



Law Reform  
Commission of  
Saskatchewan

# Life Lease Legislation

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Final Report

June 2020

This report recommends Saskatchewan enact legislation to regulate certain aspects of life lease housing developments. Life lease housing developments are an increasingly popular housing option for seniors. This report describes life leases, reviews life lease housing legislation in other Canadian jurisdictions, and discusses matters that should be addressed in life lease legislation in Saskatchewan.

The Law Reform Commission of Saskatchewan was established by *An Act to Establish a Law Reform Commission* (proclaimed in force in November 1973) and began functioning in February 1974.

The Commission is incorporated by an Act of the Saskatchewan Legislature. Commissioners are appointed by Order in Council. The Commission's recommendations are independent and are submitted to the Minister of Justice and Attorney General of Saskatchewan for consideration.

Projects are initiated by the Commission in response to suggestions from the public and the legal community, or at the request of the Minister of Justice and Attorney General. After preliminary research, the Commission usually issues a background or consultation paper to facilitate consultation. Tentative Proposals may be issued if the legal issues involved in a project are complex. Upon completion of a project, the Commission's recommendations are formally submitted to the Minister of Justice and Attorney General as final proposals.

At present, the Commission is funded by grants from the Law Foundation of Saskatchewan and the Ministry of Justice.

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## Contents

Summary of Recommendations.....	4
I. Introduction .....	6
II. Background .....	9
III. Is Life Lease Legislation Necessary for Saskatchewan? .....	12
IV. Discussion and Recommendations for Life Lease Legislation.....	15
1. Payments.....	15
i. Timing & Amounts of Pre-Lease Payments.....	15
ii. Trust Accounts & Trustees .....	16
iii. Refunds.....	18
iv. Use of Funds .....	20
2. Disclosure Requirements .....	21
3. Rescission (Cooling-off) Periods.....	23
4. Reserve Funds .....	24
5. Rent and Fee Increases .....	26
6. Tenant Representation on Boards and Participation in Decision Making .....	27
7. Reporting & Meeting Requirements.....	30
8. Termination of the Life Lease .....	32
9. Assignment of the Life Lease .....	33
10. Change in Ownership of Development.....	34
11. Insurance Requirements .....	35
12. Dispute Resolution.....	36
13. Default of Sponsor/Landlord .....	38
14. Offences .....	39
15. Types of Sponsors .....	40
16. Independent Legal Advice.....	41
V. Recommendations .....	42

## **Summary of Recommendations**

Life lease housing is an increasingly attractive housing option for seniors. Depending on the model chosen by the life lease operator, purchasing a life lease can be a substantial financial investment. Life leases are, for the most part, unregulated in Saskatchewan; most aspects of life leases are determined by the life lease agreement signed by the operator and the purchaser. The Commission's recommendations regarding issues that should be addressed in life lease legislation are based on the need for purchasers of life leases to have information and clarity surrounding their obligations and rights. The recommendations also provide certain basic protections to life lease purchasers. The Commission's recommendations are as follows:

1. Life lease legislation should require pre-lease payments for new developments to be held in trust by a trustee, and then credited towards the entrance fee once a lease agreement is executed.
2. Life lease legislation should require life lease agreements to provide prospective tenants the option to either receive an immediate refund or negotiate an extension to the completion date in the life lease agreement within 60 days of the promised date of completion if the complex is not completed on the promised date.
3. Life lease legislation should require entrance fees to be refunded within 5 business days upon cancellation of the offer to lease during the rescission (or cooling-off) period and within 30 days following termination of the life lease agreement.
4. Life lease legislation should provide that entrance fees can only be used to: (i) pay for the development or operation of the complex, (ii) refund entrance fees, or (iii) contribute to the refund fund.
5. Life lease legislation should require life lease developers to disclose prescribed information (similar to that required to be disclosed in Manitoba) to prospective tenants prior to entering into a lease agreement and prior to collecting a deposit or pre-lease payment. If the disclosure requirements are not met, tenants should be entitled to rescind the life lease agreement without penalty with a full refund of any deposit or pre-lease payment.
6. Life lease legislation should provide for a pre-possession rescission, or "cooling-off" period of not less than seven days after signing a life lease agreement. The prospective tenant should be entitled to a full refund of any payments made if they withdraw from the agreement during this period.

7. Life lease legislation should require life lease operators to maintain a reserve fund to pay for major repairs and other capital expenditures. Similar reserve fund rules as those that are applicable to condominium corporations should apply to life lease operators.
8. Life lease legislation should require a lengthy notice period of not less than 3 months prior to an increase in monthly occupation fees.
9. Life lease legislation should allow a tenant representative to place matters on one board meeting agenda per year and to be able to speak to the board at the designated meeting. Tenants should also be able to request redacted board meeting minutes and financial statements related to the life lease complex.
10. Possible recommendation re termination
11. Life lease legislation should require life lease agreements to contain provisions dealing with assignment of life leases so that the purchaser is aware of their ability to assign their life lease prior to entering into an agreement.
12. Life lease legislation should require new owners to assume the obligations of the existing owner in respect of the life leases.
13. Life lease legislation should require life lease agreements to describe the types of insurance to be held by both parties.
14. Life lease legislation should require life lease agreements to contain a dispute resolution mechanism.
15. Possible recommendation re default
16. Life lease legislation should contain offences similar to those provided under Manitoba's Act.

## I. Introduction

[1] The Commission was asked to consider the need for life lease legislation by the Minister of Justice in 2018. The Commission's *Life Lease Legislation Consultation Report*,<sup>1</sup> and an accompanying survey, were made available online in March 2019. The *Consultation Report* was also emailed directly to the Canadian Bar Association, the Saskatchewan Seniors Mechanism, the Saskatchewan Seniors Association, and several individuals on the Commission's life lease project mailing list. In June, the *Consultation Report* was also emailed to the Saskatoon Housing Authority, the Regina Housing Authority, and several life lease housing developments in Saskatoon, Regina, and Swift Current. The *Consultation Report* asked the following questions:

1. Should life lease legislation limit the amount and timing of pre-lease payments?
2. Should life lease legislation require pre-lease payments and entrance fees to be held in trust by a trustee?
3. Should life lease legislation set out rules regarding when and how refunds of pre-lease payments and entrance fees are to be provided and how refund funds are to be managed?
4. Should life lease legislation prescribe the uses to which funds paid to a life lease developer can be used?
5. What information should life lease developers/landlords be required to disclose to potential tenants?
6. When should disclosure occur?
7. What should be the consequences of not meeting the disclosure requirements?
8. Should life lease legislation provide for a rescission period? How long should the rescission period be?
9. Should life lease legislation require landlords to maintain a reserve fund to pay for certain repairs to the life lease housing development?
10. Should similar refund fund requirements as those found in condominium legislation be included in life lease legislation?
11. Should life lease legislation include rules relating to rent increases?
12. Should Part IV of The Residential Tenancies Act apply to proposed increases in monthly occupancy fees in life lease housing developments?
13. Should life lease legislation provide for tenant representation and attendance at board meetings?
14. Should life lease legislation provide for tenant representation on the board?
15. Should life lease legislation include requirements for meetings between tenants and the board? What should those requirements be?

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<sup>1</sup> The *Life Lease Legislation Consultation Report* can be viewed online at the Commission's website: <<https://lawreformcommission.sk.ca/Life-Lease-Consultation-Report.pdf>>.

16. Should life lease legislation include reporting requirements? What should those requirements be?
17. Should tenants be given an ability to request audited financial statements?
18. Should life lease legislation set out circumstances in which a life lease agreement may be terminated by either party?
19. If so, in what circumstances should termination be possible?
20. Should life lease legislation create any rules regarding assignments of life leases? What should those rules be?
21. Should life lease legislation define what happens to a life lease agreement upon a change of ownership?
22. What should the rules be regarding refunds of entrance fee?
23. Should landlords be required to maintain insurance policies for life lease housing developments?
24. Should life lease legislation include a dispute resolution mechanism?
25. Should life lease legislation require life leases to include a dispute resolution process?
26. Should life lease disputes be referable to the Office of Residential Tenancies?
27. Should life lease legislation prohibit life lease developers/sponsors from preventing life lease holders from registering their interest on title?
28. Should life lease legislation require life lease developers/sponsors to register life lease interests?
29. Should life lease legislation contain a provision regarding a potential default of the sponsor?
30. Should offences be created in life lease legislation?
31. What should constitute an offence under life lease legislation?
32. Should life lease housing sponsors be required to be non-profit organizations?
33. Should life lease housing legislation distinguish non-profit landlords from other landlords? If so, in what ways?
34. Should potential tenants be required to receive independent legal advice prior to entering into a life lease agreement?
35. Should life lease developers be required to encourage prospective tenants to seek professional advice prior to purchasing a life lease?
36. Is there a need for life lease legislation in Saskatchewan?
37. Are there any other matters that should be addressed in life lease legislation?

[2] The Commission received 4 responses to the survey, 2 written responses from life lease residents, 1 written response from a director of a life lease housing development, 1 written response from a manager of a life lease housing development, 1 written response from a financial institution, and a submission from a life lease consultant.

[3] These responses were then used by the Commission to arrive at a set of tentative recommendations on life lease housing legislation for Saskatchewan. The following tentative recommendations were then sent for further consultation to the organizations and individuals previously contacted as well as the Saskatchewan Realtors Association:

1. Saskatchewan should adopt life lease legislation in order to clarify certain aspects of life leases for the benefit of both purchasers and sponsors.
2. Life lease legislation should contain provisions on pre-lease payments and entrance fees.
3. Life lease legislation should require life lease developers to disclose prescribed information to prospective tenants prior to entering into a life lease agreement and prior to collecting a deposit or pre-lease payment. If the disclosure requirements are not met, tenants should be entitled to rescind the life lease agreement without penalty and with a full refund of any deposit or pre-lease payment.
4. Life lease legislation should provide for a pre-possession rescission, or “cooling-off” period of at least seven days after signing a life lease agreement. The prospective tenant should be entitled to a full refund of any payments made.
5. Life lease operators should be required to maintain a reserve fund to pay for major repairs and other capital expenditures. Similar reserve fund rules as those that are applicable to condominium corporations should apply to life lease operators.
6. Life lease legislation should require a lengthy notice period of not less than 3 months prior to an increase to monthly occupation fees.
7. Life lease legislation should allow tenant representatives to place matters on board meeting agendas and to speak to these items at meetings, but the legislation would not require that tenants have representation on the board.
8. Life lease legislation should allow tenants to assign their life lease agreement with prior consent of the landlord. This consent can only be refused on reasonable grounds, as set out in the life lease contract.
9. Life lease legislation should require new owners of life lease developments to honour existing life leases and refund entrance fees to all tenants upon termination of the life lease.
10. Life lease legislation should require life lease developers and operators to maintain all necessary insurance, and the insurance should include a loss payee clause in favour of the tenants up to the amount of their entrance fee to ensure recovery of the entrance fee should the complex be destroyed or become inhabitable.
11. Life lease legislation should require life lease contracts to include a dispute resolution mechanism, and allow disputes to be referable to the Office of Residential Tenancies upon a request by either party.
12. Life lease legislation should not require life lease developers to be non-profit organizations.

