

REPORT  
OF  
THE LIFE TENANCY TASK FORCE

October 1987

## 1. INTRODUCTION

### 1.1 Objectives

- ° In November 1986, the B.C./Yukon Regional Office presented a proposal to the CMHC Management Committee which advanced the view that life tenancies could improve the affordability and marketability of purpose built housing for elderly people and stimulate private sector interest in developing markets for such housing. The Committee responded by setting up a Life Tenancy Task Force with a mandate to examine the potential of life tenancies in Canada.
- ° In taking this initiative, it was recognized that several auxiliary benefits could result from enabling more elderly people to choose to move into affordable privately initiated retirement housing. In addition to increasing the range of options available to elderly Canadians, it was felt that benefits would include:
  - increasing financial independence and thereby reducing the subsidy needs of asset rich/income poor elderly people; and
  - enabling more efficient use of the existing housing stock and infrastructure by facilitating access by senior citizens to smaller and more suitable housing accommodation.

### 1.2 Work Program

- ° In carrying out its work, the Task Force examined experiences in other countries, including the U.S., Britain and Australia, where privately initiated retirement housing has been available for a number of years. This provided an opportunity to study the evolution of retirement housing as a private sector option, and to gain insight into the reasons for the development of a wide variety of housing types and financial mechanisms (including life tenancies), as well as ways of dealing with consumer protection issues. The Canadian housing industry is now showing increasing interest in retirement housing and several recent developments were examined.
- ° A telephone survey and focus group sessions were carried out to provide assessments of the potential markets for life tenancies. These studies were also designed to determine what factors would most influence elderly people to choose or reject life tenancies.
- ° Discussions and meetings were held with representatives from the life insurance industry and pension funds to determine their potential interest in the life tenancy concept and to seek their views on the ways in which the concept could be marketed and structured.
- ° Discussions also took place with major firms who currently develop and manage special housing for older people in both Canada and the U.S. These consultations provided valuable information on the practical issues that are important to the private sector in considering retirement housing developments and innovative financing.

- ° In evaluating the various options and developing its conclusions and recommendations, the Task Force attempted to reflect the jurisdictional and regulatory environments in Canada, and the current and evolving nature of the elderly population.
- ° The Task Force identified potential CMHC initiatives (see Section 9) which could raise awareness of the concept of life tenancies and help to ensure that it is adopted in ways that serve the needs of elderly Canadians.

## 2. BACKGROUND

### 2.1 Extending Housing Options

- ° Older Canadians have diverse backgrounds and interests and significantly different levels of fitness, income and assets. It is expected that this diversity will increasingly be expressed in demands for a much greater variety of accommodation and services. In particular, elderly people are likely to seek options that will enable them to maintain independent life styles and financial self-sufficiency for as long as possible.
- ° The Corporation is currently undertaking several research studies, some in cooperation with provincial housing agencies and the private sector, to explore and evaluate a variety of promising new housing options for older Canadians and to identify the actions that may be necessary to make these widely available. The work of the Task Force both contributed to and benefitted from these studies. A recently published CMHC booklet, entitled "Housing Choices for Older Canadians", is designed to provide the public with an overview of new options that are, or could be, available. It includes descriptions of different types of privately initiated retirement housing and new forms of tenure, including life tenancies.

### 2.2 Privately Initiated Retirement Housing

- ° Privately initiated retirement housing is now a fast growing segment of the private housing market in both Britain and Australia, and it also represents a significant portion of the U.S. market. The basic concept of combining accommodation, care and security, is inherent in the "sheltered housing" in Britain, the "retirement villages" in Australia, and the "retirement and life care communities" in the U.S. There is, however, a wide variety of project and accommodation forms, as well as differences in the types and levels of service provided as part of the accommodation package.
- ° The supply and variety of privately initiated retirement housing has also increased substantially in Canada in recent years and as a result-except for the life care community model available in the U.S.-most forms of retirement housing available in Britain,

Australia and the U.S. do exist in Canada. Condominium retirement projects offering 24-hour a day emergency response systems provide retirement housing in Canada comparable to sheltered housing in Britain. Similarly, as in the case of Australia, there are several retirement villages in Canada today. Amberwood Village in Stittsville (near Ottawa) stands as an example of such communities. The reason for the absence in Canada of life care communities as they exist in the U.S. will be discussed later in this paper.

- ° Just as different forms of retirement housing have evolved, a variety of purchasing and tenure options have been developed in response to different conditions and consumer preferences. As in Britain, a new form of tenure has emerged in recent years in Canada. As described in typical brochures put out by project sponsors, this new form of tenure involves the purchase by the senior of a "life interest" in a "condo-style" project. Under this arrangement, a senior provides the project sponsor (usually a non-profit agency or co-op) with a lump sum interest-free loan to cover part of the cost of the dwelling. This loan entitles the senior to occupy the dwelling for life, although rent is also payable in respect of ongoing costs. The loan amount is returned to the senior, or to the senior's estate when the dwelling is vacated. In Britain, arrangements of this type are called "Loan Stock Schemes".
- ° In the pure loan stock model, the senior cedes all appreciation in the value of the property to the project sponsor in return for a reduction in the cost of entry. This means that the loan can be much less than the full value of the property and/or that the ongoing rent can be reduced. In Canada, the few loan stock schemes in existence are operated by groups with a religious affiliation. Appendix 1 provides additional information on selected housing retirement projects.
- ° The main benefit of loan stock schemes stems from the reduced cost of entry into a project compared with outright purchase. Other advantages for the senior are that of residing in a project catering the specific needs of elderly people and that of having security of tenure for life.
- ° The concept of life tenancies as described in this paper, represents an evolution from the concept described above. Life tenancies currently exist in Britain where they are offered by a company operating under the name "Home for Life PLC".

### **3. THE CONCEPT OF LIFE TENANCIES**

#### **3.1 Description**

- ° Compared to the loan stock scheme, purchase of a life tenancy can result in an even more substantial reduction in entry cost for the senior. However, instead of being achieved through granting an interest free loan to the project sponsor, the reduction in entry

cost under a life tenancy model stems from purchasing occupancy of the dwelling unit for a period equal to the remaining life of the senior as opposed to buying permanent ownership. This means that under a life tenancy agreement, ownership of the property will revert back to another party (ie. the developer/investor) after the death of the senior. This also implies that under a pure life tenancy model, none of the amount spent to purchase a life tenancy would revert to the senior's estate following death.

- ° Given that under a life tenancy, a senior buys the right to occupy the dwelling unit for life, the arrangement essentially amounts to the purchase of a pre-paid lease. The amount of the prepaid lease 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. Table 1 below illustrates the pricing of a \$100,000 dwelling unit where the purchaser is a 65 year old male, having a life expectancy of 15 years. As shown in the Table, based on the purchaser's life expectancy, the cost of prepaying the rent on a \$100,000 dwelling would amount to \$63,100. As indicated in Table 1, these estimates are derived from the "HOME FOR LIFE" scheme offered in Britain.

**TABLE 1**  
CONTRIBUTION <sup>1</sup> BY SENIOR AND BY "HOME FOR LIFE P.L.C"

AGE	SINGLE MALE		SINGLE FEMALE	
	Purchase Price Paid By Senior	Home For Life Contribution	Purchase Price Paid By Senior	Home For Life Contribution
65	63.1 %	36.9 %	70.1 %	29.9 %
70	56.7 %	43.3 %	63.5 %	36.5 %
75	50.2 %	49.8 %	56.5 %	43.5 %
80	43.0 %	57.0 %	49.2 %	50.8 %
85	36.0 %	64.0 %	40.6 %	59.4 %

Source: "The Home for Life Plan".

<sup>1</sup> Expressed as a percent of house price.

- ° As indicated in the example above, being calculated on the basis of life expectancy, a key advantage of a life tenancy is that of enabling the senior to access suitable accommodation at a cost much lower than the full market price of the property (i.e., \$63,100 as opposed to \$100,000 in the example above). Correspondingly, the purchaser of a life tenancy benefits by:
  - being certain to have sufficient money to occupy the dwelling unit for the rest of his/her life, irrespective of how long he/she lives (as long of course, as he/she can cover the monthly cost of utilities, upkeep and so on);
  - by paying less than the full price of the property, the purchaser has some money left to spend or to invest in an annuity to supplement income;
  - alternatively, the purchaser of life tenancy could purchase a more expensive home with a given amount of capital;
  - the purchaser of a life tenancy obtains security of tenure for life.
- ° Life tenancies and "loan stock schemes" bear a number of similarities. These are as follows:
  - compared with outright purchase, both schemes provide the senior with a reduction in the cost of entry;
  - under both schemes, the senior must pay a minimum monthly fee to cover the cost of utilities, maintenance, property taxes, and so on; and
  - both schemes offer security of tenure for life.
- ° While life tenancies and loan stock schemes have many similarities, the main difference is that compared with a loan stock scheme, the purchaser of a life tenancy usually is able to obtain a much more substantial reduction in the cost of entry because in addition to surrendering all price appreciation, the purchaser of a life tenancy surrenders the whole value of the home following death.
- ° In summary, life tenancies constitute the leasing of a unit to the elderly for life with the unit reverting on death, to the developer/investor. Ownership of that unit comprises two legal interests: (i) the life tenancy which is enjoyed by the elderly occupant and (ii) the reversionary interest owned by the developer/investor. The sum of these two interests equal the freehold interest. Life tenancies do not exist in Canada now. They are offered in Britain by a company operating under the name "Home For Life PLC".

#### 4. ALTERNATIVES TO LIFE TENANCIES

The Task Force examined the following alternative approaches which could provide older people with similar advantages to those offered by life tenancies, by reducing the amount of capital required to buy occupancy rights to a dwelling.

