

Collaborative housing: the new kid on the block



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Collaborative Housing' is an umbrella term for housing models that prioritise community-building, affordability, resource-sharing and resident participation. These models are becoming increasingly relevant in a housing market with limited options. Common features include:

1. A mix of private and shared spaces. Residents determine what is shared and it often extends beyond spaces to vehicles, tools and household goods, resulting in resource efficiency and sustainable, liveable cities.
2. An intentional focus on building a sense of community through design facilitating informal social contact and sharing, without compromising household privacy.
3. Participatory approaches giving residents a significant role in the scheme's design, development and governance.
4. Emphasis on affordability, superior design quality and (often) an accessible location.

The term 'collaborative housing' encompasses 'co-housing' (an intentional community of private homes clustered around shared space/facilities) but also includes a range of possibilities along a spectrum from collective and communal to private and individualised ownership models. Different models can be combined in the same housing development, for example, a co-housing development might be financed and developed using the building groups model.

It is a misconception that collaborative housing is only relevant to those interested in 'alternative' lifestyles. Collaborative housing solutions may provide improved housing options for mainstream urban dwellers. Similar principles can be applied to commercial developments, e.g. private offices with shared facilities.

Dual and unitary title schemes

Strata title, community title and unit title schemes are 'dual title' schemes. A body corporate holds a title for the common property and the individual has a separate and alienable title to

Snapshot

- 'Collaborative housing' encompasses a growing range of innovative responses to rising housing costs and demographic and social changes.
- It may improve the range of tenure options for the growing number of people who cannot afford home ownership in Australia.
- It requires good legal design – as individual and group property rights may need to be adjusted using contracts, covenants, and hybrid or customised ownership and governance structures.

their home unit. Dual title schemes are popular because the unit owner can borrow on the security of their individual title, and they bear a proportionate risk on maintenance of the common facilities. Dual title schemes tend to prioritise individual over collective ownership rights.

In a 'unitary title' scheme, ownership of the land, building and homes or units is not separated, but is held on a single title by one or more owners jointly, or by a corporate vehicle like a company or co-operative. The right to occupy a dwelling is achieved using legal devices including licenses, agreements or rights attached to member shares. Examples of unitary title schemes - a tenancy in common plus agreement e.g. used in small block development; occupancy rights attached to member shares in a co-operative or

company title scheme; and leases and licences used in a co-living scheme. Unitary title schemes tend to prioritise collective over individual ownership rights.

Collaborative housing models

The concept of unitary or dual title ownership is helpful when considering legal design options for collaborative housing. It may be possible to adapt a scheme to fit one or both types of ownership depending on the collaborator's priorities and needs.

The following models are examples of collaborative housing that can be adapted for mainstream and urban housing projects:

Small Blocks: These are smaller private developments such as duplexes, or two to three townhouses developed on the same block of land. The owners are typically family or close friends, who wish to live in proximity and be closely involved in the project's design and development. In this model, the inclusion of shared spaces is determined by the group's preferences and may include shared gardens and work or recreational spaces.

Small Blocks are developed using a combination of traditional land titles and contracts. They may use dual titles like strata title or unitary title like joint tenancy plus contracts. Parties may co-own the land prior to development and need an

agreement or agreements to define their relationship, project financing, what is to be developed, how it is to be distributed once developed and how disputes are to be managed.

Building Groups: Building groups are formed when prospective residents group together to develop their own multi-unit housing project, aided by an experienced professional. Building Groups may be unitary or dual title and are open to entry to members of the public who are prepared to accept the constraints on ownership which may include a cap on capital gains and a Group controlled resale process. Founding residents are usually actively involved in design and development. Building Groups often have a purpose or theme e.g. environmental sustainability, over-50s community. Nightingale Housing is a well-known example of a hybrid Building Group, where the architect is an independent developer, investors finance the build for a capped profit and prospective owner-occupiers contribute a 10% deposit. In traditional Building Groups, prospective owner-occupiers may finance the development themselves, contracting a professional development manager to lead them through the process. Dual title schemes like community or strata may be used in conjunction with a participatory governance model. For instance, Narara Eco Village uses community title, but includes a co-operative to facilitate participatory management of the community.

Co-operatives: Australia's equivalent to co-operative title is company title. Prior to strata title legislation, company title schemes were a common method for enabling apartment home ownership. A company holds title to the building with shareholders having occupancy rights attached to their shares. Company title in Australia was based on American style co-operative title schemes found in New York, where many exclusive apartment buildings like the 'Dakota' are still co-operatively owned. 'Limited equity' co-operative schemes may be used to increase affordable housing options. In these schemes the co-operative may cap capital gains on apartment resale and control the resale process to retain any public subsidies. In Australia, co-operatives have mainly been used to create intentional communities e.g. Bundagen Co-operative. Co-operative ownership schemes, like company title, are unitary title schemes. However a co-operative might also be used to govern a dual title scheme.

Co-Living: Co-living models are designed to provide cheaper rental accommodation and can be commercial enterprises or managed by community housing providers (the latter are also known as 'new generation boarding houses'). They are a unitary title model. The development will contain small self-contained rooms (bedroom & ensuite etc) with larger shared living spaces (lounge rooms, kitchen, working spaces). Historically used for student accommodation and singles on lower incomes, they may become popular for young professionals wanting an urban lifestyle without the high cost. Co-living will be included in the proposed Housing Diversity State Environmental Planning Policy.

Legal design issues to consider

Ownership: The ownership structure in the development phase may need to change for the occupancy phase. In the legal design of these projects the pre and post development allocations of interests, transfers of ownership, together with taxation and duty implications must be carefully considered.

Finance: Access to finance may limit the choices available. If unitary title systems are used, it may be difficult for occupants to obtain traditional bank finance, with alternative financing options sought e.g. community housing providers, crowd sourced equity funding and social impact investors.

Governance Structures: The participants in a collaborative housing project may insist on participatory and democratic governance models. A governance body run as a co-operative may not be compatible with strata and community title schemes.

Dispute Resolution: Dispute resolution in unitary title schemes may not fall within the jurisdiction of statutory tribunals. In NSW, company title disputes may be heard by the Local Court, however for other unitary models, including co-ops, the only recourse may be Supreme Court litigation.

Succession & Transfer: Restraints on alienability under unitary title schemes may impact disproportionately on vulnerable members, who may not understand the implications of those restrictions at the time of entry. In company or co-operative title, the enabling legislation deals with succession and share transfers, but the constitution will mainly define those rights. Clear and accessible language when drafting the constitution is important. Disclosure documents are also required under the Co-operative National Law.

State planning and development controls and policies: Local government planning and development controls do not always accommodate collaborative housing models or even have a standard definition for them. Issues facing collaborative housing developments include size restrictions and dual occupancy entitlements.

In summary

Collaborative housing is a response to limited options in a housing market that preferences the interests of investors over residents. It aims to refocus housing provision on its primary function of providing safe, secure and decent accommodation. Collaborative housing is also concerned with finding solutions to counter the disintegration of community – a basic requirement for a healthy and safe society. The success of collaborative housing will depend not only on the willingness of governments and finance providers to reduce the barriers to these sorts of developments, but also property lawyers who can use their legal design skills to innovate around these barriers and provide replicable models that can be scaled and duplicated.

Further information: A guide to collaborative housing by the Institute for Sustainable Futures, University of Technology Sydney is available at: <https://www.collaborativehousing.org.au/> **LSJ**