



## Commentary of Model California LEHC-CLT Ground Lease

*This Commentary is intended to supplement (not replace) the commentary accompanying the Cooperative Ground Lease in Chapter 15-B of the 2011 Community Land Trust Technical Manual.<sup>1</sup> The commentary below only covers California-specific topics or portions of the model lease which we revised substantially in creating the CACLTN model LEHC-CLT ground lease.*

***DISCLAIMER:** This commentary is intended to offer helpful information, however, this document does not constitute legal advice and further, CACLTN can make no guarantees this commentary is suitable to any particular situation as each housing project is unique and local laws may vary. Applicable laws of all kinds can also change. CACLTN encourages its CLT members and LEHCs to use this document as a general educational resource and to seek advice from an attorney for each specific situation.*

### — Acknowledgments

We'd like to thank **Bay Area Community Land Trust (BACLТ)** for sharing a LEHC-CLT ground lease with us as many of the changes we made to the national model lease were modeled off of BACLТ's lease.

We're grateful to the members of our advisory group who discussed experiences and needs of CLTs around California and beyond with us and whose insights informed the California LEHC-CLT ground lease and this commentary.

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<sup>1</sup> <https://groundedsolutions.org/tools-for-success/resource-library/community-land-trust-technical-manual>

## **SECTION 2.2: Renewal**

The model language here provides the option for the cooperative to renew the ground lease for an additional 99-year period after the first 99-year term expires. This is consistent with CLT practices around the nation and it is consistent with the definition of a CLT in California's Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)(III) which provides that a CLT is a nonprofit corporation which leases its land to persons and families of low or moderate income for renewable terms of 99 years. However, we should note a possible legal ambiguity regarding the right to renew: California Civil Code Section 718 prohibits leasing periods lasting in excess of 99 years. Courts have interpreted the law as prohibiting leases of indefinite or perpetual duration, such as in the cases of leases that automatically renew so as to create a lease lasting beyond 99-years, have indefinite options to renew, or in any situation where it appears that the intention of the parties was to create an indefinite or perpetual lease. Therefore, we recommend refraining from revising the language in this section in a way that could be construed as an automatic renewal. Additionally, we recommend that around the time that the first 99-year term expires, the parties should sign a memorandum of renewal or a restated new lease for the next 99-year term so as to make clear the parties' intentions to be bound to an additional 99-year term at that future time when the initial 99-year term has expired or is approaching expiration.

## **ARTICLE 4: Lease Fee**

There is no set formula for determining the price of the lease fee. Each property will have a complex set of factors for the CLT to consider, including but not limited to terms of any financing, available subsidy for a project, what the residents can afford, the CLT's anticipated administrative costs in managing the lease, etc. In the national model lease, Section 4.3 describes a process of determining the fair market-based rental value of the land lease and then vaguely adjusting it based on what is affordable for the residents. We eliminated this section altogether because it's not necessary for a lease agreement to provide an explanation about how the rental price was determined and there is no standard formula for determining the ground lease fee in a CLT ground lease.

## **ARTICLE 5: Taxes and Assessments**

In California, leases lasting 35 years or longer count as a change in ownership for property tax purposes (California Revenue and Taxation Code Section 61(c)). Therefore, from a property tax perspective, a cooperative with a 99-year renewable ground lease is the "owner" of the land and improvements both; therefore, the property tax bills should be addressed to the cooperative. Additionally, California has enacted legislation specifically addressing the topic of taxation of properties subject to a 99-year CLT ground lease (in addition to rental properties owned by CLTs) which are discussed in detail in the California Community Land Trust Network's Property Tax Guide and a Letter to Assessors written by the California Board of Equalization. These materials are available to Network members on the Resources page at <https://www.cacltnetwork.org/>

