RESEARCH REPORT

Guidebook on Life Tenancy Options

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A GUIDEBOOK ON LIFE TENANCY OPTIONS

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Prepared for
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ABSTRACT

This guidebook discusses a housing tenure concept called *life tenancy*. Under this form of tenure, a senior citizen can purchase a guaranteed lifetime occupancy of a dwelling, paying up-front a lump sum which represents a portion of the market value of the dwelling. On death of the senior, all property rights to the unit revert to the investor who holds permanent ownership of the dwelling.

Life tenancy as an option for seniors does not currently exist in Canada. Various aspects of life tenancy, primarily from the point of view of the consumer, are examined in the guidebook. The advantages and risks of life tenancy are discussed against alternatives. Some considerations from the investor's perspective are also examined, to raise awareness of the potential of this concept.

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EXECUTIVE SUMMARY

As more Canadians become seniors, their diversity in backgrounds and interests, and their different levels of health, income and assets, are increasingly being expressed in demands for a variety of accommodation and services. In particular, elderly people are now seeking options that will enable them to maintain independent life styles and financial self-sufficiency for as long as possible. Life tenancy could be one of these options.

What is Life Tenancy?

Life tenancy is a form of tenure for retirement housing which offers the opportunity of relatively low-priced, affordable shelter. Under this arrangement a senior citizen can purchase a guaranteed lifetime occupancy of a dwelling, paying up front a lump sum which represents only a portion of the market value of the dwelling. On death of the senior, usually all property rights to the unit revert to the investor who holds permanent ownership of the dwelling. Monthly fees are also paid by the senior to cover ongoing operating and maintenance costs.

The life tenancy purchase price paid by the consumer depends partly on his or her age (the older the person, the lower the price), and partly on capital cost recovery and long term profit for the investor. The purchase price could also depend on other factors, such as sex and marital status of the consumer, on the market situation, and on the dwelling itself (design features, size, location, etc.). Younger people pay more because they are expected to live longer. Similarly, because of their longer life-expectancy, women may pay more than men of the same age, and a married couple pay more than a single person of the same age.

There are currently no life tenancy arrangements in Canada. Some examples of this form of tenure emerged in the United Kingdom in the mid-1980s and Rentes Viagères, which represent a form of life tenancy, have a long history in France.

Advantages

Compared to outright purchase of a home, life tenancy offers the senior citizen a chance to buy occupancy rights to a home with a comparatively low entrance price (below full market value), thereby freeing assets which the senior can use to improve his/her standard of living.

The advantages which make life tenancy an attractive housing option for consumers are:

- *it could provide a guarantee of adequate housing in a good residential area at a price below full market value;*
- *it could provide protection against increasing rents (although not against increases in the costs of upkeep);*
- *it could provide housing that is within easy access to shopping facilities, hospitals, community centres, etc.;*

- *it could provide assured safety and home security for life;*
- *it could free up equity to supplement income; and*
- *generally, it could lead to a better quality of life in retirement.*

Caveat

The benefits provided to the life tenant are generally provided in exchange for surrendering the investment interest in the dwelling, since the purchaser gives up the whole value of the home following death or moving out, with no remainder for his or her estate. Thus, under a pure life tenancy arrangement, if the senior dies shortly after signing the lease, or decides at an early date (say within a year or so) to move out, the entire entry payment could be lost by the senior or the estate. This is a risk which most purchasers may not be willing to accept. Therefore, agreement to provide partial refund to the person's heirs in the event of premature death, or to the person himself in case of early withdrawal, would be necessary.

For Whom is Life Tenancy Best Suited ?

Life tenancy would most likely best suit persons who:

- *prefer not to pay the full market price for a dwelling or prefer to prepay full rental cost up front at a known price, rather than have the uncertainty of future rent increases; or*
- *would be left with insufficient income on which to live in reasonable comfort if they were to attempt to purchase the dwelling outright at full market prices; or*
- *have no heirs to whom they would wish to leave their home; or for whatever reason do not consider it a priority to leave a substantial estate; or*
- *would wish to leave only a part of the value of their home to their heirs, (i.e., if the life tenancy project they are entering allows for partial equity participation); or*
- *wish to release part of their existing capital for immediate purposes (such as travel or other recreational activity, financial investment, etc.), but also want the security of guaranteed lifetime occupancy; or*
- *wish to be free of the ongoing demands and expenses of maintaining a larger home which may have been built or purchased to suit a different set of circumstances; or*
- *rent their current residence yet have sufficient savings to purchase a home and wish to be free of the uncertainties of an escalating rental market.*

Life tenancy would most likely be of little interest to persons who:

- *can afford the full purchase price for a home, and still have enough income left over to live on in comfort; or*

- *are content with their currently owned home and can afford the ongoing costs; or*
- *desire to leave all the value of their home to their children or other heirs; or*
- *are facing a situation of rapidly failing health.*

Generally, contracts for life tenancies can be tailored to meet the particular needs of individuals and to protect the interests of both consumers and investors. To make sure that they suit the specific needs of individuals, life tenancy contracts should only be consummated after obtaining the advice of knowledgeable legal and financial counselors.

Variations in Life Tenancy Options

The life tenancy housing option can be formulated in different ways. The formulations depend mostly on variations in financial provisions, but also on other factors such as the type of housing provided; the entry price; the monthly fees (for taxes, insurance, utilities, maintenance, or property management); exit options (i.e., a total or partial loss of entry price); and the provision of joint ownership for couples and survivor benefits.

Investing in Life Tenancy

Life tenancy housing as an investment for an entrepreneur is generally a long term proposition, which does not produce short term gains on equity. In essence, a life tenancy is simply an adaptation of an existing concept, that of life annuities, but within a residential context. A life annuity is a fixed yearly payment or pension, which may end either after an agreed period or at the death of the recipient. Annuities are cash payments. In contrast, a life tenancy is a payment in kind. Instead of being paid a periodic cash amount, the life tenant receives the right to occupancy on a lifetime basis. The role of the investor in this context is clear: to provide secure housing on a long term lease basis in exchange for an up front lump sum payment which covers the life of the lease, in this case equal to the life of the person. The investor and the tenant enter into a prepaid leasing arrangement. The cost of the prepaid lease is primarily determined by the value of the dwelling, the tenant's life expectancy and the owner's (investor's) desired return on his/her equity.

The nature of the life tenancy investment is such that it would more likely appeal to an investor with the following characteristics:

- *has a long term investment horizon;*
- *requires good protection of purchasing power (i.e., inflation hedge);*
- *does not require regular cash flow;*
- *seeks long term capital growth;*
- *has a capacity to acquire a sufficiently large portfolio to neutralize deviations from life expectancies.*

Market Considerations

An important marketing consideration for a new product is *defining the product for the consumer*. Life tenancy is a relatively new concept and very few people in Canada have heard of it. If life tenancies become available in the housing market, information which explains their benefits and drawbacks should be made readily available to potential consumers. The investor providing life tenancies will likely need to prepare appropriate brochures explaining the concept in particular clarity and with sufficient comprehensiveness, such that the consumer would become aware exactly what he or she would be getting into.

In the context of life tenancies, the following market research questions should be addressed:

- *Who will be the consumers of life tenancies?*
- *What are the features of life tenancy which will most appeal to consumers?*
- *What are the risks involved for the investor (e.g., competition, market conditions, alternative products)?*
- *What will bring prospective consumers to life tenancy projects?*

The answers to these questions should assist the investor in his/her decision making process, in establishing business objectives, and in developing marketing plans and strategies.

Legal Implications

Life tenancy is still non-existent in Canada, but if the number of investors and seniors interested in it grows, then there will likely be increased interest in legal questions raised by this housing option. Lawyers representing elderly people, their children, government agencies, and financial institutions, will need to determine how federal and provincial legislation applies to life tenancy issues.

RÉSUMÉ

À mesure que la population du Canada vieillit, les demandes de commodités et de services reflètent une diversité accrue quant aux origines, aux intérêts, à l'état de santé, aux revenus et aux actifs des particuliers. De nos jours, les personnes du troisième âge recherchent avant tout des façons de conserver leur autonomie personnelle et financière le plus longtemps possible. En ce sens, la location viagère pourrait répondre à leurs attentes.

Qu'est-ce que la location viagère?

La location viagère est un mode d'occupation visant à procurer un logement à prix relativement bas aux retraités. Ce régime permet à une personne âgée d'acquérir un droit d'occupation à vie sur un logement, en contrepartie d'une somme globale payée d'avance et représentant une fraction de la valeur marchande du logement. À la mort de l'occupant, tous les droits de propriété reviennent habituellement à l'investisseur, qui jouit de la propriété permanente du logement. La personne âgée verse une somme mensuelle servant à payer les frais d'entretien courants du logement.

Dans la location viagère, le prix du droit d'occupation payé par le consommateur dépend, d'une part, de son âge (plus la personne est âgée, plus le prix est bas), et, d'autre part, du recouvrement d'investissement et du profit à long terme de l'investisseur. Le prix d'acquisition du droit peut être fonction d'autres facteurs comme le sexe et l'état civil du consommateur, l'état du marché, et le logement comme tel (conception, taille, emplacement). On exigera davantage d'argent des personnes plus jeunes, car on s'attend à ce qu'elles vivent plus longtemps. De même, en raison de leur espérance de vie plus longue, les femmes paieront plus, à âge égal, que les hommes, et le prix sera plus élevé pour un couple marié que pour un célibataire.

Il n'existe pas de régime formel de location viagère au Canada. Ce mode d'occupation a commencé à être appliqué au Royaume-Uni au milieu des années 80, et les rentes viagères, une pratique apparentée à la location viagère, existent depuis longtemps en France.

Avantages

Contrairement à l'acquisition pure et simple d'un logement, la location viagère permet à la personne âgée d'acquérir un droit d'occupation sur un logement contre un coût initial relativement bas, c'est-à-dire inférieur à la valeur marchande réelle du logement. Le locataire peut alors utiliser l'actif ainsi dégagé pour améliorer ses conditions de vie.

La location viagère est une possibilité intéressante pour le consommateur, puisqu'elle peut :

- lui garantir l'occupation d'un logement adéquat, dans un milieu résidentiel de qualité, à un prix inférieur à celui du marché;

- le protéger contre les hausses de loyer (mais non contre les coûts d'entretien)

- lui permettre d'habiter à proximité des magasins, hôpitaux, centres communautaires et autres;

- lui procurer une sécurité à vie en matière de logement;

- servir à dégager l'avoir propre, comme supplément au revenu; et

- favoriser, dans l'ensemble, une meilleure qualité de vie à la retraite.

Précision importante

Les avantages rattachés à la location viagère sont généralement obtenus en contrepartie de la renonciation, par le locataire, à tout intérêt financier dans le logement, ce dernier abandonnant tous ses droits à son décès ou à son départ, sans que rien ne soit laissé à sa succession. Or, si la location est à strictement parler «viagère» et que la personne âgée meurt peu après la signature du bail ou décide de quitter prématurément son logement (au bout d'un an par exemple), cette personne ou sa succession risque de perdre la totalité du paiement initial. La plupart des acheteurs n'accepteront pas de courir un tel risque. Aussi, il peut être nécessaire de conclure des ententes prévoyant un remboursement partiel du paiement, à l'occupant ou à ses héritiers, en cas de départ ou de décès prématuré.

À qui s'adresse la location viagère?

La location viagère conviendrait particulièrement aux personnes qui :

- préfèrent ne pas payer la pleine valeur marchande d'un logement ou qui préfèrent payer d'avance et à prix fixe la totalité des frais de location, se mettant à l'abri d'éventuelles hausses de loyer;

- ne disposeraient pas d'un revenu suffisant pour vivre dans un confort raisonnable si elles faisaient l'acquisition pure et simple d'un logement, au prix du marché;

- n'ont aucun héritier à qui elles souhaitent léguer leur maison, ou qui, pour toute autre raison, ne jugent pas essentiel de laisser un héritage important;

- souhaitent laisser à leurs héritiers une partie seulement de la valeur de leur maison (si le bail viager autorise une participation à la mise de fonds);

- désirent dégager une partie de leur avoir propre à des fins immédiates (voyages ou autres activités récréatives, placements, etc.), sans renoncer à la sécurité que procure un droit d'occupation à vie;

- veulent se libérer des tâches et des dépenses d'entretien d'un grand logement, construit ou acheté à l'origine pour répondre à des besoins différents;

- sont locataires de leur logement, même s'ils ont les moyens d'en acheter un, et qui veulent se libérer de l'incertitude liée à l'escalade des loyers.

La location viagère offrirait sans doute peu d'avantages aux personnes qui :

- ont les moyens d'acheter un logement à sa valeur marchande tout en continuant de bénéficier d'un revenu suffisant pour vivre confortablement;

- sont satisfaites du logement dont elles sont propriétaires-occupantes et qui peuvent supporter les frais d'entretien;

- veulent laisser la valeur entière de leur maison à leurs enfants ou à leurs héritiers;

- voient leur santé se détériorer rapidement.

Les contrats de location viagère, en général, peuvent être adaptés aux besoins des locataires et conçus de manière à protéger les intérêts des consommateurs aussi bien que des investisseurs. Un particulier devrait consulter un conseiller juridique ou financier compétent avant de signer un bail viager, pour s'assurer que les dispositions répondent réellement à ses besoins.