[4] The Commission received 9 written responses from individuals/residents, an additional online survey response, 5 written responses from operators, and 1 written response from a seniors' organization to these tentative recommendations.

[5] The Commission's recommendations on this project are informed by the responses received to both the Consultation Report and the tentative recommendations.

## **II. Background**

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[6] A life lease is a hybrid type of tenure arising from a contract that permits the purchaser to occupy a residence for life in exchange for an initial lump sum payment (typically referred to as an entrance fee) and the payment of ongoing monthly sums (which can cover both operating expenses and rent, depending on the size of the initial lump sum payment).<sup>2</sup> Life leases grant a right to occupy; life lease holders do not own the property they are occupying. Beneficiaries may inherit a life lease from the life lease holder upon the holder's death, however, whether the beneficiaries would be entitled to occupy the life lease unit would depend on the terms of the life lease contract between the purchaser and the sponsor.

[7] Life leases are increasingly being used across Canada to create seniors' housing projects, and they are almost always run by non-profit organizations, such as churches and service clubs. Life lease housing developments often provide some level of personal care options and may provide specific cultural or religious environments. Age and the ability to live independently (with the supports available in the housing project) are typical eligibility requirements imposed by project sponsors. Life lease buildings are often apartment style buildings.

[8] There are five main types of life leases used in Canada, described as follows by the Canada Mortgage and Housing Corporation (CMHC):

1. Zero-balance – The resident pays an amount up front designed to prepay rent for his/her expected remaining life. No residual value is repaid to the occupant or their estate at the time of departure or death. Consequently, the purchase price for an interest in this type of life lease is the least expensive relative to other forms.
2. Declining Balance – The resident pays an amount up front based on life expectancy. The estate is paid a residual value which declines each year to zero at the end of a specific

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<sup>2</sup> Canada Mortgage and Housing Corporation, *Research Report: An Examination of Life Lease Housing Issues*, (March 2007) at 1. Available online at: <<https://www03.cmhc-schl.gc.ca/catalog/productDetail.cfm?cat=126&itm=3&lang=en&fr=1503518030828>> (last accessed August 29, 2018) [CMHC Report].

period of time. This type of life lease is slightly more expensive than the zero-balance form.

3. No Gain – The amount redeemed at the time of sale remains the same as that paid at the time of initial occupancy in nominal terms, though it declines in real terms as there is no provision for annual inflationary increases to be taken into account. This is in essence a zero-interest loan to the sponsor for the time of occupancy of the unit.
4. Price Index – Redemption value increases based on annual price index factor being applied to the purchase price, for instance the Consumer Price Index (CPI). This has certain risks for the sponsor if real estate values are increasing more slowly than general inflation.
5. Market Value – The life lease interest is redeemed at whatever price the market will bear at the time of sale. Purchasers pay an amount similar to that for a comparable condominium unit.<sup>3</sup>

[9] Saskatchewan’s residential tenancies legislation does not apply to life leases.<sup>4</sup> *The Condominium Property Act, 1993*<sup>5</sup> also does not apply to life leases. The result is that the rights and obligations of life lease holders are largely governed by the terms of the life lease agreement entered into with the project sponsor. Other provincial laws, such as *The Saskatchewan Human Rights Code*,<sup>6</sup> may apply to life lease housing in certain contexts.

[10] Saskatchewan has a variety of types of life lease housing developments, operated by various organizations. Most life lease housing developments in Saskatchewan are run by non-profit organizations. The provincial government is also involved in life lease housing in various communities. The Saskatchewan Housing Corporation offers a Life Lease Program which is administered by local housing authorities.<sup>7</sup> To be eligible for the program, the applicant(s) must be at least 55 years of age, able to live independently, and have annual gross income and assets below a certain limit. Deposits range from \$60,000 to \$135,000. This program utilizes the “no gain” life lease housing model, as the deposits are returned (less any outstanding fees) when the life lease ends.

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<sup>3</sup> *Ibid* at 2.

<sup>4</sup> Subsection 5(g) of *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001 provides that the Act does not apply to “living accommodation rented under a tenancy agreement that grants a right of occupancy: (i) for the life of the tenant; or (ii) for a fixed period of not less than 20 years.

<sup>5</sup> *The Condominium Property Act, 1993*, SS 1993, c C-26.1. Pursuant to subsection 4(1) of this legislation, condominiums are formed when a building or land is divided into units by the issuance of titles pursuant to an approved condominium plan. Life lease holders do not hold fee simple title to their units.

<sup>6</sup> SS 1979, c S-24.1.

<sup>7</sup> Information about this program can be found online at: <<https://www.saskatchewan.ca/residents/housing-and-renting/renting-and-leasing/life-lease-housing-for-seniors>> (last accessed November 8, 2018).

[11] Manitoba is the only jurisdiction in Canada to have enacted life lease housing legislation. *The Life Leases Act*<sup>8</sup> was enacted in 1999. The legislation contains several provisions aimed at protecting purchasers of life leases, which it treats as tenants. *The Life Leases Act* also contains provisions that are aimed at protecting the interests of life lease development sponsors, which it treats as landlords. For instance, the Act deals with the release of funds by the trustee to the developer to obtain financing and purchase land and it contains provisions regarding foreclosure proceedings. The legislation also prohibits non-profit landlords from owning more than one residential complex (but allows a non-profit landlord to act as property manager for more than one residential complex) and creates several offences.

[12] Bill 208: *Life Leases Act* was introduced in Alberta on May 25, 2009.<sup>9</sup> Its second reading was adjourned on October 26, 2009 and Bill 208 subsequently died on the Order Paper. Bill 208 was similar to Manitoba's Act; it contained disclosure requirements, prescribed a cooling-off period, required annual meetings to be held, required tenant representation at board meetings, and allowed for the prescription of maximum entrance fees. Entrance fees were to be held in trust and would be refunded if the development would not be completed by the project completion date disclosed to the tenant. Bill 208 also required the creation of a reserve fund. The Director of Residential Tenancies would have been responsible for the administration of the legislation, and the Director would have all of the powers available under the *Residential Tenancies Act* with necessary modifications to administer the Act. The Bill also made any contraventions an offence and set out prescribed penalties.

[13] A private member's Bill respecting life leases was introduced in Ontario on February 16 2016 (Bill 160: *Life Lease Act, 2016*).<sup>10</sup> Its second reading occurred on February 18, 2016, and it was subsequently sent to the Standing Committee on Regulation and Private Members Bills. Bill 160 contained only three substantive provisions, requiring sponsors to: maintain a reserve fund for specified purposes, hold annual meetings for life lease holders, and repay any amount received if possession of the unit was not given to the life lease holder on the day specified in the purchase agreement.

[14] During Bill 160's second reading, concerns were raised over the lack of a specified amount for the reserve funds, and the lack of details regarding the notice to be given of the annual meeting. Further, members noted that while the Bill required deposits to be returned if

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<sup>8</sup> *The Life Leases Act*, CCSM c L130.

<sup>9</sup> Bill 208, *Life Leases Act*, 2nd Sess, 27th Leg, Alberta, 2009 [Alberta Bill 208]. The full text of Bill 208 can be viewed online at: <[http://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_27/session\\_2/20090210\\_bill-208.pdf](http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_27/session_2/20090210_bill-208.pdf)>.

<sup>10</sup> Bill 160, *Life Lease Act, 2016*, 1st Sess, 41st Leg, Ontario, 2016. The full text of Bill 160 can be viewed online at: <<https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2016/2016-02/bill---text-41-1-en-b160.pdf>>.

possession was not given by the date specified in the purchase agreement, the Bill did not set a timeline for returning the payment and did not prescribe any penalties for a failure to return it. In addition, the Bill did not require that deposits be kept in trust accounts. A reading of Hansard suggests that the member intended for the Bill to be substantially amended in Committee.

[15] Bill 155: *Life Leases Act, 2017*<sup>11</sup> was subsequently introduced as a private member's bill in the Ontario Legislature on September 20, 2017. After its second reading on October 5, 2017 Bill 155 was sent to the Standing Committee on Regulations and Private Bills. Bill 155 was much more comprehensive compared to Bill 160. Bill 155 proposed allowing landlords or trustees to receive pre-lease payments or entrance fees and required those fees to be held in trust. Bill 155 also included disclosure obligations and placed several conditions to be met before a landlord or trustee received entrance fees. Bill 155 would have allowed tenants to cancel their life leases within seven days after the day on which the life lease or signed offer to lease is given to the landlord. Provisions dealing with reserve funds, insurance, annual reporting requirements, and board meetings were also contained in the Bill. Bill 155 also created several offences.

### **III. Is Life Lease Legislation Necessary for Saskatchewan?**

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[16] Over the past decade, the Canada Mortgage and Housing Corporation, the Advocacy Centre for the Elderly, and members of some legislative assemblies have advocated for the creation of life lease housing legislation in various Canadian jurisdictions.

[17] In 2007, the Canada Mortgage and Housing Corporation (CMHC) released a research report on life lease housing issues. Consultations were undertaken with various stakeholders involved in 15 different life lease developments in Canada. Interviews were conducted with project managers and with residents. The CMHC noted several potential issues with life leases including: the absence of legislation to protect and clarify purchaser and sponsor rights, disclosure issues, financing, management, sustainability of operations, and security of tenure.

[18] The CMHC recommended each province (except Manitoba, which had already enacted life leasing legislation) consider creating life lease legislation to consolidate the various statutory provisions applicable to life lease housing into one statute, and to fill any potential consumer protection gaps. The CMHC further recommended that any life lease legislation should be flexible enough to recognize the various types of life lease developments and to continue to allow

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<sup>11</sup> Bill 155, *Life Leases Act, 2017*, 2nd Sess, 41st Leg, Ontario, 2017 [Ontario Bill 155]. The full text of Bill 155 can be viewed online at: <[https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2017/2017-09/bill---text-41-2-en-b155\\_e.pdf](https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2017/2017-09/bill---text-41-2-en-b155_e.pdf)>.

creativity in developing new forms of life lease housing. The CMHC suggested that life lease legislation should include provisions addressing:

- Rescission periods (suggested seven days as for condominium purchases)
- Registration of life leases
- Tenant representation on the Board
- Clarification of whether provincial rent control legislation applies to monthly occupancy fees
- The conditions under which deposits may be used by the developer to fund construction (or for other purposes)
- Reserve fund requirements
- Disclosure prior to marketing of certain information

[19] The CMHC recommended that project sponsors should be required to create a minimum number of spots on the board for residents (either with or without voting rights) as a way to increase resident satisfaction. The CMHC also suggested that seniors be encouraged to seek professional advice prior to purchasing a life lease given the complexity of this type of investment.

[20] In 2007, the Advocacy Centre for the Elderly (ACE) submitted comments on life lease housing in Ontario to the Ministry of Municipal Affairs and Housing.<sup>12</sup> ACE recommended the following be considered in drafting life leasing legislation:

- Non-discrimination within life leasing developments;
- Regulating care services in life lease housing similar to care services provided in retirement homes;
- Preventing promises of immediate entry into long term care homes when required by the purchaser (in Ontario, admission to long-term care is governed by legislation and controlled by the Community Care Access Centres);
- Dispute resolution mechanisms;
- Disclosure requirements (both pre and post purchase);
- Purchaser involvement in operations;
- Registration on title and title interest;
- Cooling-off periods;
- Rendering the rent control regime in Ontario's *Residential Tenancies Act, 2006*<sup>13</sup> applicable to proposed increases to monthly payments;
- Requiring independent legal advice prior to entering into a life lease agreement;

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<sup>12</sup> Advocacy Centre for the Elderly, "Written Submission to the Ministry of Municipal Affairs and Housing concerning Life Lease Housing in Ontario" (2007). Available online at: <<http://www.advocacycentreelderly.org/appimages/file/Life%20Leases%20-%20June%202007.pdf>> [ACE Submission].

