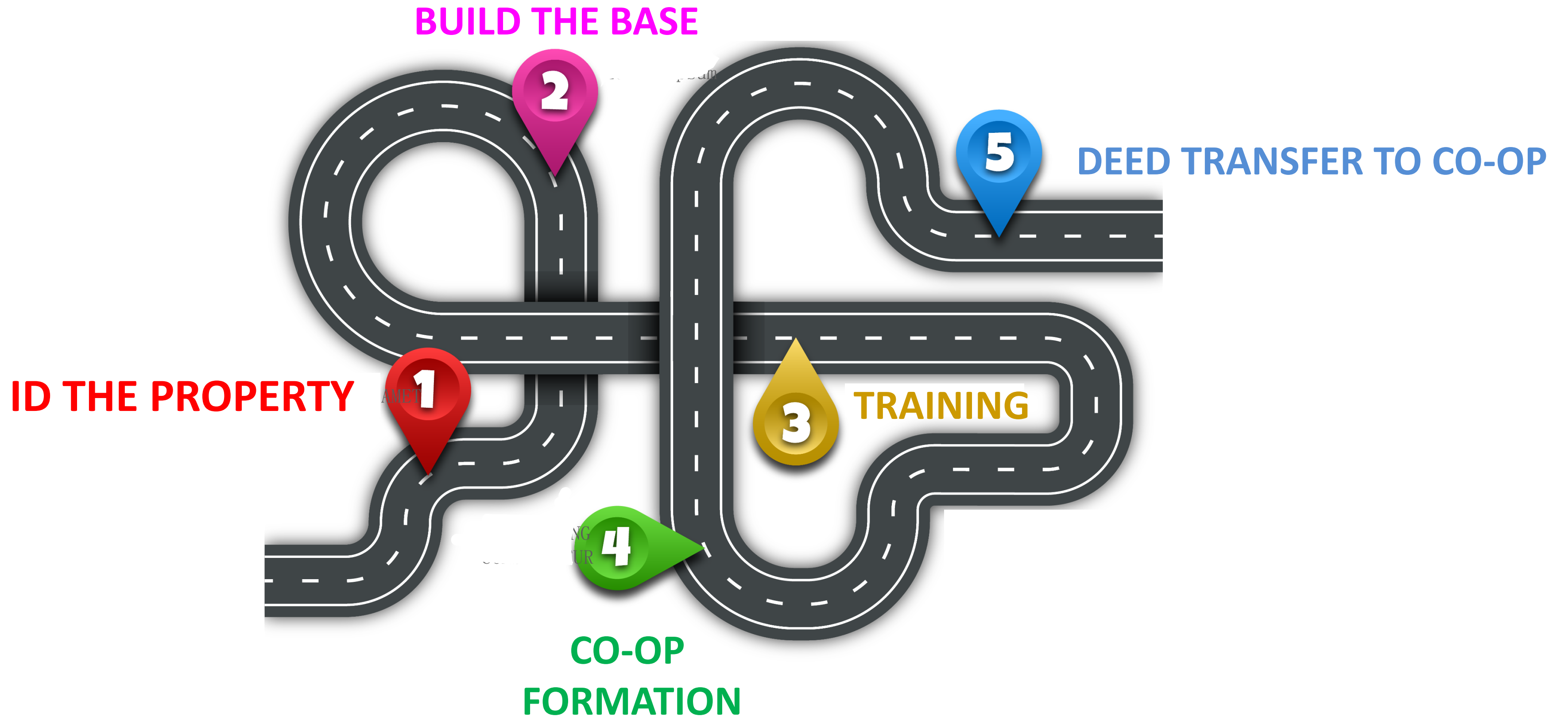


**uhab**

# **Incubator**

Co-op Creation and Affordability  
Considerations

# Cooperative Formation



# CO-OP Creation Considerations



## 1. | Build The Base

- Organize the tenants and the community.
- Build a tenant association and train on democratic governance and co-op structure

## 3. | During Construction or Rehab

- Draft and refine the co-op governing documents
- Form the co-op corporation with either a temporary NFP board or residents.

## 2. | Consider NFP Interim Owner

- Know the roles of all of the related parties working on and with the co-op really well. Will be tempted to combine responsibilities but this is not always possible.
- Involve the TA as Sponsor and/or part of the renovation or construction process.

## 4. | Deed Transfer

- This is when the co-op becomes the owner.
- Lenders will need the co-op to assume the debt.
- Document the details of the transaction.

