

BUSINESS MATTERS

Should we change our shares to 'Cooperative Residential Title Shares'?

Following the recent arbitration (Nov 2013-May 2014), which highlighted some grey areas in rights and responsibilities of the members and those of the Co-operative, our solicitor Nigel Hill suggested some changes to our legal structure. The first suggestion was for a complete revision of our rules and by-laws, which has been done. Nigel also suggested changing the shares to 'Cooperative Residential Title Shares' (CRTS).

This idea has already been discussed in an article published in Newsletter 155 and in a report on Nigel Hill's open session of 30/5/2015 as published in Bundy Flyer no 77 (available via bundagenlegal@gmail.com).

CRTS would be similar to company title shares (although we would remain a co-operative). Those special shares would confer a right to occupy the area within a structure, and the structures with members' right to occupy would be 'attached' to their shares. Residential members (those with sites) would be issued with CRTS, which would replace their current shares. Note that we are NOT talking of converting to a Company.

At the GM July 2015, an agreement was made to look into this idea of CRTS, and a budget was allocated for research. Nigel Hill has started doing some research about CRTS but there is still a lot to be done to work out the necessary changes to our structure, and understand the consequences, should we decide to go that way. However we know enough to start a discussion to see if we are interested to go any further.

GM agreement 16.3.8: Special Class of Shares (July 2015)

- a) The process of creating a new class of residential shares as recommended by our solicitor will be started.
- b) Up to \$15,000 will be allocated from our Frozen Funds (long-term savings) to start this process (includes legal fees and RFW).
- c) Once the research has been done, a special resolution will be put at a GM with the wording of final terms & conditions of these special shares for final approval.

The advantages that we hope would come with these new shares include:

- A clearly stated right to occupy.
- A clear statement of the obligations/responsibilities of members
- These shares would absolve the coop and community of responsibility if a member doesn't fulfil their obligations. The consequences would be the member's responsibility only (eg if someone is seriously injured in someone's home). Is it fair to expect the rest of the membership to bear the consequences of a single member's actions or lack of action?
- These special shares might help to get the Owner Building Permits and First Home Owner Grants (this will need to be confirmed with Fair Trading).
- These special shares might help members get bank loans/mortgages, but with the knowledge that there is no value in the land (this will need to be confirmed).

These special shares would be preferable to the current implied Licence To Occupy, being much clearer to both the members and the 'outside world'.

Points to take in consideration

- Bundagen owns the land and would still remain the owner of the structures. These special shares would not give members ownership of the structures as such, but would give them a right to occupy. The express right would NOT be to the bricks & mortar but to the right to occupy and the enjoyment of the structures. These special shares would NOT confer an equitable interest in the structure or in the land. These special shares would NOT define any boundaries of sites, which would be within expanded houses as currently mapped.
- Residential members would NOT be tenants, but owners of the shares.
- The value of the structures (included in the value of the CRTS) would still be decided by Bundagen's valuation process.

This would entail changes...

Changing the nature of the shares would, of course, entail some changes. One of the major one would be that, unlike what we originally thought, **it may not be possible to retain the non-residential shares** (non-resident members without an assigned site within an expanded house), **as only one class of shares is permitted within Co-operatives.**

Nigel Hill suggested the option of substituting the shares of current non-residential shareholders (the 'non-residents') with Co-operative Capital Units (CCU). CCU are created under the Co-operatives law and are essentially a non-voting type of share. This would give the non-residential members a legal interest and stake in the Co-operative, but NOT the right to vote. They would still receive newsletters and notices of GMs, they would still have the right to visit and live on the land as visitors (without having to fill up 6-monthly forms), etc. Nonetheless, they would cease to have a say in how we manage the Co-operative and how we live together as a community, as this would be reserved to the members who have a site. Alternatively, non-residential members could opt to get their shares refunded.

At this stage, the idea is open to comments and feedback. We particularly would like to hear from our non-resident members to get their comments. **We are forever grateful to the non-resident members for their roles in the creation of Bundagen and in the following years, and it is only with their support that we would pursue these changes.**

There will be information sessions for members in May or June to discuss this further, and individual letters sent to non-residents.

For more information, make comments, give feedback, etc, please contact Phil or send an email to bundagenlegal@gmail.com.

Phil, for CoordM 13/2/17