### **SECTIONS 6.1-6.2: Cooperative Owns Improvements**

The model ground lease itself provides that the cooperative has purchased the improvements from the CLT as of signing of the lease. Section 6.2 basically states that the purchase has happened. Prior to signing any ground lease, the CLT and cooperative may want to negotiate a separate purchase and sale agreement, especially if the cooperative will be paying a considerable purchase price and arranging for financing of the purchase of the improvements. There are numerous items that may be covered in such a separate agreement beyond the scope of this commentary document and the model ground lease exhibits. Additionally, a deed document must be recorded to reflect the ownership of the improvements by the cooperative, such as provided in the Exhibit: DEED. In California a Preliminary Change in Ownership Report (PCOR) form accompanies a deed when it is submitted for recording to inform the local Assessor of changes in ownership.

### **SECTION 6.3: Construction**

This is an area where the parties may want to consider revisions. The parties may choose to expand or reduce the CLT's approval rights over construction and repair work done on the property, depending on the characteristics of the cooperative. The language provided here gives the CLT the right to approve or reject the adding of new structures or expanding of existing structures on the property, but does not grant the CLT control over general maintenance and repair work done to the existing structures, such as a roof replacement or other maintenance work. In the case of a more savvy or mature cooperative, it may be appropriate to allow the cooperative greater control over new construction (of course subject to the other conditions in this Section 6.3 such as the requirement to comply with all applicable laws). A less mature cooperative may warrant CLT approval of any and all construction and repair work done on the property, not only for new structures or expansion of existing structures but the hiring of contractors for all work. Considering the high costs of construction in California and the numerous legal and practical considerations in selecting qualified construction contractors, it may be prudent to err on the side of giving the CLT greater approval rights. There are numerous factors to consider here, including but not limited to the background and experience of cooperative residents, their ability to make prudent decisions, the foreseeable construction and repair needs of the property, and the CLT's administrative capacity.

### **SECTION 7.3: Refinancing**

We provided a greater window of time for the CLT to approve of a refinancing of the mortgage or taking out of a new mortgage. The CLT and the cooperative could consider further extending the periods of time given that a refinancing or new mortgage can have such significant impacts on the property and each party's rights.

### **ARTICLE 9 Generally**

The ordering of this article has been changed so as to give the CLT the first opportunity to purchase the improvements, before other potential purchasers. The national model ground lease contemplated the cooperative proposing a different housing cooperative or organization purchasing the improvements. To us it seems more likely that if the cooperative is seeking to sell the improvements it would be because the cooperative's

management structure is falling apart, so we believe that in such a case the CLT should have the first opportunity to purchase the improvements, perhaps to restructure the property as a simple affordable rental property. If the CLT does not want to (or is unable to) purchase the improvements, then it will have some oversight over the selection of another buyer to ensure the property will be used in ways that are consistent with the affordable housing goals of the parties, if possible. We also extended the timeline for the purchase to close to 120 days. Additionally, we revised the Purchase Option Price formula as described in the subsequent comment on Section 9.8. The commentary accompanying the national model ground lease is still generally relevant but specific section numbers won't correspond to specific sections of this California adaptation of the model ground lease.

### **Section 9.5: What if the CLT Does Not Purchase Improvements**

The language in this section and the prior section gives the CLT a lot of control over what happens to the property in the event the cooperative wants to sell the improvements. In the event that the cooperative wants to sell, likely the best case scenario would be for the CLT to buy out the cooperative and keep the property as an affordable rental property managed by the CLT or another nonprofit affordable housing organization. Therefore, prior sections in Article 9 were revised to give the CLT the first opportunity to purchase, before the cooperative can sell the improvements to another buyer. This Section 9.5 addresses the scenario where the cooperative wants to sell the improvements but the CLT doesn't purchase them from the cooperative. We think this type of situation which would invoke Section 9.5 will be rare, but given that this is a 99-year ground lease, many types of potential crisis scenarios should be contemplated, hence this section contemplating a sale of all the improvements to an entity other than the CLT. In such an event, consistent with the national model cooperative ground lease, there is language encouraging sale of the improvements to another entity whose intended use of the property will be as a limited-equity housing cooperative or some other form of affordable housing for low to moderate income people. However, we changed the language substantially to give the cooperative the ability to sell to a different purchaser in the event they are unable to find a willing purchaser who fulfills that specific criteria. This is because real property laws in the United States, including in California, generally prohibit "unreasonable restraints on alienation." In other words, the courts will likely invalidate terms of a lease or contract which place restrictions on a property which are so severe that they render the property impossible or nearly impossible to sell or transfer for extended or indefinite periods of time. The language provided in this Section 9.5 seeks to strike a balance between keeping the property for use as affordable housing and being enforceable in our market-oriented legal system. However, we can make no guarantees that this language would be upheld by a court should a legal dispute arise between the cooperative and CLT regarding the cooperative's ability to sell the improvements. This part is one that may require careful consideration and review by the CLT's own legal counsel.

