LEGAL STRUCTURES FOR Intentional Communities in the United States

By Diana Leafe Christian, Dave Henson, Allen Butcher, and Albert Bates

Every forming community makes crucial decisions about whether and how it may comply with various local, state, and federal laws and regulations, and which legal entity, or several entities, it will use to co-own land, run educational programs, and/or manage any community-owned businesses—all of which affects the group's relation to the wider public. This article, excerpted from the new 7th edition of the Communities Directory*, explores this issue. It was substantially revised and updated by Diana Leafe Christian from previous versions of this Directory article, and shortened slightly for this issue of* Communities.

"Thank you very much, but your advice really doesn't apply to us," wrote a community I'll call Buckeye Farm to their lawyer. He had just reviewed their proposed legal plan for co-owning their 98 acres of farmland and their new-member joining document.

The lawyer cautioned against their proposed plan, saying it wasn't legally sound and could be considered fraudulent if anyone took them to court. But the community considered this advice irrelevant because, for them, Buckeye's spiritual and ecological intentions, values, and mission morally superseded any laws of mainstream culture. They executed their legal-financial plan.

A decade later an incoming member's questions triggered a second look at these issues, and they hired another lawyer. He concluded members were seriously vulnerable legally and financially, and to protect their community from potential disaster they should change their legal arrangements significantly. They learned, for example, that with their current legal arrangement, if a member were sued for any reason, lost the suit, and couldn't pay damages or legal costs, the court could compel the sale of the person's assets. And because they all owned all of the property, this could include the forced sale of all or part of the property to pay the money owed. Their financial-legal structure also made them subject to local subdivision regulations—which, if enforced, would require two to three million dollars of road-paving costs, which they couldn't possibly afford. Lastly, and even worse, their financial document for new members promised rights in the land that, it turns out, were not true, and so if taken to court, the document would most likely be declared as fraudulent. Once they absorbed this news—with members in various states of shock, incredulity, confusion—they stopped accepting new members until they could decide what to do. That was their first problem.

Their second problem was the fierce conflict and years of heartbreak arising when various community members couldn't agree on what to do, and some of their older, more countercultural members still didn't believe there was actually a problem. A new lawyer advised that all three problems could be resolved by re-apportioning land ownership among various smaller groups of members and creating several new legal entities to do this. But six years later things still weren't resolved. No members had been sued, the group hadn't been cited by local authorities for subdivision violation, and they hadn't been taken to court for fraud, yet they were still vulnerable to any of these potentially occurring at any time. While members had agreed on some aspects of implementing the lawyer's recommended legal changes, with no new members for six years—and some departing in frustration—Buckeye had no new capital and far less annual income from remaining members with which to pay mounting legal expenses.

The Seven Steps Every Community Needs to Follow

Buckeye could have avoided its legal-financial vulnerabilities and years of conflict if they'd taken seven simple steps at the beginning. For example, what if the founders and early members had done what newly forming communities *need* to do—and what your community should do:

(1) Clearly understand the community is embedded within and subject to local, state, and federal laws and regulations.

(2) Know what these laws and regulations are, how they will affect your community over time, and what the risks may be if you don't comply with them. These include federal tax requirements; federal laws regarding illegal substance use, firearms, and other issues; federal and state laws regarding the rights and responsibilities of your chosen legal entities; annual legal-entity reporting

requirements with the state, and state health department and environmental quality regulations; county subdivision regulations, zoning regulations, building codes, and property tax requirements.

(3) Orient all members, especially new ones, to these laws and regulations.

(4) Make a well-informed, conscious decision to either comply or not comply with the laws and regulations, or comply with some but not others.

(5) If you decide not to comply with some laws, you are willing to take the risks. You *fully inform all potential members of these risks*. New people get full disclosure.

(6) Orient all members, especially new ones, to the legal entity(ies) your community uses and the benefits, responsibilities, and challenges of these entities.

(7) Orient people especially to liability issues, so everyone understands the degree of liability protection the community does and does not offer its members.

Fortunately, many community founders do understand the need to understand the law and design their projects to be legally sustainable. See, for example, the combined multiple legal entities of Occidental Arts and Ecology Center (OAEC), Los Angeles Eco-Village, Mariposa Grove, and EcoVillage at Ithaca, below.

What's a "Legal Entity"?

A legal entity is a recognized set of rights, protections, and requirements created and regulated by each state for activities such as owning property, conducting a for-profit business or providing a nonprofit service, or investing money in stocks and securities. A legal entity confers the same rights that an individual person has and can function as an individual person functions. A legal entity is able to buy and sell assets—for example, it can buy your community's property—and enter into business contracts, such as hiring contractors and other building professionals, Permaculture designers, workshop trainers for your community, and so on.