# CO-OP AFFORDABILITY MECHANISMS



## The Fundamental Preservation Tools

### 1. Co-op Governing Documents

- Certificate of Incorporation
- Deed
- Ground Lease
- Stock
- By-Laws
- Proprietary Lease

### 3. State Laws

- Formation of co-op
- For subsidy
- Corporate governance

### 2. Regulatory Agreements

- Regulatory Agreement
- Ground Lease
- Declaration of Covenants

### 4. Stewardship

- For technical support
- To ensure compliance
- Assist with financial stability

**1.**

**CO-OP GOVERNING  
DOCUMENTS**

# Affordability can, and should, be memorialized and made public through several different documents.

Important for long term preservation and for full disclosure to the public.

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## External to the World

- Documents that are recorded and/or filed with the State where the property is located.
- Serve to make restrictions long term or permanent

## Internal to the Cooperative

- Govern the operations of the cooperative
- Codify regulatory requirements

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All stakeholders (lenders, funders, governing agencies, future cooperators etc.)  
will want to see restrictive language

**uhab National**

External to the World

# Certificate or Articles of Incorporation

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Primary document that creates the corporation formed pursuant to Illinois law(s).

- In NY we use a combination of laws that entitle the co-op to receive subsidies while also allowing a small amount of profit to the shareholders.
- Include a strong statement of purpose. “...to create and preserve affordable housing at or below ... AMI” (or some other index easy to calculate).





