

**/LAND TRUSTS FOR
NON-PROFIT CONTINUING
HOUSING CO-OPERATIVES:
EXECUTIVE SUMMARY/**

prepared by Communitas Inc.

MAY 1985

ACKNOWLEDGEMENTS

This study and report represents the efforts of many people. First of all, our thanks go to all the people working in land or housing organizations in Canada, Britain and the U.S.A. who took time to answer our questions and to send us their literature. Second, we thank the members of the Co-operative Housing Foundation Land Trust Research Committee whose comments on each discussion paper and draft of this report added both breadth and depth to our study. We owe particular thanks to Lesley Conley, our library consultant without whose work our research would now barely be begun, and to Joan Swain, for her assistance in producing the report. We thank both the Co-operative Housing Foundation and Canada Mortgage and Housing who jointly funded this research project.

Finally, we would like to thank the many members of housing co-operatives who took the time to discuss the land trust idea and to provide us with their ideas, questions and comments.

DISCLAIMER

This project was partially funded by the Canada Mortgage and Housing Corporation, but the views expressed are the personal views of the author and no responsibility for them should be attributed to the Corporation.

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ABSTRACT

Lynn Hannley and Marsha Mildon. Land Trust for Non-Profit Continuing Housing Co-operatives. Edmonton: Communitas Inc., 1985.

This study, commissioned by the Co-operative Housing Foundation of Canada together with Canada Mortgage and Housing Corporation, was designed to explore land trust systems as a possible vehicle for ensuring the retention of co-operative land holdings within the co-operative housing sector. This study reviewed experiences of other jurisdiction in developing land-holding systems, as well as possible ways in which land might be lost from the co-operative housing sector. On the basis of this information, a theoretical model was developed which includes a land component, a capital component and a support services component. The model was reviewed to determine the legal, economic, and tax constraints to implementation. Finally an implementation plan was developed.

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EXECUTIVE SUMMARY

LAND TRUSTS FOR NON-PROFIT CONTINUING HOUSING CO-OPERATIVES

1. INTRODUCTION

The purpose of this study has been to develop a theoretical model for a Canadian land trust system for non-profit continuing housing co-operatives, and to outline the legal, economic and organizational framework required for such a system.

1.1 BACKGROUND TO THE STUDY

In Canada, we frequently speak of different "sectors" with respect to the production and distribution of housing: the sector of real estate, private builders, housing entrepreneurs, known as the private sector; the government or public sector; and the third sector, made up of non-profit housing groups often sponsored by churches or special interest groups, and co-operatives. Within the third sector, because of the differences in objects, philosophy, and style of operation between traditional non-profits and co-operatives, it is common to speak of a separate and distinct co-operative housing sector, a sector which, until the last decade, was very small.

In 1970, there were only a few hundred continuing housing co-operative units in Canada. In a little over a decade, nearly 30,000 units have been developed or are currently in the planning stages. This rather significant development has been achieved through the efforts and energies of the Co-operative Housing Foundation of Canada (CHF), the Canada Mortgage and Housing Corporation (CMHC), the co-op resource groups across the country, and most of all, through the efforts of thousands of co-op members. It has been an important achievement. It represents not merely an addition of housing units to the stock, nor merely means of directing social housing dollars to those who need them, but instead, represents a genuine alternative choice of housing and community available to all Canadians.

It is important that the housing energy, financing, and initiative represented by these units remains available to Canadians. It is equally important that the number of units available as continuing co-op housing be expanded so that this housing alternative does, indeed, provide Canadians with an effective choice. To ensure both preservation of the existing units within the co-op housing sector and continuing expansion of the co-op sector requires some new initiatives, and it was to begin the process of developing these initiatives that CHF and CMHC jointly funded this research study of "land trusts."

1.1.1 Land Trusts

For several years, the notion of developing some type of "land trust" has circulated in the co-op housing sector. Co-ops are concerned both to ensure that land once brought into the co-op sector will remain in the co-op sector and to enable the consolidation and growth of continuing not-for-profit co-operative housing.

1.1.2 Appropriate Human Habitats

In the most comprehensive sense, the goal of the co-operative housing movement in Canada is to create appropriate human habitats.

While a precise definition of appropriate human habitat is not possible, several elements can be identified with some certainty. Such a habitat should provide the individual with physical spaces for privacy, as well as for communication and collective action with increasingly broad ranges of people, including the family, the immediate neighbours, the block or "enclave", the community and the government. Finally, the habitat should provide the individual with security, both mental and physical, as he moves between these spaces.