<sup>13</sup> SO 2006, c 17.

- Restricting life lease developments to not-for-profit sponsors.

[21] At the second reading of a proposed bill on life lease housing in 2016 in Ontario's Legislative Assembly, the member introducing the bill described the need for life lease legislation as follows:

*I've had constituents reach out to me with concerns over how their life lease communities are run. In one instance, life lease holders saw their monthly fees increasing and the reserve funds for their complex decreasing in order to pay for the development and maintenance of another life lease project nearby. This is the sort of blatant misuse of reserve funds and disrespect for life lease holders that the legislation I am proposing today will help to prevent.*

*As legislators, it is our duty to protect the most vulnerable members of our population. In the golden years of their retirement, senior citizens who have done so much to build up this great province should not have to worry about keeping a hawk eye on the people to whom they entrust their money. Not only will this new bill define a life lease, but it will also set the standard for basic annual meetings between life lease sponsors and holders.*

*...Despite the many benefits his parents experienced, my constituent feels there is room for improvement. They felt they had very little input into the operation of their home. While their building did have a residents' association, it only dealt with trivial matters such as when and how to set up and take down the Christmas decorations. This is what needs to change.*

*He expressed that his parents wished to have a voice in the important matters of the building and to have some oversight over decisions surrounding the raising and spending of fees, maintenance and key staff. Residents, many of them with beneficial experience and many others eager to learn, would be an asset to these facilities. With a real voice, they'll be as committed to their building and investment as they were to their own homes. This bill gives them the well-earned opportunity to have just that.<sup>14</sup>*

[22] Similarly, at the second reading of the second proposed private member's bill on life lease housing in 2017 in Ontario's Legislative Assembly, MLA (Lib) Ann Hoggarth described the need for the Bill as follows:

*Life leases can vary widely in their purpose, services and business models. Most life leases operate well and are run with the residents' best interests in mind; however, there are exceptions, and these can cause a great deal of anxiety in the lives of these senior residents.*

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<sup>14</sup> Ontario, Legislative Assembly, *Hansard*, 41st Parl, 1st Sess (18 February 2016) at 1430.

*...My office has continually heard from more and more seniors—not just from Barrie but across the province—with concerns about life leases.<sup>15</sup>*

[23] Most responses to the *Consultation Report* and tentative recommendations were in favour of Saskatchewan enacting life lease legislation.

[24] The Commission is of the view that Saskatchewan should adopt life lease legislation in order to clarify certain aspects of life lease housing for the benefit of both purchasers and operators/developers. The Commission’s recommendations regarding issues that should be addressed in life lease legislation are based on the need for purchasers of life leases to have information and clarity surrounding their obligations and rights. The Commission’s recommendations are not intended to prescriptively regulate the life lease market; while the recommendations provide certain basic protections to purchasers, many aspects of life leases will remain subject to the provisions contained in specific life lease agreements.

## **IV. Discussion and Recommendations for Life Lease Legislation**

### **1. Payments**

[25] Developers and operators of life lease housing complexes typically require tenants to pay an initial lump sum, commonly referred to as an entrance fee. Additional payments may also be required if the complex is still in the planning or building stages.<sup>16</sup> Manitoba’s Act refers to this second type of payment as a pre-lease payment. These payments are not “deposits” in the sense that they do not guarantee that the landlord will offer the prospective tenant a life lease.<sup>17</sup>

[26] The *Consultation Report* outlined provisions that could be included in life lease legislation addressing when deposits and payments can be collected, the amount that can be collected, whether deposits and payments must be held in trust, whether deposits and payments can be refunded, and how deposits and payments may be used.

#### **i. Timing & Amounts of Pre-Lease Payments**

[27] Subsection 6(1) of Manitoba’s Act prohibits landlords from receiving a pre-lease payment from a prospective tenant on or after the occupancy date of the complex. Subsection 5(2) of Ontario’s Bill 155 proposed the same restriction. In addition, in Manitoba pre-lease payments

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<sup>15</sup> Ontario, Legislative Assembly, *Hansard*, 41st Parl, 2nd Sess, No 103 (5 October 2017) at 5578.

<sup>16</sup> Government of Manitoba, “Before a Tenant Rents”, (last accessed February 8, 2019). Available online at: < [www.gov.mb.ca/cca/rtb/ot/lifelease/beforetenantrents.html](http://www.gov.mb.ca/cca/rtb/ot/lifelease/beforetenantrents.html) >.

<sup>17</sup> *Ibid.*

can be up to a maximum of \$1,000. Subsection 5(4) of Ontario's Bill 155 would have prohibited landlords from receiving pre-lease payments over a prescribed amount.

[28] The *Consultation Report* asked whether life lease legislation should limit the amount and timing of pre-lease payments. Responses to this question were mixed. The Commission agrees with the approach taken in Manitoba and in Ontario's Bill 155 prohibiting landlords from receiving pre-lease payments on or after the occupancy date. The Commission further recommends that the maximum allowable amount of a pre-lease payment be prescribed by regulation.

## **ii. Trust Accounts & Trustees**

[29] In Manitoba, subsection 8(1) requires pre-lease payments to be held in trust for the benefit of the tenant until it is paid out in accordance with the section or otherwise refunded.

[30] With respect to entrance fees, subsection 19(1) requires a landlord to appoint a trustee to receive and administer an "initial tenant's" entrance fee in accordance with the Act and regulations. An "initial tenant" is the first tenant to enter into a life lease in respect of the rental unit (s 1(1)). Subsection 19(2) also requires a landlord to appoint a trustee to administer a fund to secure the landlord's obligation to refund entrance fees if the entrance fee is refundable.<sup>18</sup> Subsection 9(1) requires entrance fees from both initial and subsequent tenants to be held in trust until the cooling-off period has expired.

[31] Pre-lease payments and entrance fees paid by initial tenants (other than those that are to be refunded) must be held by the trustee for the benefit of the tenants until the landlord has satisfied the prerequisites to payment in s 21(4).<sup>19</sup> Subsection 21(4) requires the landlord to have to provide to the trustee:

- (a) all evidence required by the regulations respecting
  - (i) the landlord's legal interest in the lands on which the residential complex is or is to be located,
  - (ii) the projected costs of the development of the complex,
  - (iii) the availability of funds to complete the development,
  - (iv) registration of any mortgage required by a lender to finance development of the residential complex,

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<sup>18</sup> Subsection 6(4)(d) states that a landlord may only receive or permit a trustee to receive an entrance fee from an "initial tenant" if a trustee has been appointed to receive and administer entrance fees, and if the entrance fee is refundable, the landlord must also have appointed a trustee to administer the refund fund (s 6(4)(e)).

<sup>19</sup> *The Life Leases Act*, *supra* note 8 s 21(3).

(v) contracts entered into for the development and security for the performance of those contracts,

(vi) the obtaining of any regulatory approvals required to carry out the development,

(vii) insurance coverage for the complex as required under section 17,

(viii) the certification of expenditures incurred or work completed in the development of the complex, and

(ix) any other prescribed matter; and

(b) an irrevocable letter of credit or equivalent security for an amount that is not less than the total of the first year's rent that would be payable for all unleased rental units, if they were leased under life leases in respect of which the minimum entrance fees required by the landlord had been paid.

[32] These types of provisions provide a degree of protection to individuals who have paid deposits or pre-lease payments against the prospect of a failed project.

[33] The *Consultation Report* asked whether life lease legislation should require pre-lease payments and entrance fees to be held in trust by a trustee. Responses were mixed, with several responses suggesting that entrance fees paid in respect of established life lease housing complexes be distinguished from entrance fees paid in respect of new or under development life lease housing complexes and pre-lease payments paid in respect of life lease housing complexes under development. One response from a manager of a life lease complex stated:

*If this was a new life lease project where construction hadn't started yet this could be considered, but for us we could not run our 30+ year old complex/cover our operating expenses if we could not access these monies for responsibly covering daily operation of the complex.*

Concerns were also raised about the costs of retaining a trustee:

*As our life lease pre-lease payments are applied to the final entrance fee, we cannot hold them in trust. We apply all deposits and entrance fees to our operating costs and deal with refunds through our usual cash flow. As a non-profit organization if we had to hold any of these payments in trust, we could not access the monies we require to operate our 30+ year old property. The added expense to hold it in a trust account and to retain a trustee is also punitive to us.*

A financial institution provided the following comment:

*Yes. Pre-lease payments, once they are credited to the entrance fees, and entrance fees should be held in trust by a trustee to reassure tenants that they will get their money back should the landlord not continue with the development of the life lease complex, or that their payments will not be released to the landlord unless it is intended for the development of the life lease complex.*

[34] The Commission recommends that life lease legislation require pre-lease payments for new developments to be held in trust by a trustee, and then credited towards the entrance fee once a lease agreement is executed.

### iii. Refunds

[35] Manitoba's Act sets out what happens to pre-lease payments in various circumstances. If a life lease is entered into, the pre-lease payment is to be credited to the entrance fee payable by the tenant or returned to the tenant if the tenant has paid the entrance fee in full.<sup>20</sup>

[36] If, however, it becomes "reasonable to conclude that the development of the residential complex will not be completed by the projected completion date disclosed to the tenant" the landlord shall refund a tenant's pre-lease payment unless it has already been given to the trustee to be credited to the entrance fee payable.<sup>21</sup> If the tenant has paid the pre-lease payment but the landlord has not offered a life lease to the tenant on terms and conditions comparable to those contained in a life lease of a rental unit in the same complex comparable to the rental unit in which the tenant expressed an interest, the landlord must refund the pre-lease payment to the tenant.<sup>22</sup> Finally, if the tenant and landlord have not entered into a life lease by the occupancy date of the complex for any other reason and the landlord has not refunded the payment to the tenant, the landlord shall give the pre-lease payment to the trustee appointed to receive entrance fees.<sup>23</sup> Subsection 7(2) of Bill 155 was similar to Manitoba's Act.<sup>24</sup>

[37] Section 22 of Manitoba's Act requires that 95% of each entrance fee (other than the portion of the entrance fee payable in respect of a tenant's extras) must be refundable if the landlord is a not a non-profit landlord or if the term of the lease is for the tenant's life. Section 23 requires the landlord to contribute an amount not less than the minimum amount stipulated in the landlord's disclosure to the refund fund prior to the occupancy date of the complex. If

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<sup>20</sup> *The Life Leases Act*, *supra* note 8 s 8(2).

<sup>21</sup> *Ibid* s 8(3).

<sup>22</sup> *Ibid* s 8(4)(a).

<sup>23</sup> *Ibid* s 8(4)(b).