##### 4.1 Shared-Equity Schemes

- ° Shared-equity schemes are popular in Britain. As an alternative to outright purchase, they provide a relatively simple way for older people to reduce the capital they require to purchase the right to live in retirement housing. They allow for purchase of part of the equity (50% for example) and payment of rent in respect of that portion retained by the developer or investor. Rent is also paid to cover ongoing costs. The arrangement usually gives the occupant the right to purchase all or part of the developer/investor portion of the equity at a later date. Purchasers can also sell their equity in the same way as if they had purchased the dwelling outright, although in some cases they must market it through the operators of the project.
- ° Compared to life tenancies, the shared-equity approach demands a greater proportion of the purchaser's assets/income, as the combined purchase and rental costs must cover the full value of the unit. The advantage of shared-equity approach is that of providing a marketable asset which will appreciate if property values increase.
- ° In Canada, where older people usually have access to NHA mortgages, shared-equity arrangements may offer few advantages over purchasing a dwelling outright and taking a mortgage to cover part of the purchase price. A potential advantage, however, is protection from mortgage interest rate volatility.

##### 4.2 Reverse Mortgages

- ° Although reverse mortgages are viewed mainly as a means of freeing up equity in an existing home, they could also be used to free some of the capital that would otherwise be required to purchase a new home. There is an inherent disadvantage in reverse mortgages, in that the level of interest to be paid on the mortgage is usually higher than the level of return received through the annuity. There is also the risk associated with escalating mortgage rates and fixed annuity income.

##### 4.3 Other Alternatives

- ° Other alternatives available to the senior that were examined by the Task Force included:
  - outright purchase of a dwelling unit;

- investing in GIC's or bonds and renting accommodation;
- purchase of a life annuity and renting accommodation.
- ° Table 2 below provides, on the basis of various criteria, a comparison between all the alternatives discussed thus far in this paper. The criteria used for comparing the alternatives include:
  - the cost of entry into a homeownership project;
  - the degree to which the senior can use assets to supplement income; and
  - the extent to which money can be left to the senior's estate.
- ° As Table 2 shows, life tenancies provide the senior with a low cost approach to access homeownership type housing. However, it is also the only homeownership option that fails to permit the senior to leave any money to his/her estate. This illustrates the trade-off faced by seniors in deciding between various housing alternatives.
- ° It should be noted that the Table compares the "pure" versions of the various schemes. The holder of a life tenancy could, for example, obtain part of value appreciation of his unit. Of course this would mean a higher priced life tenancy.

TABLE 2

## LIFE TENANCIES COMPARED WITH VARIOUS ALTERNATIVES

Alternatives	Entry Cost <sup>(1)</sup> (A)	Amount Left to Invest in Life Annuity <sup>(6)</sup> (B)	Monthly Income From Life Annuity <sup>(7)</sup> (C)	Monthly Shelter Cost (Incl. Mortgage Interest) (D)	Net Monthly Income (cost) From \$100,000 Asset (E)=(C)-(D)	House Price Appreciation (F)	Money left to Estate (G)
HOME OWNERSHIP OPTIONS							
Life Tenancy	\$63,000 <sup>(2)</sup>	\$37,000	\$ 393	\$ 300 <sup>(8)</sup>	+\$ 93	Surrendered	Nil <sup>(12)</sup>
Loan Stock Scheme	\$87,000 <sup>(3)</sup>	\$13,000	\$ 138	\$ 300 <sup>(8)</sup>	-\$162	Surrendered	Original <sup>(13)</sup> \$ 87,000
Purchase Outright	\$100,000	NIL	NIL	\$ 300 <sup>(8)</sup>	-\$300	Accrues to Senior/Estate	\$100,000 plus full price appreciation
Reverse Mortgage	\$50,000 <sup>(4)</sup>	\$50,000	\$ 531	\$ 758 <sup>(9)</sup>	-\$227	Accrues to Senior/Estate	\$ 50,000 plus full price appreciation
Shared Equity Scheme	\$50,000 <sup>(5)</sup>	\$50,000	\$ 531	\$ 635 <sup>(10)</sup>	-\$104	Shared 50/50	\$50,000 plus half of price appreciation
RENTAL OPTIONS							
Rent and Invest in GIC/Bonds	Nil (rental tenure)	Nil (Invested in Bonds)	\$ 833	\$ 969	-\$136	None	\$100,000 in GIC/Bonds
Rent and Invest in Life Annuity	Nil (rental tenure)	\$100,000	\$1,062	\$ 969	+\$ 93 <sup>(11)</sup>	None	Nil <sup>(12)</sup>

<sup>1</sup> Assuming that the market value of the dwelling is \$100,000

<sup>2</sup> Based on "HOME FOR LIFE" plan. Calculations assume a 15 year-life expectancy

<sup>3</sup> Under a loan stock scheme, the reduction in the cost of entry represents roughly 10 to 15 percent of the value of the dwelling.

<sup>4</sup> Assuming a mortgage of \$50,000.

<sup>5</sup> Assuming a 50/50 split in ownership between the resident and project sponsor.

<sup>6</sup> Amount left after paying entry cost (assuming total assets of \$100,000)

<sup>7</sup> Based on interest rate of 10 percent and life expectancy of 15 years.

<sup>8</sup> Represents the monthly cost of upkeep, utilities, property taxes, and so on.

<sup>9</sup> Assuming that mortgage payments cover only interest costs. The calculations are based on a mortgage rate of 11 percent.

<sup>10</sup> This option represents a mixture of the purchase outright option and the rental/life annuity option. Monthly shelter costs were computed as follows:  $(\$300 + \$969)/2$ .

<sup>11</sup> Because this option is essentially similar to the life tenancy option, it is assumed that market forces would make the two options equal in dollar terms.

<sup>12</sup> Some money during the guaranteed period; none if death occurs after the end of the guaranteed period.

<sup>13</sup> 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.

## 5. CONSIDERATIONS FOR THE PURCHASER OF LIFE TENANCIES

- ° Life tenancies involve purchasing the right of occupancy for life. In the case of a single female entering into a life tenancy agreement at age 65 for example, this may mean occupancy of the same dwelling for 20 years or longer.
- ° Because of the unique features of life tenancies compared with regular freehold ownership and rental tenure, the senior entering into a life tenancy agreement faces a special set of risks. Under a pure life tenancy, the main risk to the occupant is that of total loss of the investment in the life tenancy if any of the following events occur:
  - i) the investor goes bankrupt and therefore, no one honours the life tenancy contract;
  - ii) the occupant dies very shortly after the life tenancy agreement is signed;
  - iii) for any reason (eg. illness), the occupant must move out of the life tenancy dwelling unit.
- ° Each of these risks elements are discussed below.

### 5.1 Risk of Financial Failure of the Sponsor

- ° As indicated, a life tenancy is essentially a pre-paid lease with the repayment based on a term of uncertain duration but calculated in accordance with the senior's expected life occupancy. Because of the long duration of the lease, the amount paid by the senior can be substantial - representing say \$60,000 for occupancy in a dwelling valued at \$100,000.
- ° Given that the project sponsor is entrusted with a large amount of funds, an important risk borne by the occupant is that of financial failure of the project. This has occurred in the United States in the mid 1970's when several life care communities with inadequate reserves actually went bankrupt. Such communities in the United States are collecting huge entry fees in return for providing housing and more importantly, health services to senior residents for life.
- ° As in the case of life insurance companies or any financial institutions entrusted with the savings of individuals, investment in life tenancies may require regulation to ensure the financial safety of such arrangements. Issues related to consumer protection will be discussed later in this report.

## 5.2 Risk of Premature Death

- ° 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 project sponsor 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.
- ° Because of the type of problem noted above, there are few if any life annuity contracts, for example, sold without a guaranteed minimum period of payment. Similarly, it is likely that life tenancy contracts would have to incorporate some guaranteed period of payment. In fact, the ideal scenario would be that of providing people with choices as to the length of the period of guaranteed payment (e.g. five years or ten year) as is currently done in the life insurance industry. This is offered by "Home for Life PLC" in the life tenancy program that it offers in Britain.

## 5.3 Risk of Move due to Changing Needs

- ° In Canada (under present loan stock schemes) as well as in Britain, purchase of a life interest or life lease involves moving into a self-contained dwelling unit located in a senior citizen project having some communal facilities and offering limited if any health services. While many people may live in such projects for the rest of their life, some seniors become too frail to live independently in self contained dwelling units and must move out. Others become ill and need health services beyond those provided in the project. This means, of course, that for some people, the move into a life tenancy arrangement may not be for the rest of their lives.
- ° There are two alternatives to address the problem described above. These are:
  - i) that projects be designed to provide a continuum of care geared to the changing needs of the elderly population; or
  - ii) that life tenancy contracts incorporate a provision providing the senior with financial compensation in the event of termination of the contract.
- ° The provision of a continuum of care is the model 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.