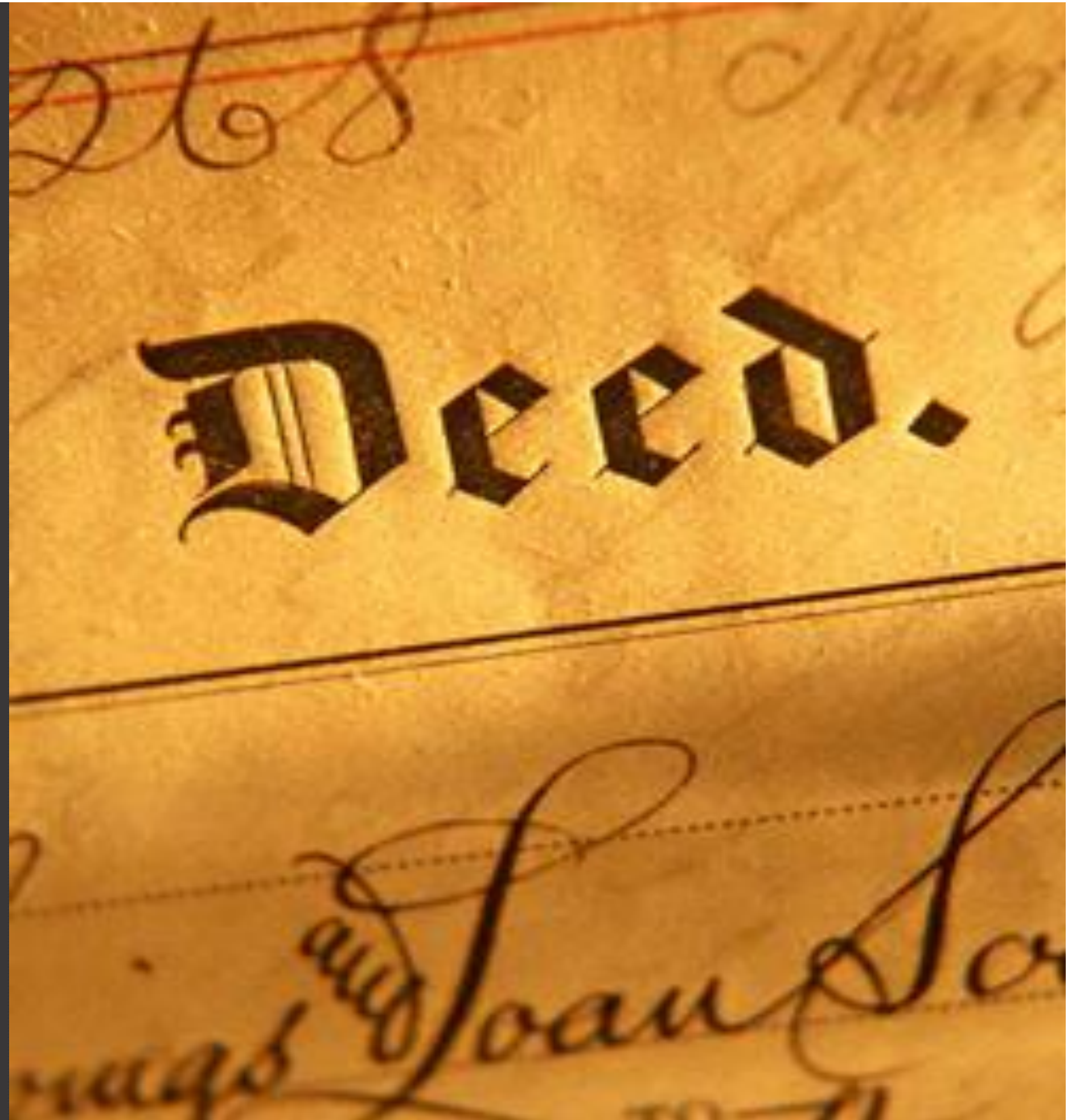
# DEED

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Public Record of Ownership of the land.

Deeds contain restrictions that attach to the use of the land and therefore the co-ops on the land. Difficult to change.

Can contain clauses that allow ownership to revert back to the municipality if restrictions are violated.





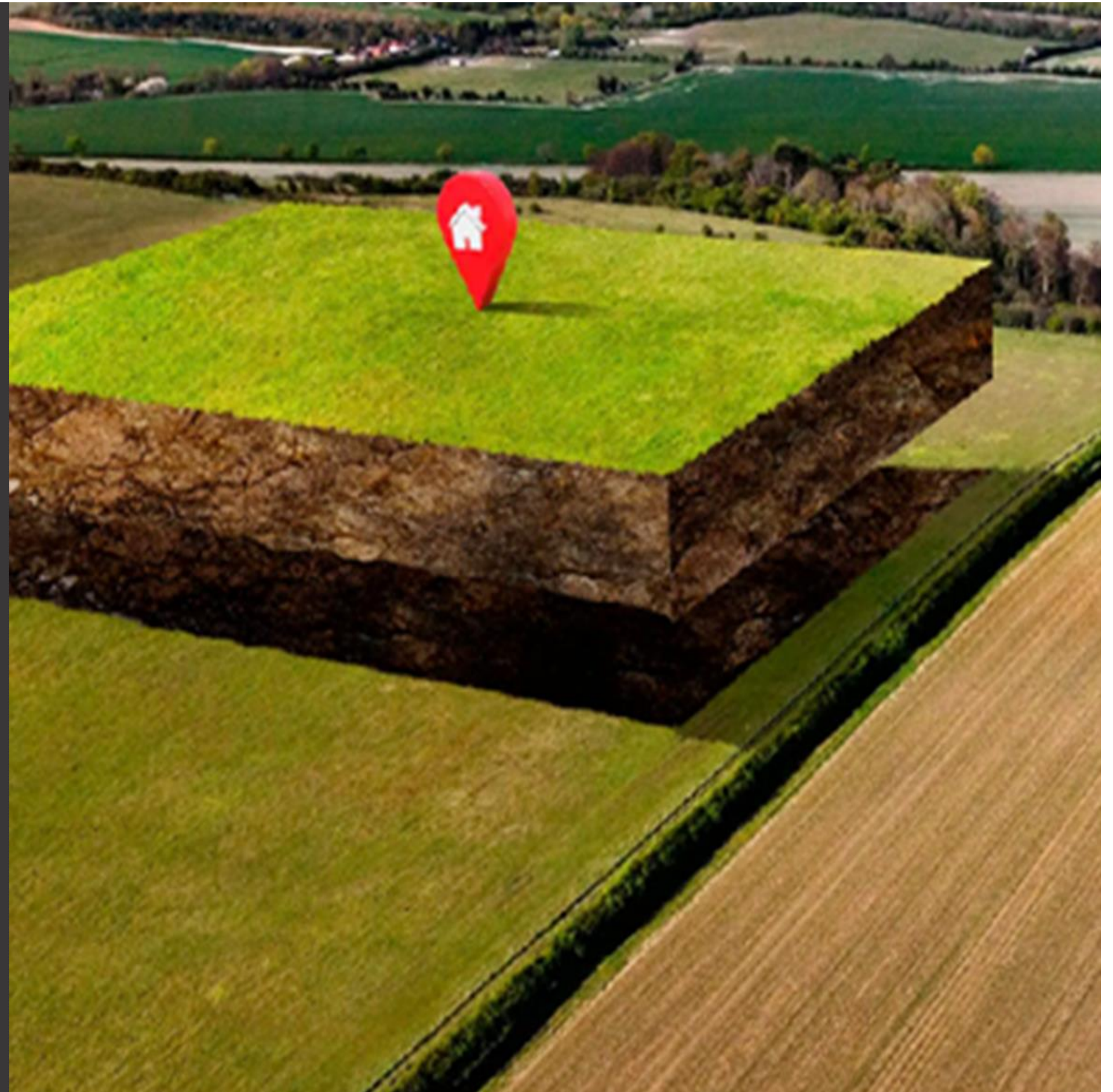
# CLT Ground Leases & Declaration of Covenants