<sup>24</sup> Bill 155, *supra* note 11, proposed that if the prospective tenant subsequently enters into a life lease agreement, the pre-lease payment must be credited to the entrance fee or returned to the tenant if the entrance fee has been paid in full. If it became reasonable to conclude that the development of the residential complex would not be completed by the projected completion date, the landlord would have been required to refund the pre-lease payment unless it has already been paid to the trustee as a credit against the tenant's entrance fee. If, however, the prospective tenant and landlord had not entered into a life lease agreement by the occupancy date of the complex, then pursuant to s 7(4)(a), the pre-lease payment would have needed to be returned to the tenant if the landlord had not offered a life lease to the tenant on terms and conditions comparable to those contained in a life lease of a rental unit in the same complex comparable to the rental unit in which the tenant expressed an interest. If the landlord had offered such a life lease to the tenant, or in any other circumstances than those set out in s. 7(4)(a), then s 7(4)(b) allowed the pre-lease payment to be paid to the trustee.

there are insufficient amounts in the refund fund in respect of two or more leases, the tenant with the earlier date of cancellation or termination of the lease will be refunded first.<sup>25</sup> If this date is the same, the funds will be paid to the tenants in proportion to the amounts owed to them.<sup>26</sup>

[38] Subsection 9(3) of Manitoba's Act requires the entrance fee be refunded to the tenant if the tenant withdraws the offer to lease before it is accepted by the landlord, or if the landlord rejects the tenant's offer to lease or fails to accept it within the time permitted for acceptance.

[39] Manitoba's Act allows landlords to withdraw excess funds from the refund fund and use the funds for the purposes of the residential complex or for any other permitted purpose as set out in the regulations.<sup>27</sup> The refund fund will be considered "fully funded" after the occupancy date of the complex if the amount in the fund is equal to or greater than the total amount payable to former tenants whose entrance fees have not been refunded and the total amount that would be payable to current tenants if all the life leases were terminated.<sup>28</sup> Once the refund fund is fully funded, the current tenants of the complex have a right to a refund of the refundable portion of their entrance fee.<sup>29</sup> In addition, once the refund fund is fully funded, the trustee's fees for the administration of the fund shall be paid out of the income of the fund (and the capital of the fund if necessary).<sup>30</sup> Any additional income earned by the fund must be paid annually to the current tenants of the complex who have not obtained a refund of the refundable portion of their entrance fees.<sup>31</sup> The Manitoba legislation also distinguishes between non-profit and for-profit landlords in respect of the refund fund: if the landlord is not a non-profit landlord, subsection 27(4) prohibits the trustee from paying any part of the refund fund to or for the benefit of the landlord.

[40] The *Consultation Report* asked whether life lease legislation should contain rules regarding when and how refunds of pre-lease payments and entrance fees are to be provided and how refund funds are to be managed. One respondent suggested that pre-lease payments should be refunded immediately to prospective tenants if the life lease complex is not completed on the date promised by the landlord, or once all the units in the complex are covered by a lease

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<sup>25</sup> *The Life Leases Act*, *supra* note 8, s 24(4).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid* s 25. Pursuant to section 25, the refund fund will have excess funds if the balance in the refund fund exceeds the total of:

- (a) the minimum amount stipulated in the landlord's disclosure to the tenants under subclause 6(4)(b)(i); and
- (b) the amounts refundable to tenants whose leases have been cancelled or terminated or who have given notices of termination.

<sup>28</sup> *Ibid* s 27(1).

<sup>29</sup> *Ibid* s 27(2).

<sup>30</sup> *Ibid* s 27(3)(a).

<sup>31</sup> *Ibid* s 27(3)(b).

agreement. Some respondents expressed concerns about the length of time (up to six months in one instance) it can take to receive refunds of entrance fees after termination of the life lease.

[41] Regarding refunds of pre-lease payments for life lease housing projects under development, the Commission recognizes there may be circumstances where the purchaser does not want an immediate refund of the pre-lease payment. The Commission recommends life lease legislation require life lease agreements to provide prospective tenants the option to either receive an immediate refund or negotiate an extension to the completion date in the life lease agreement within 60 days of the promised date of completion if the complex is not completed, or the unit to be occupied by the purchaser is not ready to be occupied, on the promised date.

[42] Regarding refunds of entrance fees, the Commission recommends life lease legislation require entrance fees to be refunded within 5 business days upon cancellation of the offer to lease during the rescission (or cooling-off) period and within 30 days following termination of the life lease agreement.

#### iv. Use of Funds

[43] Subsection 21(7) of Manitoba's Act states that funds paid to the landlord by the trustee must be used for one or more of the following:

- (a) to pay for development of the complex;
- (b) to pay for tenants' extras;
- (c) to refund all or any part of one or more entrance fees paid in respect of the complex;
- (d) to fund the landlord's contribution to a refund fund in respect of the complex;
- (e) to satisfy an order made under section 154 of *The Residential Tenancies Act* in respect of an entrance fee;
- (f) to reimburse the landlord for amounts paid by the landlord for any of the foregoing purposes.

[44] The section also provides that any remaining amounts must be used only for the purposes of the complex. Subsection 9(2) of Manitoba's Act further specifies that unless otherwise provided, entrance fees or gains realized by investment of the entrance fees may be used only for the purposes of the residential complex.

[45] The *Consultation Report* asked whether life lease legislation should prescribe the uses to which funds paid to a life lease operator can be used. Most responses were in favour of this type of a provision.

[46] In order to prevent entrance fees being used to develop or operate another life lease development or for other unrelated purposes, the Commission recommends life lease legislation provide that entrance fees can only be used to: (i) pay for the development or operation of the complex, (ii) refund entrance fees, (iii) or to fund the refund fund.

## **2. Disclosure Requirements**

[47] The CMHC suggested life lease developers be required to disclose the following information before marketing the life lease development:

- Who the owner/operating of the housing project will be;
- Term of the lease;
- Investment requirement;
- Method of sale of interest and/or other options for termination of the lease by either side;
- Risks associated with obtaining refund of entrance fee/leasehold cost;
- Who is responsible for paying occupancy charges and property taxes;
- Common areas and facilities to be included in the development;
- Estimated date of construction start and completion;
- Construction warranties;
- Planning approval/building permit obtained;
- How the development will be financed (both during construction and operation).<sup>32</sup>

[48] Manitoba's Act sets out what must be disclosed at two stages: prior to receiving a pre-lease payment and prior to receiving an entrance fee. Subsection 6(2) requires a landlord to disclose the following information to the tenant prior to receiving a pre-lease payment:

- the estimated entrance fee that will be payable in respect of each type of rental unit in the complex or each type in which the tenant has expressed an interest;
- the projected completion date; and
- any additional prescribed information.

[49] Section 10 of *The Life Lease Regulations*<sup>33</sup> additionally requires landlords to complete a Pre-Lease Information Form and provide it to the prospective tenant prior to receiving a pre-lease payment (there are different forms for non-profit and other landlords). In addition to the

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<sup>32</sup> CMHC Report, *supra* note 2 at 4.

<sup>33</sup> Man Reg 143/99.

estimated entrance fee and projected completion date, the landlord must also indicate the estimated monthly rent on the form. Both forms are contained in Appendix B of the Regulations.

[50] Subsection 6(4) of Manitoba's Act permits a landlord to receive an entrance fee only if the landlord has disclosed to the tenant:

- whether the entrance fee is refundable;
- the minimum amount that will be contributed to the refund fund; and
- any additional prescribed information.

[51] The landlord must also provide the tenant with a written statement of the tenant's cancellation rights under s 10 of the Act prior to receiving an entrance fee. Subsection 11(1) of *The Life Lease Regulations* additionally requires a trustee to complete an Entrance Fee Information Form prior to receiving a signed offer to lease and prior to receiving an entrance fee (there are different forms for non-profit and other landlords). The form requires the landlord to indicate the amount of the refund fund and the amounts that the landlord owes in refunds to tenants. Non-profit landlords also must indicate how much they contributed to the refund fund, and the amount in the reserve fund. Both forms are contained in Appendix B.

[52] *The Life Lease Regulations* also contemplate disclosure requirements on assignment of a life lease. Section 12 requires landlords to ensure, prior to consenting to the assignment of a life lease, that the assignee is given the same information that the landlord would have been required to give to the assignee under section 11.

[53] Ontario's Bill 155 also distinguished between the information that must be provided before receiving a pre-lease payment and before receiving an entrance fee.<sup>34</sup>

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<sup>34</sup> Subsection 5(3) of Ontario's Bill 155, *supra* note 11, would have required the following information to be disclosed by the landlord before receiving a pre-lease payment:

- the estimated entrance fee that will be payable in respect of each type of rental unit in the complex or each type in which the tenant has expressed an interest;
- the projected completion date;
- prescribed information regarding the governance and management of the complex, including information regarding staffing, finances and the roles and responsibilities of tenants;
- the estimated amount of any other fees that may be charged, including monthly occupancy fees, and a summary of the process by which any future increases to fees are to be determined and communicated;
- the estimated amount of the refund that the tenant would receive upon termination of the lease and information regarding the method of calculating that amount; and
- any additional prescribed information.

[54] The *Consultation Report* asked what information life lease developers and operators should be required to disclose to potential purchasers, when the information should be disclosed, and what the consequences should be of failing to meet the disclosure requirements. Most responses were in favour of requiring certain information to be disclosed prior to receiving pre-lease payments and entrance fees.

[55] In order to ensure purchasers are sufficiently informed as to the nature of their purchase and their rights and obligations under the life lease agreement, the Commission recommends life lease legislation require life lease developers to disclose prescribed information (similar to that required to be disclosed in Manitoba) to prospective tenants prior to entering into a lease agreement and prior to collecting a deposit or pre-lease payment. If the disclosure requirements are not met, tenants should be entitled to rescind the life lease agreement without penalty with a full refund of any deposit or pre-lease payment.

### **3. Rescission (Cooling-off) Periods**

[56] The Advocacy Centre for the Elderly has stated that life lease legislation should include a rescission period, and that the legislation should require the sponsor to advise the purchaser of their right to cancel their life lease agreement.<sup>35</sup> The Canada Mortgage and Housing Corporation similarly recommends that life lease housing legislation should include a seven-day rescission period.<sup>36</sup>

[57] Subsection 10(2) of Manitoba's Act gives the tenant a seven-day period to cancel his or her life lease after the day the signed life lease is given to the landlord. Landlords must include a statement of cancellation rights in the prescribed form in a life lease provided to a tenant.<sup>37</sup> If the statement is not included, the seven-day period does not begin running until the landlord gives the tenant the prescribed statement of cancellation rights.<sup>38</sup> The landlord must refund the full

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Subsection 5(5) of Bill 155 proposed requiring the landlord to disclose the following information prior to receiving an entrance fee:

- if the entrance fee is refundable, the minimum amount that will be contributed to the refund fund; and
- any additional prescribed information.

Subsection 5(5) also would have required the landlord to have given the tenant a written statement of the tenant's cancellation rights prior to receiving an entrance fee.

<sup>35</sup> ACE Submission, *supra* note 8 at 7.

<sup>36</sup> CMHC Report, *supra* note 2 at 48.

<sup>37</sup> *The Life Leases Act*, *supra* note 8, s 10(1).