- ° Experts in the area of housing for the elderly have indicated that this model is unlikely to be appropriate in the Canadian context. This is due to the following reasons:
  - life care communities in the U.S. essentially sell health insurance to seniors. While this might be appropriate in the U.S., subsidized health care in Canada precludes the major motivating force behind life care communities;
  - experts in the field have indicated that healthy seniors do not want to live in the same project with frail elderlies. As a result, it is more difficult to market projects providing self-contained housing units for independent living and a nursing home;
  - 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;
  - finally, deteriorating health is not the only reason why people may want to move out of a life tenancy unit. Other reasons may include lack of compatibility with other residents, preference to move closer to friends or relatives, and so on. Life tenancy projects offering a continuum of care would not eliminate these reasons for moving.
- ° A more appropriate alternative would be that the life tenancy contract provides the senior with financial compensation in the event of termination by either party. This is the approach followed by "Home for Life PLC" in Britain which provides financial compensation either in the form of a lump sum or in the form of a monthly annuity for life in the event that the senior moves out of the dwelling. An important implication of this approach is that of transforming a life tenancy into an instrument closely resembling a life annuity which of course provides a senior with an income stream irrespective of where he/she lives.
- ° Given that life tenancies can be designed to provide flexibility to move, they do not have to be restricted to projects offering a continuum of care; therefore, like a mortgage, a life tenancy arrangement could be made on any ownership dwelling in any ownership housing project. This is the way in which "Home for Life" operates its program in Britain where the life tenancy arrangement involves only the senior and "Home for Life" so that in a given project containing dozens of dwellings, only one senior may have entered into a life tenancy arrangement. The fact that life tenancies can be used for any type of dwelling unit - including a senior's present single detached house for example - is important given the results of the market studies conducted for the Task Force. These are discussed next.

## 6. POTENTIAL MARKETS

### 6.1 Survey/Focus Group Sessions

- ° Two studies were commissioned in order to gauge the levels of potential interest in privately initiated retirement housing and life tenancies in Canada. Both studies were oriented to elderly people who currently own their own homes and live in a major city. The first study was a broad based telephone survey, involving 600 respondents located in Vancouver, Toronto, Montreal and Halifax. The second study comprised a series of focus group sessions, designed to complement the telephone survey, and these were held in Vancouver, Winnipeg, Toronto, Montreal and Halifax.
- ° The survey and focus groups attempted to present retirement housing and life tenancies in the context of the full range of options that could be available to older people. The results, which are outlined in the next section, therefore provide views on other emerging options, such as garden suites and home sharing in addition to life tenancies. More details about the methods used and the results of the studies are provided in Appendix 2.

### 6.2 Survey Results

- ° The two surveys revealed that the vast majority of seniors wish to remain in their current home as long as possible. This suggests that it would be worthwhile to adapt life tenancies so that they can be used as a mechanism to support the desire of some of these people. Used in this way, life tenancies would essentially be similar to a sale-leaseback arrangement under which a senior sells his/her home to an investor and rents it back from the investor for life.
- ° While seniors prefer to stay in their home, over two thirds of the respondents did acknowledge the probability of moving at some time in the future, although this was usually associated with a negative influence, such as infirmity or bereavement.
- ° Of the respondents who expressed interest in moving into specially designed retirement housing, approximately one-third indicated that they would consider the life tenancy option if they did decide to move. Their choice would, however, be influenced more by the quality of the accommodation, than by the availability of the life tenancy option.
- ° Households with a net worth of between one hundred and two hundred thousand dollars showed the highest level of interest in life-tenancies. This group may prove to be the primary market, in that they have sufficient equity to participate in the life-tenancy option, but not such a high level of income that they have no real need for additional disposable income.

- ° The surveys confirmed some impressions gained from observing experiences in other countries. In particular, it became apparent that life-tenancies (not surprisingly) would be much more acceptable to consumers if they included provisions for termination, guaranteed terms of reimbursement to a purchaser's estate, and perhaps some share in the appreciation of the value of the property.
- ° Although only 15 percent of the respondents expressed some interest in life tenancies, it should be noted that if only ten percent of the elderly population actually took out a life tenancy over the next ten years, the market for life tenancies would represent close to 50,000 households. Considering the increasing popularity of loan stock schemes in Canada in the past few years, life tenancies - which make access to housing even more affordable than under a loan stock scheme arrangement - have a reasonable chance of becoming an alternative chosen by some seniors.

## 7. SOURCES OF FINANCING

- ° In addition to assessing the potential demand for life tenancies, the Task Force also tried to identify the potential suppliers or investors in life tenancies. To do this, the first task consisted of identifying the risks and rewards arising from offering life tenancies.

### 7.1 Risks to the Investor

- ° Supplying life tenancies involves two major types of risks: real estate investment risks and normal insurance risks stemming from difficulties in risk pooling, adverse selection problems, and so on.
- ° 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 and this has been a significant cause of financial failure of life care communities in the U.S. - is that of unanticipated high inflation and interest rates. This can create major problems in instances where pre-paid rent includes the prepayment of all utilities as well as services such as meals, recreation and health care.
- ° Turning to the life insurance aspect of life tenancies, the main risk is that of people living longer than the life expectancy assumptions under which the life tenancies were priced. 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 and the provision for providing compensation to the senior in the event of termination of the life tenancy agreement.

## 7.2 Specialized Real Estate Investors

- ° Given that life tenancies largely represent a real estate investment in senior citizen housing, it seemed at the outset that large specialized firms currently owning and operating senior citizen projects - e.g. firms such as Extendicare and Central Park Lodges - would be natural investors in life tenancies.
- ° 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 appreciation 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 pre-paid rent, the best way of dealing with this risk would be simply to pass it on to the resident. To a large extent, this is what is normally done in Britain where pre-paid rents tend to exclude all utilities and services. This is also done in Canada where senior citizens living in loan stock schemes pay a monthly fee to cover the ongoing cost of operating the project. In regard to the risk of the investor facing higher interest rate 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.
- ° Discussions with specialized investors owning and operating senior citizen housing revealed a certain degree of interest on their part in the concept of life tenancies.

### 7.3 Life Insurance Companies as Potential Investors.

- ° As the preceding discussion suggests, 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, their relative inability to handle the price appreciation risk through portfolio diversification.
- ° Discussions with the Life Insurance Companies Association indicated that their members would have little or no interest in offering or investing in life tenancies. However, discussions with one large member company revealed a great deal of interest on the part of that company in the concept of life tenancies. In addition to the conceptual similarities between life tenancies and life annuities, this may be due to the fact that this particular life insurance company has a subsidiary which owns and operates a large number of senior citizen projects.

### 7.4 Securitization/Syndication

- ° The reversionary interests in life tenancies could be marketed to investors by developing a pool of life tenancies and issuing investment certificates in the same way as it is currently done under the MBS program. If this were done, it has been suggested that pensions funds would be possible investors in life tenancies. Discussions with pension funds indicated little or no interest in investing in life tenancies.
- ° A large market for life tenancies would have to be established before securitization and syndication approaches would be practical. The Task Force did not see the development of these approaches as being necessary to stimulate initial interest in life tenancies in Canada.

## 8. CONSUMER PROTECTION

- ° There are no fundamental legal impediments to the emergence of life tenancies in Canada. To be more specific, there are no laws or regulations preventing a firm from offering a product similar to that marketed by "Home For Life" in Britain. In fact, a Vancouver - based company unveiled last year a life tenancy product which had many similarities with the product offered by "Home for Life". This company (operated by W.J. Turner under the name "Canadian Home Income Corporation) has since transformed its product into a more traditional reverse mortgage plan as it felt that such an instrument would be easier to market.
- ° As indicated, a life tenancy arrangement could cover the pre-payment of a full range of services including various housing services, meals, use of recreation facilities, some health

services, and so on. The continuum of care model offered in the U.S. represents an extreme case in which a great variety of services are prepaid at the time of entry into the project. By contrast, the "Home For Life" model only pertains to the use of the physical dwelling unit and thus, the prepaid rent excludes all services.

- ° Under a life tenancy arrangement, the need for consumer protection increases as the number of services included in the contract is expanded. This means, of course, that projects offering a continuum of care and a full range of services are those that should be of greatest concern to seniors. In such projects, there is more likelihood of misunderstanding between the senior and the project sponsor as to the agreed quantity and standard of facilities, care and services to be available at no extra cost. Although there are no specific laws aimed at life tenancy projects offering a continuum of care, there is a network of laws, in any province, which would apply to such projects. Chief among them are rent controls for real life tenancy schemes in Ontario, Nova Scotia and Manitoba (not in most other provinces), condominium acts, and the general regulation of securities. Appendix 3 provides a more detailed discussion of consumer protection issues and the various laws and regulations which would affect life tenancies.
- ° Considering the risks involved for seniors particularly in projects offering a multitude of services, it would be inappropriate - if CMHC decided to promote life tenancies - to do so without taking steps to ensure that adequate consumer protection is available. This means that if CMHC is to promote life tenancies, it should devote the resources necessary to develop model agreements in co-operation with industry and consumer groups.

## 9. POTENTIAL CMHC INITIATIVES

Currently, there is a need for an agency such as CMHC to take a lead role in exposing life tenancies and other financing options to potential developers, investors and to seniors. Two types of initiatives were considered by the Task Force:

- i) information dissemination through publications and audio-visual means; and
- ii) demonstration projects.

### 9.1 Information Dissemination

- ° There is a lack of awareness in Canada about potential options for older people such as life tenancies, that could help to make housing more affordable. Partly to meet this need, the Corporation has published a consumer oriented booklet entitled "Housing Options for Older Canadians" which outlines the range of different forms of special housing and life tenancy approaches.

- ° The essence of this initiative would be to build on the "Housing Options for Older Canadians" publication by following with more detailed documents describing:
  - financial aspects of life tenancies and other tenure options;
  - design considerations;
  - service and care options;
  - management considerations;
  - market analysis factors; and
  - consumer protection considerations.
- ° The main advantages of this approach would be:
  - its fairly low cost to CMHC; and
  - the low level of risk for the government given that by presenting a variety of tenure options and ensuring that consumers and developers are adequately aware of the advantages and disadvantages of each, CMHC would not be perceived as promoting an option which ultimately may not suit the consumer or the developer.
- ° The key disadvantage of this approach is that alone, it may not provide sufficient stimulation to induce the private sector to begin experimenting with the concept. Of particular concern is the possibility that under this approach, CMHC may be viewed as not fully living up to its role as housing innovator.

