

COHOUSING - A GUIDE FOR INDIVIDUALS

This guide sets out some of the key questions for individuals to consider when thinking about joining a cohousing group.



We are delighted to support this guidance from Wrigleys which helps meet the demand for advice we see from people considering cohousing. Cohousing offers a wonderful, sociable way to live created through the participation of residents in the life and management of their neighbourhoods. Whilst sharing common characteristics, each cohousing scheme will be unique, and we recommend each person or family carries out their due diligence as outlined in this guide, before moving in. In addition, given the highly social nature of cohousing, we advise paying attention to the quality of a community's decision making, problem resolution and diversity policies to ensure they align with your own values and expectations. By using this guidance, we believe you will be in a great position to find the right cohousing community for you.

Owen Jarvis CEO, UK Cohousing Network



ABOUT YOUR ROLES

When you become a member of a cohousing community you take on multiple roles which are interconnected with one another.

MEMBER	TENANT	INVESTOR	OFFICER
You become a member of the legal entity through which the cohousing community is operated (usually a company).	You normally become a tenant of property owned by the cohousing community.	You become an investor in the cohousing community (by way of an investment in property through your tenancy, by way of a financial investment; or both).	You may become one of the officers (directors) of the cohousing community.
You will have rights and responsibilities in relation to the future of the cohousing community.	You need to comply with the various obligations within your lease.	You need to pay money to the cohousing community which you will want to take with you if you leave the cohousing community.	You will have day to day responsibility for the overall running of the cohousing community.

If you are considering joining a cohousing community, it is essential that you understand the different roles that you will have - the detail of them will differ from community to community - and their interconnectivity with one another. For example, your lease may terminate when you cease to be a member. So, you need to understand the circumstances in which you might cease to be a member which will be set out in the governing document of the legal entity through which the cohousing community is operated (rather than being set out in the lease).

BECOMING A MEMBER

Cohousing communities tend to be operated through a company structure (which we refer to as the cohousing company), although other legal structures can also be used, such as a co-operative society. Therefore, the members of cohousing communities are often the company law members of a cohousing company. This usually means that they have the right (with fellow company law members) to amend the governing document of the cohousing company and to appoint and remove the officers of the cohousing company.



When considering joining a cohousing community as a member, we suggest using this checklist to help you to decide:

- ✓ **Ask** for a copy of the articles of association, rules or other governing document.
- ✓ **Check** the arrangements for the holding of members' meetings (and make an effort to attend meetings when they are called). For example:
 - How are members' meetings called?
 - How much notice needs to be given to members of such a meeting?
 - How many members need to be at a members' meeting for it to be quorate and to validly pass decisions?
 - Is there a requirement for an annual general meeting to be held by the cohousing community?
- ✓ **Ask** is your membership formal (in a company sense, you are a company law member (usual) or shareholder (unusual) and can participate in binding decisions) or informal (you participate in discussions but not in legally binding company decisions)? What is the process for you being formally accepted into membership, and has this been followed?

- ✓ **Check** if your membership is tied to your tenancy or investment? If so, does it end automatically when your tenancy or investment ends? You will need to check the governing document of the legal entity, and the terms of your lease and of your investment to understand the position.
- ✓ **Find out** in what circumstances you can be removed from membership? In what circumstances can you remove yourself from membership? What are the consequences of removal from membership (including on your tenancy and on your investment)?
- ✓ **Clarify** what decisions are reserved for the officers of the legal entity to make, and what decisions are reserved for the members to make? The officers will usually be authorised to make day-to-day decisions in relation to the cohousing community. Certain decisions have to be made by the members as a matter of law (e.g. to make changes to the governing document of a cohousing company).
- ✓ **Check** whether you are you required to contribute to the payment of any outstanding liabilities in the event that the legal entity ceases to exist? This would usually be no more than £10 in your capacity as a member of a cohousing company.

INVESTING IN THE PROPERTY

Most cohousing communities grant long leases to their members. Occasionally, some groups will sell a freehold with covenants on the title to their members instead and this section applies equally in such cases. We describe both routes as "investing in property" as you will hold a valuable property interest in the cohousing community as a result of your membership and investment.

If you were buying property outside of the cohousing environment, you or your solicitor would undertake various investigations to ensure the property was suitable and could be sold on in the future. This is sometimes referred to as ensuring you have good and marketable title. This is equally true for any property bought from a cohousing community, whether by way of a lease or freehold sale.