If non-profit continuing housing co-operatives are, then, an approach to the achievement of appropriate human habitats, there are a number of elements which contribute to the approach. There are, of course, the basic co-operative principles which have traditionally guided co-operatives since the 1840's. In addition, there are a number of particular principles such as the long-term building of heterogeneous communities, resident control of housing, and the traditional non-market, non-profit principles with respect to housing and land, which have guided the development of the continuing housing co-operative sector in Canada. Many of these elements can be included in an approach to land holding which, for want of a better term, we may describe as a land trust approach. Contributing to this approach, there seem to be three distinct areas where a land trust might contribute to the overall co-op housing goal, and for the purposes of this study, we can describe these areas as objectives achievable by a land trust: objectives in respect to tenure, objectives in respect to economics, and social objectives.

1.2 OBJECTIVES OF A LAND TRUST FOR NON-PROFIT CONTINUING HOUSING CO-OPERATIVES

1.2.1 Tenure Objective

Co-operative housing projects in Canada have developed as a type of land holding mechanism different from fee simple ownership, condominium ownership, and renting. Co-operators in fact are co-owners of their housing, with broad rights to use and enjoy their own housing units, as well as to participate in the decisions about the use of the entire project. On the other hand, they have voluntarily and deliberately limited their right to gain, and their right to transfer their property. While some co-ops own and others lease the land on which their housing units are built, the land tenure concept common to all seems to be that the whole, in particular the land, is to be held for the common good, while the part, particularly the housing unit, is held for the use of the individual. A primary objective of a land trust system would be to create a system which will ensure the long term continuance of this type of land tenure.

1.2.2 Economic Objective

The economic tradition of housing co-operatives is a tradition based on economic self-help, equitable sharing of economic benefit, direction of community to social purposes, and co-operation with government. Community equity, for the purposes of the paper, means value added to land through society's actions (e.g. rezoning, servicing, etc.) as well as profit added through inflation or scarcity of land. An objective of a land trust system would be to ensure that dollars spent, both by the co-op housing sector and by the government, are used to guarantee the long term continuance of this tradition by the co-operative housing sector, thereby maximizing the benefit of social housing dollars.

1.2.3 Social Objectives

The social objectives of the co-operative housing movement have been to ensure the long term availability of housing and community which reflects need in an ecological sense. This has meant the development of human habitats which include that which is essential for human life and growth, rather than reflecting contemporary fashion as to the requirements of the "ideal" house. The social objective of a land trust system will be to increase the long term availability of appropriate human habitats, and to enhance accessibility to these habitats for low and moderate income households.

2. REVIEW OF LAND TRUST EXPERIENCE

After a preliminary investigation, it became clear that the term "land trust" is a very vague one, that has been used to describe a variety of organizations. In addition, there are organizations, while not using the term "land trust" to describe their activities, in fact, function as such. In order to obtain the broadest input for the development of a "land trust" system that might be used by Canadian housing co-ops, organizations which exhibited the characteristics of a "land trust", as well as those who identified themselves as "land trust", were included in the review. The following "land trust" characteristics were identified by the research team:

- to hold land in perpetuity;
- to hold land for the common good;
- to ensure the land is used for a stated purpose or to increase access to housing.

2.1 TRUST ORGANIZATIONS

Three main types of organizations were identified through the review.

- a. Private Housing Oriented Organizations (whose main purpose was to provide rental housing to low and moderate income households);
- b. Land Based Organizations (including early utopian communities and modern land trusts);
- c. Co-operative Housing Organizations.

2.1.1 Private Housing Oriented Organizations

The following Private Housing Oriented Organizations were examined:

Britain.....Housing Trusts
 - Nottingham Trust
 - London Incorporated Trust
 - Sutton Trust

Germany.....Neue Heimat

Zambia.....Squatter Community Upgrading

While these organizations varied in scope and organization, they have a number of common elements. First, all the organizations share the stated purpose of the delivery of housing to households unable to provide housing for themselves. Second, the land is either held by the organization itself or by the crown. Therefore, the ownership of the land does not transfer to the low and moderate income user. It should be noted that the German example, Neue Heimat, does sell housing units, presumably to higher income households. In addition, the housing in Zambia is owned by the squatter while the land is owned by the crown. In all the British examples, both the land and housing is owned by the individual trust.

