

# Cohousing – The Legal Path Transcript

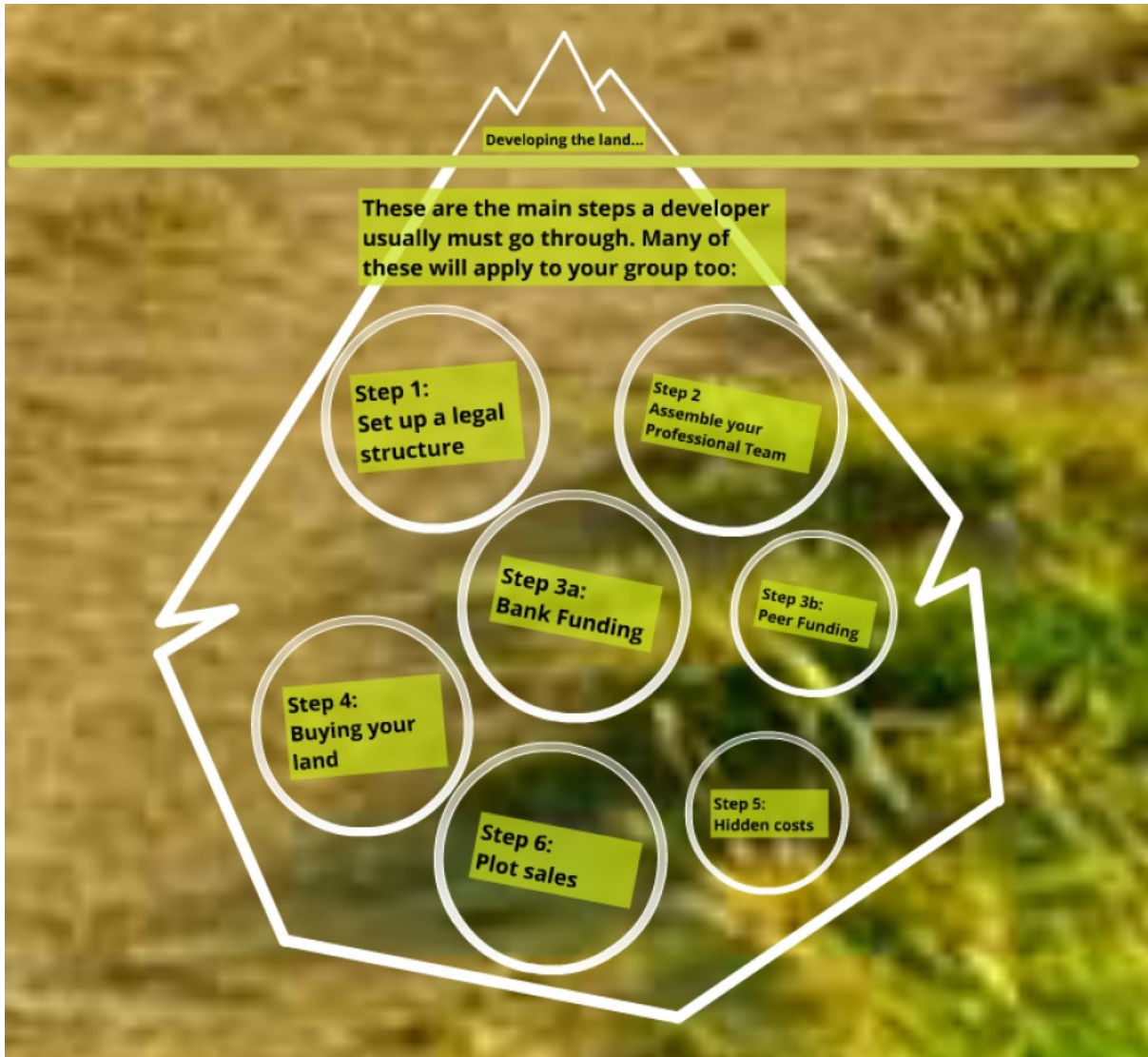
## Introduction



Stage 1 - Visionary	Stage 2 - Developer
<p>An individual or a group has the <b>vision</b> to start a cohousing project.</p> <p>Once you have identified a piece of land to buy, the vision turns into a <b>development</b> with these common stages:</p> <ul style="list-style-type: none"> <li>• Setup a legal structure</li> <li>• make an offer and agree a price</li> <li>• investigate the land ('legal due diligence' )</li> <li>• obtain funding</li> <li>• buy the land</li> <li>• develop it</li> <li>• populate it</li> <li>• maintain it.....</li> </ul> <p>...time to start the transition from "Visionary" into "Property Developer"!...</p>	<p>This is the <b>key</b> legal stage</p> <p>Your group has to adopt the "mindset" of a house developer.</p> <p>Please don't be alarmed though - you do not need to have the <b>VALUES</b> of a house developer, but you need to do a commercially savvy deal with the seller of the land.</p> <p>This means minimising expenditure and managing legal and economic risk.</p> <p>This is the area where Wrigleys and our team of related advisers can help you "think and act like a developer" in order to compete for the land and obtain it on the best possible deal.</p>

### The Legal Process

A development project is a lot more complex than a normal house purchase. Unfortunately, this stage can be a bit like an iceberg...



Those main steps in more detail are as follows:

## Developing the land...

These are the main steps a developer usually must go through. Many of these will apply to your group too:

### Step 1 - Set up a legal structure

A suitable legal structure does the following:

- Reduces risk through limited liability.
- Binds the group in a democratic structure.
- Must be a recognisable structure that a funder will contract with.
- Allows the group to open a bank account.