Possibilités d'adaptation

La location viagère, comme mode d'occupation, peut prendre diverses formes. La nature de l'entente dépend surtout des différentes dispositions financières, mais aussi d'autres facteurs comme le type de logement; le coût initial; les frais mensuels consacrés aux taxes, aux assurances, aux services, à l'entretien ou à la gestion immobilière; les modalités de départ (c'est-à-dire la perte totale ou partielle du droit d'occupation) et les possibilités en matière de copropriété et de prestation de survivant dans le cas des couples.

L'investissement dans la location viagère

Dans la perspective du bailleur, le logement donné en location viagère est le plus souvent un investissement à long terme ne produisant pas de gain en capital à court terme. En fait, la location viagère est tout simplement l'application au secteur résidentiel d'un concept existant, celui de la rente viagère. Une rente viagère consiste en un paiement ou en une pension annuels fixes, qui cessent d'être versés au terme d'une période convenue ou à la mort du bénéficiaire. Les rentes sont payées en espèces. Dans le cas de la location viagère, par contre, le versement se fait en nature. Au lieu de recevoir périodiquement une somme d'argent, le locataire viager jouit d'un droit d'occupation à vie. Le rôle de l'investisseur est donc clair dans ce contexte : offrir à un locataire une sécurité d'occupation garantie par un bail à long terme, en contrepartie d'une somme globale payable à l'avance et couvrant toute la durée du bail, cette durée étant égale, dans ce cas-ci, à la vie du locataire. Le bailleur et le locataire signent alors une convention de paiement du loyer par anticipation. Le coût du loyer prépayé est déterminé par la valeur du logement, par l'espérance de vie du locataire et par le rendement que le bailleur (l'investisseur) entend tirer de son avoir propre.

En raison de ses caractéristiques, l'investissement dans la location viagère convient davantage à une personne qui :

- investit à long terme;
- a besoin d'une bonne protection de son pouvoir d'achat (protection contre l'inflation);
- n'a pas besoin de rentrées de fonds périodiques;
- recherche la croissance à long terme de son capital;
- peut acquérir un portefeuille suffisamment étendu pour absorber les écarts de prévisions concernant la durée de vie.

Le marché

Un point important à considérer, dans la commercialisation d'un nouveau produit, est d'adapter le produit aux besoins du consommateur. La location viagère est un concept relativement nouveau dont on a peu entendu parler au Canada. Si ce mode d'occupation devient accessible sur le marché de l'habitation, les consommateurs devront avoir directement accès à toute l'information voulue sur ses avantages et sur ses inconvénients. L'investisseur qui offrira des régimes de location viagère devra probablement préparer des brochures expliquant le concept de façon suffisamment claire et compréhensible pour que le consommateur puisse savoir exactement de quoi il en retourne.

Dans une perspective d'étude de marché, les questions suivantes devront être considérées :

- Quels consommateurs seront visés par la location viagère?
- Quelles caractéristiques de la location viagère seront les plus intéressantes pour les consommateurs?
- Quels sont les risques pour l'investisseur (concurrence, situation du marché, autres produits)?
- Qu'est-ce qui incitera les consommateurs à opter pour la location viagère?

Les réponses à ces questions devraient aider l'investisseur à prendre des décisions, à établir ses objectifs commerciaux et à élaborer des plans et des stratégies de commercialisation.

Questions juridiques

La location viagère, en pratique, n'existe toujours pas au Canada. Toutefois, l'augmentation du nombre d'investisseurs et de personnes âgées qui s'y intéressent se traduire par un accroissement de l'attention accordée aux questions juridiques associées à ce mode d'occupation. Les juristes représentant les personnes du troisième âge, leurs enfants, les organismes gouvernementaux et les institutions financières devront déterminer de quelle façon les lois fédérales et provinciales s'appliquent à la location viagère.

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1. INTRODUCTION

There are now more than three million Canadians aged 65 years or over. The aging of the baby boom generation, combined with a longer life expectancy rate, means that large increases in the elderly population will continue for at least the next three decades. Demographers generally agree that by the year 2021 one in five Canadians will be 65 years or older.

As today's baby boomers become senior citizens early in the next century, they will continue to have profound effects on many of the social and economic trends of our society. The aging of our population will likely mean rising pressures on the numerous service organizations and on government resources that society must earmark for the elderly. In this context, new solutions to meet the requirements of seniors have to be encouraged.

Seniors naturally have varied tastes and retirement needs which call for many different approaches. In the area of housing, the key to addressing the needs of seniors is in diversifying their shelter options -- such as providing alternative financial and tenure arrangements. Examples of these arrangements include *reverse mortgages*, *sale leasebacks*, *shared equities* and *life tenancies*, each of which provides certain benefits to consumers not available from other more traditional approaches.[1]

This guidebook discusses *life tenancies* in particular, as a potential tenure arrangement for seniors. It should be noted, however, that life tenancies are not currently available in Canada. Various aspects of life tenancies from the point of view of the consumer, are examined in the following pages. The advantages and risks of this form of tenure are discussed against alternatives. Some considerations from the investor's perspective are also examined, to raise awareness of the potential of this concept.

[1] For definitions of each of these options see the glossary of terms (Appendix A).

1.1 What Is Life Tenancy ?

Life tenancy is a form of tenure for retirement housing which offers the opportunity of relatively low-priced, affordable shelter. Under this arrangement a senior citizen can purchase a guaranteed lifetime occupancy of a dwelling, paying up front a lump sum which represents only a portion of the market value of the dwelling. On death of the senior, usually all property rights to the unit revert to the investor who holds permanent ownership of the dwelling. Monthly fees are also paid by the senior to cover ongoing operating and maintenance costs.

The life tenancy purchase price paid by the consumer depends partly on his or her age (the older the person, the lower the price), and partly on capital cost recovery and long term profit for the investor. The purchase price could also depend on other factors, such as sex and marital status of the consumer, on the market situation, and on the dwelling itself (design features, size, location, etc.). Younger people pay more because they are expected to live longer. Similarly, because of their longer life-expectancy, women may pay more than men of the same age, and a married couple pay more than a single person of the same age.

Affordability is one of the most important benefits of life tenancy, since the main attraction of this housing arrangement to the senior consumer is that it provides an opportunity to live in a suitable dwelling without having to raise or finance the full market value. For example, instead of paying the full price of, say, $100,000 for a dwelling, a 65-year-old lady may have to pay only $65,000 for the right to live in that dwelling for the rest of her life. After the senior's death, full property rights revert to the investor, who paid $35,000 for those rights.

Many seniors in Canada already own homes which in some cases have become unsuitable to their needs because the upkeep has become too costly or cumbersome, children have moved out, a partner has died, the location is inconvenient, or for other similar reasons. The life tenancy option in these situations enables senior citizens to sell their homes, then with some or all of the proceeds of the sale, they can purchase lifetime occupancies in more suitable dwellings, possibly with lower ongoing costs. On the other hand, for the investor, life tenancy offers an opportunity to buy into a relatively secure real estate investment which has long term potential for price appreciation.

Until recently, limited choices were available to senior homeowners who have low cash incomes yet have significant sums of money invested in their houses (e.g. they could purchase smaller units in condominiums or in retirement housing projects). These people could also sell their homes and abandon their security to become renters or remain in their homes and get by on small incomes. Available in Canada now are various instruments for converting a person's home equity into extra income, while maintaining a degree of security in homeownership. These instruments include reverse mortgages and sale leasebacks. Life tenancy, while not yet available in Canada, is another form of home equity conversion which allows seniors to secure lifetime residency while retaining some cash to improve their standard of living.

A life tenancy, however, is not for everyone. For example, a recently retired senior whose health might be failing will benefit less from life tenancy than an older senior who is in relatively good health. Moreover, many seniors prefer to remain in the familiar surroundings of their existing homes for as long as possible.

From the investor's point of view, an entrepreneur expecting short term returns on equity may not benefit from life tenancy. However, significant gains from investment in life tenancy could be realized over a long term basis. It is important to provide investors with ways of spreading or hedging risks.

1.2 Examples of Life Tenancies

As mentioned, there are currently no life tenancy arrangements in Canada. Some examples of this form of tenure emerged in the United Kingdom in the mid-1980s.[1] One company called Home For Life PLC (HFL) provides life tenancies in approximately 100 apartment blocks (projects) in England. The average project size is comprised of 40 separate apartments or premises and

[1] Rentes Viagères, which represent a form of life tenancy, have a long history in France.

HFL has had an average of six life tenants per project (this information was obtained in September 1992). There are other similar home equity conversion projects in England, as well as Scotland, Wales, Northern Ireland and the Channel Isles, but because much of the "home reversion"[1] business is done privately in the U.K., reliable total figures are hard to come by. However, one of the former Directors of Home For Life PLC, estimated that there are probably between 10,000 and 20,000 properties (projects) involved in reversion schemes generally. The proportion of these that are of a life tenancy type is not known, but it could be as high as five per cent.

As of mid-1992, the business at Home For Life was curtailed, not by any failure of the Home For Life Plan, but because of the impact of recessionary conditions on the whole of the business of the parent company of HFL (i.e., Rosehaugh PLC). To help Rosehaugh meet its obligations to the banks, HFL was sold to another organization, as of June 1992. The HFL Plan now provides several options for seniors to choose from. These options include various home equity conversion schemes such as sale leasebacks arrangements, as well as life tenancies.

Another company providing life tenancies in England is Lifehomes PLC which provides opportunities for lifetime tenure in specifically constructed dwellings for retirement living. Occupants of the properties are retired singles or couples who are of a minimum age of 60 years for women and 65 for men.

Under the terms of the Lifehome scheme, the occupant(s) have a legal right to remain in possession of the property until they die or until such time as they wish to surrender their occupancy to the investor(s)/owner(s), for an appropriate rebate.

As indicated, the amount of the lump sum prepaid rent is determined on an actuarial basis using the life expectancy of the senior (individual or couple); the market value of the dwelling unit; and the market determined risk related yield. Exhibit 1-1 illustrates the portion of the entry costs to a dwelling unit that single male and female purchasers of different ages would need to pay. This table is only illustrative and is modeled after the "Home For Life Plan" offered in Britain, based on the latest information (provided in September 1992.

[1] See Glossary of Terms, Appendix A, for definition of "home reversion".

As shown in Exhibit 1-1, based on purchasers life expectancy, the cost of prepaying the rent on a $100,000 dwelling would amount to $68,900 for a single male aged 65 years, or $77,300 for a single female aged 65 years. This table, of course, is based on life expectancies and the market situation in England. Section 3 provides some financial comparisons of entry costs as they might apply in Canada.

Exhibit 1-1:
Contributions[1] of Valuation By Senior and By Home For Life

	SINGLE MALE		SINGLE FEMALE	
AGE	Contribution Paid by Senior	Contribution Paid by Home For Life	Contribution Paid by Senior	Contribution Paid by Home For Life
65	68.9 %	31.1 %	77.3 %	22.7 %
70	61.4 %	38.6 %	70.2 %	29.8 %
75	53.4 %	46.6 %	61.9 %	38.1 %
80	47.9 %	52.1 %	52.4 %	47.6 %
85	39.9 %	60.1 %	45.9 %	54.1 %
90	32.6 %	67.4 %	36.8 %	63.2 %

1.3 Advantages

Compared to outright purchase of a home, life tenancy offers the senior citizen a chance to buy occupancy rights to a home with a comparatively low entrance price (below full market value), thereby freeing assets which the senior can use to improve his/her standard of living.

The purchaser of a life tenancy benefits by having security of tenure for life with protection against ever-increasing rents. Lifetime occupancy is guaranteed with no escalating monthly rental payments in respect of the capital cost of a dwelling. The cost of upkeep, however, could increase according to market value for services.

[1] Expressed as a percentage of house price. See Section 3 for more analysis of how entry costs are calculated.

Life tenancy could also provide an opportunity to move into a more appropriate accommodation, suitable to the current financial, social, or health situation of a senior citizen. For example, it could involve moving into a new dwelling unit conveniently located within easy access to shopping facilities, hospital, community centre, place of worship, recreation complex, and so on.

Purchasers of life tenancies should ensure that they can afford the ongoing monthly costs of the dwelling, such as fees for utilities and upkeep, for property taxes, and for insurance. In most cases, to make the entrance into a life tenancy arrangement worthwhile, these costs should be comparable to or lower than previous monthly disbursements.

In brief, the advantages which make life tenancy an attractive housing option for consumers are:

- *it could provide a guarantee of adequate housing in a good residential area at a price below full market value;*
- *it could provide protection against increasing rents (although not against increases in the costs of upkeep);*
- *it could provide housing that is within easy access to shopping facilities, hospitals, community centres, etc.;*
- *it could provide assured safety and home security for life;*
- *it could free up equity to supplement income; and*
- *generally, it could lead to a better quality of life in retirement.*

1.4 Caveats

The benefits provided to the life tenant are generally provided in exchange for surrendering the investment interest in the dwelling, since the purchaser gives up the whole value of the home following death or moving out, with no remainder for his or her estate. Thus, under a pure life tenancy arrangement, if the senior dies shortly after signing the lease, or decides at an early date (say within a year or so) to move out, the entire entry payment could be lost by the senior or the estate. This is a risk which most purchasers will likely be unwilling to accept. Therefore, agreement to provide partial refund to the person's heirs in the event of premature death, or to the person himself in case of early withdrawal, would be necessary.

