

LEGAL ISSUES IN COHOUSING DEVELOPMENT

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Abstract: This workshop will be a comprehensive overview of the legal issues that arise in the a typical cohousing development, including choosing an appropriate development entity, drafting an operating (or similar) agreement, understanding and choosing long term ownership options, assembling (and contracting with) members of a development team, site control and acquisition agreements, zoning and permitting, architect and construction contracts, financing and related documents (predevelopment, construction and permanent), choosing and working with your lawyer, and negotiation of fee arrangements. The workshop will be participatory, and will focus on particular questions and issues raised by the participants, who will be encouraged (but not required) to frame and send in their questions an advance.

I. GETTING STARTED

A. Choice of Development Entity / Entity Formation

1. Very rare to do business as an individual (liability)
2. Considerations in development entity choice
 - o Liability, control, tax consequences, upkeep
3. Types of entities
 - o Corporations (for profit, nonprofit, cooperative)
 - o Partnerships (general and limited)
 - o Joint Ventures (don't really exist – just a name for a partnership)
 - o LLC's (limited liability companies) and LLP's (limited liability partnerships)
4. Difference between taxable and pass-through entities
5. Most cohousing groups choose LLC's
6. Considerations in LLC Operating Agreements
7. Forming your entity: do it yourself or get help?

7. Securities law issues

B. Choice of Long Term Ownership Entity

1. Cooperatives
2. Condominiums
3. Fee Simple / Homeowner Associations
4. Land Trusts (what they are, why they may be relevant)

C. Assembling (and contracting with) a Development Team

1. Lawyer (see part III below)
2. Developer / Development Consultant (what is the difference)
 - roles of a developer/development consultant (specific services; equity; risk)
 - self-development
 - options for allocating/sharing risk
 - relationship of equity/risk/control
3. Accountant
4. Design professionals (architect / engineers)
5. Permitting consultants
6. Real estate brokers
7. Types of contracts for various parties / relationships

II. DEVELOPING THE PROJECT

A. Site Control

1. Options
2. Purchase and Sale Agreements
3. Due diligence

4. Acquisition financing

B. Zoning / Environmental / Permitting

1. In Massachusetts (and many other states) we live in a highly regulated environment
2. Zoning: exclusionary and inclusionary
3. Water and Sewer
4. Water Management (wetlands, storm water management, drainage, etc.)
6. Hazardous materials: Phase I and Phase II reports
5. Other requirements: historic, ADA and accessibility, air pollution

C. Construction

1. Types of contracts
 - o Fixed-price
 - o Cost-plus
 - o Guaranteed maximum price
 - o Construction management (with GMP)
2. Bidding and contractor selection
3. Negotiating the contract (AIA forms, etc.)
4. Value engineering
5. Role of various professionals in construction contract and process

D. Financing

1. Acquisition and Predevelopment
2. Construction
3. Permanent
4. Mezzanine debt and other subordinate loans

4. Loan closings and documents

- Note (promise to pay)
- Mortgage and Security Agreement (lien rights)
- Loan Agreement (business terms)
- Intercreditor Agreements
- Guaranties (are they required?)
- Due diligence (title, survey, environmental, legal opinions)

5. Completion, unit sales and loan conversion

III. CHOOSING AND WORKING WITH YOUR LAWYER

- A. What skills and experience to look for in selecting a lawyer
- B. Interviews and selection process
- C. What the lawyer really does
- D. Managing performance
- E. Managing cost

IV. QUESTIONS AND DISCUSSION: EVERYTHING YOU REALLY WANTED TO KNOW FROM A LAWYER BUT WERE AFRAID TO ASK

About Klein Hornig LLP

Klein Hornig LLP is one of the nation's premier law firms concentrating exclusively on housing and community development, with offices in Boston, Massachusetts and Washington, DC. The firm focuses on structuring, managing and closing all types of complex housing transactions for both new development and housing preservation/revitalization, and has significant experience with cohousing projects. In addition, Klein Hornig offers expertise in the fields of public housing, partnership and business associations, condominiums and cooperatives, nonprofit organizations, real estate law and conveyancing, construction law, zoning and land use law, legislative services, administrative enforcement, fair housing and dispute resolution. We invite you to visit our website at www.kleinhornig.com to appreciate the range and depth of our work, or contact Managing Partner Jonathan Klein in our Boston office, 145 Tremont Street, Boston, Massachusetts 02111, 617-224-0600.