### **SECTION 9.8**

This Section was revised to use terminology and concepts from California's limited-equity housing cooperative statute and to more clearly comply with its provisions regarding sale of property of the LEHC or dissolution. Thus, the formula for resale of the improvements

was altered considerably from the national model. The “transfer value” of memberships is defined in California Civil Code Section 817(b)(1) and there are restrictions on what happens with the proceeds of a sale pursuant to Section 817(d)(2) of that code.

### **ARTICLE 10 Generally**

This Article provides for significant oversight of the cooperative by the CLT, which we generally recommend for new cooperatives or those which have a poor track record in terms of property management. To strengthen oversight and communication, a CLT incubating a new cooperative may seek to negotiate to have the cooperative's bylaws prescribe for a CLT-appointed representative to serve on the board of directors at all times or so long as the CLT wishes to appoint a member of the cooperative's board of directors. For more mature cooperatives, some of the sections in Article 10 could be eliminated altogether or significantly altered to merely provide notice to CLT of certain events (in lieu of CLT approval) such as subleasing, admission of new members, budgets, or management contracts. See subsequent commentary below on some specific sections of Article 10.

### **SECTION 10.7: Subleases**

The topic of CLT approval over subleases was a topic with many nuanced opinions in our work group and we know it to be a contentious topic within cooperatives more broadly. We provide default language that gives the CLT approval rights over subleasing but we provide alternative language that gives the cooperative more autonomy over subleasing decisions within certain parameters. There are countless possible adaptations of these options.

One reason the CLT may want to control subleasing is the California limited-equity housing cooperative statute places some conditions on holding memberships or shares in the cooperative that effectively limit the circumstances in which it would be lawful for subleasing by a member of their unit to someone else who is not a member of the cooperative. Per Civil Code Section 817(b), the cooperative is required to buy back the share or membership of a member who ceases to be a permanent resident of the cooperative. This means that an individual member should only be able to remain a member and to sublease their unit to a non-member under circumstances where the member is away temporarily, with an intention of returning to the co-op, such as during travel abroad or attending school. If a member of the cooperative has moved out with no intention of returning, they should be forced to sell their share or membership back to the cooperative, and pursuant to Civil Code Section 817(c), the cooperative should sell the membership interest and right to occupy the associated unit to a new member (although it may be permissible for the cooperative to rent a unit to a non-member tenant should the cooperative struggle to find a new purchaser for the membership). Because this legal concept of “permanent residency” can be somewhat ambiguous, the CLT may want to review these subletting situations on a case-by-case basis to ensure that the absent member seeking to sublet their unit actually qualifies as a permanent resident of the cooperative. The CLT additionally may want to monitor subletting carefully to ensure that members are not making a profit from subleasing their unit in contravention to the spirit

of the LEHC law and the CLT's affordability restrictions. And of course, the CLT will want to make sure subtenants meet income requirements.

