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CHAPTER I

INTRODUCTION

101. Real property development is a very complicated, expensive and time consuming activity. In carrying out this activity, the implementation of a comprehensive due diligence process to determine the feasibility of any proposed project is essential. Although real property issues vary from province to province (and sometimes from community to community within a province) there are some generic due diligence parameters that are relevant in every project. In addition to the “due diligence” process there is a very dynamic and complex relationship that pertains to developers, architects, property managers and other interested parties.
102. A number of Legion Branches are looking at ways to maximize the value of their real property which includes the combined assets of building and land. In a similar context, other non-governmental organizations (NGOs) are investigating partnership options with Legion Branches or are indicating their interest in learning from the “Best Practices” that The Legion has developed over the years.
103. The purpose of this Handbook is to provide Legion branches with information and planning material to assist them, as much as possible, with determining the viability of a proposed project before they incur large expenditures,

retain the services of paid consultants and/or enter into service agreements and development contracts. In accordance with the due diligence process it may be necessary to obtain professional assistance. However, as much as possible, this help should come from professionals with a special area of expertise (i.e.: environmental assessors, land use planners, lawyers, accountants, property appraisers, etc.). These professionals should be hired to perform a specific function for a set fee. It is important to engage these professionals in the correct order. For example, there would be no need to get architectural drawings before the Market Analysis is completed, because the Market Analysis will help determine what kind of physical structure is needed to meet the market demands.

104. This hand-book aims to provide some information and direction on how to 'get started' with a project. It also offers some insight on the chronological order for completing the due diligence process. Branches may be able to obtain this "generalist consulting" or project planning through the services of a paid consultant; these services are available at no cost to Legion branches through Ontario Command.

CHAPTER II

ONTARIO COMMAND REQUIREMENTS FOR BRANCH HOUSING/RENOVATION PROJECTS

201. In every case when a branch is involved in a real property or housing development, it is necessary for the branch to abide by The General By-Laws of The Royal Canadian Legion, Ontario Command. Various sections of The General By-Laws deal specifically with the "Holding of Property". Other By-Laws may be relevant, depending on project specifics.
202. All branches must abide by The Act to Incorporate, Section 11(2) which reads as follows:
- 11(2) No branch may without the consent in writing of the provincial command having jurisdiction over the branch, hypothecate, mortgage, pledge, lease, sell, convey or otherwise dispose of its real or personal property, except in the ordinary and usual course of its activities.

They must also provide all information as required in the Legion Act 1990 that reads as follows:

THE LEGION ACTS – 1965 AND 1990

The Legion Act 1965 preceded the Legion Act 1990 and the two provincial pieces of provincial

legislation complement each other. The 1965 Act outlined the powers of branches and commands to hold property and specified that the property of the command or branch could be held in the name of the command or branch. Following the 1965 Legion Act, the General By-Laws of Ontario Command were later changed to require that the property of the branch 'shall' be held in the name of the branch. This change occurred in 1971 and can be found in the current By-Laws in Section 905. All branches should hold branch property in the name of the branch and not in the name of trustees.

The Legion Act 1990 outlines the process that must be followed for property transactions and borrowing. It reads as follows:

WHEREAS The Royal Canadian Legion, herein called the Legion, hereby applies for special legislation in respect of the matters hereinafter set forth; and whereas it is expedient to grant the application;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) Despite any other general or special Act, no branch of the Legion may mortgage, lease or convey real property unless,

- (a) It is authorized by resolution passed by a two-thirds majority vote of the members of the branch in good standing who are present and vote at a special or general meeting of the branch; and
 - (a) The consent in writing of the Ontario Provincial Command or the Manitoba and Northwestern Ontario Provincial Command, as applicable, is first obtained.
 - (2) Notice of the meeting under clause (1) (a) shall be given to members in good standing by mailing it to the last known address of the member at least ten days before the meeting.
2. (1) If the charter of the Provincial Command the Legion is revoked or suspended, the Dominion Command of the Legion may register in the proper registry or land titles office a certificate, signed by the president and secretary under the seal of the Dominion Command, stating that the charter of the Provincial Command has been revoked or suspended.
- (2) Upon the registration of the certificate under subsection (1), the real property held in the name of the Provincial Command vests in the Dominion Command.

