending value of a life lease home be established for resale (or for lending purposes)?

- Based on actual experience, what "selling values" have life leases achieved in your project? Are actual selling values more, less, at par with original investment? If more or less, what are differences reflecting? Appreciation (if more)? Fees (if less)? Other factors?

- What have the sales experiences been (positive or negative aspects?)

- What are the provisions for resale of life lease interests in your project? Is there a waiting list of prospective residents? Do residents sell on their own? Do they use real estate agents? What process do you use for selling if units are returned to you? (waiting list? advertising? real estate agents?)

- What are the implications of these experiences for sponsors? For lease holders?
- What are the possible resolutions of any problems that have arisen?

- How do the values obtained compare with comparable condominium units?

- What fees are charged for selling unit interests for residents?

When the lease holder leaves

- According to agreements in sponsor's project, what happens if life lease holders have deteriorating health of other debilitating circumstances? Are they required to vacate their unit? At what point?
- Has this happened in your project? Any negative reaction from the person "evicted" or other residents?

Purchase and Financing the life lease , Deposits

- How do sponsors calculate:
  - The initial balance (cost of the life lease) to be contributed by the resident

- What proportion of the value of the housing unit and the value of accessing common areas is covered by the entrance fees paid by lease holders? Is this money required all at once? What is the timing of having to submit this money?

- In your province, are pre-occupancy deposits in life lease housing projects held in trust or available for use in the financing of construction?

- What are the refund and interest provisions for these deposits, if the project doesn't proceed? If the purchaser backs out?

- Are there any concerns? For which stakeholders? How could these concerns be addressed?

- How do life lease holders finance their lease purchase? (Explore the role of the sponsor in the financing of the lease? Provided financing? Facilitate financing? If so, how?)

Monthly fees: calculation and regulation

- How do sponsors calculate:
  - Monthly fees (initial and increases)
  - Escalation rate of life lease holders contributions towards the reserve fund for major property repairs

- What is covered by monthly fees?
  - Were life lease holders clearly advised on this? [How? e.g. detailed in agreement?]
  - Did lease holders know what costs their monthly costs would cover?

- What has been the average annual increase in monthly fees since the project opened? What has been driving the increases (increases in costs? increased services? etc.)

- What are the average monthly fees for life lease holders? How do these compare to the monthly charges for condominium owners?
- How do you decide on additional services to offer residents? (survey of residents, management decision) Have the services offered changed over time? In what way?

Regulatory options for monthly fees

- What types, and level of detail, of information regarding monthly fees *should* be available to life lease holders, and when (e.g. prior to lease signing)?
- How should increases be regulated, e.g. in regard to rate of increase and notice period?
- Should there be an arbitration process?
- Should sponsors be able to make fee increases retroactive?
- What contingencies should be planned for significant vacancies?
- If revenues are down because fees aren't being collected for vacant units, should remaining life lease holders have to pay higher fees?
- How can life lease holders confirm that the charges are being fairly apportioned among the units in the housing project?
- How can they confirm that the apportioned charges are comparable to similar housing?

Support Services – provision and regulation

- What are the connections between the shelter and service components in your project? Do you offer support services such as meals, housekeeping and monitoring?
- What recourse do life lease holders have if their residency depends on receiving these services but the services are, or become, unsatisfactory?
- If you only offer shelter in the life lease project, with the option for residents to transfer to the care component of your operation when they need it: What provisions are there to protect lease holders in such cases?
- What are the licensing implications of providing care in a building where residents lease their units? If a license is revoked, are life lease holders' interests and investments at risk? What recourse would they have?

The reserve fund
- How much do sponsors have in the reserve fund for major repairs? [How is the annual required contribution to the reserve determined?]
- What process is in place to ensure that funds are available when needed? Are professional reserve studies done occasionally to estimate future reserve requirements (as in Ontario condos)?