In the US, legal entities have been created for businesses and nonprofit organizations, for securities and stock ventures, and for co-owning real estate. Most intentional communities use business and nonprofit legal entities even though none of these exactly fits how most intentional communities function. The five most commonly used legal entities used by intentional communities in the US are homeowners associations, condominium associations, housing cooperatives (which can be used for land as well as buildings and housing), limited liability companies (LLCs), and 501(c)3 nonprofits. Three others used occasionally (and examined more fully in the longer version of this article in the *Communities Directory*) are non-exempt nonprofits, 501(c)2 title-holding nonprofits, and, for income-sharing communities, 501(d) nonprofits.

Two real estate legal entities, Joint Tenancy and Tenants in Common, can be used to own shared property, but they have serious limitations and are not ideal for communities. (See "The Disadvantages of Joint Tenancy and Tenants in Common," p. 55.)

How a Legal Entity Benefits Your Community

(1) Limited liability protection. In addition to allowing your community to function like a person re buying and selling assets and entering into contracts, a legal entity also confers limited liability protection for community members. That is, community members (and any board members, officers, employees, or shareholders, if applicable) are not held *personally* responsible for any criminal wrongdoing or debts incurred by the community. No one's personal bank accounts or other assets are vulnerable to court-ordered fines. (It's called "limited" liability because in some cases when a court can show that a specific board member, officer, or employee knowingly caused their organization to break the law or take out a loan knowing there was no possibility of repayment, that person *is* held personally responsible—that is, liable. The person can be subject to criminal charges or court-ordered fines or punishment.

(2) Buying your community's property is easier. Having a legal entity will make the process of buying land easier. A seller, bank, or other lending institution will take a legal entity with tens of thousands in the bank and a brief credit history more seriously than it would take a collection of individuals trying to buy property together.

(3) Higher credibility. In doing business with others—buying liability insurance, pay-

Members of Rocky Corner Cohousing in Bethany, Connecticut set up an irrigation system during a work party on their 33 acres.

ing property taxes, getting a loan, hiring people for various services, and entering into business contracts with building contractors and other professionals—having a legal entity offers more credibility than if you were just a collection of individuals with no recognized business or nonprofit entity.

(4) Your community's intentions, values, mission, and major agreements are backed by law. Any agreements the group states in the documents of its legal entity (such as bylaws, articles of incorporation, an LLC's operating agreements, etc.), will be compatible with federal and state law, and thus legally enforceable. If a member violates one of these agreements and if the issue goes to court, your community will have the force of law behind it to induce the errant member to comply.

The same is true if your community is sued or cited for violating a law by a government authority. If a court has to consider your community's intentions, mission, and shared values in light of the lawsuit's claims or the government authorities' claims, having them written clearly in your legal documents will have far more credibility with a court or judge than if the only way you convey them is by your members testifying simply verbally.

(5) Land ownership is easier. Some legal entities are more compatible than others for the various ways you can own property together, such as: (a) everyone owns the property in common; (b) each household owns its own individual plot; or (c) each household owns its own individual plot and everyone owns the rest. Whichever entity you use, it allows your group to co-own property in a more secure and sustainable way than if just one member owned it, or if multiple members' names were on the deed, which unfortunately requires officially revising and re-registering the deed when anyone joins or leaves.

(6) Reduced taxes. If you use any legal entity other than a 501(c)3 nonprofit, the federal and state governments will tax your community's income (and the county will require property taxes). Thus you can choose a legal entity that saves the most taxes relative to your community's particular circumstances.

For-Profit and Nonprofit Corporations

The word "corporation" is a term for a legal entity which, as noted, confers some of the same rights and functions on an organization as an individual person has. More importantly, a legal entity offers limited liability protection for community members as well as for board members, officers, and employees and/or shareholders, if you have them. (When a community uses a corporation legal entity either all community members function as board members or they annually elect people to serve on the board. In either case, everyone has limited liability protection.)

Before limited liability companies (LLCs) were available, some intentional communities used the for-profit Subchapter S corporation to own shared property, because it was specifically designed for small companies without shareholders. But nowadays most intentional communities use LLCs instead, because they offer much better benefits and none of the disadvantages of a Subchapter S corporation. (LLCs are not corporations, but offer the same advantages; please see below.)

