

APPENDIX C

REAL ESTATE CONSIDERATIONS

The acquisition of sites for *Independent Living BC* projects needs to be considered in the context of the requirement that the Society mobilize community equity to make its Project financially viable. In most cases, sites will be obtained from one of the following sources, with the first three being more likely than the fourth:

1. The site is already owned by the Society. Where a Society brings land it currently owns, it is expected that the land will be contributed to the Project at no cost to the Project.
2. The health authority may own a site that it has made available for the Project. In this circumstance, the land will be leased to the Society at no cost to the Project (e.g. a long-term lease with a prepaid rent of \$10.00).
3. The Society has negotiated a ground lease from a public body (a municipality or government agency) or another non-profit society. The rent must be prepaid and the term must be at least 60 years. Nominal rent (e.g. \$10.00) would be expected.
4. The Society, when it has significant cash equity to bring to the Project, may purchase the site from the private market. To protect itself, the Society should ensure that its purchase agreement contains all appropriate conditions precedent including the approval of BC Housing.

Societies must undertake all appropriate due diligence to ensure that all risks, costs and obligations associated with the land (such as servicing, municipal charges, legal constraints, subdivision, zoning, approvals, title issues, geo-technical issues, environmental issues, etc.) are fully understood and reflected in the proposed purchase price and terms, and in the Project design, schedule and budget.

Project Commitment Conditions

As a condition of Project Commitment, the following key land issues must be resolved to BC Housing's satisfaction:

Agreement to lease. If the land is to be leased, the Society must have the site secured by an agreement to lease. The terms of this agreement must give the Society sufficient control over the site to allow a reasonable development schedule at a reasonable cost and with limited liability.

Contract of purchase and sale. If the land is being purchased, the Society must have the site secured by way of a contract of purchase and sale. This agreement must give the Society sufficient control over the site to allow a reasonable development schedule at a reasonable cost and with limited liability.

Land valuation. BC Housing may obtain an independent appraisal to assist in determining the market value of the proposed site. If the Project involves a mixed-use development or a lease, the market value will be apportioned accordingly.

Environmental. BC Housing will obtain a Stage 1 Preliminary Site Investigation and may require a Stage 2 Preliminary Site Investigation and a Detailed Site Investigation. If contamination in excess of provincial standards is found, the site must either be fully re-mediated, or a re-mediation plan in place which has been approved by the Ministry of Water, Land and Air Protection.

Geo-technical analysis. The Society must provide to BC Housing a geo-technical analysis.

Site survey. The Society must provide a land survey showing all improvements, encroachments, easements, rights-of way. Any encroachments must be removed or legally documented.

Municipal approvals. All required approvals (e.g. subdivision, rezoning, development permit) and cost charges from local and other levels of government must be identified and reflected in the budget and schedule.

Servicing. All issues relating to the provision of municipal and utility services must be identified and reflected in the budget and schedule.

Land Title

Prior to construction beginning and mortgage funds being advanced by BC Housing, the following conditions must be satisfied:

- The Society must own a separate and mortgageable interest in land (fee simple title or long-term ground lease), upon which the Project will be constructed. The title must be free and clear of all objectionable defects as determined by BC Housing with reference to the CMHC Mortgage Loan Insurance Handbook. **Please note that a notation on title pursuant to the *Hospital Act* is an objectionable defect and must be removed.**
- BC Housing will require the following documents to be executed and registered as charges or notations on title, prior to any funds being advanced by BC Housing:
 - Ground Lease (if the Society is not the registered owner)
 - Section 219 Covenant and Option to Purchase the Society's interest in land (in favour of Provincial Rental Housing Corporation, BC Housing's land owning company)
 - Mortgage of Society's interest (in favour of BC Housing)
 - Assignment of Rents (in favour of BC Housing)
 - Notice under the Personal Property Security Act

All other charges (including proposed new charges) on title must not impose unreasonable costs, restrictions or liabilities on the Project, and must receive prior written approval from BC Housing.