- (3) A certificate registered under subsection (1) shall contain a reference to this Act.
3. The Royal Canadian Legion Act, 1975, being chapter 24, is repealed.
4. This Act comes into force on the day it receives Royal Assent.
5. The short title of this Act is The Royal Canadian Legion Act, 1990.

**PROCEDURE FOR BORROWING,
MORTGAGING, LEASING OR CONVEYING
REAL PROPERTY FOR REVIEW
BY THE PROPERTY COMMITTEE
OF ONTARIO COMMAND**

1. A notice of motion must be proposed at a General Meeting of the Branch specifying the details of what is proposed.
2. The notice must be mailed to all members in good standing at least 10 days prior to the General or the Special General Meeting at which the matter will be discussed and voted on.
3. If the matter is approved by a two-thirds majority, the Branch must submit 7 copies of the following information to Ontario Command:

- a) A copy of the notice of motion, mailed as per item # 1 above.
 - b) A certified copy (signed by President and Secretary) of the minutes of the General Meeting at which the notice was proposed and a certified copy of the minutes of the General Meeting at which the Notice was approved by a two-thirds majority.
 - c) A copy of the audited financial statements of the branch for the past 2 years.
 - d) A business plan (including precise information on how the loan, lease, etc., will be repaid and specifying whether lottery funds have been considered through an application to the licensing authority for use of funds under *the more than 2% policy* and/or *the building fund policy*).
 - e) A budget for the next fiscal year.
 - f) A copy of all pertinent documentation (i.e. sale/lease agreement, mortgage document, etc.)
 - g) The name, address, telephone number, etc., of the branch lawyer who is providing the legal advice, etc.
4. The Ontario Command Property Committee then reviews all documentation and confirms in writing if the Branch has complied with the Legion Act 1990. Branches must receive the approval from Ontario Command before committing to the lease, sale, purchase, etc.

203. While it is not a requirement for Provincial Commands to develop property approval or development guidelines it is a good idea to do so. Not only are the guidelines directly beneficial to the branches and Commands, but having tested property development guidelines and procedures in place brings increased credibility to the program. It may also make it easier for branches to receive approval when applying for government programs, or when applying to lenders and municipalities.
204. The important thing for branches to remember is that there are Legion By-Laws and rules to follow and it is certainly in the best interest of the branches to know these requirements as early as possible in the planning stage so that a project is not held up at some other critical stage because a required step in the approval process has been omitted.
205. The use of the word “Legion” in a corporate name must receive prior approval by Dominion Command, because it is a Registered Trade-mark. When branches contemplate using the word “Legion” in a corporate name, they should be mindful of specific considerations:
 - a. If the word “Legion” is to be used there must be a clear demonstration of what involvement the Legion will have in the project;

- i. Who is involved? (branch, zone, district, Command, group of branches, etc.);
 - ii. What is the extent of the involvement;
 - iii. How long does the involvement last;
 - iv. What needs to happen for the Legion to no longer be involved in the project, either formally or informally;
- b. There is need for a provision to ensure that if the “Legion” is no longer involved in the project, the word “Legion” may need to be removed from the name of the entity; and
 - c. There is need for a provision to protect against the unilateral removal of the word “Legion” from a project if the Legion feels that removing the name would be inappropriate.