## 9.2 Demonstration Initiatives

To supplement the information dissemination approach, CMHC could put together a demonstration project. Two types of demonstrations were considered by the Task Force:

- i) a traditional demonstration; or
- ii) a facilitative demonstration.

### 9.2.1 Traditional Demonstration Project

- ° Under this approach, CMHC would play an active role as a developer to produce a model life tenancy project. It would acquire the land, build the project, market it and manage it until proven a success at which time it could be sold.
- ° This approach would give CMHC full control in designing the financial options and the physical dwelling units, in choosing the type and level of support services and in managing the project directly. It would also eliminate the need to find private investors into the project.

### 9.2.2 Facilitative Demonstration

- ° Alternatively, CMHC could mount a facilitative demonstration under which it would act as a catalyst, bringing together the necessary elements of a largely private sector demonstration. This would involve the following initiatives:
  - searching out an appropriate investor willing to purchase the reversionary interests of units, enter into shared equity arrangements, or enter into loan stock agreement in a number of projects;
  - reaching agreement with a number of developers (already offering senior citizen housing on a rental or condominium basis) to offer a variety of tenure options in their projects (the goal would be to achieve a variety of project designs, services and prices);
  - providing information (as described in Section 9.1 above) and promotional material;
  - providing model purchase agreements;
  - providing advice to developers on design, servicing and management details; and
  - assisting with market analysis of projects.

### 9.2.3 Assessment of Alternative Demonstration Initiatives

- ° This section presents an assessment of the two alternatives discussed above, i.e., a facilitative demonstration versus a traditional type of demonstration project. In evaluating the two alternatives, five criteria are used. These are: (i) the degree of CMHC profile; (ii) the financial cost involved; (iii) the time and efforts needed; (iv) the level of risks for CMHC; and (v) the effectiveness of the alternative in meeting the stated objective.
- ° Given these criteria, the following observations can be made:
  - CMHC Profile: Both options offer opportunities for CMHC to demonstrate leadership. The traditional demonstration must receive a higher rating than the facilitative demonstration because CMHC would be recognized as the developer whereas with the facilitative demonstration, it would be only one of a number of participants. The facilitative demonstration however, would provide wider profile opportunities if projects were secured in different locations.

- Financial Cost: The traditional demonstration would be far more costly. The cost of land, materials and labour to put a project together would not be incurred in the other option. On the other hand, if the project were successful, it could be sold at a profit.
- Time and Effort: Trying to bring together a variety of actors to do something innovative would require patience, persistence and hard work. It is assumed that much of the management of the traditional demonstration could be contracted out. On balance, the facilitative demonstration would probably require more time and effort.
- Risks to CMHC: Just as the traditional demonstration provides the greatest opportunity to increase CMHC's profile, it also entails the greatest risk if anything goes wrong. Also, if the resources were restricted such that the traditional demonstration could provide only one combination of price, design, services and location, the risk of selecting the wrong combination would be higher.
- Effectiveness: Effectiveness relates to the probability of contributing to the overall objective of widening the range of housing options open to seniors. Because a facilitative demonstration would be capable of demonstrating more combinations of tenure design and service options, it is more likely to achieve the overall objectives than a traditional demonstration project. Also, with a facilitating demonstration, CMHC would be building on private sector initiatives which are beginning to occur on their own rather than creating a government showcase that would then have to be transferred to the private sector.

## 10. CONCLUSIONS AND RECOMMENDATIONS

### 10.1 Conclusions

- ° The introduction of life tenancies would widen the range of choices open to elderly Canadians. This stems from the fact that for some seniors, life tenancies may represent the only way of gaining access into a homeownership retirement project. For others, life tenancies would provide a means of simultaneously enjoying homeownership and converting part of the equity in their home to supplement retirement income.

- ° It is likely that life tenancies would appeal to some seniors. This is evidenced by the increasing popularity of loan stock schemes which like life tenancies - although in a more limited way - provide the senior with a means to reduce the cost of entry into homeownership housing. The effective demand for life annuities also suggest that some seniors may choose a life tenancy as a means to transform part of their assets into a stream of income for life.

#### 10.2 Recommendations

- ° As suggested in section 9, given that life tenancies represent a new concept in Canada and given the need for life tenancy agreements which provide adequate consumer protection, it is the view of the Task Force that CMHC should pursue a number of initiatives to promote the introduction of life tenancies. In this context, the Task Force recommends:
  - to begin the information dissemination process; and
  - to explore in detail the possibility of undertaking a facilitative demonstration program.

## **APPENDICES**

1. Profile of Selected Retirement Housing Projects in Canada.
2. Market Surveys: Methodology and Empirical Results.
3. Consumer Protection: Issues and Legislations.

# APPENDIX I

## PROFILE OF SELECTED RETIREMENT HOUSING DEVELOPMENTS IN CANADA<sup>1</sup>

PROJECT NAME	SPONSOR	LOCATION	TENURE
Horizon Village	Horizon Village Corporation	Edmonton and Calgary, Alberta	Condominium
Grace Lutheran Place	Saskatchewan Housing Corp., City of Regina, Grace Lutheran Church and purchasers of life interests.	Regina, Sask.	Loan Stock Scheme
Wyndham Gardens Apartments	Unionville Home Society	Unionville, Ontario	Loan Stock Scheme
Donwood West Inc.	Mennonite Brethren Geriatric Assoc.	Winnipeg, MAN.	Shared Equity Scheme
Circle Drive Place	Circle Drive Alliance Church	Saskatoon, Saskatchewan	Loan Stock Scheme
The Cedars	Columbia Housing Advisory Assoc.	Surrey, B.C.	Co-op
Kiwanis Chateau	Kiwanis Club of Winnipeg Federal Government Prov. Government Mun. Government	Winnipeg, MAN.	Loan Stock Scheme
Fred Douglas Place	Fred Douglas Lodge Man. Government Government of Can.	Winnipeg, MAN.	Loan Stock Scheme
Nithview Home and Seniors's Village	Tri-Country Mennonite Homes	New Hamburg, Ontario	21 Year Lease with Renewal Option
St. Elizabeth Retirement Village	St. Elizabeth Home Society of Hamilton	Hamilton, ONT.	21 year Lease with Renewal Option

<sup>1</sup> Project-specific details are provided appendices 1.1 to 1.10

## APPENDIX 1.1

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

Horizon Village

#### LOCATION OF PROJECTS

Edmonton and Calgary, Alberta

#### SPONSOR

Horizon Village Corporation

#### DESCRIPTION

Building Type: Small bungalow and semi-detached units.

Unit Type: N/A

Project Features: Country club lifestyle: recreation centre, social activities, common areas.

Neighbourhood Features: Suburban setting.

#### TENURE AND FINANCIAL ARRANGEMENT

- ° Sponsor has built about 15 projects, each having between 26 and 85 units.
- ° Condominium ownership is the only tenure choice.
- ° Monthly charges for operational & maintenance costs.

## APPENDIX 1.2

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

Grace Lutheran Place

#### LOCATION OF PROJECT

Regina, Saskatchewan

#### SPONSOR

Saskatchewan Housing Corp.

City of Regina

Grace Lutheran Church and the Purchasers of Life Interests

#### DESCRIPTION

Building Type: High rise - 11 storey, 68-unit complex.

Unit Type: One bedroom (572 sq.ft);  
Two bedrooms (826 and 858 sq.ft)

Project Features: Recreation and social area equipped with kitchenette for social gatherings. Outdoor sundeck, sitting rooms and laundry facilities. Christian caring environment.

Neighborhood Features: Proximity to Kinsmen seniors lifestyle centre, medical facilities and shopping areas.

#### TENURE AND FINANCIAL ARRANGEMENT

- ° Loan stock scheme
- ° Rental option also available (17 units)
- ° Life interest is based on capital cost of development less government assistance and contributions by Grace Lutheran Church.
- ° Monthly service charge of \$222 for one bedroom apt. and \$244 for a two bedroom unit.
- ° Refund on lease termination is the lesser of the original purchase price or market value of the interest.

## APPENDIX 1.3

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

Wyndham Gardens Apartments

#### LOCATION OF PROJECT

Unionville, Ontario

#### SPONSOR

Unionville Homes Society (Non-Profit Organization)

#### DESCRIPTION

Building Type: Low rise, 4 storeys, 122 units

Unit Type: One and two bedroom suites

Project Features: Social and recreation activities, whirlpool, library security and parking. Temporary health care assistance provided at nominal cost (\$10.00 per day) in the respite units located within the project.

Neighborhood Features: Small town setting with historic sites, shops and recreation facilities (golf).

#### TENURE AND FINANCIAL ARRANGEMENT

- ° Loan stock scheme plus monthly service charges.
- ° Refund of 90% of the releasing price upon termination.
- ° Normal privileges associated with homeownership.

## APPENDIX 1.4

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

Donwood West

#### LOCATION OF PROJECT

Winnipeg, Manitoba

#### SPONSOR

Mennonite Brethren Geriatric Association

#### DESCRIPTION

Building Type: High rise - 8 storeys, 60 units.

Unit Type: One bedroom (800 and 841 sq.ft);  
Two bedrooms (1030, 1037 and 1038 sq.ft)

Project Features: Multi purpose room, whirlpool and exercise area,  
library and doctors office.

Neighborhood Features: Directly across from Polo Park shopping centre.  
Park area surrounds the building. Religious  
institutions also close to the project.

#### TENURE AND FINANCIAL ARRANGEMENT

- ° Shared equity approach that requires a prepayment and monthly fees for operational costs.
- ° Equity refund on termination is 100% of re-lease value less renovation cost plus unpaid charges and 6% administrative and real estate fees.
- ° Initial price range from \$68,000 to \$86,000.