- What processes are used to raise or lower charges to life lease holders to keep the fund at the appropriate level?

Taxation: Property and Land Transfer Taxes

- How do property taxes apply to this life lease housing project? How is this life lease project assessed for property taxes compared to other forms of tenure? What tax rate is applied locally (multi-family or single family?)
- How do land transfer taxes apply to this life lease housing project?

- Who receives the property tax assessment notice, the sponsor or the life lease holder?

- Are life lease holders directly responsible for each of these taxes?

- If life lease holders are responsible for paying property taxes, what happens to the sponsors' interest in the property if they default and the local government takes action against the property?

Security, Deposits, Registration

- Compared with condominium owners, what is the level of security among life lease holders with respect to the tenure of their housing and their investments?

- Were pre-occupancy deposits held in trust or used for construction financing?

- Is the life lease interest registered on the land title?

Default by Project Sponsor

- What happens upon default by the sponsor of a life lease development?

- If the project has to be sold, what are the rights of, and risk to, individual leaseholders?

Default by Individual Life Lease Holder

- If a project experiences ongoing vacancies due to default by individual lease holders, what protections would remaining life lease holders need to ensure that they get all the maintenance and services they are paying for?
- What are the implications for the sponsor, lender and mortgage loan insurer?
- What resolution options exist?

Legal status/protection, Government Grants and Tax Credits

- Are life lease holders [in province relevant to sponsor's project] considered to be renters or owners? [details covered with KI s in gov't sectors]
- Would low or moderate income life lease holders be eligible for provincial rent subsidies? What are the requirements [for qualifying]?

- If life lease holders are considered to be owners, would they be less protected against fee increases, eviction etc. since not covered by provincial rent review legislation?

- Would low or moderate income life lease holders qualify for assistance offered to homeowners in your province? What are requirements for qualifying?

- Who should apply for them, life lease holders or the sponsors?

- What are the options to address these issues?

Implications of fixed term lease
- If life leases have a fixed term, what happens when they expire? e.g. are they renewable?
- Would you build on leased land? What are the implications if the land lease is less than the term of the life lease?

Rental in event of non-lease of units
- If sponsors of life lease housing projects were unable to sell a life lease interest some of their housing units, would they be legally allowed to rent them?

- What restrictions, if any, would apply, and what are the legal or regulatory sources of such restrictions (e.g. provincial tenancy legislation; sponsor/resident agreement)?

- What would the implications for the remaining life lease holders, [lenders, loan insurers?] be?

Incidence of Failure
- Are you aware of any projects where life lease sponsors have failed to complete their projects and give possession of the housing to life lease holders?

- If yes, what were the reasons for such failures?

- What are the options to avoid them?

Change of use from original land use approval

- If municipal land approval is based on a project being life lease, what happens if the sponsor wants to convert it to condominium or strata? Did you need to re-zone the land to develop the life lease project? Was there any municipal resistance /confusion during the rezoning about what the life lease concept is?

The life lease agreement

- Current life lease agreement forms vary from province to province and from project to project with respect to the types of clauses and conditions that are included in the forms.

  - Is this creating confusion among sponsors, lenders, and seniors considering life lease housing?

- What benefits would result from development a standard life lease agreement form that could be used by interested parties, e.g. in each of the five provinces?

- What would need to be done to development and implement such a form?

    - e.g. the disclosure part of the agreement could be provided separately and be tailored to the individual needs of the sponsors.

Regulatory Options

Given the particular characteristics of life leases, what are the most appropriate regulatory options? Should they be treated as rental or ownership? Should it be mandatory that the leaseholder's interest be registered on title? Should there be special regulations with respect to the relationship between sponsors and life lease holders?

General

Are there any issues you are aware of related to life lease housing that we have not discussed?

Are there any other comments you would like to make?