2.1.2 Land Based Organizations

Three basic types of land based organizations were identified by the research team:

agricultural based organizations

conservancy based organizations

urban based trusts

The following is a summary of the organizations the research team reviewed:

ISRAEL.....Jewish National Fund

U.S.A.....Three Ardens
Free Acres
Fairhope Community
New Communities Inc.
Covenant Community
Community Land Co-op of
Cincinnati
Ottawaquechee Regional Land Trust
Marin Agricultural Land Trust
Trust for Public Land

CANADA.....Turtle Island Stewardship
Society
Second Century Fund of B.C.

While the bias of these land trust organizations may vary, they all have two elements in common. First, the primary purpose of these land trusts is to protect a particular piece of land from use for purposes other than the proposed purpose of the trust. Second, the trusts believe that land should be held for the common good. It should be noted that much of the philosophy of the modern American land trust comes from the experiences of the earlier land-based utopian communities.

2.1.3 Co-operative Housing Associations

The most highly developed examples of co-operative housing associations are found in Scandinavia and West Germany. While there are national differences, particularly in the organizational structure of the co-operative, (whether there is one national co-op with many daughter co-ops or many municipal co-ops with one federal network), the major features are similar. Hyresgaasternas Sparkasseoch Byggnadsforeningars (HSB Sweden) provided the most detailed example of such associations.

3. THEORETICAL MODEL FOR A LAND TRUST SYSTEM

The impetus for the review of the concept of "land trusts" arose from a concern about the possibility of future loss of land from the co-operatives sector.

The following situations were identified as those which could result in the loss of land from the sector. Land could be lost if:

- A co-operative converted from its non-profit status to another corporate form (e.g., a condominium or profit oriented corporation) and either sold the property to the former members or disposed of the property to another purchaser and divided the assets from the sale.

The vast majority of co-operative land has been financed directly by Canada Mortgage and Housing Corporation, (CMHC) or has a CMHC insured loan. All these co-operatives have some form of agreement with CMHC, requiring CMHC's approval prior to the sale of property. In addition, CMHC's approval is necessary if the incorporation documents are to be modified. During the term of the agreements with CMHC, these constraints assist in inhibiting the loss of land from the sector.

However, after the expiry of the agreement with CMHC, these constraints no longer exist. It is also possible that CMHC might agree to the conversion or sale of the units, since the sale of the units to tenants is currently allowed under its 56.1 program. Therefore, it is possible that land could be lost through sale, both during the term of the agreement with CMHC, and after its expiry.

- A co-op defaulted on a mortgage or its taxes, and the land and buildings were seized by CMHC, the lender or the municipality, and subsequently rented or sold outside the co-op sector.
- The land were located in an area which was rezoned in a manner so as to make the neighbourhood unsuitable for housing, and the co-operative sold it.
- The co-op's buildings had deteriorated and were no longer fit for occupancy, and the co-op did not have or could not obtain the funds to rehabilitate the project. That land could be lost from the sector. The Sutton Trust in England is a good example of this possibility. The majority of their buildings require major upgrading and modernization, and the Trust is not in a financial position to undertake this work without assistance from another source, presumably government.
- A substantial number of co-op units are built upon leased land. While these leases are for at least 10 years longer than the first mortgage, a number of them cannot be renewed when the lease runs out. The land and improvement will revert to the lessor without any compensation to the co-operative.

- The co-operative was expropriated by government for government purposes, and could not find appropriate replacement land.
- A project was destroyed, perhaps by fire or flood, the lender wanted to be paid out, and the insurance proceeds were not adequate to pay the lender and enable the co-operative to rebuild the project.
- The co-operative used its equity, either earned or windfall, in such a manner that would result in the loss of the project.

In summary then, the potential loss of land falls into three groups.

LAND BASED - This group includes situations which resulted in the privatization of the assets of the co-operative, by the individual members of the co-operative.

CAPITAL BASED - This group includes situations where the co-operative is unable to access the necessary capital to maintain/retain its project, and therefore, must either sell or forfeit the project.

SUPPORT BASED - This group includes situations where the co-operative, because of lack of information, resources or ongoing education, finds itself in a position where it must forfeit its land.

3.1 APPLICABILITY OF THE EXPERIENCE OF OTHERS

A number of experiences in other jurisdictions offer some techniques that may be applicable in addressing these three situations.