The sorts of things that you need to be checking for are:

- ✓ Survey – is the construction sound and is the property likely to need any expensive repairs in the short to medium term?
- ✓ Conveyancing searches – do these show anything adverse e.g. a breach of a planning consent or that a compulsory purchase order has been made?
- ✓ Is there anything adverse on the title?
- ✓ Are the covenants in the lease (or freehold) unduly restrictive or onerous? The covenants in a cohousing lease may be very different to a standard residential lease, but are they covenants that you are happy with?
- ✓ If you require a mortgage, is the lease one that a lender will accept? This is something that your solicitor can advise you on. There is guidance on what lenders will accept in the Commercial Lenders Handbook and it can be very prescriptive.
- ✓ Even if you, personally, do not need to satisfy a lender's requirement to obtain finance, is the lease likely to be approved by a lender? If not, this could restrict who you sell to, if you need to move on.
- ✓ Even if the lease is not generally accepted by high street lenders, will it be accepted by local building societies or specialist lenders such as Ecology Building Society? If so, are their interest rates affordable?
- ✓ Tenure – how long is the lease for? How much time does it have left to run?
- ✓ In what circumstances can the lease be terminated (either by you, or by the cohousing community)? What are the consequences of the termination of your lease (including on your membership and on your investment)?
- ✓ What happens to your lease if you die whilst still a member? Can your children or other beneficiaries inherit it or will they need to sell it? Do the lease covenants allow them to do this, even though the beneficiaries are not members of the legal entity?

INVESTING IN THE COHOUSING COMPANY (OR OTHER LEGAL ENTITY)

In some cohousing communities, rather than investing in property, you might make a financial investment in the cohousing community. In this instance, you will hold a valuable financial (rather than property) interest in the cohousing community as a result of your investment. That financial interest might be by way of holding shares in the cohousing company if it is a company limited by shares (which would be unusual for a cohousing community), or by way of a loan made by you, or other debt owed to you. You will still be entitled to live in the cohousing community's property, but this is likely to be under a short term renewable lease or licence which may only last for a few years or months, or even from week to week.

The sorts of things that you need to be considering are:

- ? In what circumstances can you require the repayment of your money?
- ? In what circumstances can the cohousing community repay the investment to you (whether you want to receive it or not)?
- ? What happens to your investment when you leave the cohousing community (whether because you are removed, or because you leave voluntarily)? Is there any difference if you are leaving voluntarily, or if you have been removed from the community under the governing document of the community? For example, is your investment immediately repaid to you, or is it only repaid if a replacement member of the cohousing community is found? If it is not immediately repaid to you, is there a backstop date by which it must be repaid, regardless of whether or not a replacement member has been found?
- ? What happens to your investment if you die whilst resident in the cohousing community? Is it repaid to your estate at that point? Does it pass to your children or other beneficiaries?
- ? Are there any mechanisms which provide that the value of the investment would go up or down over time? For example, is it linked to the local house prices index, the local wage index, or to the specific value of the house or flat you live in, as determined by a valuer?
- ? Is interest payable in respect of the investment? If so, when it is paid?
- ? Will a commercial lender have security over the assets of the cohousing community? If so, if the cohousing community became insolvent the commercial lender could take possession of the community's assets (including its property) and sell it to repay its debts. You will only be repaid your investment out of any surplus realised from that sale (which the commercial lender will control). You may not receive some (or indeed all) of the amount you originally invested as a consequence.
- ? How much money are you investing? Are there any mechanisms which require you to commit more money at a later date?
- ? What is the basis on which you are entitled to live in the cohousing community's property? How can that arrangement be terminated? What are the consequences of termination (including on your membership and on your investment)?

BECOMING AN OFFICER OF THE COHOUSING COMMUNITY (OR OTHER LEGAL ENTITY)

Becoming an officer of the cohousing community (in a company sense, becoming a company law director, sitting on the board of directors) is an extra step up from being a member of the cohousing community in terms of responsibilities. Being an officer means being responsible for the day to day running of the cohousing community. Officers have a duty to act in the way in which they consider is in the best interests of their legal entity. If an officer is also a tenant, member or investor (or some combination of all three), they need to think carefully which "hat" they are wearing when making decisions.

Before agreeing to become an officer, you might want to consider:

- ? What kind of commitment is required? Do you have sub-committees who deal with particular aspects of the cohousing community (e.g. the garden, the accounts etc.) or does the main board deal with everything?
- ? How long are you appointed as an officer for, and what happens at the end of your term? How do you stop being an officer (whether because you have chosen to leave the community, or otherwise)?
- ? Who appoints you as an officer – is it the other officers, the members or the tenants? It might be the case that you automatically become an officer by becoming a member (in which case all members will be officers, and vice versa).

CONCLUSION

Becoming a member of a cohousing community is a rewarding thing to do. It brings the benefits of being part of a community, opens up the opportunities for friendship and mutual support and offers an alternative to the mainstream model for home ownership. It also involves a complex mix of different roles and it is important that you ask questions and understand the implications of what you are being asked to do, before committing yourself.

The information in this document is necessarily of a general nature, specific advice should be sought for specific situations. If you have any queries or need any legal advice, please feel free to contact Wrigleys Solicitors.

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Working with the National CLT
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