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Ground Leases are offered by the CLT deed holder allowing the cooperative to occupy the land under certain restrictions.

- Allows for longer term affordability and greater permanence.
- Can be used instead of, or together with, other regulatory documents.
- Memo of Ground Lease is a shorter document and usually what gets recorded.
- There are slight differences between multi and single family homes and/or manufactured home parks.
- Declaration of Covenants gets into the detail of the restrictions.

Like deed restrictions can last in perpetuity.





# **Internal to the Cooperative**

# Stock Certificate Or Membership Contract

Evidence of Ownership endowing the holder with voting rights in the co-op. It can be sold, bequeathed and pledged.

Lists the owner, number of shares, the co-op name and apartment or house number.

Include reference to any regulatory document, supervising agency and relevant restrictions.

Best to have 1 vote per apartment regardless of unit size.





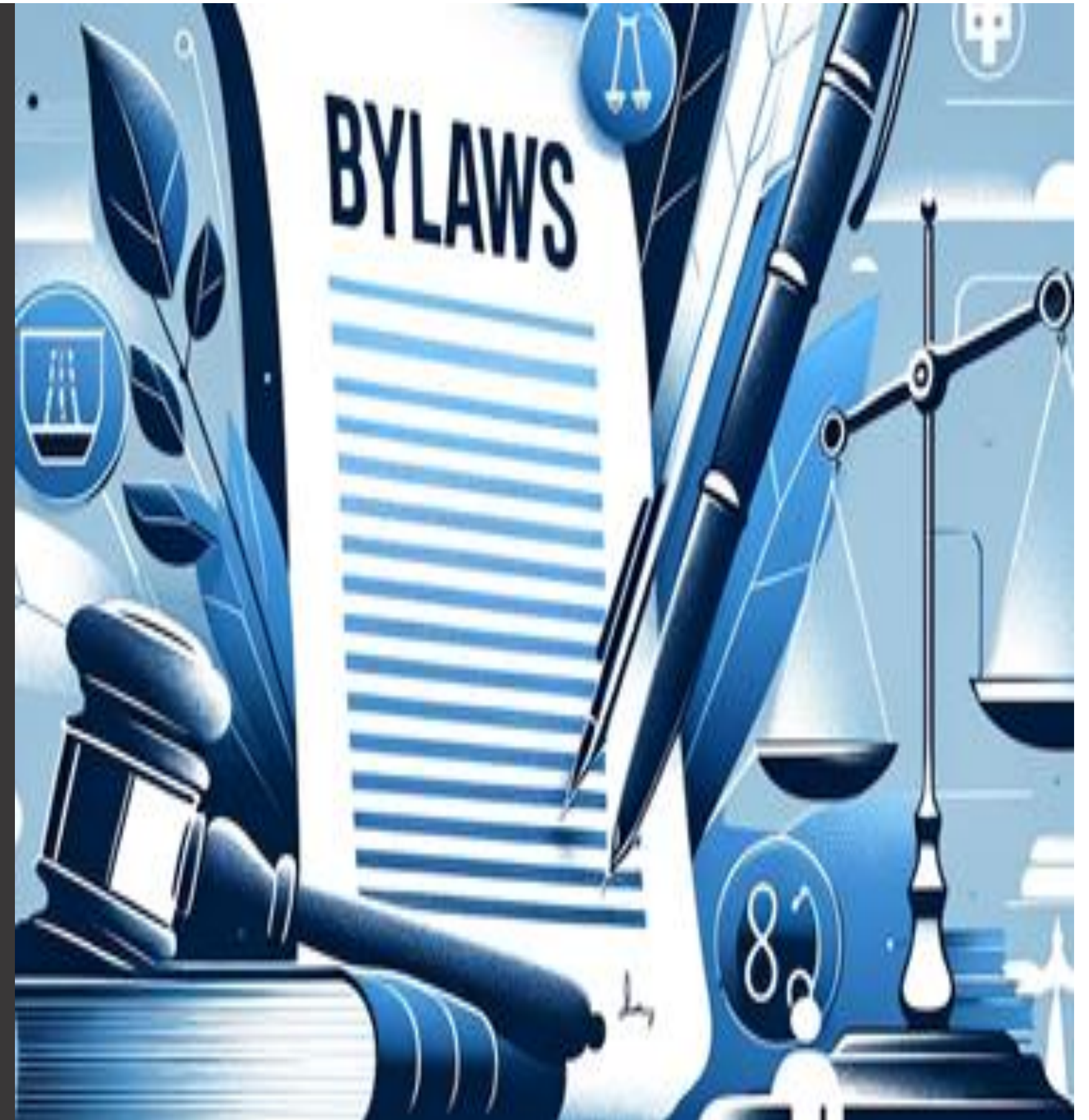
# By-Laws Or Operating Agreements

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Rules of operating and legal fiduciary duties of the governing board to the shareholders and the corporation. Ensures democratic control.

Include restrictions on:

- resales, subletting and any other regulatory requirements.
- Outline transfer rights and process



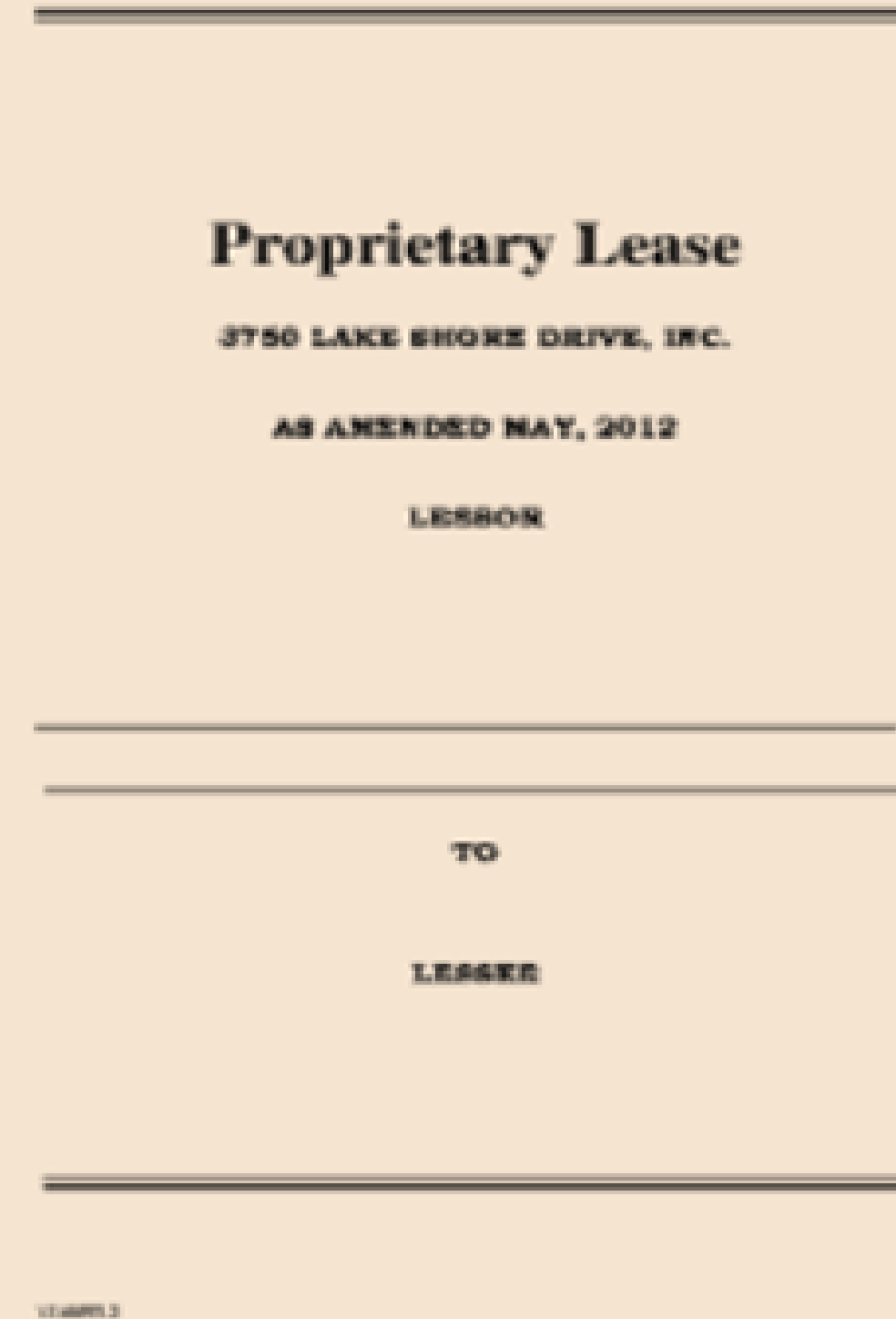
# Proprietary Lease Or Occupancy Agreement