Communities also use nonprofit corporations. These are designed for organizations that intend to benefit people but not earn a profit for owners or shareholders, and they offer exactly the same liability protection. Like for-profit corporations, nonprofits can earn income by selling products or offering services (as long as that income and how it's earned is connected to its purpose) and can hire employees.

Nonprofits offer various kinds of tax-exempt corporations. The 501(c)3 nonprofit, created for educational, charitable, scientific, literary, or religious reasons, can receive tax-deductible donations, as noted above, and is used by many communities. Other nonprofit corporations include 501(c)2 title-holding nonprofits and 501(d) religious and apostolic corporations (used by most income-sharing communities).

Homeowners associations and condominium associations use nonprofit legal entities.

Housing co-ops are nonprofits (though in some states housing co-ops have their own legal entity). Private land trusts and community land trusts which are created using nonprofit legal entities are not themselves specific nonprofit entities.

Corporations are created by registering with the state—filing a list of corporate officers and

Rocky Corner Cohousing members celebrate Winter Solstice on their land.

articles of incorporation, and receiving state approval. Nonprofit corporations are also created by registering with the state; after receiving state approval the organization may apply with the IRS for a specific federal tax exemption like those noted above.

Let's look at five of the most common kinds of legal entities used by intentional communities.

Limited Liability Companies (LLCs)

Limited liability companies (LLCs), which were created for small businesses, are not corporations but have many of the same advantages, including limited liability protection. They are created by filing an "operating agreement" with the state, and participants are called "members." A group qualifies to use an LLC if it intends to continue through time, has centralized management, and ownership in the LLC can be transferred easily. The LLC law in most states makes it pretty easy to comply with these qualifications.

An LLC's operating agreement can allocate different decision-making rights to different kinds of members (for example, if there are outside investors, community members can decide most day-to-day decisions but only investors can make decisions about expenditures over a certain dollar amount). In addition to individuals, members of an LLC can also be other legal entities, including partnerships, corporations, other LLCs, and/or trusts. Unlike a corporation, LLCs are not required to keep minutes, hold meetings, or make resolutions.

A legal entity offers limited liability protection for community members, board members, officers, and employees and/or shareholders.

LLCs must distribute their earnings the same year the earnings are made. An LLC's income taxes are not paid by the LLC itself, but passed through to each member to pay in their individual income taxes (called "pass through" taxation).

Benefits: Limited liability protection; ease of setting up, using, and changing; banks and lending institutions are familiar with LLCs.

Challenges: None that we know of.

Examples: Sowing Circle Community in California, known as Occidental Arts and Ecology Center (OAEC), uses an LLC to own their land. Many forming cohousing communities start off owning their land and bank accounts with an LLC, and then switch to a homeowners association or condominium association after construction is finished.

Homeowners Associations and Condominium Associations

These are property ownership arrangements which allow people to own their own individual housing unit (or lot, house, or apartment) and, through the association, share ownership in the rest of the property.

A homeowners association (HOA) owns the common elements of the property—roads and footpaths, bridges, community buildings, common green areas (lawns, gardens, fields, woods), parking lots, children's playgrounds, ponds, etc.—and is obligated to manage and maintain everything. People own their own individual units, including the structural components (roof, walls, floor, foundation, etc.).

In a condominium association, everyone shares an undivided interest in all the common elements named above, as well as in the structural components of each individual dwelling (roof, walls, etc.). People own the air space inside their individual dwellings. A condominium association is obligated to maintain all the common elements.

While HOAs are most often used for planned housing developments with houses and lots, and condo associations are most often used for apartment buildings, this is not always the case. Sharingwood Cohousing in Washington State, for example, uses a condo association for its individual lots and houses.

Homeowners and condominium associations are not legal entities themselves, and are usually organized as nonprofits under IRS Section 528 tax designation. The 528 tax designation means that any funds collected for buying, developing, building, repairing, maintaining, and/or managing the property are not taxable if the association meets two tests. First, it must receive at least 60 percent of its gross income in a given tax year specifically to pay the above-named expenses (such as collecting membership fees, dues, assessments, etc.). Second, it must spend at least 90 percent of its gross income on these same expenses. If the association doesn't meet the 60 percent and 90 percent tax-exemption requirements in a given year, all their income that year is taxed at the corporate rate of 30 percent.

This tax-exemption may even include property owned privately by an individual community member on their own lot, such as a greenhouse, meeting space, retreat cabin, etc. But to qualify for this tax exemption, the greenhouse, etc. needs to meet these criteria: (1) it must affect the overall appearance of the community, (2) the owner must maintain it to community standards, (3) there must be an annual pro-rata assessment of all members to maintain it, and (4) it must be used only by association members and not rented out.