## APPENDIX 1.5

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

Circle Drive Place

#### LOCATION OF PROJECT

Saskatoon, Saskatchewan

#### SPONSOR

Circle Drive Alliance Church

#### DESCRIPTION

Building Type: 3 storey low rise complex, 100 units.  
(25 rental and 75 ownership).

Unit Type: One bedroom (688 sq.ft);  
Two bedrooms (850 sq.ft)

Project Features: Common areas, workshop and crafts room, whirlpool,  
and picnic grounds. Security and parking facilities.

Neighborhood Features: Suburban setting that is interconnected with a modern  
personal care home.

#### TENURE AND FINANCIAL ARRANGEMENT

- ° 75 units under loan stock arrangements; 25 rental units.
- ° Refund on termination equivalent to initial purchase price or current market value, whichever is the lesser.
- ° Monthly fees to cover operating costs.

## APPENDIX 1.6

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

The Cedars

#### LOCATION OF PROJECT

Surrey, British Columbia

#### SPONSOR

Columbia Housing Advisory Assoc. (Co-operative)

#### DESCRIPTION

Building Type: Ground level row type accommodation,  
84 units.

Unit Type: One bedroom (803 sq.ft);  
Two bedrooms (912 sq.ft)

Project Features: Fully landscaped grounds community building with  
office and common room.

Neighborhood Features: Close to shopping, entertainment and medical  
facilities.

#### TENURE AND FINANCIAL ARRANGEMENT

- ° Member owned cooperative housing where security of tenure is guaranteed.
- ° Members control their collective operating and management costs. (\$95-120 per month).
- ° Payment of initial share required by members to fund the project.  
(Minimum share \$12,400 for a one bedroom \$13,600-two bedroom).
- ° In addition to operating cost, monthly rent covers mortgage debt service.
- ° Upon termination, shares in the cooperative are refunded.

## **APPENDIX 1.7**

### **INDIVIDUAL PROJECT DESCRIPTION**

#### **PROJECT NAME**

Kiwanis Chateau

#### **LOCATION OF PROJECT**

Winnipeg, Manitoba

#### **SPONSOR**

Kiwanis Club of Winnipeg  
Government of Canada  
Province of Manitoba  
City of Winnipeg

#### **DESCRIPTION**

Building Type: High rise - 17 storeys, 122 units.

Unit Type: One bedroom, one bedroom and den,  
Two bedrooms (size range 700-1200 sq.ft).

Project Features: Lounge, activity space and related amenity areas  
on the main level. Security entrance and  
and parking.

Neighborhood Features: Located in downtown Winnipeg. Climate controlled  
walkways provide easy access to major commercial  
and entertainment facilities.

#### **TENURE AND FINANCIAL ARRANGEMENT**

- ° Loan stock approach where occupants pay an entrance fee (\$24,619 for a 700 sq.ft apartment, up to \$40,775 for a 1200 sq.ft apartments).
- ° Monthly costs covers mortgage debt service (if any) and operating costs.
- ° Entrance fee refunded on termination (less \$2,000 deposit fee).

## **APPENDIX 1.8**

### **INDIVIDUAL PROJECT DESCRIPTION**

#### **PROJECT NAME**

Fred Douglas Place

#### **LOCATION OF PROJECT**

Winnipeg, Manitoba

#### **SPONSOR**

Fred Douglas Place Inc. (Non-Profit Organization).  
Government of Canada  
Province of Manitoba  
City of Winnipeg

#### **DESCRIPTION**

Building Type: High rise - 17 storeys, 120 units.

Unit Type: One bedroom (821 sq.ft),  
One bedroom and den (1014 sq.ft),  
Two bedroom (1163 and 1278 sq.ft)

Project Features: Variety of shops on main floor, security entrance, reading room and lounge, games room, health and fitness area, parking.

Neighborhood Features: Located in downtown Winnipeg. Climate controlled walkways provide easy access to major commercial and entertainment facilities.

#### **TENURE AND FINANCIAL ARRANGEMENT**

- ° Loan stock approach that requires an initial entrance fee (eg. \$26,759 for a one bedroom unit). Privileges normally associated with ownership.
- ° Monthly fees (rent) also required to offset project operating costs.
- ° Monthly fees reassessed yearly by the Board.
- ° The entrance fee can be increased so as to reduce monthly payments.
- ° On termination, the entrance fee less \$2000 (development costs) is refunded.

## APPENDIX 1.9

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

Nithview Home and Seniors Village

#### LOCATION OF PROJECT

New Hamburg, Ontario

#### SPONSOR(s)

Tri-Country Mennonite Homes

#### DESCRIPTION

Building Type: Low rise and ground level - 42 units.

Unit Type: 24 private rooms, 36 semi private rooms.  
One and two bedroom units.

Project Features: Extended care services include:  
home cooked meals, housekeeping, laundry and nursing.  
Hairdressing and barber services also available.  
Social, recreational and worship activities.

Neighborhood Features: Country-village style concept. Open space and  
greenery surround the village.

#### TENURE AND FINANCIAL ARRANGEMENT

- ° Life lease purchase price plus monthly service charges.
- ° Occupancy right for life or 21 years which ever is shorter. Occupancy beyond 21 years requires a new agreement.
- ° Refund on termination is equal to the portion of the life lease payment remaining refundable at such time.
- ° Nominal monthly service charge for utilities, maintenance etc.

## APPENDIX 1.10

### INDIVIDUAL PROJECT DESCRIPTION

#### PROJECT NAME

St. Elizabeth Retirement Village

#### LOCATION OF PROJECT

Hamilton, Ontario

#### SPONSOR(s)

St. Elizabeth Home Society of Hamilton

#### DESCRIPTION

Building Type: Ground level townhouses, 315 units.

Unit Type: One and two Bedrooms.

Project Features: Clubhouse for social and recreation activities,  
swimming pool, church and store.

Neighborhood Features: Suburban setting, bus routes through village.

#### TENURE AND FINANCIAL ARRANGEMENT

- ° A 21 year prepaid base rent lease is issued.
- ° On termination before the end of the lease, the remaining years are sold to next resident at a negotiated price.
- ° If residents live longer than the 21 years in the lease, the lease is extended for life for \$1.00.
- ° Monthly maintenance charges.

## APPENDIX 2

### 1. TELEPHONE SURVEY

#### 1.1 Introduction

In the spring of 1987, CMHC commissioned a market research study in order to gather opinions from a sample of seniors regarding their potential interest in a variety of housing tenure and financing schemes. In particular, the survey was designed to measure the interest of the senior citizen community in life tenancies as a potential method of serving the housing needs of the elderly. The survey was designed to determine:

- (i) financial parameters that would make the concept attractive to potential buyers (particularly pricing and the impact on their estates);
- (ii) specific features that would be of interest (e.g., nursing care); and
- (iii) any significant concern among potential buyers.

In addition, the survey was designed to examine seniors' attitudes toward housing issues in general, including their possible interest in reverse annuity mortgages (RAM's) and special retirement housing units.

#### 1.2 Survey Methodology

The survey instrument was in the form of a telephone interview. A total of 600 interviews of homeowners aged 60 years and over were conducted between May and early June, 1987. The interviews, which were offered in both English and French, were undertaken in four metropolitan areas; the Vancouver area, Metropolitan Toronto, the Montreal area, and Halifax and surrounding areas. The number of people interviewed in each city was as follows:

AREA	SAMPLE SIZE	DISTRIBUTION
Vancouver	301	50.0%
Toronto	98	16.6%
Montreal	100	16.7%
Halifax	101	16.7%
<hr/>		
TOTAL	600	100.0%

In interpreting the results of the survey, some caution should be exercised. First, only four geographical areas were chosen. This obviously falls short of providing a nationally representative cross-section in that not all regions were covered and no rural or 'small town' areas were included in the sample. Second, as the table indicates, the survey distribution was heavily skewed toward the Vancouver area.

### 1.3 Highlights of Survey Results

- ° Ninety-seven senior citizens representing 16.2 percent 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 percent of the sample, expressed at least some interest in special retirement housing.
- ° The survey results suggest that the degree of interest in life tenancies decreases with the age of a senior citizen. Although 24.2 percent or 40 of the responding seniors between the ages of 60 and 64 expressed at least some interest in life tenancies, only 10.9 percent or 5 of the respondents in the 80+ age cohort expressed such an interest.
- ° Responding seniors which expressed at least some interest in life tenancies are those with a net worth in the range of \$100,000 - \$200,000 (19 out of a sample of 71); those with current income exceeding \$20,000 (59 out of a sample of 285); and those who are between the ages of 60 and 64 (40 out of a sample of 165).
- ° The vast majority of senior citizens which responded to the telephone survey had never heard of RAM's, special retirement housing or life tenancies. While 220 respondents (representing 36.7 percent of the sample) were aware of RAM's, 24.8 percent or 149 of the respondents were aware of special retirement housing, and only 95 of responding seniors representing 15.8 percent of the sample surveyed were familiar with the concept of life tenancies.
- ° When asked which of the plans they would be most likely to use in the future, 63 respondents or 10.5 percent of the sample chose RAM's; 273 responding seniors representing 45.7 percent of the sample replied that they would choose special retirement housing; and only 45 respondents or 7.5 of the sample indicated that they would be most likely to use life tenancies. A total of 166 seniors or 27.8 percent of the sample responded that they would not likely use any of these housing plans in the future.

