

LEGAL STRUCTURES: LAND TENURE & BUSINESS OWNERSHIP

Intentional Community tends by its nature to attract non-standard legal structures, necessary where collective land ownership is intended, but sometimes unfamiliar or unwelcome to local estate agents, lawyers, conveyancers, banks or planners. Some options are described in the table below. As options vary by State, and the detail of similarly-named Acts is not necessarily identical, informed legal advice is recommended.

HINT: Before seeing lawyers, research communities in your state on types and functionality of their legal structures.

Collective ownership requires that purchasers be fully aware of their rights, responsibilities, By-laws, covenants and estimated costs, especially of community levies, which may be addition to rates and charges, at the outset. It is wise always to have purchasers confirm in writing that they have read and understood relevant documents, especially By-laws and levies.

The induction issue needs to be a priority for the collective at both systems design and completion stages. Churning of ownership through private on-sales can be a time-bomb issue for communities, as private sellers often fail to inform buyers of the nature of the community arrangements or existence of levies. THIS CAN CONTRIBUTE POWERFULLY TO DILUTION OR LOSS OF THE VISION. While not a developer issue, it is a critical *duty of care* that communities be made aware of this issue and be encouraged to develop a clear and tenacious induction programme and governance system very early, not only for later comers but also for those who come in at the community expansion phase that follows the initiator group's establishment activities.

A view exists amongst the ordinary planning and development industry that if the benefits of eco-living are to be more widely adopted, these things can be swept away and replaced by attractive marketing packages. These are no substitute for education and training of their new resident customers in governance principles & practice, and giving them opportunities to contribute to longer-term objectives in these areas.

LAND TENURE		
TYPE	DESCRIPTION	EXAMPLES & COMMENTS
Community Title	Private building lots set in commonly-owned land; managed by a Body Corporate under established By-laws; enables nesting of further Community Title subdivisions within a lot. Similarity to Strata Title but more options such as nested subdivisions; a common structure for EcoVillages and Cohousing, which may have extensive common land holdings.	May be managed by a professional management agency or by residents. ALDINGA ARTS-ECOVILLAGE SA 2001 (Community Title) In its establishment phase, uses a strata management company to undertake tasks such as levy collection, AGM paperwork, BAS and day-to-day financial management. All substantial decisions & budgets are voted by the community and implemented by the (paid through levies) <i>Community Manager, Community Corporation</i> (volunteers, elected annually), a committee system and casual employees. Community Title can interfere significantly with best community interest and goodwill in that it prescribes unanimous agreement in some types of decisions, setting the community up for the possibility of being held to ransom by one person. Available in Queensland (taking over from 'Group Title'), NSW (not normally

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		<p>rural, must be zoned first), SA; not Victoria.</p> <p>WA: Strata Title, rural clusters, operates similarly to Community Title elsewhere.</p> <p>In South Australia, Community Title was designed for resort co-ownership and to ultimately replace Strata.</p>
Strata Title (‘condominium’)	Interior private, skin & exterior common; managed by a resident committee or an appointed professional agency. Individual responsibility for private mortgages.	Multi-storey building, apartments, town houses May be used for Cohousing and EcoVillages where Community Title not available. See note above re WA.
Multiple Occupancy	One owner of all land, held on behalf of a community, often by a Co-op or a Community Land Trust Improvements may be collectively or individually owned. Local Government Council approves a certain number of units	NSW rural only. Unpopular with mainstream because more tribal. Requires common ownership of land, then a legal arrangement among members as to rights to occupy a particular site. Internal agreements are less secure than legal title.
Co-operative	An autonomous business structure, owned and controlled by member users. Membership elects officebearers, no shares; can hybridise with PL Company & have shareholders or set up as a housing or business co-op. Structure also well suited by <i>non-profit company limited by Director’s Guarantee</i> . May also be an Incorporated Association (cheap & easier to establish). Co-ops have one vote per member and rules about return on shares. Work sharing, obligations, entry & exit, finance and other rules peculiar to that group must be agreed in advance.	<p>Many kinds, eg housing, food, credit union, primary produce, marketing, education, workers’, transport, purchasing, utilities.</p> <p>Co-operative Federation of Victoria Ltd: http://www.australia.coop has helpful downloads about Co-ops & how to set them up.</p> <p>EcoVillages in Australia commonly Community or Strata Title. As they mature, community businesses are often set up as Co-ops. Co-op structure is more common for small communities for holding land.</p> <p>Pinakarri Cohousing Co-op: www.pinakarri.org.au/. Also see WA Government Sustainability Case Study index: HOUSING & CONSTRUCTION Beyer, D. Pinakarri Community: An Intentional Co-Housing Cooperative January 2002.</p> <p>Guiding Principles for housing co-operatives from International Principles of Co-operation, International Co-operative Alliance Centennial Congress (1996); (source Pinakarri website):</p>