<sup>38</sup> *Ibid* s 10(3).

entrance fee to the tenant within fourteen days of receiving the tenant's notice to cancel.<sup>39</sup> Ontario's Bill 155 included similar provisions.<sup>40</sup>

[58] The *Consultation Report* asked whether life lease legislation should provide for rescission period, and if so, how long that period should be. Most responses were in favour of such a provision, and some responses noted that their life lease agreement contained this type of a clause.

[59] The Commission recommends life lease legislation provide for a pre-possession rescission, or "cooling-off" period of not less than seven days after signing a life lease agreement. The prospective tenant should be entitled to a full refund of any payments made if they withdraw from the agreement during this period.

#### 4. Reserve Funds

[60] The CMHC recommended that life lease legislation contain reserve fund requirements, analogous to condominium legislation.<sup>41</sup>

[61] In Saskatchewan, a condominium developer is responsible for all expenses and liabilities relating to the common property and facilities for the period between titles to units being issued and the day before condominium fees are first levied on the owners of the units.<sup>42</sup> Once condominium fees have been levied, condominium corporations become responsible for expenses and liabilities relating to the common property and facilities of the condominium.<sup>43</sup> Condominium corporations are required to establish one or more reserve funds to pay for:

- (a) any unforeseen common expenses;
- (b) any major repair or replacement of common facilities, common property, services units or assets of the corporation, including roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators and laundry, recreational and parking facilities; and

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<sup>39</sup> *Ibid* s 10(4).

<sup>40</sup> Subsection 9(2) of Bill 155, *supra* note 11, is similar, and will provide tenants, prior to taking possession of the rental unit, a seven-day cooling-off period to give written notice of their intention to cancel the life lease after the life lease agreement or offer to lease has been signed. If, however, the required statement of cancellation rights was not included in the life lease or not given in the prescribed form, the seven-day period in s 9(2) will not start to run until the landlord gives the tenant the prescribed statement of cancellation rights (s 9(3)). The full entrance fee must subsequently be refunded to the tenant (s 9(6)). Alberta's Bill would have also included a rescission period, but it would have been shortened to three days (s 9(2)).

<sup>41</sup> CMHC Report, *supra* note 8 at 4.

<sup>42</sup> *The Condominium Property Act*, *supra* note 4, s 54(2).

<sup>43</sup> *Ibid* s 54(1).

- (c) any major repair or replacement of any units or portions of units designated in any bylaw passed pursuant to clauses 47(1)(f.1) and (i.1).<sup>44</sup>

[62] Condominium corporations must have reserve fund studies conducted and a written report prepared every five years.<sup>45</sup> The reserve fund study report must be made available to each owner at the next annual meeting of the condominium corporation.<sup>46</sup>

[63] In Manitoba, subsection 16(1) of *The Life Leases Act* requires non-profit landlords to maintain a reserve fund to pay for “any unforeseen major repairs to or replacement of assets of the complex, including, without limitation, roofs, exteriors, buildings, roads, sidewalks, sewers, heating, electrical or plumbing systems, elevators and laundry, recreational and parking facilities.” Reserve funds may also be used to cover any unforeseen cost of the residential complex or shortfall in the revenue of the complex, or as required by an order made under s 140.1 of *The Residential Tenancies Act* (application for rent review).<sup>47</sup> The landlord determines the amount of the reserve fund and there is no prescribed minimum amount. Ontario’s Bill 155 similarly proposed requiring a landlord to maintain a reserve fund to pay for unforeseen major repair and the replacement of assets of the facility such as roofs, exteriors, heating systems, and recreational facilities.<sup>48</sup>

[64] The *Consultation Report* asked whether life lease legislation should require operators to maintain a reserve fund to pay for certain repairs to the life lease housing development, and whether similar refund fund requirements as those found in condominium legislation should be included in life lease legislation. Most responses were in favour of life lease legislation imposing this requirement on life lease housing operators, and one response indicated that their life lease housing complex has a reserve fund in place. Another response noted:

*Based on experience, it is very hard for landlords of life lease complexes to get a subsequent loan for capital expenditures, since the trustee holds a mortgage for and on behalf of the tenants to secure the payment of their entrance fees. This problem will be resolved by requiring landlords to maintain a reserve fund dedicated for major repairs and other capital expenditures.*

*The reserve fund study should be conducted by an independent company and not by the landlord to make sure that the amounts that should be maintained in, and/or contributed to, the said fund are objectively determined by experts in valuating and maintaining residential complexes. The reserve fund study should also be updated every 5 years to*

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<sup>44</sup> *Ibid* ss 55(1)(b) and 55(3).

<sup>45</sup> *Ibid* s 51.2.

<sup>46</sup> *Ibid* s 51.5.

<sup>47</sup> *The Life Leases Act*, *supra* note 8, s 16(2).

<sup>48</sup> Ontario Bill 155, *supra* note 11, s 12(1).

*make sure that the amounts being maintained and contributed are adequate. Furthermore, it should be specified whether contributions to the reserve fund should be paid by the tenants or the landlord, or shared by both.*

[65] The Commission recommends life lease legislation require life lease operators to maintain a reserve fund to pay for major repairs and other capital expenditures. Similar reserve fund rules as those that are applicable to condominium corporations should apply to life lease operators.

## 5. Rent and Fee Increases

[66] The Advocacy Centre for the Elderly suggested that the rent control regime in residential tenancies legislation should apply to monthly fees paid by life lease holders.<sup>49</sup> The CMHC suggested that life lease legislation clarify whether provincial rent control legislation affects increases to monthly occupancy fees.<sup>50</sup>

[67] Part IV of *The Residential Tenancies Act*<sup>51</sup> governs rent increases in residential tenancies in Saskatchewan. Landlords under fixed term tenancies cannot increase the rent under the tenancy unless the amount and date of the increase were agreed to between the landlord and tenant when the tenancy was entered into.<sup>52</sup> Landlords under periodic tenancies must give the tenant written notice of a rent increase at least twelve months before the effective date of the increase, or, if the landlord is a member of a prescribed association of landlords, six months before the effective date of increase.<sup>53</sup> Rent cannot be increased until after the later of eighteen months from the beginning date of the tenancy or twelve months after the effective date of the previous rent increase.<sup>54</sup> If a landlord is a member of a prescribed association of landlords, these timelines are shortened to twelve and six months respectively.<sup>55</sup> If a landlord has increased rent contrary to these provisions, a hearing officer may award the tenant compensation that the officer considers just and equitable.<sup>56</sup>

[68] Manitoba's Act allows non-profit landlords to increase rent if the actual operating costs and contributions exceeded revenue for the previous fiscal year and if the life lease states that rent is the tenant's share of operating costs and contributions to reserve funds and to any refund fund.<sup>57</sup> In these circumstances, non-profit landlords are subject to sections 118, 119 and 140.1 of

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<sup>49</sup> ACE Submission, *supra* note 8 at 7.

<sup>50</sup> CMHC Report, *supra* note 2 at 4.

<sup>51</sup> *Supra* note 3.

<sup>52</sup> *Ibid* s 53.1(1).

<sup>53</sup> *Ibid* s 54(1).

<sup>54</sup> *Ibid* s 54(2)(a).

<sup>55</sup> *Ibid* s 54(2)(b).

<sup>56</sup> *Ibid* s 54(5).

<sup>57</sup> *The Life Leases Act*, *supra* note 8, s 37.1(1).

[69] Manitoba's residential tenancies legislation. Section 118 requires there to be twelve months between rent increases, subject to certain exceptions.<sup>58</sup> Section 119 requires authorized rent increases to be applied equally in each rental payment period. Section 140.1 of *The Residential Tenancies Act* is a provision specific to life leases in non-profit residential complexes. Subsection 140.1(1) allows tenants to apply to the director for a review of proposed rent increase. Landlords of life lease housing complexes other than non-profit landlords are subject to the entirety of the applicable rent regulation provisions in Manitoba's residential tenancies legislation.<sup>59</sup>

[70] The *Consultation Report* asked whether life lease legislation should include rules relating to rent increases, and whether Part IV of *The Residential Tenancies Act* should apply to proposed increases in monthly occupancy fees in life lease housing complexes. Responses were mixed, however most agreed that life lease legislation should require operators to provide a lengthy notice period prior to an increase in monthly occupation fees, in recognition of the fact that most life lease occupants are seniors who are often on a fixed income.

[71] Increases to occupancy fees depend on the terms of the life lease agreements, and the Commission is not making any recommendation on whether increases to occupancy fees should be limited to a certain amount. However, the Commission recognizes that occupants should have ample time to prepare for the increased amount. Therefore, the Commission recommends that life lease legislation should require a lengthy notice period, of not less than 3 months, prior to an increase in monthly occupation fees.

## 6. Tenant Representation on Boards and Participation in Decision Making

[72] The Advocacy Centre for the Elderly suggested life lease holders should be able to participate in decision-making relating to the operation of the life lease complex, by being represented on the board of the sponsor organization.<sup>60</sup> ACE also suggested the board of the sponsor organization be required to allow the residents to form a residents' council and to co-

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<sup>58</sup> Subsection 118(2) of *The Residential Tenancies Act*, CCSM c R119, sets out the following exceptions to the 12 months between rent increases requirement in s 118(1):

- (a) when a rent increase is otherwise permitted under section 126.1 (rent increase after termination of life lease), section 131 or 132 (landlord regains possession of a rental unit), section 132.1(landlord adds furniture), or section 137 (tenant requests improvement or service);
- (a.1) to the first rent increase for a rental unit after the director approves a rehabilitation scheme under section 134; or
- (b) so as to prevent an increase for separate charges for laundry facilities being made within 12 months of any other rent increase.

<sup>59</sup> *Ibid* s 116(4).

<sup>60</sup> ACE Submission, *supra* note 8 at 6.

operate with the council. The CMHC asked life lease residents and operators about the involvement of residents in the operation of the complex and reported:

*In the majority of the case study buildings, residents were not allowed a seat on the board. Where resident involvement in the Board is specifically prohibited, it is because sponsors feel that, since they own the property, they have responsibility for its financial wellbeing. A board of directors is chosen based on the skills the sponsor feels are required to effectively manage the development and maintain proper control over the asset (e.g. accountants, lawyers).*

*It is important to recognize that residents of life lease housing are, by definition, able to live independently. Most have lived long productive lives and have owned their own home. In the market value model, they view themselves as very similar to condominium owners. They have a significant portion of their family assets tied up in the investment in the life lease. They feel they have the competency to participate productively in the management of their housing. The lack of input most have into the annual maintenance budget and how it is spent is a source of significant frustration.... Residents would like input into the day-to-day management of the building – for example, response times for maintenance problems. These concerns were not only expressed by market value residents; they were commonly expressed in many of the focus groups, regardless of the form of life lease....*

*The desire for participation in management is not, however, a unanimous view. Some residents moved from condominium units and are happy to abdicate responsibility for management; they did not like the friction between neighbours that contentious issues in their previous housing raised. They see the lack of involvement in management as a positive aspect of life lease living.<sup>61</sup>*

[73] The CMHC recommended that sponsors should be required to create a minimum number of spaces for either voting or non-voting tenants on the board.<sup>62</sup>

[74] Manitoba's Act gives tenant representatives of a non-profit landlord a right to place matters on the agenda for board meetings and to attend and speak at board meetings.<sup>63</sup> Tenant representatives are not, however, given a right to vote.<sup>64</sup> Following board meetings, the landlord must give a copy of the minutes of the meeting to the tenant representatives, who may then give other tenants access to the minutes.<sup>65</sup> Ontario's Bill 155 similarly proposed allowing a tenant

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<sup>61</sup> CMHC Report, *supra* note 2 at 26.