- ° Respondents were provided an example of what a life tenancy would likely cost based on each respondent's age. When asked whether the example enhanced their interest in life tenancies, 74 respondents or 12.7 percent of the sample replied that the example made life tenancies more attractive; 72 respondents representing 12.4 percent of the sample replied that the example made life tenancies seem less attractive; and 288 responding senior citizens did not consider the example to make a difference one way or the other.
- ° When asked whether it is more important to leave an estate to their heirs or to have a current higher standard of living, 42.2 percent of the sample replied that they would prefer to leave an estate while 41.7 percent of the sample responded that they would rather have a higher standard of living. The premise that life tenancies would be geared to a market of seniors who would forfeit some of their estate for a higher standard of living today is supported by the survey results in that 23.7 percent of those who expressed at least some interest in the life tenancy concept indicated a preference to leave an estate while 63.9 percent replied that they would prefer to increase their current standard of living.
- ° Of the 44.2 percent (265 respondents) who indicated that they are thinking of selling their home sometime in the future, 24.2 percent or 64 respondents of this subgroup expressed at least some interest in life tenancies. The bulk of those seniors expressing at least some interest in life tenancies (45.8 percent of the sub-sample) replied that the physical work of the home would be the major reason to sell. Less than 20 percent of seniors who were at least somewhat interested in life tenancies replied that health reasons would be the major reason to sell their homes. This result is consistent with the survey's finding that 71.3 percent of these seniors would not be much more likely to choose a life tenancy plan if health care services were included. However, the inclusion of an emergency alarm system as a special feature in a life tenancy dwelling was seen as being important to 88.4 percent of those responding seniors who expressed at least some interest in life tenancies.

## 2. FOCUS GROUP SESSIONS

### 2.1 Introduction

As a means of supplementing the telephone survey, a series of focus group sessions were conducted in July 1987 with a view towards exploring housing options for senior citizens with particular emphasis on life tenancies.

A focus group study basically entails a series of discussion, in this case with older homeowners, in order to determine in detail their views on retirement housing and life tenancies.

## 2.2 Focus Group Methodology

Initially, 120 homeowners aged 55 and over were to be interviewed in groups of eight. In order to ensure a representative sample of homeowners, participants were to be recruited on the basis of the following groupings: age, sex, marital status, socio-economic status, city of residence and language usually spoken. The study was to be conducted in five different cities (Vancouver, Winnipeg, Toronto, Montreal and Halifax), with two groups per city. The Montreal focus group studies were to be conducted in French while the other groups were to be conducted in English. Participants were to be recruited by the National Advisory Council on Aging (NACA).

Each of the 8 person focus groups was to be homogeneous in terms of age. For example, people in the 65-74 age groups were not to be mixed with those between 55-64 or those 75 and older. Reflecting their representation in the homeowners population, groups were to be mixed in a sex composition and marital status as follows:

Age 55-64:	6 males married and living with their spouse	2 widowed females
Age 65-74:	6 males married and living with their spouse	2 widowed females
Age 75+ :	5 males married and living with spouse	3 widowed females

It was also intended that in each group, half of the males and half of the females would be homeowners residing in upper class neighbourhoods; the other half would comprise homeowners from lower-middle class neighbourhoods.

Due in large measure to the short time period allocated for subject recruitment as well as the difficulty which was encountered in recruiting subjects for research projects during the summer months, it was found to be impossible to adhere strictly to the original selection criteria and simultaneously secure a sufficient number of subjects

required for meaningful study. The recruitment procedure was therefore modified to allow for convenient sampling, and it became necessary to postpone the Montreal group sessions until October (the results here reflect the English study groups only as the data from the Montreal sessions were not available at the time of writing).

In total, 16 English language groups participated with a mean size of 6.8 people. Five groups were recruited in Vancouver, five in Toronto, three in Winnipeg, and three in Halifax. The total number of participants was 109 (60 males and 49 females). However, records of only 103 of the participants (55 males and 48 females) were considered in the analysis because: 2 males and 1 female in one of the Toronto groups left mid-way through the session; 1 male in another Toronto group arrived late and was unco-operative; 1 male in a Winnipeg group was a renter and was therefore ineligible to participate in the study; and 1 male in Vancouver did not speak English well enough to comprehend many of the questions which were asked. These occurrences prevented to some extent the desired mix of socio-economic characteristics which was originally expected.

The procedure used in executing the focus group discussions was as follows:

- ° Each participant was handed an envelope containing an Informed Consent Form and a Participant Information Form. The latter requested information concerning the participants' age, sex, marital status, present employment status, present occupation or major pre-retirement occupation if retired, self-perceived health status, highest level of education completed, receipt of Old Age Pension, Spouses Allowance and the Guaranteed Income Supplement (full or partial), form of current housing, household composition, location of current housing, duration of residence in current housing, estimated market value of current home, amount of mortgage (if any), type of homeownership, and the number of bedrooms in the current home.
- ° The leader subsequently introduced himself/herself and described to the participants the purpose of the study, explained the reason for having a tape recorder (to verify the accuracy of the leader's focus group summary and the coded information) and two observers (each responsible for recording the responses of 4 participants).
- ° The leader then asked a series of pre-determined specific questions. All participants were encouraged and prompted to give their views and opinions by the session leaders.
- ° The focus group methodology used was different than most others which are usually conducted in that:

- (i) a list of specific questions rather than just general topics were developed. Usually, the leader starts with a vaguely defined list of topics and questions with the instruction to expand on and explore issues as they emerge. The leader was not restricted to the list which was used in this particular focus groups study and was encouraged to probe responses and ask follow-up questions. This procedure was aimed at ensuring that all questions of critical interest were asked of all the groups in a consistent manner, using wording that has been pre-tested to ensure clarity and comprehension.
- (ii) In conventional focus group methodology, non-verbal responses can get lost since the leader is not usually able to keep note of such occurrences which cannot be reconstructed from the audio-tape. Rather than rely solely on a transcription of the proceedings and the leader's notes based on his/her memory of the session, the modified method entailed the attendance of two observers at the sessions to record, on a pre-coded form, comments as they occur as well as non-verbal responses.
- (iii) By recording responses separately for each individual in the group, more precise identification of the extent to which a consensus prevailed within any one group and across the various groups in the study was permitted.

### 2.3 Highlights of Focus Group Results

- ° When asked to cite the characteristics of being a homeowner which they liked the least, 38 seniors representing 36.9 percent of the sample replied 'having to maintain/repair the home'. Twenty-five of the respondents or 24.3 percent of the sample replied that 'having to maintain the yard/garden' as being their least liked item.
- ° Forty-two seniors or 40.8 percent of the sample responded that they have seriously considered selling their current home. For the sub-sample which responded that they have considered selling their home, 19 of them or 45.2 percent of this sub-sample replied that the 'physical difficulty of maintaining their home and garden' as being a major reason. When stratified by age category, it becomes more evident that this 'difficulty' becomes more acute with age. For example, although 35.3 percent of those respondents between the ages of 55 and 64 who did consider selling their homes cited physical difficulty as the reason, the corresponding percentages for the 64 to 75 and 75+ age categories were 37.5 percent and 77.8 percent respectively.
- ° For the sub-sample which replied that they have not considered selling their home, 11 seniors or 26.2 percent of the sub-sample indicated that 'alternatives were too expensive', and 7 seniors representing 16.7

percent of the sub-sample suggested that there was 'no better alternative'. When discussing reasons for selling their home in the future, 39 responding seniors out of a sample of 103 replied that it would be due to 'poor health' (self or spouse) reasons; 31 responding seniors indicated that they would sell in the future due to 'physical difficulty of maintaining home/garden'.

- ° Seventy of the seniors representing 68 percent of the sample replied that they did not consider homesharing as a form of accomodation that they would seriously consider. In addition, only 13 out of the entire sample of 103 would unconditionally consider such an alternative.
- ° Seventy-four of the participating seniors representing 72 percent of the sample replied that they would never seriously consider taking in a boarder or putting in a self-contained suite in their home.
- ° Twenty-five of the participants or 24.3 percent of the sample had heard of Reverse Annuity Mortgages. Out of the entire sample of 103, only 19 responded that they would personally consider such an option. Seventy participants representing 68 percent of the sample indicated that they would not consider RAM's as a housing option.
- ° When confronted with the question of whether they would sell their present home and then rent a home or an apartment, 64 participants or 62.1 percent of the sample replied negatively while only 21 seniors representing 20.4 percent of the sample indicated this as something they would consider doing.
- ° When asked whether they would purchase a smaller single family house, 67 participants or 65.0 percent of the sample replied negatively while 31 seniors representing 30.1 percent of the sample indicated this as something they would consider doing.
- ° When confronted with the question of whether they would sell their present home and then purchase a mobile home, 90 participants or 87.0 percent of the sample replied negatively while only 8 seniors representing roughly 8 percent of the sample indicated this as something they would consider doing.
- ° When asked whether they would purchase a unit in an apartment or townhouse development, the reaction was much more favourable. Sixty-four of the participating seniors representing 62.1 percent of the sample indicated that this was an alternative that they would consider doing. Only 17 out of the entire sample of 103 expressed disinterest in such an option.