When intentional communities use HOAs or condo associations, they are either all members of the board of directors or they choose board members from among their members.

A downside is that homeowners associations and condominium associations cannot choose their members because of Federal Fair Housing laws. This means they must say "Yes" to any interested new people who can pay the purchase price and meet the terms of the sale if property is offered on the open market. They cannot say "No, thanks" to people who seem not to understand and support the community's purpose, values, and lifestyle, or who seem to offer red flags to the group, such as having substance addictions, a history of financial irresponsibility, or undesirable behaviors or attitudes. They can choose people for a waiting list, however, and use the list to draw from when a lot, house, apartment, or housing unit may be for sale, if the property is offered privately, not publicly.

Federal Fair Housing laws require HOAs and condo associations to say "Yes" to any interested new people who can pay the purchase price and meet the terms of sale.

Not all states have HOAs (e.g., Massachusetts doesn't) and condo associations.

Benefits: Limited liability protection; credibility with banks and lending institutions who will loan money and create mortgages for individual members; and tax breaks.

Challenges: The community can't choose their own members (unless they have a waiting list); not all states have both of these.

Examples: Most cohousing communities, including Sharingwood, as noted above, use either a homeowners association or condominium association to co-own their property after their initial development and construction phases.

Housing Cooperatives (Housing Co-ops)

A housing co-op owns the land and buildings. Its members don't own any part of the property, but own shares in the co-op and have a lease to a specific house, lot, apartment, or housing unit.

Housing cooperative law varies slightly from state to state. In general, however, members own shares in the housing cooperative, which, with a lease, gives them the right to live in a particular dwelling. And again, depending on the state, in general the number of shares the members buy is based on the current market value of the dwelling in which they intend to live. People pay a monthly fee—usually a prorated share of the co-op's monthly mortgage payment, if there is one, and property taxes, combined with a general fee for maintenance and repairs. The monthly fee is generally based on the number of shares each of the members holds, which is equivalent to the dollar value given to the member's individual dwelling.

While housing co-ops are legal in all states, some states have clear laws for housing co-ops and other states don't. Housing co-ops are usually organized as nonprofit corporations; however, some states have a special "cooperative corporation" category that is neither nonprofit or for-profit.

Most banks and lending institutions won't loan to a co-op or to co-op members because they don't want to own shares. This is because if the bank had to foreclose on the loan they would rather own tangible, sellable assets like a title to a house or housing unit. The National Co-op Bank was created to loan to housing co-ops and other kinds of co-ops, though it usually charges a higher rate of interest for loans than other banks do. There are several kinds of housing co-ops including student housing co-ops, senior housing co-ops, and limited equity housing co-ops.

Benefits: Limited liability protection; the community can choose its members.

Challenges: It can be difficult to get a bank loan and loans have higher interest rates than loans for HOAs and condo associations.

Examples: Walnut Street Co-op, a shared house in Oregon; Los Angeles Eco-Village; Miccosukkee Land Co-op, which uses a housing co-op to own their 344 acres in rural Florida.

501(c)3 Nonprofits

Communities primarily use 501(c)3s to own land in order to preserve and protect the land from future real-estate speculation and development. This entity can also be used to receive tax-deductible donations and grants, which can come from corporations, individuals, government agencies, and/or private foundations.

Some communities use the same 501(c)3 or a different 501(c)3 to own and manage their educational programs as well.

A 501(c)3 nonprofit is created by registering as a nonprofit corporation with the state and applying to the IRS for the specific 501(c)3 tax designation. In order to qualify for receiving this tax status the group needs to either provide educational services to the public, offer charitable services to an indefinite class of people (rather than to specific individuals), combat negative social conditions, or provide a religious service to its members and/or the public. (This nonprofit is designed for charitable, religious, educational, scientific, or literary organizations. The IRS interprets "religious" liberally; this can include self-described spiritual beliefs or practices.)

As well as receiving tax-deductible donations, 501(c)3 nonprofits pay no income taxes, and are exempt from most forms of property tax. They are eligible for lower bulk mailing rates, and for some government loans and benefits. Communities that are also religious orders may also be exempt from Social Security, unemployment, and withholding taxes in some cases, if they qualify.

In order to receive a 501(c)3 nonprofit tax status, an intentional community must meet two IRS tests. It must be organized, as well as operated, exclusively for one or more of the above tax-exempt purposes. To determine the "organizational test," the IRS reviews the nonprofit's articles of incorporation and bylaws.