Presumably the cooperative's own bylaws and internal procedures for handling transfers of memberships should address all of the above considerations. In some more mature cooperatives the CLT may trust the Cooperative to do just that and not need to approve of each subletting proposal. Furthermore, in the context of a larger cooperative or in a context of a CLT with a large portfolio of properties and limited staff capacity, the right to approve of subleases may be an undue burden on the CLT. We left the language as providing the CLT with broad discretionary approval rights, but any given CLT may want to limit its review of sublease proposals to just ensuring the subtenant meets income eligibility criteria and that the member subletting their unit continues to meet statutory qualifications of membership. We provided some possible alternative language which would give the cooperative more autonomy in approving shorter term sublets (up to 6 months) as just one example of a more permissive clause on subleasing. This is a section of the lease that may require customization based on the cooperative and the CLT's capabilities and based on any funder-imposed restrictions on subleasing.

A note on landlord-tenant law and subleasing: California recently enacted a Tenant Protection Act providing "just cause" eviction protection to tenants who have rented a dwelling unit for 12 months or longer (California Civil Code Section 1946.2) therefore, a subletter in place for 12 months or longer could be protected from eviction under this new law. Furthermore, numerous cities in California have different just cause eviction ordinances, some of which are even more protective of tenants and may apply to tenants having occupied a property for less than 12 months. Therefore, a CLT may wish to consider just cause eviction laws and other tenants' rights laws applicable in its jurisdiction prior to deciding on a subleasing policy.

### **SECTION 10.8: Budgets**

Compared to the national model lease, on the subject of the cooperative's finances we provided much greater detail on the budgeting requirements of the cooperative and granted the CLT authority to force the cooperative to revise its budgets if the budget doesn't adequately cover necessary expenses of maintaining the property, including the funding of a reserve. The CLT may want to consider to what extent it would like to control the budget and expenditures of the cooperative. We anticipate that in many situations the cooperative won't stick to a budget precisely and the CLT should consider how much capacity it has to monitor adherence to budgets but in any event we believe it a best practice for the budget to undergo some vetting by the CLT.

### **SECTION 10.12: Reserves**

We added a requirement that the Cooperative maintain a reserve fund. Depending on the condition of the property among other factors, the CLT may wish to adjust the monthly funding of the reserve account in paragraph (b).

## **ARTICLE 12: Mediation**

The national model ground lease simply states that mediation and arbitration are among the available dispute resolution methods. We replaced the language from the national model to require mediation before any arbitration or court proceeding may be initiated by either party (with the exception of injunctive relief). We do not include a mandatory binding arbitration clause in this model ground lease for a number of reasons, including that California courts have voided mandatory arbitration clauses in residential lease agreements based on California Civil Code Section 1953. We believe that statute could be interpreted as also prohibiting a binding arbitration clause in a context such as this CLT-LEHC ground lease.

## **SECTION 13.1: Membership in CLT**

The national model ground lease assumes that the CLT is a membership organization, such that residents can become members eligible to vote for a portion of the board of directors of the CLT, as this is a common way for CLTs to be organized. However, we are aware that some CLTs in California are not organized as membership organizations, therefore, this section may be inapplicable to some CLTs.

## **SECTION 13.3**

California law generally allows lease agreements with terms as long as 99 years but not longer (California Civil Code Section 718), however, CLTs owning any land used for agriculture should note that California law limits leases for agricultural or horticultural uses to terms of no more than 51 years (California Civil Code Section 717). Because this model lease is intended for housing cooperatives with multiple dwelling units on the property (not agricultural land) and because California law provides clear authority for parties to enter into 99 year leases, we omitted excess language designed to conform to the common law rule against perpetuities discussed in the commentary on the national model cooperative lease.