- ° When asked whether they would purchase a unit in special retirement housing, the reaction was not as favourable as for the purchase of a unit in apartment or townhouse development. Forty-two of the participating seniors representing 40.8 percent of the sample indicated that this was an alternative that they would not consider doing. Twenty-eight of the seniors or 27.2 percent of the sample indicated that they would consider such an option, while 23 seniors or 22.2 percent of the sample would 'perhaps' consider such an option (depending on future circumstances and health). Although 16.5 percent of the sample cited 'recreational and social programs' as an advantage of such a scheme, 22.2 percent of the sample indicated that 'too many old people' would be a major disadvantage. This was perceived largely by the youngest 55-64 year age cohort.
- ° When asked whether they would purchase a basic life tenancy arrangement, a mere two seniors were 'very interested' representing only 1.9 percent of the entire sample. Although nine participants expressed 'moderate interest' reflecting 8.7 percent of the entire sample, 88 respondents or 85.4 percent indicated that they 'were not interested' in purchasing a life tenancy arrangement.
- ° Although 18.4 percent of the sample considered the relatively cheap cost of purchasing a life tenancy as an advantage vis-à-vis an outright purchase, many of respondents perceived several disadvantages. For example, 25.2 percent of the sample did not approve of being 'locked into a home which, over time, may no longer be appropriate'; 23.3 percent of the sample indicated concern over 'losing investment if they move'; 18.4 percent saw the inability to 'pass the unit/equity to their heirs' as a disadvantage; 15.5 percent did not approve of the monthly maintenance fees and 14.6 percent of the sample did not like 'someone else getting the advantage of making the money'.
- ° When the results are stratified by the age categories, it becomes evident that the interest in purchasing a life tenancy increases with the age of the senior. For example, 3.8 percent of those participants between 55 and 64 years of age indicated that they would at least be 'moderately' interested in this concept; 6.5 percent of those between the ages of 65 and 74 expressed a similar interest; and 22.6 percent of those seniors 75 years and older expressed at least a 'moderate' interest in purchasing a life tenancy.
- ° Participants were asked whether the inclusion of certain provisions would enhance the attractiveness of the life tenancy option. Among the provisions were some form of reimbursement if a person wanted to withdraw for which 39 seniors or 37.9 percent of the sample considered this as increasing the attractiveness of the life tenancy arrangement (30.1 percent of the sample did not consider this to be the case).

- ° Forty of the participants or 38.8 percent viewed some form of reimbursement to the estate if the leaseholder dies within the first ten years as making life tenancies more attractive (42.7 percent of the sample did not consider this to enhance the attractiveness of life tenancies).
- ° Twenty-seven participants representing 26.2 percent of the sample replied that the life tenancy concept would be more attractive if some of the appreciation of the unit would go to their estate; however, forty-one respondents or roughly 40 percent of the sample did not consider capturing a portion of the appreciation as increasing the life tenancy option's attractiveness.
- ° Forty-four of the seniors or 42.7 percent of the sample responded that the inclusion of a nursing home bed would enhance the attractiveness of life tenancies, while only 28 of the participants or 27.2 percent of the sample thought otherwise.
- ° When asked whether there were other financial or management options that would make life tenancies more attractive, 16 respondents or 15.5 percent of the sample replied 'public or non-profit rather than private ownership' and 9 seniors representing 8.7 percent of the sample indicated 'if I had a say in or control over the maintenance fee'.
- ° The participants were asked to state whether all or most of the special services and amenities they said that they would like to see in retirement housing could only be made affordable to them through a life-tenancy arrangement would overcome some of the disadvantages of not owning the unit. To this question, 56 of the participants or 54.4 percent of the sample replied 'no', 28 people or 27.2 percent replied 'yes', and 13 seniors or 12.6 percent replied 'maybe in the future'.

When asked whether they would recommend a life-tenancy arrangement to their parents (or some elderly relative), only 4 seniors out of the entire sample of 103 replied that they would.

- ° When asked of the likelihood of the participants' purchasing a unit in a retirement village, 44 of the seniors or 42.7 percent of the sample indicated no interest; 31 seniors or 30.1 percent of the sample expressed definite interest; while 7 seniors or 6.8 percent of the sample replied that they may become interested 'in the future'. While 31 seniors out of the sample of 103 perceived an advantage in this form of accommodation in terms of 'recreational facilities', this was offset by 34 of the seniors perceiving a disadvantage due to 'too many old people'.
- ° When asked of their interest in a continuum of care retirement community, 64 participants or 62.1 percent of the sample expressed at least 'moderate' interest in living in a retirement village. Only 8.7 percent of the seniors were not interested.

## APPENDIX 3

### CONSUMER PROTECTION

#### 1. The Residents

##### 1.1 The Concerns

The fundamental vulnerability of the residents lies in the possibility that the provider may become financially unable to continue providing the care and services for which the resident or his family 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.

Project insolvency can arise from undercapitalization, underestimate of cost increases, failure to establish and maintain reserves, unrealistically low pricing to draw in residents, mismanagement and outright fraud. Complaints in all these areas were brought before a 1983 special committee of the United States Senate, and some are reflected in the rationales supporting legislation in many jurisdictions.

There is also a significant likelihood of misunderstanding as to the agreed quantity and standard of facilities, care and services to be available at no extra cost. Unwarranted reliance may be placed on the perceived honesty and interest of the developer or promoter, in making assumptions about what to expect. A prospective resident may not realize that if concerns are important they should be set out satisfactorily in the agreement. These concerns can include such matters as rules about pets, availability nearby of shopping and professional facilities and restrictions on who may be retained or consulted, whether activities are free or charged for, responsibility for and promptness of maintenance and repair, control over escalation of monthly charges, and timing of refund payments on surrender.

A typical consumer issue, especially important in a new or complex field like special retirement housing with a large lump sum financial commitment, is how to judge the dollar value of a proposal. In this respect the main parts of the proposal are the terms of entry, the terms of continuing occupancy and the terms of surrender.

Particular questions that have received attention from the point of view of value and fairness are:

- What should be the basis for calculating the amount of refund to a surrendering resident considering initial contribution, resale value, carrying expenses, degree or share of ownership and other factors?
- What restrictions should there be on occupation by or assignment to persons other than the contracting residents without surrender?

- What control should there be over expenditures residents have to pay for, ranging from monthly service charges to resale commissions?

The consumer-resident is vulnerable in the matter of whether there is resident involvement in management decisions and if so then the extent of resident power. A typical area is what support, cultural and recreational services should be provided from time to time, that are not guaranteed by the contract and for which the residents must pay. There are two sides to this coin. On the one hand, absence of resident power can allow management to ignore residents' concerns and interests, resulting in disappointment and even loss of enthusiasm for life (referred to in the 1983 U.S. Senate study). On the other hand, majority resident decisions could be insensitive to individual residents, such as the resident who cannot afford mandatory luxury services that the majority insists upon.

Since a large proportion of prospective residents will be elderly, account needs to be taken of the fact that many elderly persons experience a reduction in business acumen and in the physical capacity to support a thorough review of a proposal.

There is a special conflict of interest danger to the extent that the resident has a life entitlement but no equity value for his 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. (A parallel complaint has been made with respect to the nursing-home industry and the treatment of residents who require relatively much costly nursing care.)

#### 1.1.1 Special Concerns for Projects Offering a Continuum of Care

Special consumer-protection concerns arise because of the complexity and uncertainty involved in estimating, at the time a project is developed, what facility and staff needs will be over time as residents move from one level or type of care to another.

How can the entering resident be assured that the later levels will be available and will match expectations? At the outset, the nature and quantity of the physical and social facilities that the residents will need in future years are a matter of educated estimation at best. The accuracy of the estimates is further subject to whether the range of ages and health conditions of the residents who actually enter the community matches the range of profiles intended by the developer to be accommodated and upon which the estimates are based.

In addition, the developer of, say, a fully independent-living project is not likely in a position to build semi-independent and supported-living facilities at the outset that would simply be shown to prospective residents and then stand vacant until they are needed. Therefore, in practice, a resident signing an agreement contemplating a continuum of care has little assurance

that the later facilities will be built or if built will be of the expected quality.

The facilities for different levels of care may be managed with different approaches. For example, a management policy for an intermediate level facility that discourages, rather than facilitates, independence and privacy may not have been apparent to a resident first entering the primary facility. Indeed, a resident entering the primary facility may not then know what approach will best suit him or her years later.

A continuum-of-care package adds complication to financial analysis and value-for-dollar judgments. The different levels or types of care involve different capital and operational costs, some more and some less than the primary facility.

## 1.2 Some Available Solutions

The portion of the lump sum intended to finance future care and services could be put into a special trust or other account. However this would not ensure that it would be sufficient to finance the care and services over the long term.

Many plans do not include in the lump sum paid by the resident any amount for ongoing care and services, but rather involve continuing periodic maintenance charges, the increase of which is sometimes controlled by law. Failure to pay these maintenance charges can lead to eviction, of course, thereby undermining the idea of lifetime security.

Where the resident has equity in the property, it is possible to arrange for arrears of periodic maintenance charges to be charged against that equity. This could delay eviction for as long as the equity lasts.

Refundable amounts can be placed in trust, but this makes them unavailable to pay for project capital costs.

The Retirement Villages Act 1986 of the State of Victoria, Australia gives the resident (by sections 9(4) and 29) first priority, ahead of all encumbrances, for any required refund of ingoing contribution.

Protection of residents against eviction by foreclosing project mortgagees can be obtained by registering long-term arrangements on title and by having the mortgagees agree to honor the residents' contracts.

These protections can probably only be consistent with project financing by equity or debt investors for relatively low ratios and with no return while the residents' rights last.

The use of disclosure statements, some (e.g. Victoria (Australia)) very short, and others (e.g. Pennsylvania (U.S.)) very long, can help ensure proper understanding of terms and conditions. Cooling-off periods may give a chance for second thoughts.

Checklists and guidelines can also assist prospective residents. Well-drawn, comprehensive contracts can accomplish the same purpose. However, in all cases, competent professional advice is important.

Provision can be made for a clearly delineated reasonable level of resident influence in community management. There can be the appointment of a resident to the board of directors of the owner or manager. The Victoria (Australia) statute, referred to above, requires that the residents be supplied with annual financial statements and cash flow projections, and gives residents the right to elect a committee which may pass by-laws and resolutions covering almost everything relating to the use of facilities and the provision of services and even imposing higher maintenance charges and special levies.