Appendix 2 -Discussion Guide - Focus Group Discussions with Residents of Life Lease Residences and Questionnaire

Introduction

- First of all, thank everyone for showing up!
- Discussion leader introduces him/her self. Explains is an independent researcher/consultant conducting a study for CHMC.
- Remind participants of why discussion is taking place: to learn about their real-life experiences with life lease projects. We are talking to residents in projects in five provinces. CMHC will disseminate the findings of the research among those building, sponsoring, and living in or considering life lease projects to help them better understand life leases and how they work.
- Assure of confidentiality: session is being recorded to help with writing up results of findings. However, comments made by individuals remain strictly confidential and will not be linked to them in any way in the final report. That report will note only that we spoke with a group of residents from this life lease project – no further details about your identity are recorded. Asks all participants to sign consent form.
- Only one rule: speak one at a time.

A Exploring decisions to choose a Life Lease Project

What factors led you to choose the life lease option?
Probe:

- Why did they choose this particular housing complex over staying where they were?
    - ➢ How much was your decision influenced (positively or negatively) by the fact that the project was a life lease tenure form? Would you have moved in if it were condo or rental?
    - ➢ What other housing forms did residents explore in addition to life lease option (rental, buy smaller house, condo, mobile home, supported living building, etc)?
    - ➢ What did they see as the main advantages of the life lease option over (each of) the explored? Did life leases have any disadvantages compared to certain options?
- Did they move communities in order to purchase a life lease? How important was it not to have to move from community? (Did it overcome reservations about life lease format?)
- Before purchasing the life lease, did residents know anyone else who had purchased a life lease? If yes, what bearing the experiences of others have on their decision? Did they own a unit in this complex?

- Was return of entrance fee (Manitoba type life lease) or ease of sale of the unit (to the sponsor) (Ontario type life lease) when you move out one of the attractions?

How did the identity of the Sponsor factor into your decision to choose life lease?

Probe:

- How familiar were residents with the sponsor of the project before investing? How important was the identity of the sponsor to the decision to purchase a life lease? i.e. how important was it that they had heard of the organization/believed it to have a good reputation/had been involved with it directly themselves or had people close to them who had, etc.

- What steps did residents take to discover more about the sponsor (due diligence): sponsors' financial solvency, management ability, community reputation

- What other professional advice did residents seek before deciding to purchase a life lease: e.g. lawyer, accountant, tax specialist, etc. What concerns did these professionals voice? What advice did they give? What was the general attitude of these professionals toward the investment? What was their general level of knowledge about life leases?

Did you finance your life lease purchase?

Probe:

- Were residents required to pay the full up front cost in one lump sum? Could they pay a deposit and then pay the balance later? Were the deposits held in trust (if this was a new building under construction)?

- Did you borrow to pay your entrance fee/life lease cost? (if not skip next question)

- How did residents finance the purchase of their life lease?

    - Which organizations provided financing for life leases? (types and names of organizations)? Did the sponsor provide financing? Or the developer?

    - For those obtaining financing from the sponsor, how were terms compared with terms from other organizations?

    - How easy was it to obtain funding?
        - Which potential lenders were contacted (names and types of lenders)
        - Generally, how knowledgeable were organizations contacted about life leases?
        - Did they have personnel experienced at drawing up financing for life leases?

- (Don't ask if sponsor has already provided answer)Was your life lease registered on title? (Explain – legal interest in the property registered in the land titles office, similar to registration of deed of ownership)

What have the costs been for your life lease unit – initial investment and monthly fees?

Probe:

- What provisions exist for lease holders to pay a greater percentage of the value of the housing unit upfront? (e.g. into a second security fund) Have people taken advantage of these opportunities? Why and why not?

- Was the initial cost of your unit reasonable/ affordable?

- At the time of purchasing the lease, was it made clear to residents what costs/services were covered by the monthly fees? Do residents pay the full monthly fee regardless of the services they need currently or are there optional portions? Can residents arrange for services themselves (whether offered by the sponsor or not?)