## **ARTICLE 13.11: Recording**

Typically only a memorandum or notice of a lease is recorded in the county recorder's office, instead of the full lease document. The purpose of recording is usually to give prospective purchasers notice that there is a long term lease or other conditions that would affect their rights as a prospective future owner. Parties often do not wish to record their entire lease agreement because a recorded document is a public record and because a county recorder's office usually charges a per-page document recording fee. It's usually more practical to record a short summary notice document, rather than a full lease. However, in 2016, California adopted a new tax law instructing assessors to take into consideration the impacts of CLT-imposed affordability restrictions on the value of a property for tax assessment purposes, which in most cases will provide some property tax relief to the cooperative. This law requires that the 99-year renewable ground lease be recorded and that a copy be given to the assessor, without specifying whether recording a shorter summary or notice of the lease is acceptable for invoking the assessor's consideration. Therefore, this section has been modified to refer to that new law and state that something conforming to that law must be recorded. In advance of recording any

lease materials, the CLT may wish to seek an informal opinion from their local assessor as to whether the entire lease must be recorded in order to invoke the new CLT property tax law. See also commentary on Article 5 above regarding property tax law.

If only a notice of lease, short form lease, memorandum of lease, or other abbreviated document is recorded in lieu of the full lease, the recorded document should include all of the following:

- Duration of the lease (99-years, renewable),
- Affordability restrictions,
- CLT's right of first refusal to purchase improvements and CLT's right to approve of purchasers of improvements, and
- The fact that there are restrictions on the sale price of the Improvements.

### **ARTICLE 13.12: Attorney's Fees**

This clause was added in an attempt to deter frivolous litigation by any party, and to encourage use of discussion and mediation for dispute resolution.

### **SIGNATURES**

California corporate law generally calls for signatures of two corporate officers: one who is the President, any Vice President, or chairperson of the board, and the other a secretary, assistant secretary, chief financial officer, or any assistant treasurer, on contracts and other documents binding the corporation (California Corporations Code Section 5214 and see analogous Section 313 which was interpreted in the case *Snukal v Flightways Mfg. Inc.* (2000) 23 C4th 754). Therefore, any high stakes contracts should be signed by two officers of each corporation which is a party to the contract. In addition to or instead of two signatures, each party should provide copies of its board resolution authorizing the contract. Additionally, the officer(s) signing should be named in the most current Statement of Information on file with the California Secretary of State.

### **EXHIBITS**

We made the following changes to the array of exhibits suggested by or contained in model form in the national model ground lease:

**ZONING:** We omitted this exhibit because zoning law is publicly accessible and it may be amended from time to time without parties to the lease consenting. Therefore, we believe it is not very helpful or necessary to attach it to the lease.

**PERMITTED MORTGAGES:** We maintained this critically important exhibit on mortgages without major revisions, however, the details of this section may need to be revised pending negotiation with a mortgage lender. See also the model CLT-LEHC ground lease mortgage rider (next exhibit).

**MORTGAGE RIDER:** Like the previous Exhibit, this document may be revised pending negotiation with a lender (e.g. a bank, credit union, CDFI, or other lender) who is



willing to loan money to the cooperative to help the cooperative purchase and/or repair the improvements. If there will be no mortgage against the property then this exhibit can be eliminated altogether.

This rider is largely based on a model graciously provided by Interboro CLT in New York City and adapted from the single family CLT mortgage rider approved by Fannie Mae. This rider gives a lender certain rights to protect its financial interest in the property. Specifically, it gives the lender the right to a) intervene on the cooperative's behalf to cure breaches of the ground lease, such as failure to pay ground lease rent to CLT, so as to avoid CLT's termination of the ground lease, b) foreclose on the cooperative and require the CLT to enter into a new lease with the lender, and c) foreclose on the cooperative and sell the buildings to another entity, and in such case to eliminate many of the affordability restrictions in the lease.

When a mortgage is needed to finance a CLT property, CLTs typically agree to a rider like the one provided here because for many banks and even for most nonprofit lending institutions, the conditions of the rider summarized above are necessary conditions of lending to CLT projects. Since CLTs make it a priority to avoid foreclosure, many are ok with accepting the rider if it means that financing will be available to their project.