To determine the "operational test," the IRS conducts an audit of the nonprofit's activities in its first years of operation. Many communities have difficulty passing the operational test because of the requirement that no part of the net earnings may benefit any individual (except as compensation for labor or as a *bona fide* beneficiary of the charitable purpose). If the primary activity of the organization is to own land and operate businesses for the mutual benefit of its own community members, it fails the operational test.

Even if the community passes the operational test by virtue of other, more charitable, public benefits—running an educational center, providing an ambulance service, or making toys for handicapped children, for instance—it can still be taxed on the profits it makes apart from its strictly charitable activities.

These profits, called "unrelated business taxable income" (UBTI), have been a source of disaster and dissolution for some nonprofits because of the requirement to pay all back taxes and penalties arising from unrelated business taxable income, which can assume massive proportions in just a few years of unreported earnings. The IRS has the rule about unrelated business taxes in order to prevent tax-exempt nonprofits from unfairly competing with taxable entities, such as for-profit businesses, which may offer the same kinds of services or sell the same kinds of products. The IRS determines a nonprofit's unrelated business income in two ways: the destination of the income and the source of the income. If a community uses profits from bake sales to build a community fire station (presumably a one-time project related to the community's purpose), the IRS may consider that income "related" to its educational or charitable purpose and not tax it. If, however, the bake sales expand the general operations of the community, or pay the electric bill, the IRS may consider that "unrelated" income, and tax it.

A 501(c)3 nonprofit may not receive more than 20 percent of its annual income from passive sources, such as rents or investments. If the community has an educational purpose, it may not discriminate on the basis of race and must state this in its organizing documents. 501(c)3s are not allowed to participate in politics—they can't back a political campaign, attempt to influence legislation (other than on issues related to the 501(c)3 category), or publish political advocacies.

A serious downside is that if a 501(c)3 community disbands, it may not distribute any residual assets to community members. Rather, after payment of debts, all remaining assets must pass intact to another tax-exempt beneficiary such as another 501(c)3. In the early 2000s a relatively new community in South Carolina disbanded and gave its land to a church. Various members who'd spent their life savings paying the community's joining fee and building their house lost everything. This financial aspect of 501(c)3 nonprofits may dissuade some potential new members from joining a community that owns its land this way—those with significant assets or those who have children and who want to build a house and sink deep roots in the community. Some communities protect against this outcome by owning their land with a different legal entity (and protecting it from future speculation by other means), and creating a separate 501(c)3 nonprofit to run their community's educational

Chickens can be both alarming and engaging for children. Rocky Corner Cohousing will raise chickens on their farm.

programs. Occidental Arts and Ecology Center (OAEC) did this. (See below.)

Benefits: Limited liability protection; can protect land from later speculation and development; can receive tax-deductible donations and grants; exempt from income taxes and property taxes.

Challenges: Elaborate and time-consuming to set up and maintain; the 501(c)3 cannot engage in political activity; if the community disbands it must donate the organization's property and assets to another 501(c)3. For this last reason, sometimes people with equity and families with children tend to not join, seeking instead a community where they can have equity and financial sustainability even if the 501(c)3 later disbands. Also for this reason, communities owning their land this way tend to attract many nomadic young people interested in community adventures but uninterested in establishing equity and sinking roots into any one place, so the community can have higher than normal turnover as its young people move on to their next adventure.

Examples: Lost Valley Educational Center in Oregon owns its land through a 501(c)3; EcoVillage at Ithaca in New York owns some but not all of its land with this nonprofit. Occidental Arts and Ecology Center in California uses a 501(c)3 for its educational programs.

Please note, a "Land Trust" is not a legal entity per se, but a way of preserving land for a specific use, and land trust nonprofits or individual communities that organize themselves as land trusts generally use a 501(c)3 nonprofit, sometimes in combination with a 501(c)2 (title-holding) nonprofit.

Non-exempt Nonprofits

This is a legal structure created by setting up a nonprofit corporation with one's state but not seeking any tax-exemption status with the IRS, hence it is a "non-exempt" nonprofit. It can be used to own or manage assets with limited liability protection but with no intention to either make a profit or seek tax exemptions. EcoVillage at Ithaca (EVI) in New York uses a non-exempt nonprofit, the "EVI Village Association," as a kind of member-owned co-op. All community members are automatically also members of the EVI Village Association, which owns the two roads into the property, the water and sewer lines, the three neighborhood parking lots, the swimming pond, and the land around each housing co-op.