Another potential risk which a purchaser should consider is that which could arise in the event of changing health status. Those seniors whose health may deteriorate quickly may find they have purchased life occupancy in a housing project that no longer meets their needs. To protect themselves against this risk, seniors should make sure they will be financially compensated if they must move for health reasons. Alternatively, life tenancy projects themselves could be designed to provide a continuum of care geared to the changing health needs of the elderly, or life tenancy arrangements could provide for moving to care homes if the health of a tenant deteriorates.

1.5 For Whom is Life Tenancy Best Suited ?

The circumstances of elderly persons differ considerably, so that one method of financing retirement may be advantageous to some but of less benefit to others. If more financial and tenure options can be offered to senior citizens, better choices can be made with more suitable dwelling arrangements to match individual circumstances. Obviously, careful consideration of the benefits of alternatives is required before making a lifetime commitment. Life tenancy as a form of tenure is suitable only in certain situations.

Life tenancy would most likely best suit persons who:

- *prefer not to pay the full market price for a dwelling or prefer to prepay full rental cost up front at a known price, rather than have the uncertainty of future rent increases; or*
- *would be left with insufficient income on which to live in reasonable comfort if they were to attempt to purchase the dwelling outright at full market prices; or*
- *have no heirs to whom they would wish to leave their home; or for whatever reason do not consider it a priority to leave a substantial estate; or*

- *would wish to leave only a part of the value of their home to their heirs, (i.e., if the life tenancy project they are entering allows for partial equity participation);*[1] *or*

- *wish to release part of their existing capital for immediate purposes (such as travel or other recreational activity, financial investment, etc.), but also want the security of guaranteed lifetime occupancy; or*

- *wish to be free of the ongoing demands and expenses of maintaining a larger home which may have been built or purchased to suit a different set of circumstances; or*

- *rent their current residence yet have sufficient savings to purchase a home and wish to be free of the uncertainties of an escalating rental market.*

Life tenancy would most likely be of little interest to persons who:

- *can afford the full purchase price for a home, and still have enough income left over to live on in comfort; or*

- *are content with their currently owned home and can afford the ongoing costs; or*

- *desire to leave all the value of their home to their children or other heirs; or*

- *are facing a situation of rapidly failing health.*

Generally, contracts for life tenancies can be tailored to meet the particular needs of individuals and to protect the interests of both consumers and investors. To make sure that they suit the specific needs of individuals, life tenancy contracts should only be consummated after obtaining the advice of knowledgeable legal and financial counselors.

[1] "Partial equity participation" is described later in this guidebook, and in the glossary of terms (Appendix A).

2.0 POSSIBLE VARIATIONS IN LIFE TENANCY OPTIONS

The life tenancy housing option can be formulated in different ways. The formulations depend mostly on variations in financial provisions, but also on other factors such as the type of housing provided. Exhibit 2-2 at the end of this section summarizes the variations in life tenancy options.

2.1 Basic Variations

2.1.1 Entry Price

The entry price is the price that an individual or a couple has to pay to purchase a life tenancy. The purchase price, to begin with, differs by age of the purchaser(s). The older a person is,the lower the entry price, primarily because persons who are older are generally not expected to live as long (and thus not occupy the unit as long). Also, males will pay less than females of the same age, because life expectancy of females is higher than that of males.

Entry prices, however, will also differ based on prevailing market conditions, on location of the dwelling, and on the size and type of dwelling, and on the costs of construction.

The purchase of a life tenancy is usually with a lump sum payment, based on a sliding scale adjusted for age and sex. A *pure* life tenancy does not include any equity sharing with the owner of the dwelling. However, *modified* life tenancies could include partial equity sharing in the property. This is discussed in Section 2.1.3.

2.1.2 Monthly Fees

Although life tenancy provides guaranteed occupancy rights to a property for the life of the tenant, as in any property there are monthly payments and obligations which need to be met. These monthly payments could vary depending on factors such as the quality of the dwelling, its location and the local market situation. Exhibit 2-1 shows some of the items that would be covered in the monthly fees. These items are not necessarily paid by the property owner or manager on a month-by-month basis (e.g., taxes, insurance), but collection from residents would most likely be arranged on a monthly basis, to spread out the burden of payment over the course of a year.

Monthly fees for life tenancy arrangements could be very similar to condominium fees. The formalization of the process, however, will depend very much on the owners and/or managers of the housing complex. The basic options are whether life tenants pay their bills individually or whether management makes a collective payment every month.

Exhibit 2-1: Expense Items That Could Be Included in Life Tenancy Monthly Fees

EXPENDITURE ITEMS (OPERATING AND MAINTENANCE)	
Utilities:	Electricity Fuel Water Other
Materials and Services (Maintenance):	Electrical Systems Heating and Plumbing Painting Waste Removal Grounds Upkeep and Snow Removal Pool Expenses Security Social and Recreational Roofing Repairs Windows Elevators Building General
Management:	Property Management Superintendent Financial Management Costs (e.g., bank charges, insurance)
Other Expenses:	Municipal Taxes Miscellaneous

Monthly fees could also depend legally on the type of life tenancy contract signed. The life tenancy contract could be a *gross* lease or a *net* lease. A *gross* lease is one in which the lessor bears all the usual costs of ownership, such as real estate taxes and insurance. A *net* lease is one in which the lessee pays some or all the usual costs of ownership, including taxes, insurance, and all operating expenses such as utilities and maintenance.

2.1.3 Remainder Interests

"Remainder interest" is that part of the value of the asset retained by the estate after death of the life tenant. On the other hand, "reversionary interest" is that portion of the asset which reverts back to the investor. In a *pure* life tenancy, there is no remainder interest left for the heirs of the tenant. Full property rights and the benefits of appreciation in the value of the asset go to the owner. However, this could be partially offset by including an option for equity sharing. Equity sharing would mean that the tenant would retain some of the original value of the home, for his/her heirs, and some increments of the appreciation of the property. This, however, would probably mean purchasing lifetime occupancy at a higher price than what would be the case under a pure life tenancy.

2.1.4 Exit Due to Failing Health

Most seniors who would choose to live under the life tenancy arrangement would likely stay in their homes as long as their health permits it. Sooner or later, however, many residents may become less able to fend for themselves and may require some care. A contingency plan for failing health is thus needed, in the life tenancy contract. This could mean that the contract stipulates financial compensation to the tenant, depending on the length of time the tenant occupied the dwelling unit.

Another alternative is the so called "continuum of care" arrangement, where the occupant does not move out of the housing project, but is automatically cared for, within the stipulations of the contract, on the basis of changing needs. The continuum of care approach is used in the United States where life care communities offer the whole range of health services and housing accommodation including self contained dwelling units, bedsitting rooms and nursing homes. This means, of course, that residents in such projects do not have to move out on account of deteriorating health. But it also means that the entry prices to the projects will be higher.

In Canada the "continuum of care" option has not generally been encouraged because subsidized health care in Canada precludes the major motivating force behind life care communities, that of providing lifetime health insurance for seniors. While this approach may be appropriate in the U.S.A., experts in the area of housing for the elderly have indicated that this model is unlikely to be appropriate in the Canadian context.

Even if such projects existed, a project sponsor could not guarantee a resident that space would be available for him/her in the project's nursing home. In Canada, placement in a nursing home is controlled by health agencies that subsidize health care.

Moreover, healthy seniors do not generally want to live in the same project with frail seniors. As a result, it would be more difficult to market a project providing self-contained housing units for independent living and a nursing home on the same premises. To partially offset this aspect, a life tenancy arrangement could allow an increasingly frail occupant to move out to a separate care home as part of the agreement.

2.1.5 Other Exit Options

Other exit options are those options available to a life tenant if he/she decides to move out for reasons other than failing health. Many reasons could make life tenants change their minds about their living arrangements, such as break up in the family, discomfort with environment, change in income status, incompatibility with other residents, preference to move closer to friends or relatives, and so on. The consequences of moving out will depend on the life tenancy contract signed on entry. This could involve a total loss of entry price or a partial loss depending on length of occupancy and on any equity sharing plan involved in the contract.

Financial compensation due to termination of occupancy could be provided in the form of a lump sum exit payment, or in the form of a monthly annuity for life. An important implication of this approach is that of transforming the life tenancy into an instrument closely resembling a life annuity which of course provides a senior with an income stream irrespective of where he or she lives.

Another approach for early termination of occupancy could be providing optional housing arrangements (such as moving to another unit in another building). However, increasing the prearranged modes of compensation, or allowing for a wider variety of pullout options, to the benefit of the life tenant, will be offset by increasing the entry price. Very favourable exit terms mean less favourable entry terms.

2.1.6 Property Management

The investor in life tenancy housing (i.e., the property owner) is most likely to hire an independent management firm to supervise and administer the day-to-day upkeep of the property. Property management involves overseeing the daily duties relating to maintenance, security, recreation, repairs, waste removal, snow removal, and so on. In this context, the investor could engage the services of a professional firm to run all the property management functions; or to engage the partial services of a firm supplemented by the services of a voluntary group of occupants.

2.1.7 Dwelling/Project Characteristics

A life tenancy is essentially a *financial* agreement between the senior citizen and the investor/property owner, and as such need not at first be tied to a particular dwelling unit or housing project. However, the investor will no doubt have certain conditions regarding the type and quality of dwellings which are purchased for life tenancies. Like a mortgage, a life tenancy could be made on any dwelling in any ownership housing project. Thus, life tenancies can be used in a situation where all dwellings in a housing project are for life tenancy; for open projects (i.e., not all dwellings are for life tenancy); or for purchasing *any* dwelling in the open market, with prior agreement by the investor who supplies the life tenancy financing.

2.2 Other Variations

2.2.1 Consumer Protection

While the investor/owner should be protected against a tenant who may no longer be capable of meeting monthly upkeep costs, the tenant should also be protected against the consequences of bankruptcy of the investor.

A life tenancy agreement may include protection of the life tenant in the event of bankruptcy of the investor (e.g. through insurance, entrenched occupancy rights, etc.) -- or no protection.

Under a *net* lease[1] the lessee bears the burden of increasing taxes, insurance, and operating costs. Of course these same increases would be incurred if the lessee owned the property outright.

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[1] See page 10.

Generally, the more built-in guarantees and consumer protection clauses included in the life tenancy contract, the more likely the price of entry will increase.

2.2.2 Treatment of Couples

A senior citizen may purchase a life occupancy as a single person, but subsequently take on a life time companion who survives him/her. The life tenancy agreement may exclude the survivor in this situation. The contract, on the other hand, could include a clause which would allow renegotiation to include a new occupant. Similarly, joint occupancy of a life tenancy unit could be stipulated on entry. In this situation, the entry price would be based on the joint life expectancy of the occupants.

2.2.3 Rules of Occupancy

The bylaws of a specific life tenancy project, governing such matters as treatment of overnight guests, common areas, gardening, building of fences, parking facilities, pets, etc., may or may not be suitable to a particular consumer. In some cases, these bylaws may prove to be too restrictive or inappropriate. Thus, rules of occupancy represent another way in which life tenancies could vary.

2.2.4 Differences In the Dwelling Itself

Differences in house design, size, location, state of repair, or other dwelling related aspect, may or may not be appropriate for a particular consumer. A wide variety of housing could be provided under life tenancy agreements. As mentioned earlier, a life tenancy is really a financial agreement between the consumer and the investor. Thus, appropriate housing types can be selected to the advantage of the diverse tastes and preferences of consumers. A life tenancy unit need not be linked to a particular building or housing form.

Exhibit 2-2: Highlights of Possible Variations in Life Tenancy Options

A. BASIC VARIATIONS

COMPONENT	OPTIONS	COMMENTS
ENTRY PRICE	lump sum for life tenancy (or) lump sum for life tenancy plus share of equity	Purchase price depends on age and sex of person in household partnership -- i.e., life expectancies of occupants determines price.
MONTHLY FEES	monthly collection for taxes, insurance, utilities, maintenance, property management	Monthly payments could vary depending on factors such as quality of dwelling, location, market conditions, and amenities provided.
REMAINDER INTERESTS	none (or) some, based on equity sharing plan	"Remainder interest" is that part of the value of the asset retained by the estate after death of the life tenant.
EXIT OPTIONS	total loss of purchase price (or) partial loss depending on length of occupancy and/or equity sharing plan	The exit options are those options available to a life tenant if he/she decides to move out for reasons other than failing of health.
EXIT DUE TO FAILING HEALTH	total loss of purchase price (or) financial compensation to tenant, depending on length of occupancy (or) continuum of care provided (occupant does not move out) (or) occupant moves out to continuum of care home, as part of life tenancy agreement	Most seniors who choose to live under the life tenancy arrangement would likely stay in their homes as long as their health permits it. A contingency plan is needed for failing health.
PROPERTY MANAGEMENT	total service of a professional firm (or) partial service of firm, plus voluntary life tenancy group	The investor who pays the balance of the purchase price will usually hire a property management firm to oversee the day-to-day concerns of the life tenancy dwellings.
DWELLING/ PROJECT	purpose-built project (all dwelling units are for life tenancy) (or) open project (i.e., not all dwelling units are for life tenancy) (or) home buyer purchases dwelling on open market, with prior agreement by investor who supplies life tenancy financing	A life tenancy is essentially a financial agreement between the home buyer and the investor, and as such need not at first be tied to a particular dwelling or housing project. However, the investor will no doubt have certain conditions regarding the type and quality of dwellings purchased.