- What specific costs <u>do</u> monthly fees cover? What provisions are there for a contingency fund? Is there a component of the monthly fee that is put aside for major repairs/renovation at a later date (similar to the reserve fund for a condominium?)

- Based on experiences so far, are monthly fees going up by about as much as expected year to year? If fees are rising faster than expected, what factors are behind this rise? What are residents' attitudes toward faster-rising fees? Anyone experiencing lower rates of fee increase than expected?

What is the opportunity for Resident/Tenant Involvement in Operation/Management of the project

Probe:

- How do residents individually participate in the management of the life lease project?
  - Is there a resident's advisory council? Do they/have they belonged to the resident's advisory council?
  - Do they ask to see the independent auditor's statement?
  - Do they attend advisory council meetings (as observers)
  - Do they exercise voting rights?
  - Do they do something else?

- What level of participation is expected/allowed of them in the agreement?
  - Were these expectations clearly laid out?
  - If not, what was unclear about the expectations? What wasn't mentioned?

- Do residents perceive expectations of involvement are reasonable? If not, how are they unreasonable?
  - Would they like more involvement? In what ways?

- Would they like less involvement? How?

How secure do you feel about your tenure status and about the return of your life entrance fee/equity when you leave your unit?

Probe:

- Do you feel you have security of tenure in your unit? How does this compare to other forms of housing (e.g. condominium)

- What happens to the up-front entrance fee/cost if residents move out?

- Can residents ever be asked to move out of the life-lease project? Under what circumstances can they be required to leave?
    - Loss of mobility
    - Onset of serious illness
    - Other serious loss of independence
    - Other circumstances

- What provisions are in place for the refund of entrance fees/sale of life leases in this project? (Ask only questions which apply to the form of life lease; e.g. Manitoba requires refund of entrance fee only – no "market" sale involved)
    - Is buy-back by the sponsor guaranteed? Is there a time limit on when the sponsor has to repurchase (e.g. three months?)
    - Does the unit have to be sold through the sponsor or can it be sold on the open market with sponsor approval of the new occupant?
    - How much of the original up-front investment is returned?
        - nothing (true life lease)
        - 100%?
        - 100% plus any appreciation ?
        - declining balance with time lived in unit?
        - How much is the sponsor's fee for handling the sale? What does it cover? e.g. refurbishment, cost of selling, etc. (Do residents know this?)

    - What other re-sale provisions exist?

- What have the experiences been so far with residents who have moved out? Have sponsors bought back leases/refunded entrance fees as agreed? Have residents recouped as much money as they expected? How long did the process take? What surprises were there – good or bad??

Overall Satisfaction with Life lease – How satisfied are you with your life lease unit/purchase?

Probe: How satisfied are residents with the **overall quality of life** in a life lease project?

- What is it about the life lease residence that contributes to a good quality of life?

- ➢ What aspects detract from a good quality of life? (Probe: how well the building and investment is managed, services available (are they what you need now or anticipate needing in the future), building amenities, other factors including psychological ones – being neither an owner nor a renter, etc)

- ➢ Are there concerns about the security of tenure (right to stay as long as you feel you are able)

- ➢ Any concerns about the security of the money invested in the unit?

Doing it over again – Knowing what you do now, would you invest in a life lease again?

Probe:

- If not, why not?
- If friends were contemplating purchasing a life lease, what are the key questions you would advise them to ask beforehand?

Resident Questionnaire: Purchasing a Life Lease Residence

- Approximately how long ago did you enter into your life lease agreement? _______________
- What type of housing did you live in before moving to your life lease unit?

  ____ house ____ townhouse ___ apartment ____ other (Please specify ___________)

- Prior to moving to your life lease unit, did you ____ own or ____ rent ______ live with friends/family? __________

- How old were you when you moved into your current housing?