**POLICY FOR BRANCHES SELLING PROPERTY AND
MAINTAINING RESIDUAL FUNDS**

Branches that sell property and lease back, amalgamate or enter into a lease agreement must consent to the following policy prior to any agreements being signed:

- 1. **All funds derived from the sale of a building, or an amalgamation must be deposited or invested in a Canadian Banking Institution.**

2. An amount not to exceed \$ 75, 000.00 may be deposited to a Canadian Banking facility in the name of the branch. The remaining funds must be invested in a mix of short, medium and long term investments as directed by the members at a General Meeting. Should a Branch wish to renovate etc. they must follow the guidelines below.
3. Funds can be invested in but are not limited to the following: Guaranteed Investment Certificates, Bankers' Acceptance, Treasury Bills, Government of Canada Bonds, Provincial Bonds, Commercial paper, Triple B Bonds, low to medium risk Mutual Funds, Equities, Income trusts, Linked Notes, Principal Protected notes and Segregated Funds.
4. Investments may only be cashed, with the approval of a Branch General meeting. An Executive Committee does not have the right to approve the cashing of any investments at any time.
5. Branches that are amalgamating must follow the above noted, in item # 2. If property is sold by one branch, which is amalgamating with other, the funds would be held in the name of the new branch and the Legion Act 1990 and the Act to Incorporate would apply.

Branches are reminded that prior to any sale or leasing agreement being signed, they must follow the procedures of the Act to Incorporate, Legion Act 1990 and all policies as described in the current Officers' manual under the sections Property Committee and Branch Construction/Renovations. It is a prerequisite and mandatory that notification to members of Special

Meetings for the purpose of mortgaging, leasing or conveying of branch property, must be notified in writing, by mailing the notice, to their last known mailing address, at least 10 days prior to the meeting. The Provincial Property Committee will not tolerate a violation to this procedure.

Any member who enters into an agreement, without the express written consent of the General membership, could be held responsible for all legal costs, and liable for any transactions made. Ontario Command has the right to null and void any transaction that has not followed proper procedures.

Before approval is given by Ontario Command, branches must consent to the above noted.

Date: _____

Ontario Command

Branch President

TELECOMMUNICATION CLAUSES
FOR INCLUSION IN LEASE
AGREEMENTS

The following clauses must be included in all Telecommunication Lease Agreements and cannot be eliminated without the express written consent of the Royal Canadian Legion, Ontario Command.

INDEMNIFICATION

The tenant shall indemnify and save harmless the Landlord from any and all liability, costs, expenses and charges on account of, or by

reason of, any legal actions or any actions of whatsoever kind and nature, taken against the Landlord, by any party whatsoever, as a result of the Tenant's negligence or willful misconduct, or as a result of the Tenant's failure to comply with its obligations pursuant to the provisions of the Lease and/or and subsequent amendments or extensions.

OPTION TO EXTEND

This clause must include a sentence or clause to indicate "Any extensions must have the written approval of Ontario Command.". Also consideration must be given to the term of the extension and also if the rent is changed, which must not be reduced.

TERMINATION

This clause must include an "escape clause" for the Landlord. We are finding in most lease agreements there is no escape clause for the landlord. We are suggesting that a clause be included to read "The Landlord may terminate the Lease Agreement with 6 months written notice to the Tennant for cause." Other leases that we have reviewed have requested a Pro Rata refund and we are maintaining without the escape clause the Landlord should not be on the hook for Pro Rata **Rent Payments. Also in some cases a Third** party may be involved and if there is cause by the Third party to have the lease terminated then the Landlord should not be held liable or have to pay back rent payments.

OVERHOLDING

This clause refers to the Tenant staying on and having a month to month agreement in place if the old lease expires. We are suggesting that anytime this clause be included in an agreement that it be deleted. There is no benefit to the branch and a new lease should be introduced to be approved by both parties.

INSURANCE

Adequate insurance must be maintained and we recommend that Branches contact their insurance provider to determine the coverage required. Also ensure that the tenant has sufficient coverage. In addition if the tenant leases out a portion of the tower the Landlord should ensure they are protected. The additional new "tenant" could create additional exposure to the branch and it is strongly suggested that the branch recognizes the exposure and is properly compensated. For example if additional insurance is required it would be an additional cost to the Tenant.

ENVIRONMENT

Environment clauses are included to most agreements and must indemnify the landlord. This clause would normally indicate that there is no hazardous waste, etc. on the property.