Exhibit 2-2: Highlights of Possible Variations in Life Tenancy Options (continued)

B. OTHER VARIATIONS

COMPONENT	OPTIONS	COMMENTS
BANKRUPTCY OF INVESTOR/SALE OF PROPERTY	protection of the life tenant in the event of bankruptcy of the investor (e.g. through insurance, entrenched occupancy rights, etc.) (or) no protection	While the investor should be protected against a tenant who may no longer be capable of meeting monthly upkeep costs, the tenant should also be protected against the consequences of bankruptcy of the investor.
TREATMENT OF COUPLES	provision for joint ownership and survivor occupancy of dwelling (or) no provision for survivor	A senior citizen may purchase a life occupancy as a single person, but subsequently take on a life-time companion who survives him/her. The life tenancy agreement may exclude the survivor in this situation.
RULES OF OCCUPANCY	restrictive/not suitable (or) suitable	The bylaws of a specific life tenancy project, governing such matters as treatment of overnight guests, common areas, gardening, building of fences, etc., may or may not be suitable to a particular home buyer.
PREMATURE EXIT	lump sum settlement (or) annuity	Some life tenancy agreements may provide an annuity or a lump sum settlement in the event the tenant moves out prematurely, due to health or other reasons.
APPRECIATION IN THE VALUE OF THE HOME	no option for the life tenant to share appreciation with the investor/owner (or) option for sharing	A life tenancy agreement could include a clause which allows some sharing of the appreciation in value of the dwelling, in the event of re-sale. The tenant or his/her estate receive a prescribed share of the appreciation.
DIFFERENCES IN THE DWELLING ITSELF	appropriate for a particular person (or) not appropriate	Differences in house design, size, location, state of repair, or other dwelling related aspect, may or may not be appropriate for a particular home buyer.

3.0 FINANCIAL COMPARISONS OF HOUSING OPTIONS AND LIFE TENANCY ENTRY COSTS

As more Canadians become seniors, their diversity in backgrounds and interests, and their different levels of health, income and assets, are increasingly being expressed in demands for a variety of accommodation and services. In particular, elderly people are now seeking options that will enable them to maintain independent life styles and financial self-sufficiency for as long as possible.

3.1 Financial Comparisons of Housing Options

This section provides a comparison of the financial implications of different options, including pure life tenancy and life tenancy with a share in house appreciation.

The options are as follows:

- *outright purchase of a house*
- *rent and investment in a life annuity*
- *pure life tenancy*
- *life tenancy with a share in the appreciation of the value of the house*
- *loan stock arrangement*[1]

[1] Loan Stock Arrangements: Under such an arrangement, a senior makes an interest-free loan to the sponsor of a housing project. The amount of the loan made by the senior is set by the project sponsor and is usually equal to a portion of the market value of the dwelling the senior chooses to occupy. In return for the loan, the senior is entitled to occupy the dwelling rent-free for the rest of his/her life, or for as long as he/she wishes. This lifetime lease arrangement confers security of tenure to the resident. When the senior dies or leaves the project for any reason, the interest-free loan is reimbursed to the senior or the estate. The resident receives no share in the appreciation of his/her dwelling's value.

- *shared equity arrangement.*[1]

The criteria used for comparing the options include:

- *the cost of entry into a housing option*
- *the degree to which the senior can use assets to supplement income*
- *the extent to which money can be left to the senior's estate.*

As Exhibit 3-1 shows, a pure life tenancy provides the senior with a relatively low entry cost to access purpose-built housing. However, it fails to permit the senior to leave any money to his/her estate. On the other hand, the life tenancy option with a share in appreciation does allow for some remainder asset for the senior's estate, but this requires a higher initial entry fee. This illustrates the trade-off faced by seniors in deciding between various housing alternatives.

All the options, save for the pure life tenancy, result in a negative net monthly income from the home investment, because of the offsetting shelter costs as compared to income earned from the life annuity. This net shelter expense is paid off through the senior's other earnings.

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[1] Shared Equity Arrangements: Shared equity arrangements allow seniors to reduce the capital required to purchase the right to live in retirement housing. Such arrangements allow seniors to purchase part of the equity (50 per cent, for example) and pay rent for the portion retained by the developer or investor. They must also pay fees to cover ongoing costs.

Under a shared equity arrangement, residents can sell their share in the unit just as if they had purchased it outright, although in some cases they must market it through the operators of the project. The seniors also share, as part owners, in any appreciation in the value of the dwelling in the same proportion as their share of the original capital cost (50 per cent, for example).

EXHIBIT 3-1: LIFE TENANCY COMPARED WITH VARIOUS ALTERNATIVES

Options:	PURCHASE OUTRIGHT				**RENT AND INVEST IN LIFE ANNUITY**			**PURE LIFE TENANCY NO SHARED APPRECIATION**		
Entry Costs:	$ 100000				$ 0			$ 65000		
Amount Left for Investment [1] (by the senior):	$ 0				$ 100000			$ 35000		
END OF YEAR	Shelter Costs /Month (a)	Annuity Income /Month (b)	Net Monthly Income From Inv. (c=b-a)[2]	House Value (d)	Shelter Costs /Month (a)	Annuity Income /Month (b)	Net Monthly Income From Inv. (c=b-a)[2]	Shelter Costs /Month (a)	Annuity Income /Month (b)	Net Monthly Income From Inv. (c=b-a)[2]
YEAR 1	$ 300	$ 0	$ -300	$105000	$ 1000	$ 1000	$ 0	$ 300	$ 350	$ 50
YEAR 2	315	0	-315	110250	1050	1040	-10	315	364	49
YEAR 3	331	0	-331	115763	1103	1082	-21	331	379	48
YEAR 4	347	0	-347	121551	1158	1125	-33	347	394	46
YEAR 5	365	0	-365	127628	1216	1170	-46	365	409	45
YEAR 6	383	0	-383	134010	1276	1217	-60	383	426	43
YEAR 7	402	0	-402	140710	1340	1265	-75	402	443	41
YEAR 8	422	0	-422	147746	1407	1316	-91	422	461	38
YEAR 9	443	0	-443	155133	1477	1369	-109	443	479	36
YEAR 10	465	0	-465	162889	1551	1423	-128	465	498	33
YEAR 11	489	0	-489	171034	1629	1480	-149	489	518	29
YEAR 12	513	0	-513	179586	1710	1539	-171	513	539	26
YEAR 13	539	0	-539	188565	1796	1601	-195	539	560	22
YEAR 14	566	0	-566	197993	1886	1665	-221	566	583	17
YEAR 15	594	0	-594	207893	1980	1732	-248	594	606	12
ASSET LEFT TO ESTATE				$ 207893			$ 0			$ 0[3]

<u>SITUATION</u>:

a. Market value of dwelling is $100,000.

b. The senior citizen is selling his/her home with $100,000 remaining in equity for investment, or the senior is currently renting and has $100,000 in assets available for investment.

c. Life expectancy of the senior citizen is 15 years.

d. Monthly shelter costs for utilities, property taxes and upkeep are standardized at $300 per month in the first year, increasing by 5 per cent for each year thereafter. In the pure rental option, monthly shelter costs include rent, similarly increasing by 5 per cent annually.

e. The annuity income provided is based on quotations obtained from three different life insurance firms. They are indexed for 4 per cent increase per annum and are guaranteed for 15 years.

f. The house value appreciates at 5 per cent per annum.

g. Entry costs under pure life tenancy are assumed at 65 per cent of the value of the house; under life tenancy with share in the appreciation of the house, 75 per cent of value; under loan stock scheme, between 85 per cent and 90 per cent of value; and under the shared equity arrangement, 50 per cent.

<u>FOOTNOTES</u>: See next page.

EXHIBIT 3-1: (CONTINUED) LIFE TENANCY COMPARED WITH VARIOUS ALTERNATIVES

Options:	LIFE TENANCY WITH SHARED APPRECIATION				LOAN STOCK SCHEME NO EQUITY SHARING			SHARED EQUITY			
Entry Costs:	$ 75000				$ 87000			$ 50000			
Amount Left for Investment[1] (by the senior):	$ 25000				$ 13000			$ 50000			
END OF YEAR	Shelter Costs /Month (a)	Annuity Income /Month (b)	Net Monthly Income From Inv.[2] (c=b-a)	Share of Apprec. (d)	Shelter Costs /Month (a)	Annuity Income /Month (b)	Net Monthly Income From Inv.[2] (c=b-a)	Shelter Costs[4] /Month (a)	Annuity Income /Month (b)	Net Monthly Income From Inv.[2] (c=b-a)	Equity Share (d)
YEAR 1	$ 300	$ 250	$ -50	$10500	$ 300	$ 130	$ -170	$ 650	$ 500	$ -150	$ 52500
YEAR 2	315	260	-55	11025	315	135	-180	683	520	-163	55125
YEAR 3	331	270	-60	11576	331	141	-190	717	541	-176	57881
YEAR 4	347	281	-66	12155	347	146	-201	752	562	-190	60775
YEAR 5	365	292	-72	12763	365	152	-213	790	585	-205	63814
YEAR 6	383	304	-79	13401	383	158	-225	830	608	-221	67005
YEAR 7	402	316	-86	14071	402	164	-238	871	633	-238	70355
YEAR 8	422	329	-93	14775	422	171	-251	915	658	-257	73873
YEAR 9	443	342	-101	15513	443	178	-265	960	684	-276	77566
YEAR 10	465	356	-110	16289	465	185	-280	1008	712	-297	81445
YEAR 11	489	370	-119	17103	489	192	-296	1059	740	-319	85517
YEAR 12	513	385	-128	17959	513	200	-313	1112	770	-342	89793
YEAR 13	539	400	-138	18856	539	208	-331	1167	801	-367	94282
YEAR 14	566	416	-149	19799	566	216	-349	1226	833	-393	98997
YEAR 15	594	433	-161	20789	594	225	-369	1287	866	-421	103946
ASSET LEFT TO ESTATE				$20789			$87000[5]				$103946

FOOTNOTES:

1 This is the amount left over after the senior has paid the entry costs (assuming total assets of $100,000). The left-over amount is used to purchase a life annuity.

2 This is net income or cost, as the case may be. It represents the difference between the monthly income from annuity minus the ongoing monthly shelter costs.

3 The nil asset left over to the estate, under pure life tenancy, represents the outcome after 15 years of occupancy. A particular life tenancy arrangement could have a guaranteed initial period, of say five years, where a portion of the initial entry costs could be left over. Similarly, life annuities, in case the senior dies sooner than expected, could provide for a remainder portion for the estate during a guaranteed period. This will also impact on assets left over for the estate under the other housing options shown in the table.

4 Shelter costs in this option represent a mixture of the purchase outright option and the rental/life annuity option. Monthly costs include $300 for utilities, tax, and upkeep plus $350 (a 50% share of rental payments) for the first year, increasing by 5 per cent annually thereafter.

5 The lesser amount between the original entry cost of $87,000 and market value of the dwelling at the time of termination of the lease.

3.2 Life Tenancy Entry Costs

Exhibit 3-2 shows different costs of prepaying the rent on a $100,000 dwelling, based on sex of the tenant and on life expectancies in Canada.[1] The required investor's yield on his/her equity contribution is 8 per cent. No investor's liabilities or additional profit margin is built into the calculations. Also, in Exhibit 3-2, the assumption is made that the life tenant will live for the full life expectancy period.

EXHIBIT 3-2: CALCULATION OF INVESTOR'S AND LIFE TENANT'S CONTRIBUTIONS TO DWELLING'S PRICE

AGE OF INDIVIDUAL ON ENTRY:	60	65	70	75	80	85	90
SINGLE MALE:							
Dwelling Price ($)	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Required Real Yield (%)	8	8	8	8	8	8	8
Life Expectancy (Years)	18.41	14.90	11.80	9.13	6.91	5.12	3.73
Investor's Equity ($)	24,248	31,768	40,327	49,527	58,755	67,433	75,046
Life Tenant's Entry Cost ($)	75,752	68,232	59,673	50,473	41,245	32,567	24,954
Investor's Contribution (% of Value of Dwelling)	24.2	31.8	40.3	49.5	58.8	67.4	75.0
Life Tenant's Contribution (% of Value of Dwelling)	75.8	68.2	59.7	50.5	41.2	32.6	25.0
SINGLE FEMALE:							
Dwelling Price ($)	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Required Real Yield (%)	8	8	8	8	8	8	8
Life Expectancy (Years)	23.17	19.12	15.35	11.92	8.93	6.44	4.49
Investor's Equity ($)	16,810	22,958	30,686	39,957	50,295	60,919	70,783
Life Tenant's Entry Cost ($)	83,190	77,042	69,314	60,043	49,705	39,081	29,217
Investor's Contribution (% of Value of Dwelling)	16.8	23.0	30.7	40.0	50.3	60.9	70.8
Life Tenant's Contribution (% of Value of Dwelling)	83.2	77.0	69.3	60.0	49.7	39.1	29.2

The formula used to calculate the investor's equity contribution is:

$$IE = \frac{DP}{(RY + 1)^{LE}}$$

where: IE = investor's equity contribution
DP = dwelling price
LE = life expectancy
RY = required yield.