3.1.1 The Community Land Trust

This land trust model would certainly address the land based situations, a distinction is made between land ownership and land use. Since the land trust owns the land, and only leases it to the users, there would be no possibility of the land being lost through the decision of the users to privatize the equity in the land. The community land trust model makes an important distinction between individually earned equity and community equity. Land is considered a community asset, on which the improvements made or paid for by individuals are viewed as individual assets. Like the Canadian co-operative sector, one of the basic objectives of the community land trust movement is securing access to land for low income households who are unable to compete in the marketplace. In addition, both movements are concerned with ensuring that once land is in the sector, it remains so in perpetuity.

The community land trust model would only partially address the capital based situations. Since, in most instances, all users are responsible for financing their own improvements, it is possible that land might be lost to the trust if the users were unable to meet their financial obligations. It should be noted there is a variation in mortgage instruments in the United States and Canada. In the Canadian context, mortgages run with the land, and as such, a leasehold interest must be able to be transferred to the mortgage holder on default. Since the trust would be aware of the default, it could take remedial action to prevent the land from being lost (e.g. assume or pay-out the mortgage). It should be noted that many land trust organizations are attempting to establish capital funding pools to be made available to the leasehold users for the development of their improvements. The availability of such capital through the trust is advantageous in addressing the second situation.

Because community land trusts seek to own large tracts of land, they are probably in a better position than an individual owner, to handle the impact of expropriation. Since the trust would be concerned only with the replacement of the land and not the improvements, they would be more likely to be in a position to do so with the expropriation proceeds. In any event, should it become necessary to raise additional capital, the trust could probably acquire capital to purchase replacement land. Taxes are usually the responsibility of the land owner not the land user, therefore, the possibility of loss due to non-payment of taxes is minimized.

The community land trust also addresses the support based situations, since the land is owned by the trust and the improvements by the individuals. Should users not maintain their improvements and decide to abandon them, they would lose their earned equity, and the land would revert to the trust. As well, a number of the community land trusts are developing support systems to assist the users with

property maintenance and management.

The membership of most community land trusts includes representatives from three groups: the users, the community in which the trust is situated, and the public who are interested and supportive of the concept of the community land trust. Decisions made by the land trust should, therefore, take into account more than one specific interest group, thereby ensuring the retention of the land within the trust.

3.1.2 The Conservancy/Agricultural Trust

This group includes the American organizations who, unlike the community land trusts, do not own the land but rather, have purchased development rights, which restrict the use of land. These groups are similar to the community land trusts, in that they distinguish between ownership of the land and its use. However, they are more concerned about the use of the land than its ownership. It is possible for land to be transferred from one owner to another, however, since the trust controls the development potential of the land, its use could not change unless the trust agreed.

Because one of the major concerns of the Canadian co-operative sector is that land purchased or developed for continuing housing co-operatives continues to be used for this purpose, some of the techniques used by the conservancy/agricultural trusts may have some applicability in the Canadian context, even though this model does not adequately address the three situations. These trusts, while they do not own the land outright, control potential uses of land, and thereby, have an impact on the market value and the sales potential of land. Therefore, they do have an indirect control over the future ownership of land.

It should be noted, that in many instances the impetus for the development of such trusts came from the fact that current land owners, especially those who may have been cash poor but land rich, were having difficulty maintaining their land and were often forced to sell to land developers.

3.1.3 HSB

The Swedish co-operative system is very similar to the Canadian system, in that each individual co-operative has ownership over its' land and improvements. There is also a similarity between the community land trust and the Swedish system, in that the individual members have access to their earned equity. Until 1969, the co-operatives had control over the amount of the earned equity that an individual could obtain. Unfortunately, when this control was removed, the individual member could also capture unearned or windfall equity. As was noted earlier, this situation is being examined by the Swedish co-operatives. While the ownership of the land has not been lost to the housing co-operative sector in Sweden,

3.2 LAND BASED TECHNIQUES

The key to dealing with the land based situation appears to lie in the creation of a distinction between ownership of land and use of land. From the American experience with land based techniques, there appears to be two approaches. The first, is one in which the trust owns the land and leases it to the user for a specific purpose, referred to as ownership based techniques. The second, is one in which the user owns the land, and either sells or gives the trust control over how the land will be used, referred to as use based techniques.