A clause could be included to read: An Environmental assessment of the property must be completed to determine if there is any baseline level of contamination, before any lease is signed and all costs associated with this baseline assessment will be the responsibility of the Tenant.

CHAPTER III

LEGION HOUSING — HISTORICAL CONTEXT

301. The Royal Canadian Legion has had a long and successful involvement in the area of seniors' housing. Many Legion branches became involved in housing projects as a natural extension of the community service work they have been doing for over 80 years. This involvement of the Legion has helped many Veterans and seniors, many on fixed incomes, to find safe, affordable housing in their local communities. There are currently over 150 housing developments listed in the Dominion Command National Housing Directory. This translates into over 7700 housing units.
302. The Legion's profile in the seniors' housing community has never been higher. In the August, 2002 edition of Canadian Association of Retired Persons (CARP) Magazine, Frank Jones, in his article entitled Abide With Me, writes that financing problems and the lack of government assistance in the "social housing field" make it difficult for non-profit housing groups to build affordable housing in today's economy. However, he goes on to say that "two groups have been notably successful in bucking the odds - the Legion and the Mennonite Church."
303. When the Province of Ontario prepared a hand-book explaining its involvement in the Federal/ Provincial Housing Assistance Program, it suggested that private developers should

consider working with non-profit housing entities to best take advantage of some of the provisions of the program. The non-profit housing entity the province referred to in the publication was The Royal Canadian Legion.

304. Communities with Legion housing projects have long known about Legion involvement in housing initiatives. However, while there was local knowledge about Legion involvement in seniors housing, there was no clear understanding about the level of involvement nationally. Dominion command felt that for the Legion to truly be recognized and respected for the role it plays in providing housing to Veterans and seniors, it would be necessary to nationally coordinate these individual Legion success stories. This would not only benefit individual Legion branches by giving them easier access to information and expertise, but it would also make the Legion a very powerful national body to advocate for changes and improvements in seniors' housing.
305. Why should branches consider housing or other real property development? Although housing is one of the many services that Legion branches have provided to communities over the years, housing development is not a simple initiative for non-profit organizations in today's economy. Construction costs are high, professional services are expensive, there are very few government incentive programs to assist with non-profit housing, and obtaining mortgage financing is very difficult. Because of declining memberships, new and stricter legislation governing the operation of Legion branches and

the increased operating costs resulting from higher insurance premiums, environmental issues, employee costs and property taxes, many Legion branches are struggling to stay in operation. On the surface, all these factors appear to suggest that incurring the additional expenses associated with property development would be counter-productive to the well-being of "The Legion". In some cases that may well be true, but very often that is not the case.

306. Many Legion branches occupy prime locations in their communities and quite often they own property in excess of what the branch needs to maintain their operation. The same is often true with respect to the size of the branch building. When branches were operating at maximum capacity they needed to be large enough to hold large number of participants at Legion events with sufficient land to accommodate the parking requirements. Very few branches today are operating at maximum capacity and this has resulted in some branches being "land rich and dollar poor". In other words, branches may have considerable real property equity and very little regular cash flow.
307. This situation causes a number of problems for branches:
 - a. High property values create greater property tax burdens;
 - b. Operating large, older, inefficient buildings is expensive;

- c. Maintenance costs on excess property may be expensive; and
- d. Insurance costs may be higher because of the property values and the condition of the buildings.

Real property is an asset that creates value and equity for branches, but the maintenance of excess property creates a liability.

CHAPTER IV

REAL PROPERTY — ASSET OR LIABILITY?