Adopting a full condominium system of ownership and management may permit some simplification of the ownership, occupancy and investor rights in a project. Each parties' rights could then be related in law to a specific unit as well as to the common elements as a whole. On the other hand, in Canada, residential condominium law is weighted in favor of unit-owner control, rather than developer or manager control, and this may please neither developers nor prospective residents who want someone else to bear and guarantee the long-term responsibility.

Co-operative ownership is also a possibility. It does not much simplify ownership and occupancy arrangements, and it is not as flexible as condominium for mixed resident and investor ownership. However, co-operative could provide a framework for more resident control, and like condominium might appeal to residents who are willing to assume the long-term responsibilities.

Three possible solutions may address the life-interest-only conflict of interest problem. One may be the establishment of project control that is separated from the investors and has no stake in resident turnover. Another may be to have, on the death of a resident, a deemed surrender value calculated as if the resident were still alive with average life expectancy. Still another may be a kind of reverse life insurance or annuity arrangement that compensates the investor more as the resident remains alive.

#### 1.2.1 Projects Offering a Continuum of Care

It seems unrealistic to attempt to require the developer to guarantee the availability of every level of care to the resident as and when needed. It is more reasonable for the developer to guarantee to established residents first call for other levels, in preference to outsiders; where the required other levels are not available the resident should be entitled to surrender the no-longer-suitable unit with an appropriate refund of the initial lump sum paid.

It may be that where the continuum of care involves a change of facilities, the second and later stage facilities should already

be present and in viable operation. That is, only a developer having, say a nursing home and semi-independent living facility should be able to develop an independent-living project with a promise of a continuum of care.

Although a guaranteed surrender and refund entitlement may be theoretically fair to the resident, it does undermine the lifetime security expectation and leave the departing resident on his or her own at a time of especial vulnerability.

The complexity of financial review may be ameliorated if a separate price structure is actually set out at the beginning for each level or type of care. This would not solve the dilemma of the prospective resident: "Should I take the project with the better value now but poorer value later, or vice versa?"

## 2. The Smaller Investors

The portion of the capital for a project that does not come from the residents themselves comes from investors. Presumably the active promoters, developers and large institutional investors will design their undertakings on the basis of full knowledge of facts and risks with professional counsel.

However, based especially on the reported U.S. experience, it is entirely possible that a portion of the capital will be obtained by syndication to smaller investors, on debt or equity bases. This syndication is somewhat akin to investment in mortgage-backed securities or MURB's. However, because of the complicated relationship with the residents, the position of the equity investor is much more complex than that of a MURB investor.

The group of smaller investors may well include persons who are also residents.

The dangers for the smaller investors involve the potential for misunderstanding the expected level and range of gain or loss, and the security and priority of their investment.

Solutions for the protection of smaller investors may be rather similar to those for residents - priority security, disclosure statements, checklists, professional assistance, etc.

At the same time, in any situation where there is initial underfunding or later on greater expenditure than can be financed from the available funding, the residents and the investors may have antagonistic interests. Thus consumer protection involves balancing the positions not only of "consumers" and providers but also of consumer-residents and consumer-investors.

### 3. Approaches to Making Solutions Effective

#### 3.1 Voluntary Efforts

Voluntary adoption of good practices by the industry can avert dangers and solve problems. In Britain there is an apparently well-established private-sector industry led by Home for Life PLC. Generally the initial purchase price covers only the life interest in the home, and the resident also pays full monthly maintenance and service charges.

Voluntary agencies also play a role in consumer protection. The South Australian Council on the Ageing has prepared a checklist of some 109 questions for a prospective resident to consider or investigate, covering considerations of price, ongoing costs, facilities, involuntary removal, life-style and repairs.

Government can help create, publicize and encourage adherence to voluntary standards, guidelines and disclosure.

Non-compulsory certification can help consumers separate the reliable and reputable proposals from the others. However, to the extent that such certification is less than comprehensive and relies on goodwill or mere promises for compliance, consumers may not be well served and may even be misled.

Where there is no structured policing of practices, publicity and voluntary compliance could have the effect of disarming the consumer in the face of a proposal that seems to use all the right phrases but in reality is seriously flawed.

#### 3.2 Compulsory Regulation

Regulation by law is not likely a complete replacement for voluntary efforts at consumer protection. However, outside Britain, there is a distinct trend in the direction of consumer protection by legislation.

The scope and intensity of regulation can vary. Typical legislation -

- restricts the development of retirement communities to developers having "certification", usually based on evidence of financial and business strength and responsibility,
- requires pre-occupancy payments by intending residents to be held in escrow,
- requires maintenance of reserves,
- regulates advertising (including prospectuses),
- establishes liens for refundable money or for performance of the provider's obligations,
- prescribes certain minimum contractual terms,

- mandates consultation with the residents.

Any efforts by government to promote or support special retirement housing without at the same time controlling the dangers would expose government to blame in the event of disasters.

In Canada general regulation of special retirement housing schemes would appear to be within provincial rather than federal legislative jurisdiction. However, under Part V (ss. 35, 36(a) and (b)) of the National Housing Act, CMHC could develop and recommend standards, controls and guidelines for the industry. Also under Part V (s. 37(1)(i) and (1.1)) CMHC could undertake or finance or promote experimental demonstration projects to test out proposals. Moreover, such standards, controls and guidelines could to a large extent be made conditions for insurance of loans under the NHA.

### 3.3 Industry or Government Guarantees

A possible alternative or supplement to voluntary efforts or compulsory regulation is a soundly based scheme of direct guarantee to consumers or to lenders by an industry body or government. This could resemble either a new home warranty program or an investment insurance or guarantee program. Indiana (U.S.) has such a scheme.

Such a program could spread and absorb the risk of an occasional debacle. It would also presumably involve the setting and securing of some minimum standards. If it were properly communicated and certified to the public it could educate consumers to realize which features of proposals can be accepted as guaranteed and which should be regarded as speculative.

For residents, the guarantees could cover deposit protection, refund on surrender, basic financial standards and security of tenure.

For investors, the guarantees could cover loss of priority because of inadequate separate funding of residents' refunds, and the general terms of their interests.

Such guarantee programs would transfer to the guaranteeing body substantial responsibility for reviewing and approving complex documentation packages, developer quality and management practices.

CMHC might, subject to legislative authority (including constitutional jurisdiction), be able to be a guaranteeing body in conjunction with NHA loan insurance.

## 4. Existing Regulation in Canada

Following is a sampling of current legislation in Canada that is not especially directed at special retirement housing, but by its terms would have an impact on the kinds of projects discussed in

this Report. Of course, where justified, legislation can be amended.

In addition, all provinces have income supplement or financial or tax allowance programs to help elderly homeowners or renters. Parties to retirement housing agreements will want to ensure that qualifying requirements for such assistance are not inadvertently missed.

#### 4.1 Ontario

The Residential Rent Regulation Act, 1986 limits the annual increase that may be charged for rent, which includes accommodation-related facilities and services. The limit is set each year in relation to a defined "Building Operating Cost Index", but exceptions can be allowed in special circumstances. This is essentially a cost-pass-through 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 that are subject to escalation. This protection would likely be available notwithstanding the inclusion of a refund to the tenant on surrender. This Act would likely not be relevant to shared-equity schemes.

On the other hand the Condominium Act is not much relevant to resident who is simply a life tenant, but it is significant to shared-equity residents and to smaller investors. The 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 also, as mentioned in 6.1.2, intends unit-owner control and responsibility.

The Residential Complex Sales Representation Act, 1983 prohibits sales of general shares of ownership of residential complexes of more than six units along with the right to occupy a unit. This would appear to allow simple life leases but prevent shared-equity and surrender-value arrangements. Condominium-unit 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.

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 the 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.

#### 4.2 British Columbia

The Condominium Act, the Investment Contract Act and the Securities Act of British Columbia are similar in content to their Ontario counterparts.

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.

The Land (Settled Estate) Act is a technical and somewhat archaic statute that under some circumstances could make it possible for a life tenant to lock in a minimum lease term of 21 years. However, it is likely that this Act could be readily circumvented.

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 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 or novation on remarriage of the survivor.

#### 4.3 Nova Scotia

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 catch supported-living and semi-independent facilities. A licence is required, although social suitability of management appears not to be a criterion.

#### 4.4 Manitoba

The Residential Rent Regulation Act is like that of Ontario. The Condominium Act and the Securities Act are equivalent to their counterparts in other provinces.

#### 4.5 Quebec

In Quebec law, the right to possess and reside in a property for life is a special kind of interest in land. It is called a usufruct where there is also the right to assign or "(sub)lease" the occupancy. It is called a right to use and habitation where the right to occupation and use is personal only and cannot be transferred to another.

The life interest is not regarded as a kind of lease (that is, no landlord-tenant relationship). Therefore, the consumer protection available to tenants does not apply to a life interest. Of course, the parties can include in their agreement almost whatever safeguard they wish.

The Loi sur les valeurs mobilières (Securities Act) is of broad application as in other provinces and also regulates investment contracts.

#### 4.6 Summary

The developer of any resident-funded retirement facility would have to take into account, in any province, a network of laws that are not especially aimed at such facilities, but nevertheless apply. Chief among them are rent controls for real life-tenancy schemes in Ontario, Nova Scotia and Manitoba (not in most other provinces), the condominium choice, and the general regulation of securities.

Developers would not likely raise a clamour for a single comprehensive statute regulating retirement facilities, to replace too much complexity in complying with several statutes. They might ask for an occasional specific exemption, such as from the Ontario Residential Complex Sales Representation Act.

Groups supporting the interests of residents, and possibly small investors, could be expected to press for expanded and comprehensive regulatory schemes in provinces with high interest in special retirement housing on an entrepreneurial basis.