**LETTER OF STIPULATION FROM COOPERATIVE:** We added two exhibits containing form letters, one to be signed by an officer of the cooperative (e.g. President, Chair of the Board, Treasurer, and/or Secretary) summarizing and acknowledging the key terms of the lease. While the leadership of the cooperative should be encouraged to read the ground lease in its entirety before signing, we are assuming that some cooperatives will have leaders whose time and ability for reading longer legal documents will be quite limited. The summary is intended to help ensure that the cooperative leadership has at least an understanding of the most essential terms of the ground lease. Remember to revise this summary according to revisions to the ground lease itself.

**LETTER FROM COOPERATIVE'S ATTORNEY:** The second form letter we added is to be signed by the cooperative's attorney simply stating that the attorney has reviewed the lease and advised their client of its contents. While an attorney letter is not absolutely necessary, we believe it is a best practice for the cooperative to have its own independent legal counsel review the LEHC-CLT ground lease to provide the cooperative a reasonable opportunity to negotiate its terms and to understand them. If a cooperative chooses not to hire their own independent attorney, the attorney letter could be replaced by a written acknowledgement from an officer of the cooperative stating that they were given an opportunity to hire an attorney before signing the lease and that they are voluntarily proceeding without their own legal counsel.

**BOARD RESOLUTION OF COOPERATIVE:** A sample Board Resolution is provided. This one is intended to be adopted by the board of the Cooperative. The CLT may wish to adapt this for its own board resolution authorizing the ground lease.

**COOPERATIVE BYLAWS AND PROPRIETARY LEASE:** Some CLT-LEHC ground leases may include as attachments the cooperative corporation's articles of incorporation, bylaws, membership agreement (which might be called a shareholder agreement in some LEHCs), cooperative internal policies, or other documents specific to the cooperative. These documents will vary based on the cooperative's structure and governance and they are not necessary as attachments to the ground lease. Some CLTs or cooperatives may wish to include them here to record what those documents stated as of entering into the lease, especially if the CLT has approval rights over changes to any of those documents.

**MEMORANDUM OF LEASE AGREEMENT:** We added this as a model memorandum that could be recorded. See discussion of Section 13.11 of the lease above regarding recording documents.

### **Notes about Deadlines in the Lease**

Throughout the LEHC-CLT ground lease we added deadlines for the CLT to respond to requests for approvals on matters which are subject to CLT approval. In most cases the cooperative may consider the matter approved if the CLT is unresponsive after multiple attempts to convey a request for an approval. We felt it is important for the CLT to have deadlines to approve or reject matters and have a default approval if the CLT is non-responsive. This is because while we expect CLTs will be very engaged with their residents, 99 years is an extremely long term for a lease and many things could happen in that amount of time which could render the CLT unable to field frequent requests from residents (lack of funding, staffing shortages, mismanagement, etc., etc.). However, the deadlines we selected are arbitrary and they can be easily changed.

### **Notes about Fair Housing Laws**

Federal and state fair housing laws apply to advertising of homes available for rent and for sale, therefore, LEHCs are likely subject to fair housing laws (there are just a few very narrow exemptions from fair housing laws). In a nutshell, fair housing laws prohibit discrimination based on an applicant's race, gender, age, sexual orientation, familial or marital status, and (in California) even their source of income, among other "protected classes." Housing providers must be careful to avoid unlawful discrimination in both their advertising and selection processes when filling a vacancy. In situations where a cooperative has government funding, the funder is likely to be very concerned about fair housing laws and to impose especially strict protocol for the recipient organization to demonstrate compliance with fair housing laws. Even if no funder is imposing especially strict protocol, it's best for any LEHC to carefully consider fair housing laws because they apply to most housing cooperatives and the cooperative could be exposed to litigation risk and potential liability for noncompliance.

Hiring a reputable, licensed, third-party property manager to manage filling of vacancies is one simple way to mitigate this risk. However, it's common for members of housing cooperatives to want to be very engaged in selection of new residents to ensure new residents will be able to effectively participate as members of a cooperative, so delegating filling of vacancies to a third party manager is often unappealing to cooperative residents.