The life tenant's entry cost is the price of the dwelling minus the investor's contribution.

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1 Life expectancies are based on *Life Tables, Canada and Provinces*, <u>Health Reports</u>, Supplement No. 13, Volume 2, Number 4, 1990, Statistics Canada, Catalogue No. 82-003S.

Exhibit 3-2 illustrates the pricing of a $100,000 unit where the investor has a desired yield of 8 per cent (in real terms). As an example from this table, consider a 65 year old single female who has a life expectancy of 19.12 years. Based on an 8 per cent return, an investor would be willing today to pay $22,958 in order to earn $100,000 in 19.12 years. Hence the investor can commit to a leasehold life interest to the female life tenant for the difference between the investment ($22,958) and the market value of the dwelling ($100,000). Thus the 65 year old female can obtain a $100,000 dwelling for $77,042.

This calculation ignores the effects of inflation on the value of the property. Obviously with an appreciation in property value, the yield will be higher. If the property appreciates exactly at the rate of inflation, we can refer to the investor's return in real terms. An 8 per cent real rate of return is a very good return both today and in comparison to long term real rates. Hence the pricing in Exhibit 3-2 is very reasonable.

3.3 Effects of Inflation (Appreciation)

Exhibit 3-3 shows the effects of building into our calculations the appreciation of the property value. The real rate of return required by the investor is assumed to be 8 per cent. On the basis that appreciation in property value will equal the rate of inflation (e.g., assume 5% as shown in the table), then, if a male aged 65 lives precisely his life expectancy, the gross yield would be 13.44% per annum. Varying the long term average rate of appreciation adjusts the gross yield accordingly. However, the real yield remains constant at 8% per annum.

EXHIBIT 3-3: EFFECTS OF INFLATION (APPRECIATION) ON YIELD

Initial Dwelling Value: $100,000
Investor's Required Yield: 8 %

Entry Age Male	Life Exp.	Average Apprec. Rate	Appreciated Capital Value	Gross Yield	Real Yield	Prepaid Lease Amount	Investor Equity Amount
65	14.90	3%	$155,797	11.26%	8%	$68,232	$31,768
75	9.13	3%	$130,477	11.19%	8%	$50,473	$49,527
65	14.90	5%	$207,893	13.44%	8%	$68,232	$31,768
75	9.13	5%	$155,133	13.32%	8%	$50,473	$49,527
65	14.90	7%	$275,903	15.61%	8%	$68,232	$31,768
75	9.13	7%	$183,846	15.45%	8%	$50,473	$49,527

3.4 Effects of Deviation from Life Expectancy

In the previous calculations there is an implicit assumption that the life tenant will live precisely his/her life expectancy. Exhibit 3-4 demonstrates the effects of deviation from this assumption.

Utilizing the assumptions shown in the table, we can identify both the yield on the reversionary value (real yield) and the yield on the appreciated value (gross yield). Where the tenant's life is less than actuarially expected, the reversion occurs early and the yield is comparatively high. Conversely, a longer than expected life reduces yield. Clearly, investment in life tenancies, like life insurance, is dependent upon pooling so that the theory of actuarial tables can be operationalized.

EXHIBIT 3-4: **EFFECTS OF DEVIATIONS FROM LIFE EXPECTANCY ON YIELD**

ASSUMPTIONS:

Initial Unit Value:	$100,000
Entry Age/Sex:	65 male
Life Expectancy:	14.90 years
Investors Required Yield:	8%
Prepaid Lease:	$68,232
Investor Equity:	$31,768
Long Term Rate of Appreciation:	5%

	Attained Age	Reversionary Capital Value	Rever. Yield (p.a.)	Appreciated Capital Value	Gross Yield
	65	$100,000	-	-	-
	66	$100,000	214.78%	$105,000	230.52%
	67	$100,000	77.42%	$110,250	86.29%
	68	$100,000	46.56%	$115,763	53.88%
	69	$100,000	33.20%	$121,551	39.86%
	70	$100,000	25.78%	$127,628	32.07%
	71	$100,000	21.06%	$134,010	27.11%
	72	$100,000	17.80%	$140,710	23.69%
	73	$100,000	15.41%	$147,746	21.18%
	74	$100,000	13.59%	$155,133	19.27%
	75	$100,000	12.15%	$162,889	17.76%
	76	$100,000	10.99%	$171,034	16.54%
	77	$100,000	10.03%	$179,586	15.53%
	78	$100,000	9.22%	$188,565	14.68%
	79	$100,000	8.54%	$197,993	13.96%
life expec. (79.9)	80	$100,000	8.00%	$207,893	13.44%
	81	$100,000	7.43%	$218,287	12.80%
	82	$100,000	6.98%	$229,202	12.33%
	83	$100,000	6.58%	$240,662	11.91%
	84	$100,000	6.22%	$252,695	11.53%
	85	$100,000	5.90%	$265,330	11.20%
	86	$100,000	5.61%	$278,596	10.89%
	87	$100,000	5.35%	$292,526	10.62%
	88	$100,000	5.11%	$307,152	10.37%
	89	$100,000	4.89%	$322,510	10.14%
	90	$100,000	4.69%	$338,635	9.93%

NOTES:

(1) Reversionary capital value refers to the unappreciated value.

(2) Appreciated capital value includes both the reversionary value and any increase in value due to property appreciation.

(3) On the assumption the property appreciates at the inflation rate the reversionary yield equates to a real rate of return.

(4) The gross yield is then the overall yield taking into account both reversion and appreciation.

3.5 Effects of a Liability on the Investor

The effects of a liability, say on early surrender of the property, can be built into the calculations shown in Exhibit 3-4. The table below provides an example where the liability is on the part of the investor and payable to the vacating occupant(s), on the basis that the initial purchase price of the life interest was $31,768 for the investor and $68,232 for the occupant(s). The liability is shown as a percentage of the occupant(s) prepaid lease which is rebated. This percentage declines in proportion to length of occupancy, to 0 per cent after 7 years.

EXHIBIT 3-5: EFFECTS OF DEVIATIONS FROM LIFE EXPECTANCY ON YIELD -- COMBINED WITH AN INVESTOR LIABILITY (FOR EXAMPLE, A REBATE)[1]p

ASSUMPTIONS:

Initial Unit Value:	$100,000	
Entry Age/Sex:	65	male
Life Expectancy:	14.90	years
Investors Required Yield:	8%	
Prepaid Lease:	$68,232	
Investor Equity:	$31,768	
Long Term Rate of Appreciation:	5%	

	Attained Age	Liability (example)[2]	Reversionary Capital Value	Rever. Yield (p.a.)	Appreciated Capital Value	Gross Yield
	65	-	-	-	-	-
	66	80%	$45,414	42.96%	$50,414	58.70%
	67	75%	$48,826	23.97%	$59,076	36.37%
	68	60%	$59,061	22.96%	$74,823	33.05%
	69	45%	$69,296	21.53%	$90,846	30.04%
	70	30%	$79,530	20.15%	$107,159	27.53%
	71	15%	$89,765	18.90%	$123,775	25.44%
	72	05%	$96,588	17.22%	$137,298	23.26%
	73	0	$100,000	15.41%	$147,746	21.18%
	74	0	$100,000	13.59%	$155,133	19.27%
	75	0	$100,000	12.15%	$162,889	17.76%
	76	0	$100,000	10.99%	$171,034	16.54%
	77	0	$100,000	10.03%	$179,586	15.53%
	78	0	$100,000	9.22%	$188,565	14.68%
	79	0	$100,000	8.54%	$197,993	13.96%
life expec. (79.9)	80	0	$100,000	8.00%	$207,893	13.44%
	81	0	$100,000	7.43%	$218,287	12.80%
	82	0	$100,000	6.98%	$229,202	12.33%
	83	0	$100,000	6.58%	$240,662	11.91%
	84	0	$100,000	6.22%	$252,695	11.53%
	85	0	$100,000	5.90%	$265,330	11.20%
	86	0	$100,000	5.61%	$278,596	10.89%
	87	0	$100,000	5.35%	$292,526	10.62%
	88	0	$100,000	5.11%	$307,152	10.37%
	89	0	$100,000	4.89%	$322,510	10.14%
	90	0	$100,000	4.69%	$338,635	9.93%

[1] See Notes in Exhibit 3-4.

[2] This could be a rebate to the life tenant's heirs, should he/she die during the first few years of the life tenancy. Or, the liability could be an agreed upon rebate should the life tenant wish to move out during the initial few years.

4.0 INVESTING IN LIFE TENANCY

Life tenancy housing as an investment for an entrepreneur is generally a long term proposition, which does not produce short term gains on equity. In essence, a life tenancy is simply an adaptation of an existing concept, that of life annuities, but within a residential context. A life annuity is a fixed yearly payment or pension, which may end either after an agreed period or at the death of the recipient. Annuities are cash payments. In contrast, a life tenancy is a payment in kind. Instead of being paid a periodic cash amount, the life tenant receives the right to occupancy on a lifetime basis. The role of the investor in this context is clear: to provide secure housing on a long term lease basis in exchange for an up front lump sum payment which covers the life of the lease, in this case equal to the life of the person. The investor and the tenant enter into a prepaid leasing arrangement. The cost of the prepaid lease is primarily determined by the value of the dwelling, the tenant's life expectancy and the owner's (investor's) desired return on his/her equity.

Purchasing a prepaid lease, therefore, is analogous to purchasing a life annuity. In return for a specified sum of money, a life annuity provides specified periodic payments, guaranteed for the life of the annuitant. The pricing of annuities is premised on established life expectancies.

Investors offering guaranteed lifetime occupancies, just as investors offering life annuities, face the risk that an unusually large number of seniors might live longer than the life expectancies predicted by actuarial tables, and thereby reduce the profitability of the investment. This risk is obviously less for larger investors that have a large portfolio over which to spread the risk.

4.1 Advantages to the Investor

An owner of real estate property realizes benefits from the property by using, selling, or leasing it. If the owner sells the property, possible future appreciation in the value of the property is lost. A capital gains tax on the sale will probably have to be paid. An owner/investor of a life tenancy housing unit benefits from the property by leasing and re-leasing it. By leasing the property, an owner avoids capital gains tax and at the same time retains ownership of the property, which over the long haul may appreciate in value. Even if the owner desires to sell the property, a favourable prepaid leasing arrangement, with reversionary interests, may increase the value of the property and its marketability. Alternatively, if the owner needs immediate cash, the property may be used as security for a loan. An owner can also shift some of the burdens and risks of ownership to the tenant through a net lease. A net lease allows the lessor to lease the property free of the problems of increasing taxes, insurance, and maintenance.

4.2 Risks

Supplying life tenancies involves two major types of risk: *real estate investment* risks and normal *life insurance* risks.

Real estate investment risks arise from two sources. First, the investor bears the risk that the value of the senior's dwelling will not appreciate or will appreciate at a rate well below what could be earned in other investments of similar risk. A second major risk for the investor is that of unanticipated high inflation and interest rates. This can create major problems in instances where prepaid rent includes the prepayment of all utilities as well as services such as meals, recreation and health care (a situation which should be avoided from the investor's point of view).

As for the *life insurance* aspects of life tenancies, the main risk is that of people living longer than the life expectancy assumptions under which the life tenancies were priced. The impact of delayed termination of life tenancies, due to a large proportion of tenants living longer than expected, could be severe. This could happen particularly if the investor held a relatively small portfolio of life tenancies. Such an investor may also face difficulties in properly pricing features such as the minimum guaranteed period in the event of premature death of the senior[1] and the provision for providing compensation to the senior in the event of termination of the life tenancy agreement.

4.3 Types of Investors

The nature of the life tenancy investment is such that it would more likely appeal to an investor with the following characteristics:

- *has a long term investment horizon;*
- *requires good protection of purchasing power (i.e., inflation hedge);*
- *does not require regular cash flow;*
- *seeks long term capital growth;*
- *has a capacity to acquire a sufficiently large portfolio to neutralize deviations from life expectancies.*

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[1] Premature death after signing a life tenancy contract is of course a risk that one assumes and this is true with any type of life annuity contract -- including a life tenancy -- which does not contain a guarantee for payment for some minimum period of time. This risk not only affects the senior but also the investor/owner who could be exposed to pressures for financial compensation from the senior's estate which may feel deprived if death occurs very shortly after signature of a life tenancy contract.

Who then would be the most likely investors in life tenancy housing? Clearly, the most likely investors are those who specialize in long term financing and large specialized real estate investors. A large real estate investor could hedge or handle most types of risks involved in life tenancies, whether they were real estate related or insurance related. The risk related to the price depreciation of the property could be reduced to some extent by the investor holding a geographically well diversified portfolio of life tenancy dwellings. This strategy of course would be particularly effective for a large firm operating on a national scale.

