Legalities and ownership structures

Strata and Community Title

Strata and Community title both allow a combination of private ownership of a private residence area and shared ownership of communal spaces. Management and maintenance of the common property is by an owners corporation and executive committee. These ownership structures are common and well-understood in Australia. Strata is most commonly applied to apartments and other types of attached houses, while community title is generally used for large property estates or subdivisions.

A key aspect of strata and community title is that the body corporate has no ability to control the buying and selling of dwellings, making it easy for individuals to buy and sell their properties. This means there is less likely to be a feeling of being 'locked-in' to a collaborative housing community, but on the other hand means the community can't restrict sales to target groups e.g. only those over-65, or on low-incomes. As it provides clear private ownership of your own dwelling, it is the easiest title option to get a mortgage from the bank.

Collaborative housing project which already use strata title include the Nightingale developments and Cascade Cohousing.

Company Title

Company title is a system of communal land ownership where a person earns the right to live in a unit in a residential building by acquiring shares in a company that owns the building. In this structure, a company is created that holds the overall ownership of the title for the development, and all the residents own shares in the company that give them the right to own and use a dwelling and shared ownership of common property. Company title was commonly used in apartment blocks in Australia until strata title was created, and it is still in use in older blocks today.

A company is relatively cheap and easy to set up, and provides flexibility and limited liability for the shareholders. However, it is less widely known as a form of housing ownership, which may have an effect when buying or selling. Personal financing costs can be higher too, as banks are securing their loan against the company share rather than physical property (as they are with strata).

Legal obligations regarding governance may be less familiar than other housing title types, and it is useful to get professional advice. However, the different title also provides flexibility in management that can be useful for collaborative housing

In practical terms, a key differentiator is that the Board of Directors of the company (i.e. the members of the collaborative housing group) can decide exactly what rights and responsibilities are associated with owning a share through the company constitution. This can be used to place restrictions on any sale, lease or mortgage of dwellings, or require approval of all board members before any of these happen. This can be seen as a positive or a negative aspect of this form of title, depending on the aims of the housing group.

Cooperative (Co-op)

With co-operative title, as with company title, a separate legal entity (the co-operative or corporation) is the owner of the property, with co-operative members either owning shares or holding membership and occupancy rights which entitle them to use a dwelling in the development. The rights and responsibilities of the members are determined by the members. Housing cooperatives are based on principles of democratic control by members, for the benefit of members, and thus lend themselves to the purpose of setting up a collaborative housing project. The three most common types of cooperative are:

- Market-equity cooperative: in which shares trade at an open market rate and therefore functions in a manner similar to company title
- Limited-equity cooperative – in which upfront share prices and ongoing increases are restricted by a legal mechanism
- Rental cooperative – in which shares hold only nominal value and residents rent their housing from the cooperative

Many projects in Australia use cooperative title, such as Murundaka (rental cooperative), Pinakarri (shared equity), Stucco (rental cooperative)

Collaborative Retirement living

There are a variety of different contractual arrangements that residents can use when entering into a retirement village. These can vary depending on the village type, and there are generally multiple options when entering into a village. Collaborative retirement living could continue to function using these existing arrangements.

There are three common tenure types:

- loan or license to occupy the dwelling for the resident
- short or long-term leasehold, with resident given a long-term lease over the dwelling
- freehold title, in which the resident owns the property outright in a strata, community or company title scheme

Leasehold and freehold title provide greater security to the resident, as they are registered with the Land Titles Office. License to occupy is the most common tenure type, and it generally makes development approvals and ongoing management easier for the retirement living provider. The existing licence to occupy arrangements would appear well suited to collaborative retirement living, and serve to address potential issues found in other cohousing situations regarding issues of inheritance of a housing asset. A resident group working with a retirement living provider should consider all tenure options and determine which works best with the aims of the group.

A pilot example of this type of development is being led by IRT in Kanahooka.

Tenants in Common (TiC)

Generally seen as better suited for smaller scales and discussed further in that section. Has been used in collaborative housing communities, however is described as having varying degrees of success.

Tenants in common differs from a joint tenancy in that each owner has a quantifiable share. Each owner can sell, transfer or include their share in their will (unlike a joint tenancy there is no right of survivorship). This structure enables a group of people to buy land but also obtain separate title, entitling them to a nominated proportion of shares. All TiCs are entitled to use all of the land and to gain their proportion of any rents over it but they do not have any entitlement to possession of any particular part of the property.

Joint Tenancy

In a joint tenancy two or more persons own land or a building together in undivided shares. Each owner has the right to sell or transfer their interest but they do not have the right to include their interest in their will. On the death of one of the joint tenants their interest automatically passes to the remaining tenant or tenants. Generally this structure could not be recommended for aspiring collaborative housing projects.

Mutual Home Ownership Society

An innovative equity based leaseholder approach to co-operatively owned housing being pioneered in the UK, and used by the LILAC cohousing project. It aims to provide intermediate housing that guarantees affordability in perpetuity. Further details are available here.

Unit Trust

Under this structure the community's land is held in trust by a company from which shareholders hold leases over their allocated areas. This is sometimes used as the structure only for the development stage of a project, with ownership changed for the occupation stage e.g. Property Collectives.

Extended Family structures

Council planning instruments provide that a family home need not be just one structure but may consist of several detached but physically related buildings as long as the separate buildings do not have separate kitchens or bathrooms.

Incorporated Associations

It is possible for a group to set up an Association to hold land providing it does not engage in profit-making or trading. While relatively simple and cheap to set up, they are not well suited to the purposes of collaborative housing and can pose many potential issues. Can be set up and used for specific purposes by an existing community e.g. for managing educational activities of the community.