Benefits: Limited liability protection.

Challenges: Income is taxed at the corporate rate.

Examples: Abundant Dawn Community, Virginia owns its land this way. A non-exempt nonprofit is one of six legal entities used by EcoVillage at Ithaca in New York.

How Four Communities Use Multiple Legal Entities Together

1. Occidental Arts and Ecology Center (OAEC) in California uses an LLC, a 501(c)3 nonprofit, and a lease. They own and manage their 80 rural acres through an LLC, called the Sowing Circle LLC, and own and manage their educational programs through a 501(c)3 nonprofit, the Occidental Arts and Ecology Center 501(c)3, which itself owns nothing. Sowing Circle LLC leases most of its community land to the OAEC nonprofit. Their permanent community members (rather than their two-year temporary residents) are members of the Sowing Circle LLC as well as members of the board of the nonprofit OAEC. This arrangement works very well, for three reasons. First, the commercial lease mandates that the lessee, OAEC 501(c)3 nonprofit, maintains and repairs all the property they lease. This means that some money earned by the 501(c)3 nonprofit through classes, workshops, tours, and donations, can be used to keep the community's property well-maintained. Second, OAEC's landlords are wholly supportive of the nonprofit's activities, as they are the same community members. And third, if for any reason the OAEC nonprofit couldn't pay the full amount of their annual lease fee to Sowing Circle LLC, the LLC could claim a loss on their income taxes.


Hart's Mill members use machetes to cut brush on their land.

2. Los Angeles Eco-Village (LAEV) uses a housing co-op and a 501(c)3 nonprofit and many leases. About half of LAEV's members created Urban Soil/Terra Urbana (USTU), a 501(c)3 nonprofit used as a limited equity housing co-op, which owns two adjacent two-story apartment buildings and a four-plex unit across the street, but not the ground beneath these buildings.

The ground underneath the three buildings, as well as other parcels in the Beverly-Vermont area, are owned by the Beverly-Vermont Community Land Trust, a 501(c)3 nonprofit created by several LAEV members and other local affordable eco-housing activists.

UrbanSoil/Terra Urbana is considered a limited equity co-op because shares in the co-op apartments are much more affordable to purchase than other, similar apartments in the area because the owners don't own the ground underneath their building. Also the purchase price is not based on the exorbitantly expensive land values in the Los Angeles area. Some LAEV members couldn't afford to become owners, however, so they remained renters. All the residents of all three buildings, owners and renters, as well as a few people living in other nearby buildings on the street, are members of LAEV, and have full decision-making rights. Each renter has a lease for their apartment with USTU, and each owner has their certificate of shares and a lease allowing them to live in their apartment.

3. Mariposa Grove Community in Oakland, California uses a condominium association and a local 501(c)3 nonprofit. Mariposa Grove Condominium Association owns six apartments and shared community building space renovated from three small single-family houses on two adjacent city lots. The ground underneath these buildings is owned by the Northern California Community Land Trust (NCLT), a local 501(c)3 nonprofit devoted to limited equity housing in the northern California region. Each of the six owner households in the condo association has a ground lease with the community land trust. In addition the community founder owns a large house with rental units—two small apartments and seven bedrooms—directly behind one of the community land trust lots. He owns the property with a deed, and each of the tenants has a lease. The four buildings share a big yard with all fences removed, and all residents are Mariposa Grove members and share the amenities of the community building.

Because the owners don't own the ground underneath their building, the purchase price is not based on Los Angeles' exorbitantly expensive land values.

4. EcoVillage at Ithaca (EVI), a rural community in New York State with three separate cohousing neighborhoods, has six legal entities, 100 co-op leases, and two ground leases.

(1) EcoVillage at Ithaca, Inc., a 501(c)3 nonprofit, owns all the community's 175 acres not owned by one of the community's other legal entities.

(2) FROG Housing Co-op, the legal entity of the community's first 30-unit cohousing neighborhood with two-story townhouses, owns the duplex buildings and the land directly under each unit; it purchased the land from EcoVillage at Ithaca's 501(c)3 nonprofit. Each FROG neighborhood household owns shares in the co-op and has a lease for their individual townhouse unit.