Turning to the risk that operating costs of the rental dwelling rise at a higher rate than that assumed in pricing the prepaid rent, the best way of dealing with this risk would be simply to pass it on to the resident. Thus prepaid rents would exclude all utilities and services. In regard to the risk of the investor facing higher interest rates at mortgage renewal, this risk can be avoided if the investor is large enough to issue long term debentures.

The insurance-type risks related to using faulty life expectancy assumptions and those related to the difficulties of properly pricing the provision of contract termination and the minimum guaranteed period could be hedged by a real estate investor by transforming the cash amount of a life tenancy into a stream of monthly rental payments. This could be done by the real estate investor through the purchase of a life annuity made in the name of the occupant but with the benefits accruing to the investor. However, by performing such hedging, an investor would simply become an intermediary between the senior citizen purchasing a life tenancy and a life insurance company.

The investment in life tenancies is one which, like life insurance, is dependent upon pooling of a large investment portfolio, so that the theory underlying actuarial tables can be operationalized. The most likely investors in life tenancies are thus life insurance companies (LICs). LICs specialize in long term financing of commercial investment properties, like shopping centers, office buildings, hotels and motels, and large apartment buildings. They generally avoid financing small properties, such as single-family homes. The reasons for this are almost certainly because returns for them tend to be higher and administrative problems fewer with larger property holdings. The LICs source of funds -- policy premiums-- is quite stable, hence the preference for long term financing.

Life insurance companies could be considered as potential investors in life tenancies. However, for some life insurance companies, the relative weaknesses would be their lack of expertise in real estate investment and, at least initially until the market for life tenancies grows, their relative inability to handle the price depreciation risk through portfolio diversification.

4.4 Tax Consequences

Both the investor who sells and the senior who purchases a life tenancy should consult their tax advisors with regard to federal and provincial tax consequences of the life tenancy contract. Because each taxpayer's situation may be different, and because of the uncertainty of how the tax laws might impact on this new form of housing arrangement, each case should be examined on its own merits. There is very little precedence in Canada governing situations involving *lifetime* leasing of housing, and certainly not in the context of life tenancies. Each individual should consult his or her advisor and obtain independent counseling as to the likely tax consequences of such transactions.[1]

[1] See comments on counseling in 6.1.

5.0 MARKET CONSIDERATIONS

An important marketing consideration for a new product is *defining the product for the consumer.* Life tenancy is a relatively new concept and very few people in Canada have heard of it. If life tenancies become available in the housing market, information which explains their benefits and drawbacks should be made readily available to potential consumers. The investor providing life tenancies will likely need to prepare appropriate brochures explaining the concept in particular clarity and with sufficient comprehensiveness, such that the consumer would become aware exactly what he or she would be getting into.

Market research is becoming increasingly important to the residential sector. Due to the changing market environment, with more sophisticated and demanding buyers, the issues of what type of housing and where to build are no longer simple questions.

The investor planning to get involved in a new housing product needs to balance his intuition and creativity with hard facts about consumer characteristics, preferences and financial capabilities.

The first step in the market research process is to identify what questions need to be addressed. In the context of life tenancies, the following market research questions should be addressed:

- *Who will be the consumers of life tenancies?*
- *What are the features of life tenancy which will most appeal to consumers?*
- *What are the risks involved for the investor (e.g., competition, market conditions, alternative products)?*
- *What will bring prospective consumers to life tenancy projects?*

The answers to these questions should assist the investor in his/her decision making process, in establishing business objectives, and in developing marketing plans and strategies. A simple, relatively inexpensive market research study can help an investor make better decisions.

In addition, a process of ***testing the market*** could be pursued prior to any significant investments in life tenancy. This process of testing the market is prudent for any new product which has no track record. This process would entail providing a few life tenancy units with different options for the consumer to choose from, perhaps even (if possible) in different locations, and with different price ranges reflecting the options selected. Options could be in terms of the dwelling features, equity sharing, price alternatives, and so on.[1] However, such a market testing initiative would be very risky without some market research background.[2]

Very little actual market research has been carried out in Canada on life tenancies. The conclusions of the work that has been carried out is best described as tentative.

Study Commissioned by CMHC: In the Spring of 1987, CMHC commissioned a telephone survey and focus group sessions to provide assessments of the potential markets for life tenancies. This study was also designed to determine what factors would most influence elderly people to choose or reject life tenancies.

A total of 600 homeowners, aged 60 or more years, were interviewed by telephone during the spring of 1987. Half of these people lived in or near Vancouver, with the balance spread equally among the Toronto, Montreal and Halifax areas.

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[1] See Section 2.0 for different forms of life tenancy.

[2] In order to lessen the risk to any one entrepreneur wishing to get involved in life tenancy the most prudent approach would be to develop a life tenancy demonstration project involving a consortium of interested investors, financial institutions, builders and government agencies.

The report of this survey contains detailed findings on seniors' attitudes concerning housing issues, as well as their degree of interest in reverse mortgages, special retirement housing, and life tenancy arrangements. In addition, data are presented on the preferred size and style of life tenancy housing, and the importance to seniors of various potential features.

The general conclusion of the survey of opinions is that there is some modest interest in life tenancies among seniors. Not surprisingly, hardly any seniors had heard of this form of tenure before.

Ninety-seven senior citizens representing 16.2 per cent of those surveyed indicated that they were at least somewhat interested in the life tenancy option. Similarly, 97 of the seniors surveyed expressed at least some interest in reverse annuity mortgages. Three-hundred and seventeen respondents, representing approximately 53 per cent of the sample, expressed at least some interest in special retirement housing in general.

City of Ottawa Life Tenancy Market Study (1987): During the autumn of 1987, the City of Ottawa carried out a market study to test the concept of life tenancy. The city commissioned a private consulting firm to carry out a survey during October 1987, focussing on the feasibility of life tenancy in Ottawa for persons aged 50 years or more.[1] In particular, the objectives of the market study were as follows:

- *to determine to what extent the life tenancy concept is acceptable to Ottawa citizens and to identify the potential demand for this housing option within the city of Ottawa; and*
- *to gather some pertinent information regarding housing preferences which could be useful in developing life tenancy housing units, provided that life tenancy proved to be a viable housing option.*

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[1] *Ottawa Life Tenancy Market Study*, by TEEGA Research Consultants Inc., for City Living, City of Ottawa, December 1987.

Six hundred and seven persons responded to the survey. Out of these 607 persons, 11.6 per cent or 70 persons expressed interest in life tenancy as a possible housing option for them. The main conclusion of the study was that there is a sufficient interest in life tenancy in Ottawa to justify some units being built to test the market.

The study also provided some detailed information with regards to housing preferences of seniors, and the type of features that would be most desired in a life tenancy dwelling unit. Questions asked in the survey included preferences with regards to type of dwelling, number of bedrooms, prices, amenities, location, and other housing features. In addition, the socio-demographic background of respondents was identified, including age, sex, current tenure, household size, and income levels.

6.0 LEGAL ASPECTS

Life tenancies raise a number of legal issues that investors and seniors, must fully understand. Although this tenure option is still an unrealized notion in Canada, if the number of elderly persons interested in it grows, and if investors decide to get involved by supporting its development, then there will likely be increased interest in life tenancy issues, shown by lawyers representing elderly people, their children, government agencies, and financial institutions.

At this time, because life tenancy transactions can take many forms[1], and because the legal treatment of these transactions turns on the facts of each case, definitive answers to legal questions raised are not available. This section of the report discusses issues which may arise under life tenancy arrangements.

6.1 Counseling Seniors

A decision concerning entering into a life occupancy agreement in later life is a major financial decision. Life tenancy is definitely not suited to all elderly persons.[2] Many personal and financial factors should be taken into account before a senior commits to a life tenancy. These factors include financial planning, tax planning, and estate planning considerations.

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[1] See Section 2.0 of this report.

[2] See Section 1.5.

Proper counseling on all these aspects should involve a full evaluation of all relevant consequences. As the population ages, the number of elderly persons for whom various new financial and tenure options become appropriate will grow. Regardless of the type of financing and tenure arrangements offered to seniors, they should make sure they understand all possible eventualities that might arise from the option they choose.

In many of the areas involved in housing for the elderly, a lawyer (notary in Quebec) may be a skilled counselor. However, in other areas, professional advice from accountants, financial planners, social workers and family members or friends may also be needed. Life tenancy is a long term commitment and its implications could be either positive or negative for a senior. The pros and cons of the other options available should be carefully weighed such that the right decision is taken for each individual.

Lawyers counseling seniors who are considering life tenancy, should consider advising their clients on issues which go beyond the actual terms and conditions of particular arrangements they are considering. The impact of a life tenancy commitment upon the heirs of the senior should be explained. The lawyer may wish to encourage the senior to execute a durable power of attorney so that in the event the senior becomes incapacitated, the lawyer can ensure that the senior does not default on his/her obligations to the other parties involved.

Finally, the seniors may want to seek professional advice to examine the following issues:

- *Financially, how attractive a long term plan is this for the senior?*
- *What will the senior relinquish and what will he/she receive in return? Will the benefits outweigh the costs?*
- *Is this approach the most appropriate vehicle to meet the needs of the senior?*

A cost-benefit analysis over the expected life of the client should be performed in answering these questions. The senior's personal needs and health, as well as the senior's life expectancy, should also be considered.

6.2 Transaction Document

The terms of the life tenancy transaction are embodied in the contract between the parties. A life tenancy transaction will most probably utilize a lease as the contractual document. Such a life tenancy lease should contain at least the following protection:

For the senior/tenant:

- *assurance of lifetime occupancy;*
- *limits on increases in monthly fees with stipulation of each expense item covered by the fees;*
- *permission for the senior to have other people reside with him/her;*
- *specific duties of the tenant and those of the investor/owner regarding maintenance of the property.*

For the investor/owner:

- *restrictions on the occupant's ability to make alterations without the owner's permission;*
- *clear provision regarding assigning and subletting;*
- *provision allowing the owner to correct dwelling defects caused by tenant negligence, at the tenant's expense.*

Appendix B shows other items that may be included in a life tenancy agreement. This agreement sets out the structure and the terms of the life tenancy transaction. By signing the agreement, the consumer agrees to the terms of the lease and the investor/owner agrees to provide lifetime occupancy. The terms of the agreement should therefore be considered carefully by both parties to the life tenancy transaction.

6.3 Negotiable Factors in Life Tenancies

When asked to develop or approve a particular life tenancy agreement, the financial advisor and lawyer face a challenging task because there is no fixed pattern to follow in structuring a life tenancy. There are a number of interrelated factors which need to be individually negotiated or considered by both investor/owner and tenant. The table below enumerates the various factors, such as prepaid rent and equity sharing. The amounts of some of these factors, such as taxes or insurance, are simply accepted by the tenant or the investor/owner, but who pays them may be negotiable.

The financial advisor or lawyer can begin to prune the list of negotiable items by assuming that the life tenant should pay taxes, insurance, repairs and utilities. Beyond these items the senior will likely be trading off

Exhibit 6-1: Negotiable Factors In Life Tenancy Agreements

- Purchase price
- Equity sharing
- Method and amount of payment for monthly fees
- Repairs prior to occupancy
- Right to sublease
- Payment of repairs after occupancy
- Payment of taxes
- Payment of insurance
- Payment of utilities
- Exit options
- Premature exit implications
- Treatment of additional residents in household

purchase price against options in some of the other negotiable items. For example, if the life tenant demands an equity sharing component in his/her agreement, this will be reflected in what he/she must pay for entry.

6.4 Occupancy and Planning for Incapacity

One of the main purposes of life tenancy is to provide a way for seniors to secure lifetime occupancy. Therefore, providing assurance that the senior will have continued occupancy of the premises is of utmost concern in a life tenancy transaction. A life tenancy provides reasonable certainty as to occupancy rights. The investor/owner may request, however, that the seniors agree to relinquish the life tenancy under certain circumstances, for example, if he/she is institutionalized. Placement in a nursing home is not always permanent, but projecting the length of stay may be difficult. The investor/owner has a legitimate interest in preserving the property from waste and deterioration. An indefinite absence or vacancy of the unit may not be acceptable or legally defendable. The life tenant jeopardizes his/her right to occupancy if he/she is forced to be absent for an extended period of time.

Planning ahead for this situation is therefore an important consideration. A durable power of attorney should be executed. This is a document which spells out a person's wishes for the managing of his or her affairs in the event of incapacity. Contractual provisions dealing with vacancy, abandonment, incapacity, and the parties' obligations in this regard must be carefully drafted so as to properly preserve the life tenant's interest and his/her accompanying rights of occupancy. The life tenant's lawyer obviously plays a key role in a transaction of this nature.

There is a special conflict of interest danger to the extent that the resident has life entitlement but no equity value for his/her estate. In this situation, it is in the financial interest of the investor for the resident to die sooner rather than later. This could translate into a disregard for positive life extending facilities, conduct and attitudes.

6.5 Early Death of the Life Tenant

The possibility that an elderly person may die sooner rather than later is a contingency that seniors and their families should consider. The life tenancy agreement could provide for this eventuality, offering the elderly life tenant's heirs partial compensation in the event of early death (say within the first two years from the date of sale).

On the other hand, although detailed actuarial data exist on the life expectancy of seniors, the actual life expectancy of seniors in a specific life tenancy project would be difficult to determine. In fact seniors who expect to live longer than the statistical average could more likely be attracted to a project with a life lease than those who are frail.