401. Real property, like oil or gold, is a finite resource and “because they aren’t making any more of it” it is a valuable commodity. As with oil or gold, the value of real property fluctuates in response to market stimuli. The acquisition of real property is generally thought to be a good investment.
402. Like most assets, the value of real property is dependent upon the quality of the property which is determined by a number of variables. What factors are important may differ throughout the country and from location to location but it is these factors that drive the market for real property. Market variables ultimately determine the value.
403. In general terms, the asset value in real property is defined as the value remaining after all encumbrances, charges and restrictions are subtracted from the appraised market value. The following is a very simple example of this concept:

Property description - .5 of an acre

Highest and Best Use Zoning - Single family residential

Appraised value - \$100,000

Encumbrances -

Mortgage - \$ 50,000

Present Equity - \$ 50,000

404. In addition to the present value (equity), the owner also has a beneficial interest. Each time a mortgage payment is made the owners equity position improves and the beneficial interest decreases.

Appraised value - \$100,000

Encumbrance -

Mortgage - \$ 45,000

Present Equity - \$ 55,000

405. Although the above example shows, in a simplistic way, how present day equity is established, other factors need to be considered to get a true idea of value, cost to the owner and long-term potential value. Some of the factors that might need to be considered are:

- a. The present day value of the money invested in the property in relation to the present day value of the property;
- b. The fluctuations in property value;
- c. Any changes in interest rates;
- d. Zoning and/or land use changes;

- e. The costs associated with maintaining the property;
 - f. Any income generated by the property; and
 - g. Personal and/or business tax implications.
406. Most of the above noted factors are more relevant to Income or commercial property than they are to a single family residential lot, but the intent of this information is to show how complex it can be to develop a true idea of the value of a real property asset.
407. Like having money in the bank, it's a good secure feeling to possess real property; however it only achieves its maximum benefit when put to good use.
408. Real property – liability (property rich and cash poor). Although real property is generally considered to be a valuable asset, the term “property rich and cash poor” is familiar to most people.
409. In simple terms, this refers to a situation where the owner is putting so much money into a property that it does not leave enough “free money” to meet other obligations. Most financial institutions recommend that a fixed percentage of gross income should be dedicated to housing and/or other real property expenses. If more than the allocated percentage is required to maintain a property, it may affect the owners' ability to meet other responsibilities.

410. Many Legion branches are “property rich and cash poor”. The real property equity in most branches is relatively high; however, the costs involved in paying insurance, property taxes, maintenance and other expenses make it difficult for branches to stay in operation.
411. Quite often, a branch may hold property that is in excess of branch needs. There are costs associated with maintaining this property and these costs sometimes put a strain on a branch’s financial well being. In these cases, although the property has an equity value for the branch, because it is not generating any income or providing the branch with some other benefit (i.e. tax write-off, etc.) and the branch is incurring costs to keep the property, it becomes a liability to the branch. Again, this is a very simple explanation, because if the property increases in value every year by more than it costs to maintain the property, the branch actually does receive an equity benefit so the excess land is still really an asset. For practical purposes, because the branch does not have the cash flow to maintain the property without it negatively affecting its other obligations, this excess property is often looked on by the branch as being a liability.
412. Change the Liability to an asset. If a branch has property that it deems to be “excess to its needs”, then the first step is to decide if the property really is excess to branch requirements. For example, a piece of land that is no longer used by the branch because of a decline in business, may still have to be maintained by the branch because it is required under a municipal

by-law for parking purposes. Or, perhaps, in a rural area, “the excess land” is where the well or septic field tile is located.

413. If the property is truly in excess to branch needs, some of the options available to the branch may be:
 - a. Maintain the status quo. The property may be increasing in value so rapidly that it is the absolute best investment for the branch at that time;
 - b. Develop the property;
 - c. Sell the property;
 - d. Lease the property; and
 - e. Donate land to the municipality in return for other benefits.
414. A branch with equity in real property may be able to use that equity as security against a mortgage. This could be a good, short-term fix because it provides quick access to cash; however, it also creates a long-term liability (the mortgage) and decreases the real property equity of the branch. Even with considerable real property equity, most branches do not have sufficient cash flow to qualify for a mortgage.
415. For those branches that do have a large enough cash flow to qualify for a mortgage no real long-term gains have been created by mortgaging the property, unless the money obtained from the mortgage is used to create additional income for

the branch. Another option available to branches with excess property is to sell or lease that property which is excess to branch needs.