  ____ under 55 ____ 55-64 ___ 65-74 ___ 75 or over

- How many bedrooms are there in your residence? ________

- What is the approximate square footage of your residence? __________

- Do you live ______alone, ______ with a spouse/partner, ______ with a friend?

- How much are your monthly fees/rent this year (approx.)? _________
- What were they last year? _________

Financing the life lease

- Approximately how much did you pay for the life lease? ___________

- Were you required to pay this in a lump sum or could you pay a deposit then pay the balance later? (Please circle one)
  a. Lump sum
  b. Deposit with balance paid later

- Did you need to finance (i.e. get a loan for) some or part of the lease value?
  a. Yes
  b. No

- If 'yes', where did you obtain financing?
  a. Loan from bank, credit union or other commercial lender (specify) _______________
  b. Loan from project developer or sponsor
  c. Private loan
  d. Other ____________________

- If you financed the purchase with a loan (answer a) or b), above) what financing terms did you negotiate? e.g. length of term, renewal options, other (?)

  ____

On a scale of 1 to 7 how satisfied are you with the physical design (layout/decor/size) of your housing unit?

Not at all satisfied 1 2 3 4 5 6 7 Very Satisfied

On a scale of 1 to 7 how satisfied are you with the other physical aspects (parking, recreation facilities, common space) in your life lease complex?

Not at all satisfied 1 2 3 4 5 6 7 Very Satisfied

On a scale of 1 to 7 how satisfied are you with the level/quality of support services (recreation, medical assistance etc.) in your life lease project?

Not at all satisfied 1 2 3 4 5 6 7 Very Satisfied

On a scale of 1 to 7 how satisfied are you with the level/quality of maintenance services in your life lease project?

Not at all satisfied 1 2 3 4 5 6 7 Very Satisfied

On a scale of 1 to 7 how satisfied are you with the overall quality of life in your life lease project (e.g. support available, social interaction etc.)?

Not at all satisfied 1 2 3 4 5 6 7 Very Satisfied

On a scale of 1 to 7 how satisfied are you with the value for money/cost of your life lease unit (i.e. quality, size of space and services provided relative to cost)?

Not at all satisfied 1 2 3 4 5 6 7 Very Satisfied

2. For each service or amenity listed below, please indicate whether it is currently available in your residence. Assuming there would be an increase in your monthly fee to cover the cost of adding a service, among the services not currently available to you, which are of HIGH interest today? Which are not of high interest today but could be in the future? Which ones are never likely to be of high interest, if there is a cost involved?

Options for Services and Amenities in Life Lease Residences				
	Level of interest – for today or the future			
	Available in current residence	Yes - of high interest, today	Not of high interest today, but possibly high in future	Not of high interest, now or likely ever
Services (delivered in your building)				
24-hour on-site staff				
Nursing care				
Full meal service				
Organized recreational activities				
Other(s) :				
Amenities				
Wheelchair access				
24-hr personal call/response system				
Guest room				
Other:				

General:

What most influenced you to move into your current unit?

___

___

___

How much did the fact that the complex was a life lease affect your decision to move in?

Are there any issues related to life lease housing that you feel we did not cover adequately in the discussion or the questionnaire?

Appendix 3 Interview Guide

Interview Guide - Key Informants (only questions relevant to each respondents area of expertise were asked in each case)

Introduction

- Consultant introduces him/her self. Explains is an independent researcher/consultant conducting a study for CHMC. Purpose of the research is to identify issues which have emerged around life lease projects. We want to get a range of perspectives including those of those of organizations involved in financing, regulating, or having other involvement with life lease projects.
- Research results will be used to help make positive changes (to policy, regulation) for those building, sponsoring, and living in life lease projects.
- Note to Discussion Guide Reviewer: Not all questions will be asked of all Key Informants. Consultants will exercise discretion in determining which specific Key Informants will be asked specific questions.