3.2.1 Ownership Techniques

There are basically three methods that could be used to effect control through ownership:

- an organization other than the user owns the land leases it to the user; referred to as Ownership;
- an organization other than the user jointly owns the land with the user; referred to as Joint Ownership;
- the user/owner holds the land in trust on behalf of an organization, other than the user, that represents the co-op housing sector; referred to as Other Forms of Ownership;

a. Ownership

i. Corporate Form

This technique requires the establishment of a number of territorially incorporated non-profit entities, whose purpose would be to hold the land for use by non-profit housing co-operatives.

ii. Membership/Decision Making Structure

It is proposed that the membership of the corporation be modeled after the American Community Land Trust system. Membership should be open to the users of the land, and representatives of the co-operative sector. The co-operative sector could include representation from other provincial co-ops, co-operatives other than housing co-operatives, (the community representatives in the community land trust model) and national representatives of the housing co-op sector (the public interest in the community land trust model). The membership would elect a Board of Directors, responsible for the implementation of the policies of the organization. The users should be guaranteed at least 65% representation on the Board.

The composition of the membership should also be reflective of that of the Board of Directors. With the exception of the decision to dispose of a piece of land, which should require at least 75% majority decision of the membership.

iii. Relationship of the User to the Land

It is proposed that the users lease the land from the trust. If the user is to obtain mortgage financing for the development of their improvements, the lease may have to be written for a period that exceeds the term of the first mortgage by 10 years. It is proposed that as long as the lessee is not in default, the lease be renewable at the end of the lease.

The lease should specify the use of the land, in terms of the corporate nature of the user (eg. a non-profit continuing housing co-operative). Since the specific nature of the land use (i.e. building form/density), would be controlled by municipal/provincial regulation/legislation, it would not be necessary to include this in the lease.

This lease could contain conditions requiring the co-operative organization to begin and complete its project within a certain period of time. It could also require the co-operative to maintain its property to a certain standard, and to insure that it does not default on its mortgage or other payments (e.g. building taxes, insurance).

During the term of any mortgage, the mortgage lender and mortgage insurer will require that the lease be drafted so as to allow the land and improvements to be transferred to them upon default. This would require an agreement between the mortgagor, mortgagee and the lessor, outlining the nature of the arrangements in case of default. There has, in fact, been considerable experience across the country with various leasehold mortgages on co-operative projects. This experience can be used as a basis for the development of the necessary documents.

From the perspective of the "land holding body", the land could be viewed as being at risk, during the term of the mortgage. If a co-operative defaulted on its mortgage or other agreements, the land could be lost to the sector. The fact that the organization would be locally based, and the users would be members of the organization, should reduce the risk of default and hence reduce the risk of land loss. If additional security is desired, the "land holding body" could constitute an arrangement in which it would assume the responsibilities of the mortgagor upon default.

b. Joint Ownership

A joint ownership situation exists where two or more people have title to the land. Joint owners are considered to have the same interest in the land or are both equally entitled to the use and enjoyment of their respective portions of the property.

While there are a variety of arrangements that could be used to establish a joint ownership arrangement, (e.g. tenants-in-common, property holding company or trust company agreement) all of these will require an organization that represents the sector, as well as a basic agreement between this organization and the co-operative.

It is proposed that the same type of organization that is suggested for the "land holding body", be used to represent the sector. It is also suggested the basic principles relating to membership and decision making, also be used in this instance.

The main content of the agreement would resemble the lease agreement. There should also be a provision included to ensure that the land could not be disposed of without the consent of both parties. In all probability, it would be necessary to defer the rights of the sector to a mortgage lender or insurer, in order for the co-op to obtain mortgage financing.

c. Other Forms of Ownership

A situation of conditional ownership exists when title is transferred to an owner subject to certain conditions. Should the owner not meet the conditions the land may revert back to the original owner. Conditional ownership arrangements are traditional techniques that, while not commonly used today were used in the past. There are two general types of conditional ownership that could be used by the co-operative sector. In one, the ownership of the land would automatically revert to the original owner if the conditions are not met by the current owners. In the other, the original owner may at his own discretion re-enter and take possession of the property.

3.2.2 Use Based Techniques

The research team explored a number of different use-based techniques. The ones that appeared to be most feasible were provincial legislation to govern the activities of the co-operative regarding land, and encumbering the property in such a manner as to inhibit the loss of land.

a. Provincial Legislation

The purpose of provincial legislation would be twofold: one, to control the use of any assets realized from the sale of real property by the co-operative organization during its existence or upon dissolution; and two, to control the actual disposition/use of property by the co-operative.

There is no existing provincial legislation that deals with all these issues. Saskatchewan has just amended its co-operative legislation to allow for non-profit continuing housing co-operatives. This legislation addresses the question of disposition of assets.