This creates a situation were the investor/owner could face long term low rate of return on his/her investment.

6.6 Default of the Investor/Owner

The fundamental vulnerability of the occupant lies in the possibility that the investor/owner may become financially unable to continue providing the care (if any) and services for which the senior has paid a lump sum at the outset, or to make refunds to which the consumer is entitled, or to prevent encumbrancers from foreclosing and evicting residents.

In addition to the longevity problem[1], project insolvency can arise from under-capitalization, underestimation of cost increases, failure to establish and maintain reserves, unrealistically low pricing to draw in residents, mismanagement and outright fraud.

The protection that the life tenant would have in this situation, under the laws of Canada and its provinces, is unclear. The right to first possession of property and assets, in the event of default or bankruptcy, may go to the investor's creditors.

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[1] See Section 4.0.

6.7 Regulations

The investor/owner of any life tenancy housing scheme would have to take into account, in any province, a number of laws that are not especially aimed at such arrangements, but nevertheless could apply. Chief among them are rent controls for life occupancy schemes (in some provinces like Ontario, Nova Scotia and Manitoba), condominium regulations, and general regulations of securities.

If life tenancies and other guaranteed lifetime occupancy arrangements became popular housing options in Canada, groups supporting the interests of senior residents, and possibly investors, could be expected to press for expanded and comprehensive provincial regulatory schemes. Investors/owners would not likely object to a single comprehensive statute regulating retirement housing, to replace too much disparity, ambiguity and complexity in complying with several existing provincial statutes.

The following is a sample of legislation in Canada that is not directed especially at life tenancy or retirement housing, but by its terms could have an impact on the kinds of projects that would be involved in life tenancy. These are the most obvious statutes which would likely apply in a life tenancy situation.

British Columbia

Several statutes of the province of British Columbia could be referenced for issues related to life tenancy arrangements. These include *Land (Settled Estate) Act*, *Land (Spouse Protection) Act*, *Condominium Act*, *Residential Tenancy Act*, *Community Care Facility Act*, *Investment Contract Act*, and *Securities Act*.

The *Land (Settled Estate) Act* is a technical act which deals with questions related to leasing arrangements and the powers of the court over trustees and heirs. The mode in which leases may be authorized, the powers of leasing as vested in trustees, and renewal of leases are covered by this Act. Section 48 of this Act, in some circumstances could make it possible for a life tenant to lock into a lease term not exceeding 21 years. A tenant for life under this Act is entitled to possession notwithstanding encumbrances.

The *Land (Spouse Protection) Act* gives surviving spouses life residency rights in homesteads (matrimonial homes). The application of this Act is problematic in situations of life tenancy or of shared equity terminated on death. It may be prudent simply to ensure that the residency arrangements be based on the joint lives of both husband and wife, with a compulsory surrender on remarriage of the survivor.

The *Condominium Act* may be referenced in life tenancies, particularly in the context of treatment of common areas in life tenancy projects. The obligations of life tenants in this context seem to be similar to those of condominium dwellers, particularly if the housing complex is made up exclusively of life tenancies. Contracts about common properties are dealt with in this Act -- including bylaws, restrictions, and the duties and powers of owners of projects.

The *Residential Tenancy Act*, deals with matters such as the tenancy agreement and obligations of parties involved with regards to the premises and their upkeep. It also deals with conditions under which the tenancy agreement may be terminated by the owner/landlord. In the case of life tenancies it is not clear how this might apply to these same conditions -- e.g., default of the tenant to make monthly upkeep payments.

The *Community Care Facility Act* regulates facilities, among others, that provide personal care or supervision, or food and lodging, or that are designated by the government. This would appear to catch supported-living facilities and probably also semi-independent facilities. A licence is required, based on the professional qualification and social suitability of the management and the physical suitability of the facility. The Act prohibits all attempts by facility employees to obtain gifts or other benefits from residents. The Act also requires that the terms of any refund of prepayment for services be set out in writing.

Alberta

Alberta also has a number of statutes which would apply to life tenancies. The *Residential Tenancies Act* (September 1992) replaces the *Landlord and Tenant Amendment Act*. This Act deals with, among other matters, the obligations of landlords and tenants, and remedies to infractions of agreements. The obligations and rights of new owners are also covered by this Act.

Landlord's Right on Bankruptcy Act addresses the situations when landlords are unable to claim debt from lessees because of bankruptcy. In the case of a life tenancy, this situation could arise in terms of monthly payments for the upkeep and repair of premises. What are the landlord's rights and remedies available to the owner/landlord in a situation when the life tenant is declared bankrupt and unable to fulfill financial obligations? This Act could possibly be referenced in such situations.

The *Condominium Property Act* could apply, depending on the tenancy contract, regarding liability of a tenant in a life tenancy housing project. For example, the life tenant may be rendered liable in respect of common property, in proportion to the unit factor for his/her unit.

Saskatchewan

The "Statutory Conditions" included in *The Residential Tenancies Act* of Saskatchewan are applicable to all tenancy agreements in force in the province. These conditions cover such matters as obligations to ensure quiet enjoyment of the premises, and maintenance of the dwelling in a good, safe and healthy state. The effects of death of a tenant on tenancy is also mentioned in this Act. Where the tenant dies during the term of the tenancy agreement leaving a spouse, the death of the tenant does not terminate the tenancy agreement and the tenancy agreement remains in force and effect subject to this Act. This is applicable to a regular residential rental agreement, but in the case of a life lease agreement the rights of the spouse would most likely have to be included in the contract.

This Act also covers situations where a new landlord takes over from the original landlord. The new landlord is subject to all rights and obligations of the old landlord under this Act.

Leasing arrangements and reversionary rights of landlords are referred to in the *The Landlord and Tenant Act*. Situations where lessees become bankrupt and the rights of the landlord when a lessee is unable to pay monthly obligations are covered by this Act.

The Planning and Development Act regulates the zoning subdivision of lands. Application and location of life tenancy projects would be considered under this Act. Life tenancies might be interpreted as rental dwellings under the provisions of this Act, but this is not entirely clear.

The Personal Care Homes Act ensures that the well-being of residents of personal care homes are protected. Under this Act any owner/investor providing life tenancies which include home care arrangements will need to consider licensing for this type of shelter.

Municipalities considering getting into the life tenancy type of housing, and including special-care options in the agreements would need to refer to the *The Housing and Special-care Homes Act*. This Act includes sections dealing with the constitution of corporate entities providing special care, and with the powers of municipalities to operate homes for needy, aged, infirm or blind persons.

Manitoba

In Manitoba, several statutes also exist which regulate rental housing. *The Residential Tenancies and Consequential Amendments Act* (assented to in December 14, 1990), covers many aspects of the landlord-tenant relationship, including the tenancy agreement, and obligations of landlords and tenants. This act also deals with the situation when there is a change of landlord/ owner, and the consequences of such a change.

The *Landlord and Tenant Act* of the province of Manitoba deals specifically, in Part I of the Act, with leases and tenancies and covenants running with reversion. This part covers issues dealing with the tenant's estate and reversionary rights of landlords. Forfeiture of leases and restrictions on and relief against forfeiture are also covered. These items are relevant to life tenancy arrangements in that they regulate the leasing contracts and address situations such as breach of payments and death or default by lessee.

The Residential Rent Regulation Act may also apply in some situations to life tenancies. The act applies to all residential premises in Manitoba, with some exceptions provided for in the Act. This act regulates the process of rent setting and increases, treatment of premises, appeals processes, payment of additional services, prohibitions on conversions of the premises (e.g., to condominium use), prohibitions relating to landlords and those relating to tenants (e.g., regarding additional fees), obligations of new landlords, and rehabilitation of premises.

The Securities Act of Manitoba is equivalent to its counterparts in other provinces. It deals with issues of registration of securities, control over security companies and their subsidiaries, and regulation of such companies' activities. In that life tenancy could be formulated as an equity sharing arrangement, this Act would apply in circumstances where a company is offering shared equities in projects to "tenants" or to investors. *The Securities Act* applies to "any income or annuity contract not issued by an insurance company licensed under The Insurance Act".

The Planning Act in Manitoba deals with issues such as those relating to non-conforming uses of buildings, land zoning, and change in tenant status. This Act will likely apply to situations of life tenancies, particularly in terms of conformance to land use designations.

Ontario

Bill 121 -- Rent Control Act obtained Royal Assent on June 25th, 1992. This Act revises the *Residential Rent Regulation Act*. This Act generally limits the increases that may be charged for rent, which includes accommodation-related facilities and services. The limit is set based on a rent control guideline in effect for each calendar year. A rent control index is set each year taking into account operating costs and capital expenditures. Exceptions can be allowed in special circumstances. This is essentially a costing benchmark system. As long as it is in effect this would give some measure of protection to residents under life tenancy schemes, who pay periodic maintenance charges. This Act would likely not be relevant to shared equity schemes.

On the other hand, the *Condominium Act* is not much relevant to a resident who is simply a life tenant, but it is significant to shared equity residents and to smaller investors/owners. This Act facilitates separate unit titles and supplies a basic governing system that is well-established and understood. The sale of units is accompanied by one-year developer-guaranteed budgeting and by disclosure of intention as to sale or leasing for all units in the condominium plan. The separate unit titles facilitate mortgage financing on an individual-unit basis. The Condominium Act is also intended for resident unit control and responsibility.

The Condominium Corporation Act, 1992 (Bill 81), amends certain provision of the *Condominium Act* with respect to the management and operation of condominium corporations and the sale and lease of units, including expanded disclosure and interim occupancy requirements.

For life tenancy housing which provides special care facilities/services on the premises or as a possible option in the lease, *The Homes for Special Care Act* would likely apply. Home for the care of persons requiring nursing, residential or sheltered care, as in other provinces, need to be licensed in Ontario.

The *Investment Contracts Act* sets up a regime of compulsory registration, capital and reserves, investment controls and reporting for all arrangements under which a consumer pays money to an issuer on the promise of some return payment on maturity with optional settlement values. This Act would be especially relevant in the development of a regulatory scheme for special retirement housing, involving both residents and investors.

The *Securities Act* is a sophisticated regulatory scheme of broad application. Almost any investment arrangement needs to be carefully reviewed against this Act. Where applicable the Act very strictly regulates issuers, prospectuses, financial reporting, trading and disclosure, but does not support the actual quality or value of an investment.

The *Residential Complex Sales Representation Act, 1983* prohibits sales of general shares of ownership of residential complexes of more than six units. This would appear to allow simple life leases but prevent shared equity and surrender-value arrangements. Condominium units and some co-operative arrangements are exempted. However, it appears that an exemption would be needed to permit the scheme of life tenancy with refund on surrender, even if the refund is regarded as a debt rather than a form of ownership.

Quebec

The present Quebec *Civil Code* does not specifically address the question of life tenancies. This type of tenancy arrangement could either come under the provisions of the *Civil Code* dealing with the right of use and habitation (articles 487 and following) or the provisions dealing with residential leases (articles 1664 and following).

The right of use and habitation is a temporary real (property) right in the property. It is a variation of the right of usufruct which gives the usufructuary the full right to use the property and enjoy the "fruits" (revenues) of the property. The right of use when applied to a residential property is called a right of habitation and it confers on the "usager" and his family the right to live on the premises. The relationship between the owner and the "usager" is governed by the *Civil Code* provisions on the right of use and habitation and usufruct. The right of habitation is also governed by the terms of any agreement between the owner and the "usager". A right of habitation cannot be assigned or leased. Unless another term is specified by agreement, the right of habitation is deemed to be for the duration of the natural life of the "usager".

It is also possible that a residential lease which confers only a personal right on the lessee (tenant) may be made for the duration of the natural life of the lessee. This lease would have to be in accordance with the provisions of the *Civil Code* dealing with residential leases. The *Civil Code* specifically spells out many of the obligations of landlords and those of tenants (lessors and lessees). Matters involving repairs, rental payments, condition of the dwelling, access, subletting and transfer of leases are covered in the Code. In addition, the leasing agreement and conduct for its execution are addressed. Extension of leases, increases and fixing of rent are also a matter provided for in the Code, as well as provisions for repossession of a dwelling by an owner/investor. The rights and obligations of persons living with the lessee at the time of the lessee's death are also prescribed by the Code. Such persons have the rights and obligations from the lease to continue occupying the dwelling providing they give the lessor a notice to that effect within two months of the death.

The *Loi sur les valeurs mobilières* (Securities Act) is of broad application as in other provinces and also regulates investment contracts in Quebec. Life tenancies, as discussed earlier in this guidebook, are similar to annuities provided by insurance companies, and would therefore be subject to similar statutes applying to life annuities.

New Brunswick

The Residential Tenancies Act itemizes the obligations of tenants and landlords, and the remedies when these parties to a rental agreement fail to comply with their obligations. A "Standard Form of Lease" is made mandatory by this Act, and if such a lease is not signed the possession of the premises by the tenant creates a tenancy agreement the term of which is to be determined by the method of rental payment. This will not apply to a life tenancy arrangement, since a separate life tenancy contract will likely be needed.