Attractiveness of life lease projects

- What are advantages and disadvantages to life lease over other forms of tenure? Why did your organization become involved in life lease projects (lending, insuring, developing, legislating etc)? (A1)

- How can the lending value of a life lease home be established? (A3)

- What are the implications (for mortgage loan insurers, lenders) if life lease holders have to leave their homes due to deteriorating health of other circumstances (A4)

    - What options are there to address these implications (A4)

- What proportion of the value of the housing unit and the value of accessing common areas is covered by the entrance feed paid by lease holders? (A8)

- What is covered by monthly fees? (A8)

Taxation (A9)

- How do property and land transfer taxes apply to life lease housing projects?

- Are life lease holders directly responsible for these taxes?

- Who receives the property taxes assessment notice, the sponsor of the life lease holder?

- How are life leases assessed for property taxes compared to other forms of tenure?

- If life lease holders are responsible for paying property taxes, what happens to the sponsors' interest in the property if they default and the local government takes action against the property?

Security (A11) Registration (A13)

- Compared with condominum owners, what is the level of security among life lease holders with respect to the tenure of their housing and their investments? (A11)

- How is the life lease interest registered on the land title? (A13)

Default by Project Sponsor(B1)

- What happens upon default by the sponsor of a life lease development?

- [In each of the five provinces]What types of regulation/legislation apply ?
- In the event of default, what are the implications for the lender? The loan insurer? What resolution options exist?

- [For 2 municipalities in each of the provinces] If the municipal government waives development cost charges, or provides other assistance to support the project, what happens if the sponsor defaults on the mortgage and the project is purchased privately and is
- converted to strata or rental with or without a senior focus?

Default by Individual Life Lease Holder (B2)

- What happens upon default by individual life lease holders? What types of regulation or legislation apply in each of the five provinces?

- What are the implications for other life lease holders in the affected housing project?

Financing and insurance (B3)

- Does your organization provide financing for consumers wishing to purchase life leases? If so, do you approach this type of financing any differently that, say, a mortgage for a house of condo? If so, what is different? [

- Although insurers may have insured a number of mortgage loans for the construction of life lease projects, they may not have insured the financing of the purchase of an individual life lease due to concerns about loan security. What are the options to alleviate lender and loan insurer concerns about loan security? [mortgage insurer]

Legal status/protection (B4)

- [In each of the five provinces], are life lease holders considered to be renters or owners, or do they have another legal status altogether?
  - What are the implications for life lease holders with respect to current provincial legislation? e.g. if life lease holders are considered to be renters, would they fall under the Residential Tenancies Act and be subject to the provisions therein regarding security deposits, eviction notices, etc.
- Would low or moderate income life lease holders be eligible for provincial rent subsidies?
- Would low or moderate income life lease holders qualify for assistance offered to homeowners?
- What are the options to address these issues?

Implications of Life Leases with and without fixed term (B5)

- [In each of the five provinces] If life leases do not have a fixed term, are they considered to be valid leases?

- If so, what provisions apply?

- If life leases have a fixed term, what happens why they expire, e.g. are they renewable?

- Can life lease housing developments be built on land that is leased for a fixed term?

Applicability of New Home Warranty programs (B6)

- In the context of life leases, what protection is afforded by new home warranties and to whom?

    - Are life lease holders directly involved and protected? Is there any consideration to including them in the future?

- Are there any concerns or implications? What actions could be taken to address these

Regulatory options (B7)

- Given the particular characteristics of life leases, what are the most appropriate regulatory options?
    - Should there be special regulations with respect to the relationship between sponsors and life lease holders?
    - What types, and level of detail, of information regarding monthly fees should be available to life lease holders, and when (e.g. prior to lease signing)?
    - How should increases be regulated, e.g. in regard to rate of increase and notice period?
    - Should there be an arbitration process? Who should arbitrate? (what body)?
    - Should sponsors be able to make fee increases retroactive?
    - What contingencies should be planned for significant vacancies?
    - If revenues are down because fees aren't being collected for vacant units, should remaining life lease holders have to pay higher fees? Again, have KI s had any direct experience of projects not collecting adequate revenues? What was the actual impact on lease holder fees?
    - How can life lease holders confirm that the charges are being fairly apportioned among the units in the housing project?
    - How can they confirm that the apportioned charges are comparable to similar housing?