<sup>62</sup> *Ibid* at 48.

<sup>63</sup> *The Life Leases Act*, *supra* note 8 s 18.1(3). Subsection 18.1(1) gives tenants of a non-profit landlord the right to select one or two tenants (or a greater number if provided for in their life leases or the landlord's by-laws) to represent tenants at meetings of the landlord's board of directors.

<sup>64</sup> *Ibid*.

<sup>65</sup> *Ibid* ss 18.1(5) – (6).

representative to place matters on the agenda for the board meeting, and to attend and speak at the meeting.<sup>66</sup>

[75] The *Consultation Report* asked whether life lease legislation should provide for tenant representation and attendance at board meetings, and further, also require tenant representation on the board. Responses were mixed, with several responders noting that the answer may change depending on whether the board is focussed solely on the operation of the life lease complex, or whether it is a governance board for the non-profit corporation for which operation of a life lease complex is one of many activities. One life lease operator noted:

*We have a tenant association for community and cultural life and “floor reps”, who are residents to advise on maintenance and other concerns. As noted in the consultation report, representation on the board was suggested as a means to increase “resident satisfaction”, however we feel the tenant association and floor rep positions do this. We are also not strictly a life lease facility, we offer a mix of life lease, rental and personal care, we have a low-income family housing project, and we are also a registered charity, so to have life lease residents on the board is also a conflict/problematic for those other areas, and hinders the board’s ability to discuss frankly and openly concerns regarding other operations.*

Another response made similar observations, stating:

*No. Life lease complexes, like any other businesses, is a going concern that is owned by the landlord. Life lease complexes are big investments made by the landlords, so the latter should be given autonomy in managing and running these complexes. The legislation may include provisions similar to Manitoba’s Act, which allows tenant representatives to place matters on the agenda for board meetings and to speak at the meeting, but the final decision should still come from the landlord. Tenants, however, should also be authorized to request for a copy of the meeting minutes, so that they are able to stay informed regarding the decisions of the board.*

[76] The Commission agrees that occupants should not have a role in governance of the organization operating the life lease complex, or in governance of the life lease complex itself, and thus is not recommending that life lease legislation should require tenant representation and attendance at board meetings or that tenants should have representation on the board of the organization who operates the life lease development.

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<sup>66</sup> Ontario Bill 155, *supra* note 11, s 15(2).

## 7. Reporting & Meeting Requirements

[77] In Manitoba, life lease landlords must hold an annual meeting of the tenants. At this meeting, the landlord must present the complex's financial statements, and tenants may make representations respecting the financial statements or the operation of the complex.<sup>67</sup> The landlord must provide the following information with the notice of the meeting:

- (a) if the landlord has established a refund fund under subsection 19(2), or any other fund for the purpose of refunding entrance fees, a statement setting out in respect of that fund,
  - (i) the amounts contributed to, and the amounts paid out of, the fund during the preceding fiscal year, showing separately the amounts paid out to tenants and the amounts paid out to the landlord,
  - (ii) the balance in the fund at the end of that year, and
  - (iii) the amounts, if any, owing to former tenants of the residential complex;
- (b) if the landlord is a non-profit landlord, a statement from the landlord setting out, in respect of any reserve fund maintained by it,
  - (i) the amounts contributed to, and the amounts paid out of, the reserve fund during the preceding fiscal year,
  - (ii) the balance in the reserve fund at the end of that year, and
  - (iii) an estimate of the amounts to be contributed to, and the amounts to be paid out of, the reserve fund during the current fiscal year;
- (c) if the rents charged by the landlord under the life leases are, for any tenant, a share of the costs of the residential complex as specified in the lease, including a contribution to any reserve fund or refund fund, for that tenant,
  - (i) a statement of the revenues and expenditures of the residential complex for the preceding fiscal year, and
  - (ii) a detailed budget for the current fiscal year;
- (d) any additional prescribed information.<sup>68</sup>

[78] Manitoba's Act also requires at least one owner representative to attend the annual meeting and report to the board or owners on any of the concerns or issues raised by tenants.<sup>69</sup> There is no requirement for the board or owners to act on any of the concerns or issues raised.

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<sup>67</sup> *The Life Leases Act*, *supra* note 8, s 18(1).

<sup>68</sup> *Ibid* s 18(3).

<sup>69</sup> *Ibid* s 18(5). An owner representative is:

- (a) one director of the board of the owner of a residential complex that is owned by a corporation; or
- (b) one authorized representative of owners holding a majority interest in a residential complex that is not owned by a corporation;

The Act also allows a majority of tenants to request a non-profit landlord to obtain audited financial statements for the preceding year. Once the request has been made, the landlord must obtain the audited financial statements as soon as practicable and continue to do so for each succeeding fiscal year. The landlord must provide a copy of the statements to a tenant on request.<sup>70</sup>

[79] Ontario's Bill 155 proposed requiring landlords to call a meeting of the tenants at least four times per year, with a minimum period of sixty days between meetings.<sup>71</sup> At least one of these meetings (which must be held during the first six months of each fiscal year) would have included a review of certain financial information of the complex, including the following: a statement setting out the revenues and expenses of the complex for the preceding fiscal year, a detailed budget for the current fiscal year, a statement setting out the balance of the reserve fund, and other prescribed information.<sup>72</sup> Bill 155 would have allowed a majority of tenants to request the landlord to obtain audited financial statements for the complex.<sup>73</sup>

[80] The *Consultation Report* asked whether life lease legislation should include requirements for meetings between tenants and the board, reporting requirements, and provide an ability for tenants to request audited financial statements. Most responders were of the view that there should be a requirement for meetings between the board and the tenants. For instance, one response stated:

*Yes, the legislation should include requirements for meetings. However, quarterly meetings may be too cumbersome for landlords, especially if tenant representatives are already allowed to place matters on the agenda for board meetings and have the right to be notified of the board's decision after the meetings, as provided in item 13 above. The legislation should include provisions similar to Manitoba's Act, wherein annual meetings between the landlord and the tenants are required. Having annual meetings is a good way to update the tenants about the financial standing and the operations of the complex and for the landlord to receive feedback from the tenants about those two items.*

[81] The Commission recommends that life lease legislation allow a tenant representative to place matters on one board meeting agenda per year and to be able to speak to the board at the designated meeting. Tenants should also be able to request board meetings minutes (redacted as needed to protect confidential information, such as personal information of employees or other individuals) and review engagement financial statements related to the life lease complex.

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<sup>70</sup> *The Life Leases Act*, *supra* note 8, s 18.2.

<sup>71</sup> Ontario Bill 155, *supra* note 11, s 14(1).

<sup>72</sup> *Ibid* ss 14(7) and (4).

<sup>73</sup> *Ibid* s 16(1).

## 8. Termination of the Life Lease

[82] Life lease agreements will typically contain the terms of the right to occupy and may provide circumstances in which the life lease agreement can be terminated. Life lease legislation could set out additional circumstances where termination of the agreement would be justified by either party.

[83] For instance, subsection 10(1) of Ontario's Bill 155 proposes allowing a tenant who has not been given possession of the rental unit within thirty days of the projected completion date to cancel his or her life lease prior to being given possession.<sup>74</sup> A tenant who cancels his or her life lease under this section is entitled to a full refund of the entrance fee.<sup>75</sup>

[84] Manitoba's Act contains a similar provision – tenants who have not been given vacant possession within thirty days after the projected completion date may cancel their life lease, prior to being given vacant possession.<sup>76</sup> The tenant is then entitled to a refund of the full entrance fee within sixty days.<sup>77</sup> Landlords may make a court application to extend the time for completion if the delay is unavoidable and not the fault of the landlord.<sup>78</sup>

[85] The *Consultation Report* asked whether life lease legislation should set out rules regarding termination of life lease agreements, and what those rules should be. Most responses noted that termination provisions are included in most life lease agreements. One response suggested that requiring three months of notice prior to termination by the resident can be a hardship for residents who are relocating to nursing homes, and depending on the urgency of the relocation, can result in an individual paying rent to the life lease complex after their departure in addition to paying rent to the nursing home. Another response suggested that life lease legislation should make life lease agreements terminable if the life lease operator fails to give possession of the unit to the prospective resident on the move in date.

[86] The Commission recommends life lease legislation require life lease agreements to include termination provisions for situations where a life lease unit is not completed or ready to be occupied by the projected completion date or the projected occupancy date, and to include termination provisions applicable when either a landlord or occupant seeks to terminate the life lease agreement.

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<sup>74</sup> *Ibid.* Subsection 10(3) allows tenants to give early notice of cancellation during the 30-day period after the projected completion date, but the cancellation is only effective at the end of the 30-day period and only if the landlord has not offered the tenant immediate possession.

<sup>75</sup> *Ibid* s 10(4).

<sup>76</sup> *The Life Leases Act, supra* note 8 s 13(1). Subsection 13(3) allows tenants to give early notice of cancellation during the 30-day period, but the cancellation is only effective at the end of the 30-day period and if the landlord has not offered immediate and vacant possession of the rental unit.

<sup>77</sup> *Ibid* s 13(4).

<sup>78</sup> *Ibid* s 13(6).

## 9. Assignment of the Life Lease

[87] Life lease agreements will typically contain provisions dealing with the sale or assignment of the life lease. Restrictions on transferring the life lease to individuals below a certain age are likely to be found in many life lease agreements, given that most life lease complexes are designed as communities for seniors. Depending on the model of the life lease complex, the agreement may require the life lease to be sold back to the sponsor. Alternatively, the agreement may provide the sponsor with a right of first refusal.

[88] Manitoba's Act allows tenants to assign their life lease unless the life lease agreement (i) prohibits assignment, and (ii) the life lease agreement provides that at least 95% of the entrance fee is refundable.<sup>79</sup> Unless the landlord, tenant and assignee amend the term of the lease for a fixed number of years or for the life of the assignee, the lease is deemed to be amended to provide for a term for the life of the assignee.<sup>80</sup> Assignees must be provided with prescribed information respecting the lease and the complex and a statement of the assignee's cancellation rights under section 12.<sup>81</sup> Section 12 gives assignees a seven-day cooling off period to cancel the assignment.<sup>82</sup> If the assignee cancels the assignment within this time period, the assignee is entitled to a refund of any amount paid in respect of the assignment.<sup>83</sup>

[89] The *Consultation Report* asked whether life lease legislation should contain rules regarding assignments of life leases and what those rules should be. Life lease operators noted that there are often waiting lists for units in life lease housing developments and expressed concerns related to allowing life lease holders to assign their life lease without the consent of the operator. For instance, one operator noted:

*...we have prescribed criteria for occupants and we also have waiting lists for occupancy that are years long. To permit a tenant to assign their life lease agreement to another could open the door to someone not fitting our required criteria and would circumvent our*

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<sup>79</sup> *Ibid* s 11(1).

<sup>80</sup> *Ibid* s 11(3).

<sup>81</sup> *Ibid* s 11(7).