(3) SONG Housing Co-op, the legal entity of the second 30-unit cohousing neighborhood with two-story townhouses, owns the duplex buildings. The SONG Housing Co-op owns only the buildings; it leases the land underneath with the SONG Neighborhood Ground Lease, a 99-year lease from the EcoVillage at Ithaca, Inc. 501(c)3 nonprofit. This was done in order to create more affordable housing, and was required by Equity Trust, the organization that gave the SONG neighborhood a construction loan. Each SONG household owns shares in the SONG Housing Co-op and has a lease for their individual housing unit. (SONG also created two temporary legal entities—joint venture partnerships of 21 and 14 future residents respectively—in order to raise money for construction. When construction was finished the joint venture partnerships were dissolved.)

(4) TREE Housing Co-op, the legal entity of the third cohousing neighborhood, owns 40 units in several buildings and the land under each unit. TREE Housing Co-op purchased the land from EcoVillage at Ithaca's 501(c)3 nonprofit, and each TREE household owns shares in the TREE Housing Co-op and has a lease for their individual townhouse unit.

(5) *EcoVillage at Ithaca Village Association (EVIVA)*, a non-exempt nonprofit, functions like a member co-op (although it's not legally a co-op), through which all community members co-own the two roads into the property, the water and sewer lines, the three neighborhood parking lots, the swimming pond, and the land around each of the three housing co-ops.

(6) The Center for Transformative Consciousness is a 501(c)3 nonprofit that promotes EcoVillage at Ithaca, develops each neighborhood, and runs EVI's onsite educational programs. Like OAEC's educational 501(c)3 nonprofit, it doesn't own anything.

The community, through its EcoVillage at Ithaca, Inc. nonprofit, leases 10 acres to West Haven Farm, a CSA farm owned by two community members, and leases 5 acres to Kestrel Perch Berry Farm, another CSA farm owned by another community member. The community also created a Conservation Easement for 35 acres of the property to remain wetlands and woodlands in perpetuity, and this is on the deed to EcoVillage at Ithaca, Inc. If the community ever disbanded and gave the land and assets of the EcoVillage at Ithaca, Inc. nonprofit to another 501(c)3 nonprofit, the new nonprofit owner would have to honor this conservation easement.

"One of the reasons for creating so many different entities," writes Bill Goodman, an EVI resident and lawyer, "is our need to satisfy the requirements of other parties, including the town of Ithaca, the New York Attorney General's Office, banks, and insurance companies.... Because this project is so unusual, we have had to create a complex framework to fit both our needs and the expectations of the legal and financial worlds."

Eleven Issues to Consider When Choosing Your Legal Entity(ies)

(1) Does the entity resonate with your community's values, intentions, and mission? Intentional communities generally arise from a specific set of values and intentions, often stated as its mission or purpose. The founders may want to create an economically equitable lifestyle, a self-reliant and ecologically sustainable lifestyle, or a contemplative or spiritual lifestyle. They may want to educate or serve others, provide a nice place to live, or several of these. Given your community's values, intentions, and specific mission, what kind of formal, legal organization best suits your group?

Does the legal entity you're considering allow your group to assign its own criteria for governance and decision-making authority, or does it mandate specific rules?

(2) To what degree would the legal entity confer limited liability protection?

(3) Would the community pay federal income taxes, and at what rate? Would a different legal entity confer better tax benefits?

(4) If you'll need to borrow money, for example for a development loan or construction loan, how would your entity influence banks and other lending institutions? Are they familiar with this legal entity? Does it have credibility with them?

(5) How would the entity affect people's joining or leaving your community?

(6) Does the entity allow your group to assign its own criteria for governance and decision-making authority, or does it mandate specific rules for decision making within the group?

(7) Does the entity allow your group to choose its members?

(8) Does the entity set requirements or restrictions for how your community must divide any annual profits or losses among community members? Would it mandate how you must divide any assets if the community disbanded?

(9) How easy would the entity be to set up and manage over time? How vulnerable would it be to changes in the law or to changes in the Internal Revenue Service (IRS), or to other governmental scrutiny? How much are annual filing fees?

(10) How easy would it be to make changes in the bylaws, articles of incorporation, or operating agreements?

(11) Would the entity limit your community's political activity? If so, is that important to your group?

Legal Resources

Please get advice from a lawyer and a CPA about the legal entity(ies) your community is considering. You'll need a real estate lawyer for buying your community property. Not all lawyers know about all legal entities, so in addition to your real estate lawyer, choose one who specializes in the kind of legal entity(ies) you're considering. Get advice from other intentional communities in your state who use the same kind(s) of legal entity you're considering. What lawyer did they use? Do they recommend that lawyer?

It can save you money to draft your articles of incorporation and bylaws or operating agreements (for an LLC) ahead of time and ask your lawyer to alter them to fit the specific requirements for that entity in your state.