Saskatchewan now has Part XXIII of The Co-operatives Act that covers continuing co-ops. Section 260(5), Part XXIII, deals with gain from either the revaluation or sale of real property, in that it requires that any gains from either be placed into a special reserve fund or donated to a charitable organization or another non-profit organization. Should a co-op having a statutory reserve dissolve, the funds from the reserve must be donated for a charitable or benevolent purpose or to a co-op with similar objectives or to another person that the registrar may designate.

Because the right to alienate, (e.g. sell, lease or rent it real property is considered one of the rights of ownership, it is doubtful that it would be possible to enact legislation that would limit an owner's right to alienate land, whether or not such owner were a non-profit continuing housing co-operative. Since the concern of the sector is not only limited to the loss of assets, but also to the loss of actual land, it is thought the legislative approach would only provide a partial solution to the problem.

b. Restrictions Against Land

i. Organization

"Some of the rights normally constituting the ownership of property, such that the actual right of continued use and enjoyment in a manner appropriate to co-ops would remain with the co-occupying co-op, but an outside body would have sufficient rights to control either a disposition itself or the use of the proceeds used from a disposition." Bruce Lewis; Memorandum: Creating title interests to protect co-op sector interests in co-op projects, 1983 (unpublished)

In this particular instance the outside body would represent the interests of the sector. It is proposed that the same type of organizational model, and decision making structure proposed for the "land holding body" would be appropriate for us with these techniques.

ii. Techniques of Restricting Use

There are basically three types of techniques that have the potential to effect the use of the land which would be consistent with the objective of ensuring that non-profit housing co-operative assets remain within the sector. One, a contract between the parties; two, the creation of an interest in the property (e.g. trust, mortgage or charge, restrictive covenant, land titles act agreement); and three, the establishment of pre-emptive purchase rights.

3.3 CAPITAL BASED

As outlined earlier, there is a potential for co-operatives, who are unable to generate the necessary capital, to maintain or rehabilitate their property or to deal with loss of income due to overall economic conditions, to have to sell their land or assets.

In seeking a resolution to the problem of lack of capital, there are three basic approaches that could be taken. One, to develop enabling public programs that would ensure the availability of capital to meet the needs of the co-operative. Two, to develop a program that would enable the co-operative sector, to provide the necessary capital to support those members who require the capital. Three, to establish a program that would be jointly developed by the government and the co-operative sector that would ensure the access to capital by co-operatives as they require it.

In addition, as the co-op housing sector matures, the need for sources of capital, other than that currently available under government programs, will increase.

A variety of mechanisms were reviewed that have capital generation potential. These mechanisms fall into three general categories:

- 1) donations
- 2) banking or trust functions
- 3) market functions

While there is some potential to raise capital through donations, this mechanism should be considered as a means of raising supplementary capital, since donations are an unpredictable source of income.

Banking or trust functions probably have the most capital generating potential. Any banking or trust function should allow for the pooling of resources of existing co-operatives, individual members as well as potential members.

Market functions which include the possibility of using existing equity within the system, were considered to be long-term solutions, since at present there is little earned equity within the sector.

3.4 SUPPORT BASED

The development of the Canadian housing co-operative movement can be viewed as somewhat unusual. Low and moderate income households have been able to develop housing projects, usually with the assistance of resource groups, over which they have ongoing control, despite the fact that these households often have limited development and property management skills.

Traditionally in this country, individuals other than private entrepreneurs, have managed their own dwelling units and have not had the responsibility for the management of multiple housing projects. In fact, the concept of owner controlled multiple family projects (condominium or co-operative) is in itself a very new concept in Canada. The first condominium legislation was passed in 1967, the same time that the first new co-op project was available for occupancy.

Without a doubt, there are vast differences across the country with regard to the development and management of housing co-operatives. In addition, the economic, political and social realities within each region of the country enhance these differences. In spite of these differences there are a range of support mechanisms that all housing co-operatives require.

These include member education on an ongoing basis to ensure that the co-op members have the skills and information necessary for them to manage their co-operatives. The content and focus of member education will vary depending upon the nature of the co-operative's management system. For example, co-ops that are self managed will require different information and skills than ones that have hired staff or contract management firms.

These support mechanisms should be available on a continuing basis and must meet the specific needs of local groups. The development and delivery of such support mechanisms must be controlled by the potential users in each region. At the same time, it is important that there be a mechanism to allow for the sharing of information and resources among different regions in the country.

Unlike the land or capital based problems, the techniques required for the support based problems should be quite easy to implement. The background information and technical resources already exist across the country. They can be found within the various resource groups, existing housing co-operatives, federations and CHF committees.