### Step 2 : Assemble your Professional Team

The core advisory team usually includes the following:

- **UK Cohousing network** - for advice, support and promotion of your group
- **Solicitor:**
  - advice on legal structure, governance, property law and funding agreements (mortgage, loans).
  - Managing risk, inputting on price negotiation and future contingency payments (such as overage and s.106 payments).
  - Ongoing advice to the group when on-selling or leasing plots
  - Possible advice required on planning law, environmental law and construction contracts
- **Surveyor:** Leads on price negotiation and settling Heads of Terms for land purchase
- **Accountant:** Ensures transaction is structured in tax efficient way to cover VAT, stamp duty and capital gains taxes

### Step 3a : Bank Funding

Groups may obtain investment advice and funding from a regulated professional (such as a bank), who are often specialist lenders in the cohousing and third sectors.

At Wrigleys we are used to dealing with the leading specialist lenders and they are comfortable dealing with us.

Similarly to a house conveyance, if we are instructed to act for both the group AND the lender, this can save legal costs.

Wrigleys' experience in the sector increases the likelihood of the lender instructing us too, as they will take comfort from our knowledge and credibility.

### Step 3b : Peer Funding

Group members may be funding the project entirely or partly from cash reserves, proceeds from the sale of their own properties or loans from outside the group (such as family).

Consequently, each member is putting substantial faith and capital in the project and will expect solid assurances in return.

The group's legal structure will help by providing a framework to protect individual members in the event of a split in the group or even a decision to abandon the project altogether.

It is crucial that group members feel confident about pooling finances and an appropriate structure will give that peace of mind.

In some cases, groups also choose a legal structure that allows them to **raise** funds for the group, for example by selling shares in the group or issuing bonds.

Wrigleys is regulated by the Financial Conduct Authority which authorises the firm to advise on options for raising social finance if required.

### Step 4: Buying your land

Your project will need planning permission.

Given the unpredictability of planners you will want to keep your options open if planning is rejected; to avoid buying an expensive piece of land that cannot be developed!

Sometimes this risk is managed by delaying the full purchase and buying an 'option' over the land instead, that allows you to delay purchasing the land until you have planning permission. The option may cost up to £20,000 or sometimes more. Expensive, but less to lose if the land turns out to be unsuitable for development.

Alternatively, you may pay a deposit in return for a 'conditional contract' that says you will only pay the full land price if planning permission is obtained. The deposit may be 10%, which on a £1m piece of land is more expensive than the option. If the sale does not go through, then your group may lose that deposit.

Your solicitor would help you to assess which route to take.

### Step 5: Hidden costs

- **Overage** - After selling the land for a 'development' it is quite common for the land seller to require a second payment **after** the development has been completed to reflect the increased value of the land.
- **Section 106 Town and Country Planning Act** - Developers are often required to make payments to the Local Authority to pay for any changes to improve the public areas adjacent to the development land.

Basically, the land seller and council take a percentage of all your hard work!

The good news is that these extra charges can be negotiated, agreed in advance and, therefore, budgeted for.

#### Step 6 : Plot sales

Eventually the site will be developed and plots divided up ready to be leased to members, or sometimes leased to new residents (future members!).

Longer term, some plots may come back to the group and require selling on. Your group will want to have some control over who comes into the group, but the plot seller may want to keep the pool of potential buyers for his or her plot as wide as possible.

We will advise on suitable legal structures and land titles that will seek to balance these potentially conflicting requirements and provide a workable and sustainable solution for all.

#### The importance of skilled & experienced advisers

It can be expensive to be a 'developer' but do not let this put you off!

Help is available...and in our experience of cohousing development, the right advisers can pay for themselves in the savings they make for you.

The next stage will make it all worth while...

#### Stage 3 – Resident

After all the legal work is done, the hard work will have been worthwhile when you see your project materialise!

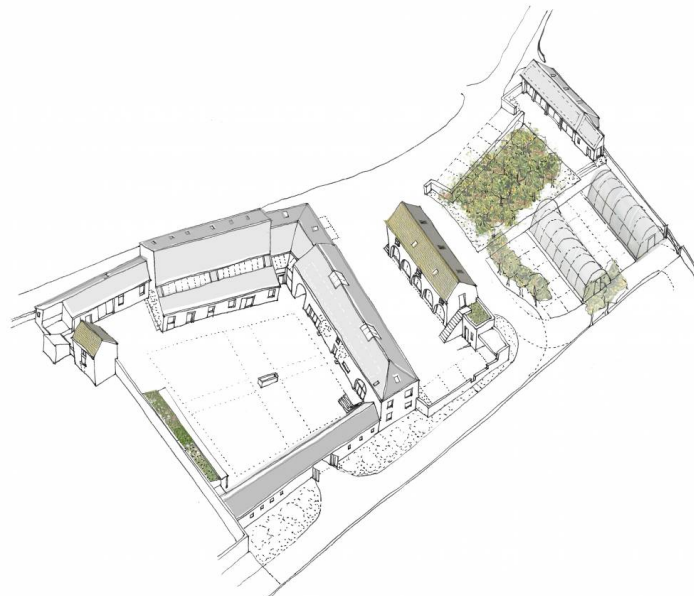


Image courtesy of Open House Project  
([openhouseproject.wordpress.com](http://openhouseproject.wordpress.com))

Further Information

Please contact Elizabeth Wilson or Malcolm Lynch for a free consultation on the legal aspects of your project.

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