Cooperatives in which members are engaged in the process of selecting new residents are strongly encouraged to require their members undergo training on fair housing laws to avoid members inadvertently asking a question or posing a comment to a prospective resident which could be construed as discriminatory. Courts have sometimes concluded that statements or preferences indicated on the part of housing providers have constituted unlawful discrimination even where the statement or behavior was not explicitly discriminatory or expressly favoring of one group within a protected class, but where it had a discriminatory *impact*. Thus, compliance with fair housing laws can be quite complex. Additionally, this area of law has been evolving in recent years. We strongly encourage CLTs and housing cooperatives to seek training and legal advice on this topic.

### **About Limited-Equity Housing Cooperatives in California Generally**

In California, limited-equity housing cooperatives (LEHCs) are defined in state law in Civil Code Section 817. CLT practitioners, residents, and their legal counsel should study Civil Code Sections 817 through 817.4 carefully to understand the severe restrictions on the extent to which residents can realize any gains in the value of their membership or share in the cooperative. The goal of this statute is to keep the purchase price affordable for subsequent buyers, and as such it greatly limits the extent to which current residents can profit compared to homeowners of conventional market properties.

Most LEHCs are structured as nonprofit corporations pursuant to California's nonprofit public benefit corporation law or nonprofit mutual benefit corporation law. The cooperative corporation law is seldom used for affordable housing cooperatives. A cooperative corporation can be used for a LEHC but in many cases one of the nonprofit corporation forms will be more advantageous. While nonprofit public benefit corporations are generally prohibited from making distributions to shareholders or anyone else, there is an exception for limited-equity housing cooperatives (California Corporations Code Section 5410).

To form a LEHC as a nonprofit corporation, numerous legal documents will be required, especially if the cooperative also intends to pursue state and federal income tax exemption. These documents include Articles of Incorporation, Bylaws, filing a Statement of Information with the California Secretary of State, possibly registering with the California Attorney General's Registry of Charitable Trusts, and applying for tax-exemption with the IRS and California Franchise Tax board. Numerous legal guides cover these steps.

The LEHC will also likely need a membership agreement and/or lease agreement and other internal policies. The CACLTN is working to collect and develop more model

documents and resources for LEHCs in California. As more materials become available they will be posted on the Network's website.

Housing cooperatives, including LEHCs, are often subject to state subdivision laws, including the California Subdivided Lands Act and the Subdivision Map Act.

The Subdivided Lands Act regulates marketing and sales of properties within a subdivided lot by requiring numerous disclosures to potential purchasers. This law may require a LEHC to go through a complex permit process with the California Department of Real Estate (DRE), however, there are numerous exemptions. Properties with fewer than 5 units are categorically exempt from regulation under the Subdivided Lands Act. Another more complex exemption applies to LEHCs which conform to a long list of conditions described in Business and Professions Code Section 11003.4(b), one of which is a strict limitation on the purchase price paid by members and another is obtaining a formal legal opinion from an attorney that the cooperative is indeed exempt under this exemption for LEHCs.

Pursuant to the state Subdivision Map Act, the local government may have authority to approve of the LEHC project. Project approval generally entails the recordation of a subdivision map as approved by the local government, among other local requirements. Check with your local planning department about specific requirements and application fees.

LEHCs are also typically subject to the Davis-Stirling Common Interest Development Act (California Civil Code Section 4000 *et seq.*). The law prescribes certain elections and meeting notice procedures, among other things related to the governance of condominiums, cooperatives, and the like. This law entails greater specificity of membership rights compared to the nonprofit public benefit corporation law's membership rights. Therefore, the bylaws of a LEHC need to be carefully crafted to conform to the Davis-Stirling Common Interest Development Act.

The LEHC should work with an attorney on all of the legal considerations described above. Moreover, the matters above may not be a complete list of legal matters for the LEHC to discuss with an attorney.