In New Brunswick the *Residential Rent Review Act* regulates increases in rents subject to review. Increases in a life tenant's rental obligations, for monthly payments for upkeep of the dwelling premises and common areas, might likely be considered under the provisions of this Act. In addition common elements in the building, and ownership and obligations towards the common elements, would likely be regulated through provisions similar to those contained in the *Condominium Property Act* of New Brunswick.

Landlord and tenant leasing agreements are regulated in New Brunswick under the *Landlord and Tenant Act*. The rights of heirs and spouses in situations where a lease for life is in effect may be applicable to life tenancies, depending on what the stipulations are in the life tenancy lease itself.

Prince Edward Island

The Rental of Residential Property Act of Prince Edward Island contains similar provisions as the residential tenancies acts of other provinces. The landlord-tenant relationship is regulated through leasing arrangements, and the execution of these leases are subject to sections of this Act. The statutory obligations of landlords and tenants would apply to life tenancy agreements.

The sale and lease of condominium units and the regulations of common elements in a condominium project are regulated by the *Condominium Act*.

As in other provinces, similar provisions to those in this Act which deal with occupant/owner obligations regarding common elements in a condominium building might likely apply to tenants in a life tenancy building.

The statutory conditions required for landlord responsibilities (e.g., proper maintenance and repair of premises, compliance with health regulations and safety standards, including any housing standards required by law), are dealt with in the *Landlord and Tenant Act* of Prince Edward Island. This Act also stipulates the responsibilities that are required on the part of the tenant. These statutory conditions will also apply to life tenancy arrangements.

Nova Scotia

Residential Tenancies Act deals with situations deemed as landlord-tenant relationships, and stipulates the requirements for leases in such relationships. Statutory conditions are laid out for services to be provided by landlords, conditions of the premises, obligation of the tenant, subletting and so on. The terms for execution of the lease and acceptable penalties and protection measures for both landlord and tenant are included. References to the *Rent Review Act* are made in matters regarding rental increases and default.

The *Rent Review Act* is equivalent to the Ontario rent control law, but not applicable for the first three years of a new building. The *Condominium Act* and the *Securities Act* are equivalent to their counterparts in other provinces.

The *Homes for Special Care Act*, somewhat like the British Columbia *Community Care Facility Act*, regulates facilities supplying room and board plus daily supervision or assistance or nursing care. This Act would also appear to apply to supported-living and semi-independent facilities. A licence is required, although social suitability of management appears not to be a criterion.

Newfoundland

In Newfoundland, the *Residential Tenancies Act* applies to situations where a tenant possesses or occupies residential premises and has paid or agreed to pay rent to the landlord; or makes an agreement with the landlord by which the tenant is granted the right to possess or occupy residential premises in consideration of the payment of or the promise to pay rent. The requirements for leases in landlord and tenant relationships are spelled out in this Act. Provision for "statutory conditions" are given in the Act. These conditions cover matters such as condition of premises, obligation of the tenant, abandonment and termination of lease, peaceful enjoyment, and disconnection of services. Since life tenancies are subject to a leasing arrangement, many of the provisions in this Act would likely apply.

The *Condominium Act* deals with the issue of common elements in a building. The owner of a condominium unit in a property is required to hold each common element as a tenant in common with the owners of the other units in the property "in the proportion which is specified in the declaration as the percentage which the common element is to relate to that unit". This is likely to apply to life tenancy projects with several life tenants occupying different units.

APPENDIX A

Glossary of Terms

Glossary of Terms

ANNUITY: (1) Periodic cash payment over a given period. (2) A fixed amount given or left by will, paid periodically. See also LIFE ANNUITY.

COMMON AREA: That area owned in common by owners of condominiums and planned unit-development homes within a subdivision.

CONTINUUM OF CARE: A seniors housing concept providing a sequence of shelter options based on changing needs due to aging.

EQUITY: The value that an owner has in property over and above the liens against it.

EQUITY SHARING: Shared ownership of real property. Also known as shared equity, equity participation, equity partnerships, and shared appreciation.

GROSS LEASE: A lease obligating the landlord to pay all or part of the expenses incurred on a leased property.

HOME REVERSION: See Reversionary Interest/Remainder Interest.

JOINT TENANCY: Joint ownership by two or more persons with right of survivorship. Upon the death of one of the joint tenants, the interest does not go to that person's heirs but to the remaining joint tenant(s).

LEASE: A contract between the owner of real property, called the "lessor" or landlord, and another person or party referred to as the "lessee" or tenant, covering the conditions by which the tenant may occupy and use the property.

LEASE WITH OPTION TO PURCHASE: A lease under which the tenant has the option to purchase the leased property, the terms of which must be set forth in the lease.

LIFE ANNUITY: An arrangement to pay an income yearly during the life of a person, the annuitant, whether or not it is thereafter continued to another; the sum thus promised.

LIFE EXPECTANCY: The average future lifetime of persons within a given age group and gender from a given point in time. Mortality rates for specific age groups are used to determine life expectancy for any population group (as shown by mortality or actuarial tables).

LIFE TENANCY: An occupancy right to real property for the life of a person.

NET LEASE: A lease requiring the tenant to pay all or part of the expenses on leased property in addition to the stipulated rent.

PARTIAL EQUITY PARTICIPATION: Equity sharing or shared ownership of real property. Also known as equity partnerships and shared appreciation.

REMAINDER INTEREST: The interest or claim that will remain with the tenant's estate after the expiration of the tenancy.

REVERSE MORTGAGE: A mortgage in which the loan is not advanced at the beginning but rather the borrower is paid an annuity (income) drawn against the equity in the home. Reverse mortgages allow senior homeowners to access cash by borrowing against the value of their homes.

REVERSIONARY INTEREST: See Remainder Interest.

RIGHT OF SURVIVORSHIP: Automatic right of surviving joint owner(s) to acquire the interest of a deceased joint owner. This is a distinguishing characteristic of joint tenancy compared with tenancy in common..

SALE LEASEBACK: A sale of a property with a lease from the buyer back to the seller. Under a sale leaseback, a senior could sell his/her home outright to an investor and in return obtain the price plus a lease of the property. The senior, however, surrenders all ownership rights to the investor and must pay rent.

SHARED APPRECIATION: See equity sharing.

SHARED EQUITY: See equity sharing.

SUPERANNUATION: This is the risk that an unusually large number of seniors might live longer than the life expectancies predicted by actuarial tables, and thereby reduce the profitability of the investment.

APPENDIX B

Components of a Model Agreement

ITEMS TO INCLUDE IN A LIFE TENANCY AGREEMENT

The following list of items, and descriptions of each therein, is only intended to provide examples which highlight what could be included in a life tenancy agreement. This list and descriptions are by no means exhaustive. Furthermore, many of the items are negotiable between the investor/owner and the life tenant (see Section 5.3 for comments on negotiable items).

TERM OF THE TENANCY

The term of the life tenancy is for the life of the tenant, unless otherwise amended due to conditions stipulated elsewhere in the agreement.

If the tenant is more than one person, the term of the lease is extended to the life of the survivor.

MONTHLY PAYMENTS/ADJUSTMENTS

The tenant agrees to pay monthly fees for maintenance and upkeep of the property. The criteria and periods (e.g., annually) for adjustments to the monthly rates should be identified here. In addition, the specific items covered by the fees should be included. The owner and/or property manager of the dwelling should agree to provide an annual budget of expenses and rationalization of the monthly payments.

USE OF PROPERTY

The tenant shall use the property as the tenant's principal residence, and for no other purpose. The tenant shall not commit or allow to be committed any nuisance or waste on or about the property.

ALTERATIONS

Neither owner nor tenant shall make or cause to be made any alterations, additions or improvements to any part of the property without the prior written consent of the other. Any alterations, additions or improvements to the property, except movable personal property, shall immediately become a part of the property and belong to the owner.

LIENS

The owner and the tenant each shall keep the property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of the tenant.

ASSIGNMENT AND SUBLETTING

The owner and tenant intend that the lease be and remain a lease to the original tenant(s) named in the lease. The tenant should not assign, transfer, sublet, or in any way encumber the lease, or any interest in it, without the prior written consent of the owner, and the owner should not be obligated to consent to any request to do so, but may give or refuse consent at his/her sole discretion. Any violation without the prior written consent of the owner shall be voidable by the owner.

UTILITIES

The tenant shall pay for all water, fuel, electricity, telephone, garbage disposal, and all other services and utilities supplied to the property during the term of the lease.

MAINTENANCE

The tenant at the tenant's cost will keep the property in good order and repair and in a safe and clean condition. As part of this section, specific details may be listed regarding the particular obligations of the tenant versus those of the owner/investor, specifically as they apply to components of maintenance and/or repairs.

TAXES

The tenant for the term of the tenancy will be responsible to pay all real property taxes and general and special assessments levied or assessed against the property, and any other charges or assessments of any governmental authority that becomes or may become a lien.

INDEMNITY

The tenant shall indemnify and hold the owner harmless from and against any injury to or death of any person or any damage to property arising from the use or occupancy of the property by the tenant.

PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The tenant at his/her cost shall maintain public liability and property damage insurance.

FIRE INSURANCE

The owner at his/her cost shall maintain on the property a policy of standard fire and extended coverage insurance to the extent of at least 100 per cent of the full replacement value.

ABANDONMENT

The tenant shall not abandon the property during the term of this lease without the owner's prior written consent. Without limiting the generality of the foregoing sentence, and subject to the provisions of this lease governing assignment and subletting, the tenant shall not leave the property unoccupied for a period in excess of ______ days, without giving the owner prior notice and making reasonable arrangements for the maintenance and security of the property.

DEFAULT

In the event of default under this lease by the tenant, the owner will have the right to terminate the tenant's right of possession of the property after a time of the owner's choosing no less than ____ days after the default has occurred.

In the event of default under this lease by the owner, the tenant will have the right to cure the default at the owner's cost. If the tenant at any time, by reason of the owner's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the tenant shall be due immediately from the owner to the tenant at the time the sum is paid, and if paid at a later date shall bear interest at a rate of ____ per cent per annum. If the owner fails to reimburse the tenant as required, the tenant shall have the right to withhold from the monthly fee payable under this lease the sum the tenant paid until the tenant is reimbursed in full for the sum plus interest as provided herein.

Because of the importance of the life tenancy agreement to the tenant, the default provisions should protect the tenant even beyond what is provided by provincial statutes. Protection should be expressly included in the leasing agreements, and to the extent that other measures beyond withholding monthly fees are feasible they should be considered by counsel.

SHARED EQUITY

Any negotiated sharing of equity in the dwelling should be spelled out in the lease, and specifically how appreciation/depreciation will be apportioned among the parties.

TERMS OF EXIT

The terms under which the tenant is allowed to relinquish his/her life tenancy should be identified as they apply to reasons for exit. Reasons due to incapacity or general health should be dealt with in a separate context than reasons related to voluntary exit. Negotiated options for settlement of an exit situation could be prearranged.

PROPERTY MANAGEMENT

Obligations and expectations of the parties involved in the life tenancy agreement could be itemized in this section. Usually property management will be the investor/owner's responsibility.

RULES OF OCCUPANCY

The by-laws of the life tenancy project, governing such matters as treatment of overnight guests, common areas, gardening, building of fences, parking facilities, and so on, may be specified in this section.

QUIET ENJOYMENT

As long as the tenant is not in default under this lease, the tenant shall have quiet enjoyment of the premises during the term of the lease.

SUCCESSORS AND ASSIGNS

All provisions of this lease shall not extend to or bind any of the heirs, executors, representatives, successors and assigns of the tenant.

All provisions of this lease shall extend to or bind any of the heirs, executors, representatives, successors and assigns of the owner.

DESCRIPTION OF THE DWELLING

The lease should contain a legal description of the property, particularly as it was at the time of signing by the parties involved.

MISCELLANEOUS

The lease is to be governed by the laws of Canada and the province of location.

APPENDIX C

Questions Consumers Should Ask

Questions Consumers Should Ask

Before entering into any legal agreement, seniors and their financial and legal advisors should ask the following questions about the life tenancy agreement.

- Compared to the cost of purchasing a home outright, does the price asked for a life tenancy represent good value, considering the age and sex of the senior?
- Who is responsible for the day-to-day duties necessary for the upkeep of common areas of the life tenancy project?
- Is a monthly fee charged to cover operating costs? How often can the fee be raised? Does the agreement specify a limit on the annual increase in the fee?
- In the case of a couple, does the agreement clearly spell out what will happen to the survivor should one of the spouses die?
- In the event of untimely death, does the agreement provide for some compensation to be paid to the senior's estate?
- What amount of financial compensation will the senior receive, should he/she move from the project for health or other reasons?
- Given the initial outlay made by the senior, will the senior have a say in the operation of the project?
- Is the project sponsor financially solid? Is there any risk of financial failure? If the project should fail, do the legal arrangements offer the residents protection?
- Is the senior guaranteed the right of occupancy for life? Are there any conditions under which the senior can be evicted from the project? If so, what are those conditions?
- What are the health requirements for continued tenancy in this project? Under what conditions will deterioration in the health of a resident lead to eviction?
- What are the tax implications of life tenancy and how will this affect the resident's own tax situation?
- What are the dwelling maintenance obligations of the owner and of the resident? Who is responsible for repairs?

APPENDIX D

List of References

List of References

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