There are, however, two major issues that need to be addressed if appropriate support mechanisms are to be developed. First, how such services will be organized; second, how the services will be funded.

It is suggested that the support based services be delivered by locally developed and controlled organizations. Already, in a number of areas in the country housing co-operatives have come together to form federations whose general purpose is ongoing education and mutual support. In some regions, the organization may be limited to

one urban area, while in others it may include a province or region thereof.

Local organizations, after determining the scope of their support system, could establish a cost for delivery of the system. Each co-operative could be charged a general membership fee and, in addition, as each group used the various services and education programs they could pay a fee for service. The level of service and its cost would be determined by the local co-operatives who would be the members of the support based organizations.

3.5 SUMMARY

The following is a summary of the three components of the theoretical model and their functions.

LAND COMPONENT

Purpose

- to hold land either through direct ownership or control over its use for the common benefit of the community

Organization

- Local/regional trust organizations whose membership would consist of:
 - the co-ops whose land will be part of the trust
 - representatives of the co-op housing sector (CHF or local/provincial federations)
 - representatives of the community at large
 - representatives from other organizations who choose to put their land in trust
 - decisions regarding disposition will require a 75% majority of all members of the trust
 - at last 2/3 of the Board of Directors shall be users of the trust

Functions

- to purchase land for use by housing co-ops and to lease that land at cost to the housing co-operatives
- to hold and lease land at cost for purposes that are determined to be within the objectives of the trust
- to control the disposition of land held by members of the trust through mechanisms determined to be functional with the region.

CAPITAL COMPONENT

Purpose

- to encourage and facilitate the expansion and long term economic viability of the co-op housing movement through the provision of contributions and capital by individual housing co-ops and their members.
- the intent of the capital component is not to replace government programs but rather to complement them.

Organization

- rather than establishing an alternate financial system, the existing co-op financial system should be used for banking and investment purposes.
- close collaboration, both on regional/national level, between the co-op housing sector and the co-op financial sector to ensure that funds invested for co-op housing purposes will be used for such.
- funds should be able to be pooled nationally both to maximize the size of the capital pool and to ensure that capital would be available to regions with limited investment potential.

Functions

- to establish member savings and pension programs.
- to establish co-operative savings programs.
- to make capital available to local land trusts
- to make capital available to housing co-operatives for the purpose of development or expansion.

SUPPORT SERVICE COMPONENT

Purpose

- to ensure the stabilization of the co-operative housing sector through the provision of comprehensive support services at the local, regional and national level.

Organization

- the support services are best provided by local/regional organizations of housing co-operatives. In many areas there are existing or developing federations of housing co-operatives. It is suggested that these federations deliver the support services. In areas which such organizations do not yet exist, it is proposed that they be developed.
- CHF provides the vehicle through which these local organizations can be part of a national support network.

Function

- to provide ongoing member education
- to provide support services, including management assistance and advocacy.
- to create the capacity of the receipt of donations that could be used to enhance low income members.
- to create mechanisms for the generation of surplus from the capital component that could be used as supplementary income for the support programs.

4. IMPLEMENTATION

The research team reviewed the legal, economic and tax implications and constraints. While legal, economic and tax constraints were identified it is suggested that none of them would prohibit the implementation of the proposed model.

4.1 LAND COMPONENT

One of the first steps in the implementation of the land component will be the development of local organizations that will be able to represent the co-op housing sector. These organizations should have the capability of holding land for the sector or entering into agreements with other co-operatives that will control the use and distribution of the land. They should be organized to ensure tax exempt status under Section 149.1(1) of the Federal Income Tax Act.

The following is an outline of the activities that must be completed in order to develop the local organizations.

4.1.1 Marketing

Since the basis of the local organizations are the housing co-operatives within a region, it will be necessary to ensure that the local co-operative groups understand the concept of the land component and are willing to establish an organization in their area. During this stage, it will be necessary to define the areas for the purpose of developing land organizations. That is, should the land organizations be developed on a provincial, municipal or neighbourhood basis.

It will be necessary to develop some basic information kits that can be used for marketing the concept. In addition, it will be necessary for CHF to facilitate discussions with the co-operatives across the country, which will result in the definition of areas for the purpose of land trust organizations.

4.1.2 Incorporation Documents

The instruments of incorporation should ensure that the organization will be a non-profit corporation for income tax purposes. In addition, they should ensure that the organization has the power to hold land and to enter into agreements with its members regarding the use and disposition of their land.