416. Selling property gives branches access to quick money and essentially substitutes real property equity for cash equity. In this situation, branches are the opposite of “land rich and cash poor”. The benefit to branches is they have cash in hand, but once the cash is gone and the property has been sold, then the branches are neither “cash rich” nor “property rich”. While selling property may be the best option for some branches, in many cases it may not be the best way to utilize real property for long-term gain.
417. Leasing out excess property is another option and one that allows a branch to keep the real property asset and use that asset to create an additional income flow. Creating a new income stream is a very important long-term benefit for branches but it does not provide quick access to a large amount of cash that occurs when a property is sold. There are also administrative responsibilities associated with becoming a “landlord” and many branches are not able, or interested in, assuming these additional duties. Finding a suitable tenant may also be difficult, and many branches feel it is important to maintain some control over the use of the leased property, because this property is generally located adjacent to, or very close to, the Legion branch. Leasing out excess property is generally a good way for branches to take partial advantage of their real property assets

but it does not give branches maximum benefit because:

- a. Only a portion of the entire real property is being used;
- b. The lease payment is generally not calculated normally on the highest and best use value of the land; and
- c. Branches are still required to maintain a building that is generally larger than needed and expensive to maintain.

418. The other option for branches to consider is the wholesale redevelopment of their properties to their highest and best uses. Very often this includes seniors housing and/or commercial development being created on the excess land, but quite often it also includes a new and efficient Legion branch as part of the development. These projects maximize the use of the real property asset, provide housing and commercial services to the community and may realize additional income potential or long-term asset enhancement. To summarize, real property is an asset that Legion branches should take into consideration when making plans for their long-term viability.

CHAPTER V

TYPICAL LEGION AFFILIATED HOUSING DEVELOPMENTS

RENTAL UNITS

501. The traditional Legion affiliated senior's housing development has been apartment rental units. These units are owned by a single entity and are rented to tenants at a monthly rental rate and for a set period of time. Some of the developments rent the units at market value and some are rented at what is generally considered to be affordable rates. What utilities are included in the rent is generally at the discretion of the owner.
502. In recent times, it has become more and more difficult for apartment units to be viable on rental income alone. This is obviously even more of a concern for "affordable" units. Construction costs have increased, as well as management and insurance fees. The cost to heat and maintain buildings is higher. While rental rates have also increased, these rates can only increase to a certain point because after they reach a certain level, it may be more feasible for tenants to look at other housing options.
503. Accordingly, many rental developments are now looking at ways to enhance rental income. One of the options that some Legion facilities have explored is to offer a "menu of services" to its tenants. This "menu of services" may include

services such as: nursing care, meals, laundry services, etc. These services are generally available to the tenants for a fee. Not only does this concept provide an alternative income flow to the facility, it also makes the facility more attractive to tenants and allows tenants to access services which makes it possible for them to stay longer in an Independent setting.

504. In addition to apartment units, other rental properties could include town houses, a community of smaller facilities containing two to four units each developments.
505. This idea appears to be well suited for rural are as where there is need for safe, affordable seniors housing but where the numbers don't support a stand alone rental unit.

CONDOMINIUM UNITS

506. This concept is more prevalent in areas of the country with large urban populations, where real estate values are very high. Condo units would not normally be as successful in areas where the cost to buy a condo would be equivalent to, or greater than, the cost to buy a stand alone housing unit. As populations age and the maintenance required to keep homes safe and efficient increases, the cost of the condo unit in relation to stand alone housing is not nearly as great a concern.
507. Condo units are generally not considered to be "affordable housing" because it is necessary to purchase these units. But, in those areas where

the market analysis shows that condominium units would best address the needs of the target group in a specific catchment area, they are certainly proven, viable development options for branches to consider.