<sup>82</sup> Subsection 12(1) of the Manitoba Regulations, *supra* note 38 provides that the 7-day period begins to run from the latest of the following dates:

- (a) the day that the assignor signs the assignment;
- (b) the day that the assignee signs the assignment;
- (c) the day that the landlord provides its written consent to the assignment;
- (d) if the statement of cancellation rights required by subsection 11(7) is not given to the assignee before he or she signs the assignment, or is not set out in the prescribed form, the day that the statement is actually given to the assignee.

<sup>83</sup> *Ibid* s 12(4).

*established lengthy waiting lists making long term applicants wait even longer, and we cannot allow that. We must strictly honour our waiting lists.*

[90] The Commission is not recommending that life lease legislation contain any specific rules regarding assignment, however in order to ensure purchasers are adequately informed, the Commission recommends that life lease legislation should require life lease agreements to contain provisions dealing with assignment of life leases so that the purchaser is aware of their ability to assign their life lease prior to entering into an agreement.

## **10. Change in Ownership of Development**

[91] Manitoba's Act provides that a person who acquires a landlord's interest in a residential complex or unit is deemed to be the landlord under each subsisting life lease, unless the person acquired the interest on a mortgage sale, a tax sale, or a foreclosure.<sup>84</sup> In those specific circumstances, unless the purchaser agrees otherwise, each subsisting life lease is terminated and the purchaser is not obligated to repay the entrance fee paid under a life lease. If the life lease is terminated under this provision, the tenant is given the right in subsection 15(3) to remain in occupancy under a deemed tenancy agreement as described in section 23 of Manitoba's residential tenancies legislation.<sup>85</sup>

[92] Alberta's Bill 208 included a similar type of provision but differed on the refund of the entrance fee. Alberta's provision stated: "Notwithstanding the termination of a life lease under this section, each tenant is entitled to a refund of the tenant's entrance fee..."<sup>86</sup> Ontario's Bill 155 does not contain a change of ownership provision akin to Manitoba's.

[93] The *Consultation Report* asked whether life lease legislation should define what happens to a life lease agreement upon a change of ownership and how entrance fees should be dealt with. The majority of responses agreed that new owners should be required to honour existing life leases and refund entrance fees to all tenants upon termination of the life lease. One response stated:

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<sup>84</sup> *The Life Leases Act*, *supra* note 8, ss 15(1) and (2)

<sup>85</sup> Section 23 of *The Residential Tenancies Act*, *supra* note 64 provides as follows:

When a tenancy agreement does not specify a date for it to end, the landlord and tenant are deemed to renew the tenancy agreement for successive rental payment periods, subject to a rent increase that complies with Part 9 and, if applicable, a tenant services charge increase that complies with Part 9.1, unless

- (a) the landlord and tenant have entered into a new tenancy agreement; or
- (b) the tenancy has been terminated in accordance with this Act.

<sup>86</sup> Alberta Bill 208, *supra* note 9, s 13(4).

*The new owner of a life lease complex should be required to honor subsisting life leases and to refund the entrance fees to all tenants in case of the termination of their life lease, irrespective of how the new owner acquired the life lease complex. Tenants should not be deprived of their right to the entrance fees just because the new owner acquired the complex through a mortgage sale, a tax sale or a foreclosure. Any prospective buyer of such complexes should do their due diligence and their failure to do so should not result to the loss of the tenants' right to refund their entrance fees.*

[94] The Commission recommends that life lease legislation require new owners to assume the obligations of the existing owner in respect of the life leases.

## **11. Insurance Requirements**

[95] Subsection 17(1) of Manitoba's Act requires landlords to maintain one or more insurance policies in accordance with the regulations. Landlords must give at least 30 days written notice of any cancellation, lapsing or reduction of the insurance to all tenants.<sup>87</sup> Ontario's Bill 155 proposed requiring landlords to maintain insurance policies in accordance with the regulations both during and after development of the complex.

[96] The *Consultation Report* asked whether landlords should be required to maintain insurance policies for life lease developments. Most responses suggested that operators should (and do) have insurance on the building and that residents should have their own contents and personal liability insurance.

[97] One response to the *Consultation Report* suggested that landlords should be required to maintain insurance policies with a loss payee clause in favour of the tenants up to the amount of their entrance fees to ensure the fees could be recovered in the event the complex is destroyed or rendered inhabitable. The Commission included this recommendation in its tentative recommendations and received several responses from life lease operators disagreeing with this tentative recommendation. One response suggested that this type of insurance would be difficult, if not impossible, to obtain.

[98] The Commission recommends that life lease legislation require life lease operators to maintain adequate replacement insurance. In addition, the Commission recommends life lease legislation require life lease agreements to describe the types of insurance to be held by both parties in order to ensure life lease purchasers are aware of the insurance obligations on both parties.

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<sup>87</sup> *The Life Leases Act*, *supra* note 8, s 17(2).

## 12. Dispute Resolution

[99] The Advocacy Centre for the Elderly has suggested that life lease housing legislation contain dispute resolution mechanisms for settling disputes between landlords and tenants. Alberta's Bill included a provision requiring a landlord to include a dispute resolution process in a life lease to address disputes that may arise between the landlord and a tenant or between tenants.

[100] Neither Manitoba's Act nor Ontario's Bill 155 contain a provision prescribing a specific dispute resolution mechanism for landlord and tenant disputes, or a provision requiring landlords to include a dispute resolution process in life lease agreements.

[101] However, in Manitoba, the director under *The Residential Tenancies Act* is empowered to make several types of decisions or orders in relation to *The Life Leases Act* pursuant to s 154(1) of *The Residential Tenancies Act*.<sup>88</sup> Subsection 154(1) provides that if the Director either determines a question arising under *The Life Leases Act* or concludes there has been a breach of a tenancy agreement or a contravention of a provision under *The Life Leases Act*, the Director may make one or more of the following decisions or orders:

1. Determining the rights and obligations of persons under the Act or a tenancy agreement.
2. Ordering the payment or repayment of money due to a person under the Act or a tenancy agreement.
3. Requiring a person who has contravened an obligation under the Act or breached a tenancy agreement to comply with or perform the obligation.
4. Requiring a person who has contravened an obligation under the Act or breached an obligation under a tenancy agreement not to do so again.
5. Requiring a person who has contravened an obligation under the Act or breached a tenancy agreement
  - a) to compensate another person affected for loss suffered or expense incurred as a result of the contravention or breach;
  - b) to pay to the other person reasonable costs, as determined in accordance with a regulation made by the minister; and
  - c) to pay interest to the other person, as determined in accordance with a regulation made by the minister, on the compensation.
6. Authorizing a person to remedy the effect of a contravention or breach and requiring the person in contravention or breach to pay the reasonable expenses associated with the remedy.

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<sup>88</sup> Pursuant to s 152(2) of *The Residential Tenancies Act*, *supra* note 64, the Director is entitled to initiate proceedings and "may, on his or her own initiative, investigate and determine a matter arising under...*The Life Leases Act*."

7. Authorizing any action that a person has taken or is to take to remedy the effect of a contravention or breach by another person, and requiring the person in contravention or breach to pay the reasonable expenses associated with the action.
8. When termination of a tenancy is authorized under Part 6, terminating the tenancy on a specified date.
  - 8.01 When termination of a tenancy is authorized under section 20 of *The Condominium Act*, terminating the tenancy on a specified date.
  - 8.1 When termination or cancellation of a life lease is authorized under Part 6, *The Life Leases Act* or a life lease, terminating or cancelling the life lease.
  - 8.2 Ordering the repayment to a tenant of all or any part of a pre-lease payment, as defined in *The Life Leases Act*, or entrance fee.
  - 8.3 Ordering the payment of compensation to a tenant in respect of the tenant's right to assign a life lease.
9. Granting an order of possession to a landlord on a specified date, if the tenancy agreement has been terminated in accordance with this Act, or if applicable, *The Condominium Act*.
  - 9.1 Requiring a person against whom the director has granted an order of possession to compensate the landlord for the landlord's reasonable costs incurred in obtaining a writ of possession under subsection 157(2) and enforcing it.
  - 9.2 Requiring a person against whom the director has granted an order of possession in respect of a rental unit that is a unit under *The Condominium Act*, or that owner of that unit, to compensate the condominium corporation for its reasonable costs incurred in obtaining and enforcing a writ of possession under subsection 157(2).
10. If the director is of the opinion that a landlord's contravention of the obligation to repair under subsection 59(1) or failure to comply with an order filed under subsection 59(3) is so substantial that occupancy of a rental unit is or would be unfair to a tenant, or endangers or would endanger the health and safety of a tenant, prohibiting the landlord from renting the rental unit until the contravention is remedied or the order is complied with.
11. If the director believes on reasonable grounds that a landlord has contravened or is likely to contravene subsection 32(1), (2) or (5) or subsection 33(1), ordering that any deposits held or to be received by the landlord respecting rental units specified in the order be paid to the director.
12. Making any order or decision for which provision is made in *The Life Leases Act*.

[102] In Saskatchewan, several types of disputes between residential tenants and landlords can be referred to the Office of Residential Tenancies.

[103] The *Consultation Report* asked whether life lease legislation should include a dispute resolution mechanism or require life lease agreements to include a dispute resolution process.

The *Consultation Report* also asked whether life lease disputes should be referable to the Office of Residential Tenancies. Responses to these questions were mixed.

[104] Instead of imposing a specific dispute resolution process for all life lease disputes, the Commission recommends life lease legislation require life lease agreements to contain a locally accessible independent dispute resolution mechanism.

### 13. Default of Sponsor/Landlord

[105] Manitoba's Act contemplates a situation where the sponsor or landlord is in default. If a former tenant's entrance fee has not been refunded within two years after the termination of a life lease (or any shorter period of time as set out in the lease agreement), the former tenant can request the trustee to demand payment by the landlord.<sup>89</sup> If the landlord fails to comply with the demand, the trustee must commence mortgage sale and foreclosure proceedings.<sup>90</sup> However, before commencing proceedings, the trustee must call a meeting and vote of the tenants. The trustee must apply to the court for an extension of time for the landlord to comply with the demand before commencing proceedings if a majority of the tenants vote in favour of seeking the extension.<sup>91</sup> Following the mortgage sale or foreclosure the trustee must distribute the balance of the refund fund pro rata to the persons who were the tenants of the complex at the time of sale or foreclosure in proportion to their entrance fees, unless the new landlord agrees to be bound by the obligations of the former landlord respecting the entrance fees.<sup>92</sup>

[106] The *Consultation Report* asked whether life lease legislation should contain a provision regarding a potential default of the sponsor. Most responses were in favour. A financial institution answered the consultation question affirmatively, however the response suggested that a mortgage in favour of the tenants, similar to that provided in Manitoba's Act, would not be an effective solution:

*First, it interferes with the landlord's ability to make financial arrangements intended for the major repair/improvement of the life lease complex. When a mortgage is registered in favor of the tenants and it cannot be postponed in favour of another mortgage unless it is for the initial development of the complex, no lender would approve the said subsequent mortgage. This sometimes makes the necessary major repair/improvement impossible to do, unless the landlord maintains a reserve fund for the project. Second,*

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<sup>89</sup> *The Life Leases Act*, supra note 8, s 31(1).