It is suggested that rather than having each local group develop their incorporation documents, there is a need to develop a basic set of clauses that could be used in the different jurisdictions across

the country. In order to accomplish this task, it will be necessary for CHF to ensure that legal resources are available to produce these draft clauses. Once produced, these draft clauses will probably have to be reviewed by solicitors who are familiar with incorporation requirements and procedures in the various jurisdictions where these organizations will be incorporated. It will also be necessary to have these clauses reviewed by the appropriate provincial directors responsible for the supervision of different types of not-for-profit corporations.

When this has been done, a resource kit can be prepared for groups to use when incorporating their local organizations.

4.1.3 Scope of Operations and Operating Budget

Each local group will have to determine the exact nature of its' operations. e.g. will the land be controlled via ownership by the organization, or by a use agreement. This will enable the organization to establish its' management requirements and to develop an annual operating budget.

To assist the groups in establishing both a management system and operating budget, CHF should ensure that various management options are developed and made available to the local groups. In developing these management systems, CHF should explore the possibility of local groups sharing resources on a provincial or national basis, with the view to developing more efficient and less expensive operating systems. Shared resources might include an information base, special consultants, and computer systems.

4.1.4 Lease Agreements

The requirements for the development of lease agreements are similar to the requirements for the development of the incorporation documents, in that standard clauses should be developed that could be incorporated into the leases in the various jurisdictions. In addition to the clauses which will inhibit the land from being transferred to a third party, without the consent of the owner, the lease should incorporate the following principles:

- lease rate should be set at cost, land should not be used to generate capital or a surplus.
- the individual co-operative should be guaranteed security of tenure.
- the lease should provide for renewal of the lease term.
- the lease should specify the use of the land by the co-op.

- the lease should specify that the co-operative begin and complete its project within a certain period of time (if the co-op is developing a project on land owned by the trust).
- the lease should require that the co-operative maintain its improvements and the land to a certain standard.
- the lease should not prohibit the co-operative from obtaining mortgage financing, and should take into account the needs and requirements of any mortgage lender or insurer.
- the lease should contain a mechanism for dealing with grievances between the user and the owner.

CHF should ensure that legal resources are made available to develop the draft clauses for the lease agreement. A information kit can then be prepared for use across the country.

4.1.5 Other Agreements

There are a number of other agreements that require standard clauses similar to those developed for the incorporation documents and the lease agreements. These should include all of the possible use base techniques.

It would be quite difficult for one body to prepare the base documents for each of the possible use-based techniques . It is suggested, however, it would be possible to prepare a list of items that should be included in any of these agreements. The exact incorporation of these items into the various agreements to be used with each technique, will be dependent upon the requirements of provincial enabling legislation and regulations pursuant thereto.

4.2 CAPITAL COMPONENT

4.2.1 Marketing

Similar to the land component, there is a need for the development of a marketing process to encourage both individual members and housing co-operatives to invest in institutions that will invest in co-op housing.

4.2.2 Developing Savings Programs

While there is a network of financial institutions that could be used both by members and co-operatives, it may be necessary to develop investment programs.

As part of the implementation of the capital component, CHF will have to work with the existing co-operative financial institutions to develop savings and investment programs directed towards co-ops and their members. The establishment of such savings programs would probably require Federal enabling legislation/regulation. CHF would have to work with the appropriate federal departments to develop such a program.

4.3 SUPPORT COMPONENT

4.3.1 Scope of Services

Within each region, local co-operatives will have to determine what type of services they require. Once this is established, the local groups will be able to determine the cost of providing the services. It is suggested that CHF should play a role in assisting local groups identify their needs and requirements, and developing educational programs and materials. This role, in fact, is an extension of the one that CHF currently plays in relationship to its members.

4.3.2 Funding the Services

The establishment of both the membership and user fees for the specific services will be the responsibility of the local organizations. In many regions of the country, local federations of housing co-operatives have been developed. It is suggested these organizations would probably be responsible for the implementation of the support services, which in some instances, will simply be an extension of existing services. In other areas where there are no federations, the groups may have to build the additional costs of organizing the federation into their initial operating budget. The amount of the fees will depend upon the nature of the services provided in each area.

4.4 SUMMARY

In summary, the majority of the work required to implement a land trust system is legal work and marketing associated with the land component.

Since membership of CHF approved the resolutions at the 1984 AGM regarding establishing a land trust system, it is suggested that CHF begin work on the implementation, with the view towards having a resource base in place for the land component by the fall of 1985.