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Agreement between each homeowner and the cooperative. Sets forth the rules of occupancy.

Include provisions on:

- The rights and responsibilities of shareholders
- Use and Occupancy Restrictions
- Voting rights
- Should be inseparable from the Stock or membership contract.



# 2. Regulatory Agreements



UHAB advocates the use of recorded regulatory agreements which set forth the affordability restrictions while allowing for maximum autonomy.

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1. A tool for preservation and guidelines for all stakeholders. Including: shareholders, management, monitor/steward, CLTs and regulatory agencies alike
2. A tool for shorter/Long term (40 years) stewardship and relationships.
3. Need to pay close attention that the desire to limit access to eligible purchasers does not encroach too much on shareholder autonomy.





# The Regulatory Agreement should include the following with reasonable flexibility:

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- Resale, profit and owner occupancy rules.
- Marketing and fair-housing guidelines.
- Ongoing training requirements.
- Instructions for continued preservation/stewardship
- Affordability requirements and guidelines
  - Limited Equity - Resale prices are sized to remain affordable to the median income of the area
  - Limited Income – Guidelines set by agencies limit eligibility to the intended population.

The agreement term should be at least as long as the longest loan term (30 years)

The co-op governing documents need to be subject to the regulatory agreement.



# 3. State Laws



# The legal formation of the individual cooperative is a creature of State Law.

Laws govern such things as:

1. The type of corporation the cooperative can act as
2. Governance practices of the cooperative corporation
3. Land use
4. Taxes, exceptions and available subsidies
5. Real estate transactions
6. Public offerings of interest in real estate
7. Securities transactions and anti-fraud oversight
8. Co-op specific laws



# 4. Stewardship



# Cooperative Steward Or Monitor

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- With or without a Regulatory Agreement or Community Land Trust an independent consultant (whether voluntary or required) assists with:
  - Ensuring a healthy board through
    - Monitoring regular meetings and elections
    - Advice on board best practices
    - Training Encouragement
  - Financial stability
    - Annual budgeting and audits
    - Capital Planning
  - Compliance
    - Assist with manager
    - Assist with agency reporting



# Legal Steps to Cooperative Conversion

## Pre-development and Development Stages

1. Negotiate regulatory framework.
2. Acquisition closing.
3. Construction Loan Closing and layering the capital stack.
4. Negotiate MOU or joint ventures with partners.
5. Construction contract negotiation
6. Provide draft tenant association governing documents
7. Track tenant involvement
8. Check-in on continued expressions of interest from future shareholders
9. Collect final underwriting
10. Finalize regulatory requirements
11. Create the cooperative corporation
12. Prepare co-op governing documents
13. Prepare the cooperative ownership disclosure package
14. Obtain approval from supervising agencies and lenders.

## Pre-sales, Sales and Transfer of Power

1. Present to offering package to the existing residents
2. Potential buyers sign subscription agreements expressing their interest in buying.
3. Collect down-payments
4. Notify the supervising agencies if the plan is moving forward
5. Market to the rest of the public
6. Qualify the project with institutional lenders for purchase loans
7. Pre-close with existing residents and new buyers whenever possible
8. Finalize the permanent financing
9. Close on the permanent loan and transfer the deed to the cooperative
10. Sign all stock and leases at closing.
11. Continue to sell any unsold shares
12. Conduct first shareholder election
13. New Board adopts by-laws
14. Sponsor board resigns.

# THANK YOU

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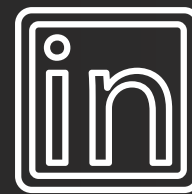
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