

AFFORDABILITY PRESERVATION PROJECT

Condominium and Limited Equity Cooperative

How does the model work?

Housing cooperatives and condominiums are commonly accepted vehicles for promoting home ownership.

Housing cooperatives own the grounds and buildings of a housing development and any other property required to operate the development. Housing cooperative members (or sometimes shareholders) collectively own the housing cooperative as a separate legal entity and lease their respective housing units from the housing cooperative. Most housing cooperatives are multi-family housing in nature.

Condominium associations customarily hold title to certain components of the housing development (common elements) in common while title to the individual dwelling units is separately held by the condominium association members. Certain of the common elements are restricted to the use of specific unit owners, e.g. garages may be owned by the condominium association but restricted to use by the owner of a specific condominium unit and not other condominium members, likewise terraces, patios, etc. Condominium associations may be formed to own either single-family dwellings, multi-family dwellings or a mix of the two.

Since housing cooperatives and condominiums are entities created for the purpose of developing, rehabilitating and operating real estate, they are neutral with respect to the goal of preserving affordability of housing. However, the organizational documents of the entities including the documents that govern their activities and the relationship of the members to each other and to the real property on which they are located, and documents collateral thereto, lend themselves to utilization of the mechanisms that promote and enforce affordability preservation, including limitations on equity return upon sale. The organizational documents of the entities can include whatever restrictions the organizer of the entity desires to assure affordability preservation by inclusion of appropriate language in the articles of incorporation and the by-laws of the entity. In the case of a condominium, restrictive covenants can also be included in the recorded master deed establishing the condominium regime. The covenants will run with and burden the land on which the condominium units are created and can prohibit amendment of the covenants without the consent of the developer of the condominium. Further, the use of the housing cooperative and condominium can also be combined with the use of community land trusts thereby separating ownership of the land from ownership of the buildings and other improvements to preserve affordability. Ownership of the respective condominium units and their transfer to subsequent owners can be restricted by implementation of the land contract/mortgage financing affordability preservation program. In each case, the respective housing cooperative or condominium will have the advantages and disadvantages of the specific affordability mechanisms it chooses to utilize.

Basic implications under Michigan law

Michigan statutes do not directly recognize the concept of limited equity housing cooperatives or condominiums. Michigan statutes also do not directly prohibit the establishment of limited equity housing cooperatives or condominiums.

The State Housing Development Authority Act (“Act”) provides for the establishment of “consumer housing cooperatives.” A consumer housing cooperative is a non-profit corporation that may derive benefits by way of federally-aided mortgages, authority-aided housing or non-authority aided housing for persons of low and moderate income. The consumer housing cooperative may not be controlled or directed by or acting in the interest of a person or entity in order for that person or entity to either derive economic gain or minimize loss in any transaction with the cooperative. The foregoing provision does not apply to an individual cooperative owner except as may be prescribed by rules of the authority.

The Condominium Act neither establishes nor prohibits limited equity housing condominiums for the purpose of creation and/or preservation of affordable housing. Any methodology required to restrict the sale and refinancing of individual residential condominium units must either be expressed in the condominium’s master deed or in the bylaws appended to the master deed or in other covenants that run with and burden the land comprising the condominium and its units.

Implications for property taxes

There are no new implications for property taxes because housing cooperatives and condominium associations have been taxed in Michigan for many years.

Implications for property transfers and title issues

In the case of housing cooperatives, transfers of membership units will be governed by the provisions of the organizational documents of the cooperative. Transfer of title to condominium units will be governed by the master deed and related documents. There would appear to be no title insurance issues connected to the transfer of a membership interest in a housing cooperative but a search of the filing records of the Secretary State of Michigan with respect to security interests in the membership interest would be necessary. Title insurance for the transfer of condominium units is readily available throughout Michigan. Title to the unit being subject to the provisions of the recorded master deed, title insurers should find some comfort that whatever restrictions may be contained in the master deed or any other recorded documents will be exceptions to the transferred title in the event of a sale of a condominium unit the subject of affordability preservation mechanisms.

Protection of third-party interests/impact on third-party financing

The protections afforded lenders and other third-parties will depend on the affordability preservation mechanisms used. Mortgage lenders finance condominium unit purchases in the normal course of business. It is unlikely that the affordability preservation mechanisms will affect that business. Financing the purchase of housing cooperative memberships is another matter. Few housing cooperatives have been developed in Michigan since the 1970's, the emphasis having been placed on the development of condominiums. Consequently, it will be a difficult task to educate local mortgage lenders regarding such financing, let alone the mechanisms that will be utilized to preserve affordable housing.

This document is a product of the Community Legal Resources Affordability Preservation Project. Please check the CLR Affordability Preservation Project website for updates to this document:

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