LIFE LEASE UNITS

508. Life lease units are a fairly recent and very popular development option, especially in areas where real estate values are high. The concept is so new that as at the date of publication of this Hand-book, only British Columbia and Manitoba have life lease legislation in effect. Ontario and New Brunswick are now in the process of developing life lease legislation.
509. Because of the lack of governing legislation and because the life lease concept is relatively new, it is best for Legion branches considering this option to engage the services of life lease experts as early on in the planning stage as possible. There are a great many different life lease concepts to consider and some may be better suited to a particular area and clientele than others.
510. Life Lease units are becoming very popular with developers because they are relatively easy to finance. Tenants pay their occupancy fees “up front” and this money can be used to cover the majority of the construction costs. Because this money is paid “up front”, the owner of the facility has certain obligations to

the tenants. It is very important to understand what these obligations are. While this is an issue in every case, it is a greater concern in those areas without governing life lease legislation.

511. As with condo units, a life lease development is not generally regarded as affordable accommodation; housing in those areas where the market analysis shows it to be a viable option for the target group, it is certainly a viable option that Legion branches should consider.

WISH LIST

No matter what type of development you may wish to pursue, make a wish list of exactly what the branch requires. The following are examples of items to be considered:

1. What square footage of the new building does the branch require?
2. How many parking spots are required
3. How much storage is required?
4. Will the developer be providing a new site for the branch to occupy, while under construction?
5. Include a clause in the agreement showing the project is protected by insurance or bond, if the developer should walk away or goes bankrupt. This would ensure the Branch is protected and may be reimbursed with sufficient funds to have the project completed.

6. Notice must be given by the developer when the project will begin. Create a timeline and ensure it is strictly followed to avoid any cost over runs. A clause may be considered for a penalty against the developer for being late in finalizing the project.
7. Be sure to include a clause that indicates that the approval of Ontario Command is required prior to any construction.

The aforementioned are only a few samples for consideration by a branch wishing to enter into negotiations with a developer.

CHAPTER VI

PROPERTY/SITE ANALYSIS

SITE ANALYSIS CONSIDERATIONS

601. Almost anyone with any involvement in real property has heard the phrase that the “three most important things in real estate are location, location and location”. Location is certainly important; however, there are always other issues to consider when determining the viability of a potential building site. The site analysis encompasses many different areas including title and ownership, physical size and dimensions, environmental analysis, highest and best use determination, determination of value, zoning/ rezoning requirements, soil capacity and yes, location.
602. Title and Ownership. Some Legion branches have land in excess of what they need to operate as a branch and this is land they may want to develop. Other branches have no excess land so any new development would need to include a branch building. Sometimes it is necessary for branches to acquire additional land for development purposes. The same concerns need to be addressed in each case although certain issues may be more important in some circumstances than in others.
603. Excess Land. There is usually a cost involved with maintaining land that is excess to branch needs. Property taxes need to be paid. There

are maintenance and snow removal costs. There may be municipal charges like water and sewer and perhaps additional insurance costs as a result of the branch being exposed to increased liability. This excess land is a valuable branch asset that is likely increasing in value every year; however, there are always costs associated with maintaining real property as an asset.

604. When a branch is developing a Business Plan, it might be beneficial to consider this excess property as a branch asset and develop some options on how this asset might best benefit the branch. If a branch wants to develop some options for utilizing this excess land, it would be necessary to conduct a site analysis to determine the property's highest and best use.
605. Branch Property. For a branch without excess property, redeveloping the branch property may require that a new Legion hall be incorporated into any development plans. In addition to all the normal steps involved in a site analysis, these branches will also need to take into consideration any possible downtime that might occur between when the existing Legion building is demolished or closed for renovations and when the new building is ready. In addition to arranging suitable accommodations to hold meetings and tend to the needs of members, there could be rental and other costs involved.
606. Acquiring Property. The two most common ways that branches would acquire property for development purposes would be to obtain a fee simple title or a leasehold interest. In the case of

a leasehold, it is often best to obtain the longest lease possible. A minimum lease of 40 years is often required by lenders before they will consider a leasehold interest for security. Again, the same site analysis process will need to be followed for property being purchased or leased.