<sup>90</sup> *Ibid* s 31(2). Subsection 31(3) allows for a waiver or postponement of the proceedings. The subsection states:  
If every former tenant of a residential complex who has a right to ask the trustee to take action under subsection (1) has given written notice to the trustee after the termination of his or her lease, waiving, or consenting to an extension of the time for, the payment of the balance of the entrance fee owing to him or her, the trustee shall accordingly refrain from taking, or delay the taking of, any action under subsection (2).

<sup>91</sup> *Ibid* s 31(4).

<sup>92</sup> *Ibid* s 32.

*calling on the mortgage is a long and expensive process that does not assure payment to the tenant/s who requested it. Mortgages in favour of the tenants are almost always subservient to a first mortgage provided by a lender to finance the development of the life lease complex. Hence, even though tenants can call on the mortgage, there is still a possibility that they can receive nothing because the mortgagee of the first mortgage is prioritized when the proceeds of the foreclosure sale are distributed. Requiring the landlord to maintain an insurance policy to cover the entrance fees of the tenants would be more effective. This would not tie the hands of the landlord in case it needs funds for the major repair/improvement of the complex and the tenants are assured that they can get their entrance fees back as long as that policy is in place.*

[107] Any financial obligations of life lease owners/landlords to the tenants carry risk to the tenants unless there is some mechanism to help ensure that payment will occur. The Commission recommends that life lease legislation address the issue of default. Such mechanisms could include, for example, requirements that security such as letters of credit be posted, that trust accounts be maintained, or that insurance be held.

#### 14. Offences

[108] In Manitoba, landlords or people engaged in marketing or developing a complex who make false or misleading statements or omit material facts in statements to prospective tenants or in advertisements are guilty of an offence.<sup>93</sup> In addition, a person who contravenes any provision of the Act or the regulations is also guilty of an offence.<sup>94</sup> Directors, officers or agents of a corporation who authorize, acquiesce in or participate in an offence are also guilty of an offence.<sup>95</sup>

[109] Section 22 of Ontario's Bill 155 was similar to Manitoba's Act, also creating two types of offences.<sup>96</sup>

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<sup>93</sup> *Ibid* s 38(1). Pursuant to s 38(3), directors, officers or agents of a corporation who authorize, acquiesce in or participate in this offence are also guilty of the offence. For a first offence, an individual can be fined up to \$20,000 and/or be imprisoned for up to one year. If the individual reoffends, they can be fined up to \$30,000 and/or be imprisoned for up to three years. If a corporation commits the offence, it can be fined up to \$50,000 for a first offence, and up to \$60,000 for any subsequent offence.

<sup>94</sup> *Ibid* s 38(2). Pursuant to s 38(3), directors, officers or agents of a corporation who authorize, acquiesce in or participate in this offence are also guilty of the offence. For a first offence, an individual can be fined up to \$3,000 and/or be imprisoned for up to one year. For subsequent offences, individuals can be fined up to \$10,000, and/or be imprisoned for up to three years. A corporation can be fined up to \$10,000 for a first offence, and up to \$25,000 for subsequent offences.

<sup>95</sup> *Ibid* s 38(3).

<sup>96</sup> Subsection 22(1) would make it an offence for a landlord, or a person hired to market or develop a complex, to make a statement that is false or misleading either to a prospective tenant that may induce, or does induce, the

[110] The *Consultation Report* asked whether offences should be created in life lease legislation and what acts should constitute an offence. Responses were mixed.

[111] The Commission recommends life lease legislation contain offences for those provisions of the legislation aimed at consumer protection.

## 15. Types of Sponsors

[112] Most life lease housing sponsors are charitable and non-profit organizations such as seniors' organizations, church groups, service clubs, or ethnic associations.<sup>97</sup> The Advocacy Centre for the Elderly has suggested that life lease developments should be restricted to non-profit sponsors, stating:

*Not-for-profit organizations are accountable to their boards and to the local communities which they serve. Further, those not-for-profit organizations which are also charitable institutions may be eligible for certain charitable exemptions which would help them keep costs down and pass along these savings to life lease purchasers.*

*Most importantly, not-for-profit organizations are required to maintain their financial focus on the well-being and interests of the life lease holders who are the main stakeholders in life lease projects, both in terms of day-to-day living and in terms of the financial investment they have made in the project. There would be an inherent conflict of interest for a life lease sponsor/operator seeking to maximize shareholder profit while at the same time protecting the "investment" of the lease holders.<sup>98</sup>*

[113] Manitoba's Act does not restrict life lease housing sponsors to non-profit organizations. Ontario's Bill 155 also will not impose such a restriction.

[114] The *Consultation Report* asked whether life lease housing developers or operators should be required to be non-profit organizations, and if not, whether, and how, life lease legislation should distinguish non-profit operators and other types of operators. Most responders were of the view that life lease legislation should not require operators of life lease housing developments to be non-profits, so long as all types of operators are bound by the same requirements in life lease legislation.

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tenant to enter into a life lease, or in a life lease, offer to lease, advertisement, or information required to be disclosed to a tenant. Subsection 22(2) provides that any person who contravenes any provision of the Act or regulations is guilty of an offence.<sup>96</sup> Subsection 22(3) would extend liability to the directors, officers or agents of a corporation who authorize, acquiesce or participate in an offence.

<sup>97</sup> Government of Ontario, "Life Lease Housing Resource Guide: Questions and Answers for People Considering Life Lease", available online at <[www.mah.gov.on.ca/AssetFactory.aspx?did=10455](http://www.mah.gov.on.ca/AssetFactory.aspx?did=10455)>.

<sup>98</sup>ACE Submission, *supra* note 8 at 8.

[115] The Commission recommends life lease legislation should not require life lease developers or operators to be non-profit organizations and should not distinguish between different types of developers or operators.

## 16. Independent Legal Advice

[116] The Advocacy Centre for the Elderly has suggested that potential tenants be required to receive independent legal advice prior to entering into a life lease agreement, stating:

*Entering into a life lease agreement is a very important step in a senior's life. It may be her biggest purchase in decades, or even the biggest purchase of her life. There is likely to be a significant inequality of bargaining power between the prospective purchaser and the project sponsor/operator. Further, as previously noted, the life lease is not a concept many people understand. There is a need for greater education and awareness among all potential purchasers about the precise nature of the transaction and its attendant rights, risks and responsibilities.*

*As such, ACE recommends that legislation include a requirement for the purchaser to provide a certificate of independent legal advice before entering into a life lease agreement. Such a requirement will ensure that the purchaser understands the nature of the investment she is making, the nature and extent of the risks and benefits, and the character of the rights she will be acquiring. Any lawyer providing this independent legal advice will have to be aware of the legislative scheme before agreeing to advise a potential purchaser. The need for clarity in the legislation will therefore be paramount to protecting the rights and interests of all parties.<sup>99</sup>*

[117] The CMHC concluded that seniors should be “strongly encouraged” to seek professional advice prior to purchasing a life lease.<sup>100</sup>

[118] Neither Manitoba’s Act nor Ontario’s Bill 155 require potential tenants to receive independent legal advice prior to entering into a life lease agreement.

[119] The *Consultation Report* asked whether potential tenants should be required to receive independent legal advice prior to entering into a life lease agreement, and whether life lease developers should be required to encourage prospective tenants to seek professional advice prior to purchasing a life lease. While all responders agreed that seeking professional advice is generally wise, most did not agree that this should not be required under life lease legislation. For instance, once response stated:

*Different individuals have different levels of experience, understanding, and knowledge of the housing/leasing industry. Those who are savvy enough to enter into a life lease*

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<sup>99</sup> *Ibid.*

<sup>100</sup> CMHC Report, *supra* note 2 at 50.

*agreement on their own should not be subjected to the additional and unnecessary expense of getting an independent legal advice. A life lease, however, is considered as one of the biggest purchases one can make in his/her life, so prospective tenants should be encouraged to seek advice from professionals, such as the tenants' lawyer, accountant, and/or financial advisor, prior to purchasing a life lease.*

[120] The Commission agrees and is not recommending that life lease legislation include any requirements for purchasers to seek professional advice, or for developers to encourage prospective tenants to seek professional advice prior to purchasing a life lease.

## **V. Recommendations**

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[121] The Commission recommends Saskatchewan adopt life lease legislation implementing the following recommendations:

1. Life lease legislation should prohibit landlords/owners from receiving pre-lease payments on or after the occupancy date, and the maximum allowable amount of a pre-lease payment should be prescribed by regulation.
2. Life lease legislation should require pre-lease payments for new developments to be held in trust by a trustee, and then credited towards the entrance fee once a lease agreement is executed.
3. Life lease legislation should require life lease agreements to provide prospective tenants the option to either receive an immediate refund or negotiate an extension to the completion date in the life lease agreement within 60 days of the promised date of completion if the complex is not completed on the promised date.
4. Life lease legislation should require entrance fees to be refunded within 5 business days upon cancellation of the offer to lease during the rescission (or cooling-off) period and within 30 days following termination of the life lease agreement.
5. Life lease legislation should provide that entrance fees can only be used to: (i) pay for the development or operation of the complex, (ii) refund entrance fees, (iii) or to fund the refund fund.

6. Life lease legislation should require life lease developers to disclose prescribed information (similar to that required to be disclosed in Manitoba) to prospective tenants prior to entering into a lease agreement and prior to collecting a deposit or pre-lease payment. If the disclosure requirements are not met, tenants should be entitled to rescind the life lease agreement without penalty with a full refund of any deposit or pre-lease payment.
7. Life lease legislation should provide for a pre-possession rescission, or “cooling-off” period of not less than seven days after signing a life lease agreement. The prospective tenant should be entitled to a full refund of any payments made if they withdraw from the agreement during this period.
8. Life lease legislation should require life lease operators to maintain a reserve fund to pay for major repairs and other capital expenditures. Similar reserve fund rules as those that are applicable to condominium corporations should apply to life lease operators.
9. Life lease legislation should require a lengthy notice period, of not less than 3 months, prior to an increase in monthly occupation fees.
10. Life lease legislation should allow a tenant representative to place matters on one board meeting agenda per year and to be able to speak to the board at the designated meeting. Tenants should also be able to request redacted board meetings minutes and financial statements related to the life lease complex.
11. Life lease legislation should require life lease agreements to include termination provisions for situations where a life lease unit is not completed by the projected completion date or the projected occupancy date, and to include termination provisions applicable when either a landlord or occupant seeks to terminate the life lease agreement.
12. Life lease legislation should require life lease agreements to contain provisions dealing with assignment of life leases so that the purchaser is aware of their ability to assign their life lease prior to entering into an agreement.
13. Life lease legislation should require new owners to assume the obligations of the existing owner in respect of the life leases.

14. Life lease legislation should require life lease operators to maintain adequate replacement insurance. In addition, life lease legislation should require life lease agreements to describe the types of insurance to be held by both parties in order to ensure life lease purchasers are aware of the insurance obligations on both parties.
  
15. Life lease legislation should require life lease agreements to contain a local and independent dispute resolution mechanism.
  
16. The Commission recommends that life lease legislation address the issue of default. Such mechanisms could include, for example, requirements that security such as letters of credit be posted, that trust accounts be maintained, or that insurance be held.
  
17. Life lease legislation should contain offences for those provisions of the legislation tied to consumer protection.