  Is this currently under review/consideration in your province? What stage are the deliberations at?

Property and Land Transfer Taxes (B8)

- [In each of the five provinces] How do property taxes and land transfer taxes apply to life lease housing projects?

- How are life leases assessed for property taxes compared to other forms of tenure?

- Who receives the property tax assessment, the sponsor or the life lease holder?

- Are life lease holders directly responsible for these taxes?

- If life lease holders are responsible for paying property taxes, what happens to the sponsors' interest in the property if they default and the local government takes action against the property?

Government Grants and Tax Credits (B9)

- [In each of the five provinces] Can life lease holders take advantage of governments grants or tax credits offered to homeowners and renters in each provinces?

- What are the requirements [for qualifying]?

- Who should apply for grants or tax credit, life lease holders or the sponsors?

Rental in event of non-lease of units (B10)

- [In each of the five provinces] If sponsors of life lease housing projects were unable to lease some of their housing units, would they be legally allowed to rent them?

- What restrictions, if any, would apply, and what are the legal or regulatory sources of such restrictions (e.g. provincial tenancy legislation)?

- What would the implications for the remaining life lease holders, lenders, loan insurers be?

Security (B11)

- Compared with condominium owners, what level of security do life lease holders have with respect to tenure of their housing and their investments?

- Are there any implications?

- What are the possible resolutions?

Deposits (B12)

- [In each of the five provinces] Are pre-occupancy deposits in life lease housing projects held in trust?

- What are the refund and interest provisions?

- Are there any concerns?

- How could these be addressed?

Incidence of Failure (B13)

- [In each of the five provinces] Are there any data on the incidence of failure among life lease sponsors to give possession of the housing to life lease holders? ‘Are there any incidences of failure that KI is aware of?

- If failures have been reported, what are the reasons for such failures?

- What are the options/strategies for avoiding such failures?

Change of use from original land use approval (B14)
[For a minimum of 2 municipalities in each of five provinces]

- If municipal land approval is based on a project being life lease, what happens if the sponsor wants to convert it to condominium or strata?
- What is the KI’s experience with a such a use change? What was needed to effect the use change, e.g. what did the sponsor need to do? What did other players need to do?

Registration of life leases (B15)
- [In each of the five provinces] How is the life lease interest registered on the land title?

- Can sponsors prevent life lease holders from registering their leases on the title?

- What should a lender require regarding registration of life leases on the title?

The life lease agreement (B15)
- Current life lease agreement forms vary from province to province and from project to project with respect to the types of clauses and conditions that are included in the forms.

- Is this creating confusion [among consumers, lenders, insurers, regulators, other groups as relevant] about life lease housing?
- What benefits would result form development a standard life lease agreement form that could be used by interested parties, e.g. in each of the five provinces?

- What would need to be done to development and implement such a form?

  - e.g. the disclosure part of the agreement could be provided separately and be tailored to the individual needs of the sponsors.

General (for all)

Are there any issues you are aware of related to life lease housing which we have not discussed?

References

Anikeeff, M.A. and Mueller, G.R. 1998 Seniors Housing, Kluwer Academic Publishers, Boston.

Baxter, D & Ramlo, A. 1999 Housing Canada's Seniors in the Next 30 Years The Urban Futures Institute, Vancouver.

Burgess, B. and Lyons, L. 1995 Seniors and equity housing co-operatives, a study completed for the Lionsview Seniors' Planning Society.