The internet is an excellent place to find free legal advice: you can find many sites with very clear and lengthy legal notes about the options discussed here.

Legal clinics at law schools often offer legal advice inexpensively or for free, and may be able to connect community members up with law students looking for a research project.

Nolo Press offers excellent self-help legal forms and online documents, books, and software for almost every kind of legal entity and legal issue: www.nolo.com.

The Community Associations Institute (CAI) offers information, education, and resources about homeowners associations, condominium associations, and housing cooperatives: www.caionline.org.

The National Association of Housing Cooperatives (NAHC) offers the same services for housing cooperatives: coophousing.org.

The Institute for Community Economics (ICE) is a federally certified Community Development Financial Institution that makes loans for permanently affordable housing across the US: www.enterprisecommunity.com. ❧

Diana Leafe Christian, author of Creating a Life Together *and* Finding Community*, has also contributed chapters to the books* Beyond You and Me, Gaian Economics, *and* Ecovillage: 1001 Ways to Heal the Planet. *She speaks at conferences, offers consultations to communities, and leads workshops internationally on creating successful new intentional communities—including legal issues, what helps existing communities thrive, and governance and decision-making. She lives at Earthaven Ecovillage. See www.dianaleafechristian.org.*

Dave Henson is a founding member of the Sowing Circle Community in Sonoma County, California and founder and Director of its affiliated Occidental Arts and Ecology Center (OAEC), an educational and rural retreat center. Dave leads many workshops at OAEC, including "Creating and Sustaining Intentional Communities," and is available for phone or in-person consultation about legal entities and organizational structures, group process and facilitation, and setting up nonprofit educational centers. See www.oaec.org.

Allen Butcher was a founder of the Fellowship for Intentional Community (FIC), and was a board member of the FIC and many other organizations. Allen lived at East Wind (1975-83) and at Twin Oaks (1985-89) communities. He now lives collectively in Denver, Colorado. His most recent book is The Intentioneer's Bible: Interwoven Stories of the Parallel Cultures of Plenty and Scarcity. *His book on the theory, design, and history of intentional community is available free at culturemagic.org.*

Albert Bates, a resident of The Farm Community in Tennessee since 1972, is a former environmental attorney and author of books on law, energy, and environment, including The Biochar Solution: Carbon Farming and Climate Change *(2010);* The Post-Petroleum Survival Guide and Cookbook: Recipes for Changing Times *(2006);* The Paris Agreement *with Rex Weyler (2015);* Communities that Abide *with Dmitry Orlov (2014); and* Climate in Crisis *(1990). Albert has been Director of the Ecovillage Training Center at The Farm in Summertown, Tennessee since 1994. See peaksurfer.blogspot.com.*

The Disadvantages of Joint Tenancy and Tenants in Common

These are two legal entities from the realm of real estate entities, not business entities, which allow two or more people to co-own a piece of property. While there are advantages to each, the disadvantages are especially onerous for intentional communities.

In *Joint Tenancy* all of the joint tenants have an equal interest in and rights in the property and all share equally in liabilities and profits. This most often includes sharing all necessary maintenance costs, taxes, and work responsibilities. However, a tenant is solely responsible for the costs of improvements made without the consent of the other tenants.

A Joint Tenancy has the "right of survivorship." which means that a joint tenant cannot will their interest in the property to heirs, but rather upon that joint tenant's death, the title is automatically passed to the surviving joint tenants.

The disadvantages of Joint Tenancy are significant for most communities. For example, a joint tenant may sell or give their interest to another person without the approval of the other tenants. This means a community could end up with a resident they don't know and don't want. Another big disadvantage is that if one joint tenant goes into debt, the creditor seeking collection could force the sale of the community's property to get the cash value of the person's share in the property.

Tenancy in Common is when two or more people have undivided interest in a property. If not otherwise specified, all the tenants in common share interests in the property equally. They can, however, distribute interest in the ownership of the property in whatever fractions they wish. Taxes and maintenance expenses, profits, and the value of improvements on the property must be distributed in the same proportion as the fractional distribution of their shares of ownership. There is no right of survivorship—the ownership interest of a deceased tenant in common passes to their heirs.

A tenant in common may sell, mortgage, or give their interest in the community's property as they wish, and the new owner becomes a tenant in common with the other co-tenants, again, whether or not the community members know the person or want them as a community member. Even worse, if a tenant in common in the property wants to sell their interest and get out but the community can't afford it right then, that person **can force a sale of the property** in order to recover the value of their interest in the property.

—DLC