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		<ul style="list-style-type: none"> ● Voluntary and open membership. (Open to all who are able to accept the responsibilities of membership). ● Democratic member control. Members actively participate in setting policy and making decisions. Each adult member has one vote. ● Member economic participation. Members control the capital of the co-op, part of which is reserved as common capital for co-op use. ● Autonomy and independence. All external agreements must be undertaken on terms that ensure democratic control by members. ● Education, training and information. Provided to all members so they can contribute effectively to the co-ops' development, and to inform the general public about the nature and benefits of co-operation and housing co-ops. ● Co-operation among co-operatives. Helps strengthen the co-op movement. ● Concern for community. Whilst maintaining co-op needs and support, co-ops work for the sustainable development of their communities. <p>Housing & business co-ops come under separate Acts. Business Co-ops need the usual business licences.</p>
Community Land Trust	Protects land as a community asset: Community land, leased private house footprint. Housing is owned or leased.	Covenants apply <i>See also</i> Multiple Occupancy Eg Christie Walk Adelaide. See <i>Your Home</i> website.
Community Ground Lease	Community owns + leases house + land <i>or</i> Private house ownership + lease land from community.	Self-management
Tenants-in-common	Sometimes used as an interim structure between purchase and conversion to co-op, Community Title or Strata. A 'share purchase group' that can own property	Commonest form for communities purchasing collectively

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	and pass it to owners' heirs or sell independently. Members are usually allocated exclusive occupancy rights on a particular unit.	
Joint Tenancy	Similar to Tenants-in-Common, except that on death the member's share passes to the remaining members automatically.	Commonest form for marital equity
Incorporated Association	Simple & cheap to establish non-profit structure; cheap to run; membership can be specified as automatic (eg on owning a unit), one vote per member; has a stated purpose, Constitution, & officebearers.	and be responsible for maintenance and anything else specified in the lease agreement. This could include right to establish By-laws and collect levies. Land can be owned by a Community Land Trust and leased to the Incorporated Association. No annual reporting requirements under a certain gross annual income. Membership change need not be registered.
Proprietary Limited Company	A legal 'person' that enables shareholders to avoid liability while owning & managing property, investing, going to court etc.	Mandala Community Pty Ltd, Warwick, Qld. Disadvantages: cost to set up & maintain (reporting, accounting, BAS, tax). Officebearers registered with ASIC; annual reporting requirements & fees incl. late fees apply.
Tradable Equity Co-operative	Lifetime lease House + land Corporate management Equity tradable	Cheap to enter, leave with any added value equity but no other; used in USA for affordable housing
Commune Kommune	Extended family sized collective, usually with strict rules of behaviour specified by the group. Sometimes organised around a charismatic leader. Danish term for local government area (LGA)	Hippie and other collectives. Kolding: see case study and Urban Ecology .
Partnership	Simple form, not taxed, registered as a business name with a partnership	Rarely used. Not recommended Clarity & quality of Partnership Agreement determines outcomes if conditions

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	agreement signed: Individuals running a common entity. Expenses & profits shared in proportion to number of shares owned. All responsible for debts and legal liability unlimited.	change eg dissolution of partnership, one member leaves, new member enters, property rights or compensation in dispute. Can get complex and nasty.
Non-Profit Company Limited by Directors' Guarantee	Common Non-Government Organisation structure. Limited liability (eg \$2, \$50 or whatever is stated in the Memorandum of Association). No shares. Any profits must be distributed to the benefit of the Company's stated objectives.	Suitable for sports clubs, CBOs and NGOs. Relatively arduous accountability required eg must have high quality records & an annual audit as well as tax returns & BAS if relevant. Annual reporting requirements re ASIC & fees to pay. Late fees apply.