- If the Project is part of a mixed use development, other agreements may be required to ensure an equitable sharing of on-going costs between the various uses.

Ground Lease

If the Society's interest in the land is to be a leasehold interest, the lease must be in the form of BC Housing's standard lease and include:

- a term of 60 years from the date of registration, and
- rent paid once on the earlier of substantial completion and 12 months after commencement.

Section 219 Covenant and Option to Purchase

BC Housing will register a Section 219 Covenant and Option to Purchase on the Society's interest in land to ensure that the Project continues to be used for the intended purpose. The term will be 60 years.

The purchase price in the Option to Purchase will be that percentage of the market value of the property equal to the Society's financial contribution in relation to the total capital cost of the basic *Independent Living BC* space. Financial contributions from government sources will not be included in determining the Society's financial contribution to the development of the Project.

Homeowner Protection Office - Warranty Exemption Information for Societies Receiving Funding From BC Housing

As of July 28, 2004 all rental housing, including social housing (with the exception of co-op housing), is exempt from the Homeowner Protection Office ("HPO") requirement for both the reconstruction fee and the home warranty insurance. Prior to this, social housing projects had been exempt from the reconstruction fee. The builder must still be licensed by the HPO.

A condition of the exemption is that a section 219 covenant in favour of HPO is registered on title for 10 years requiring:

- rental use only, and
- no partial sale.

BC Housing requires this exemption for all projects for which it is the principal funder.

Master Agreement

Under the agreement dated November 25, 2004 (the "Master Agreement"), BC Housing and the HPO have agreed to procedures for claiming the exemption, including a standard Section 219 covenant and option to purchase which includes the requirements of both BC Housing and HPO. A stand-alone HPO Section 219 covenant, consistent with the Master Agreement, is also available. Under the Master Agreement, HPO will grant the exemption provided that BC Housing issues a "Commitment Letter" which states that, prior to the issuance of an occupancy permit, BC Housing will either register a covenant in favour of HPO or will ensure that warranty insurance is in place and the reconstruction fee is paid.

In circumstance where BC Housing does not require the exemption, the HPO has its own stand-alone 219 covenant available to sponsors, outside of the Master Agreement. This may occur where BC Housing's contribution is relatively minor.

Exemption Procedure

When the exemption is being claimed under the Master Agreement, the following process will be used:

1. BC Housing will notify the society of the exemption requirements and process and will provide execution copies of the appropriate 219 covenant and option to purchase and request that they be executed and returned to BC Housing.
 2. Upon BC Housing receiving the executed 219 covenant and option to purchase from the society, BC Housing will forward the document to HPO for their execution, together with a Commitment Letter. A copy of the Commitment Letter will be sent to the society, and the society should forward a copy to the licensed builder.
 3. The licensed builder will request an exemption by submitting to the HPO an *HPO Registration Form, Multi-Unit Building*, together with a copy of the Commitment Letter.
 4. HPO will complete Section E (Proof of Exemption) of the *HPO Registration Form, Multi-Unit Building* and provide a copy to the licensed builder.
 5. The licensed builder provides a copy of the Proof of Exemption to the municipality prior to the issuance of the Building Permit.
 6. BC Housing will register on title the executed 219 covenant and option to purchase at the same time that it registers its mortgage, in priority to that mortgage.
- More information about the HPO may be obtained at: www.hpo.bc.ca
 - URL *ILBC Non-Profit Housing Program Guidelines, Appendix C* - www.bchousing.org/files/ILBC/ProgramGuidelinesAppendixC.pdf

Mortgage and Assignment of Rent

BC Housing will register its standard mortgage and assignment of rent on the Society's interest in land. After construction of the Project has been completed, the mortgage will be assigned to a take-out lender.

The mortgage is filed in the Land Title Offices under number MT900183 and the assignment of rent is filed in the Land Title Offices under ST921015.