B.C. 2003 Discussion Paper on Life Lease Housing available at: http://www.housing.gov.bc.ca/housing/lifelease/Life_Lease_Consultation_Final.pdf

B.C. Real Estate Development Marketing Act available at: http://www.qp.gov.bc.ca/statreg/stat/R/04041_01.htm

CMHC 1987 Report of the Life Tenancy Task Force, October.

CMHC 1990 Breaking the Barriers: housing Ontario seniors conference proceedings, June 27-29

Davis, C. 1993 Source Book on Life Leases: Findings of a survey of project sponsors, CMHC

DKM Housing Consultants 1999, Meeting Seniors' Housing Needs: A Guide for Community Groups, CMHC Socio-Economic Series Issue 45.

Financial Institutions Commission of B.C., 2005 Policy Statement 9 – Real Estate Development Marketing Act, available at: http://www.fic.gov.bc.ca/responsibilities/realestate/bulletins.htm#information

Genge Building Consultants 1998 Condition survey of high-rise rental stock in the city of Toronto, Ontario MMAH and CMHC.

Gutman, G. , Milstein, S. and Doyle, V. 1987 Attitudes of seniors to special retirement housing, Life tenancy arrangements and other housing options, Gerontology research Centre Simon Fraser University.

Hanes, T. 1999, "No law governs life-lease projects" Toronto Star, March 13.

Harrison, S. 1989 A profile of seniors using the life lease financing mechanism under the Manitoba Seniors Rentalstart Program, Manitoba Housing.

Insight Press 2003 Seniors Housing, proceedings of a conference held February 6-7.

Lindsay, C. A Portrait of Seniors in Canada, Third Edition, Statistics Canada Catalogue No. 89-519-XPE, October 1999.

Lumina Services Inc. 2003 Life Lease Housing in Canada: preliminary exploration of some consumer issues, CMHC External Research Program.

Manitoba Life leases Act, http://web2.gov.mb.ca/laws/statutes/ccsm/l130e.php , accessed Sept. 1, 2004

Manitoba Life Leases Act amendments 2005 http://www.gov.mb.ca/finance/cca/rtb/lifelease/lifeleasejune05.html accesses March 1, 2006

O'Brien, F. 2002 "Life leases emerge as seniors' housing option", Canadian Housing, distributed by Inman News, Feb. 21. http://db.inman.com/inman/content/subscribers/inman/column.cfm?StoryId=020204FB&columnistid=obrien accessed April 8, 2004.

Ontario Bar Association 2003 Life Lease: the New Wave in Retirement Housing, proceedings of a conference May 12.

Potter, S. 2005 "Leaky Promises" Saanich News, Sept. 21st.

Scherlowski, D., Kathleen Mancer Consulting, OSI Tandem Coop Resources and Langlais et Associes, 2000 Alternate Tenure Arrangements: Final report, CMHC.

Simmons, L. J., 1999 Life Lease Value Analysis And Review, Prepared for Housing Policy Branch, Ontario Ministry of Municipal Affairs and Housing

Skaburskis, A. 2002 Housing the Boom Bust and Echo Generations, CMHC Socio-Economic Series Issue 77.

Spurr, P. June 2002 Special Studies on the 1996 Census Data – Seniors' Housing Conditions, CMHC Socio-Economic Series Issue 55-B

Tencer, D. 2004 "Money woes kill life-lease in Glebe: Seniors home hoped to develop hybrid condos for people 55-plus", The Ottawa Citizen, November 5th.

Walter, Ron 2004 "Life-lease project is scrapped" Times-Herald (Moose Jaw), Dec. 14th.

Ward, B. 2006 "Seniors await refunds 17 months after codo project fails: $1M owed to 49 people who once had great expectations for life-lease deal", Ottawa Citizen, March 7th.

Warkentin, G. 2004 "Revenue minister to go to bat for Lion's View" Campbell River Mirror, May 19th.

Zock, G. 2006 "Life-lease option needed" The Ottawa Citizen March 17th.

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