607. Ownership. In most circumstances, a Legion branch involved in housing will incorporate a separate housing entity for development purposes. The issue of incorporating a separate housing entity will be dealt with in more detail. In the context of acquiring property, it very often makes sense to acquire or lease any land in the name of the new entity because this could result in savings in legal fees, registry or land title costs and transfer taxes. For this reason, it is important that a site analysis be completed before any land is acquired.

SITE ANALYSIS PROCESS

608. The first part in the site analysis process is to identify the site. The following sections will deal with the actual site analysis process.

Step #1 - Identify the Property "On The Ground".

609. It is important to know where the property boundaries are and what the land looks like physically. The first step in this process is to get the "land description" from the Land Titles or Registry Office and to plot the description. This can be done quickly and at little or no cost and it provides a great deal of information. Your lawyer or a surveyor can also do this work, but that

would entail costs. There is really no need to incur these costs at this very early stage. Plotting the description may show:

- a. If there are any problems with the description that will need to be corrected;
- b. If there are any registered easements, rights-of-way, etc. that may affect development of the lot; and
- c. What the physical dimensions of the property are. This will make it easier to do a visual inspection of boundaries.

It is important to realize that reviewing the most recent description of the property is very helpful at this stage. It will be necessary at some point to conduct a full title search before the property is transferred or mortgage financing is obtained. There may be considerable costs associated with this step.

610. Walking the property may point out discrepancies between the registered documents and what is on the ground (a difference in boundary measurements, evidence of a right-of-way, evidence of recent easements, etc.). This information is essential to the planning process. Also, the more detailed the information you eventually give to your lawyer, the less you will likely pay in legal fees.

Step #2 - Determine Zoning and Development Capacity

611. Once the size and shape of the lot is determined and any obvious development impediments are identified, it is then time to check with the

appropriate authorities to determine how the land is zoned, what development density restrictions are in place, the set back requirements and any other general development provisions that may apply.

612. Zoning. While there may be circumstances where a site is already zoned for the development being contemplated, more often than not a zoning variance or rezoning action will be required. This is generally a very formal and structured process and in most cases it will be necessary to hold public meetings.

If a rezoning or a zoning variance is required it will be necessary to involve the appropriate planning office and it may be necessary to retain a planning consultant. Most, or all, of the work may also be done through the Legion Seniors' Housing Centre for Excellence. Zoning is a "show stopper" because without the proper zoning in place, the development cannot proceed.

613. Development Capacity. Once zoning is obtained, it will be necessary to determine the development capacity of the site.

Development capacity includes:

- a. Number of units that can be constructed;
- b. Size of the units;
- c. Parking requirements;
- d. Set-back requirements (the distance that must be maintained between any building or parking allocations and the property boundaries)

- e. Entrance and exit requirements; and
- f. Other parameters.

These are generally the major issues considered in any development capacity analysis, however, there may be other project specific considerations.

- 614. Site Specific Restrictions. Once the zoning and the general development capacity of the site is identified, these factors help to establish the wide development capacity. However, there may be local or site specific restrictions that also impact development.
- 615. For example, a soil's analysis may be required. While the optimum development capacity for a site may be five (5) stories and one hundred (100) units, a soils analysis may determine that the soil make-up of the lot will not allow maximum development.
- 616. There may also be restrictions with respect to noise, traffic flow, water and sewer capacity, etc. These variables will all need to be specified before you are able to finalize the site analysis.
- 617. It must be remembered that most issues involving zoning and development capacity can be challenged, but this will involve legal representation and may be time-consuming and costly. Once the site analysis is completed, the branch will then know the maximum development capacity of the property. This is the ceiling, anything developed up to the ceiling capacity would be permissible.

CHAPTER VII

DUE DILIGENCE

701. A statement in the *Review and Determination of Housing Issues for Veterans and Seniors* report prepared by The Royal Canadian Legion in 2004 reads “There is no standard definition of ‘Due Diligence’ other than a recognition that it is part of a process that promotes understanding of complex issues”. While it is only “part of the process that promotes understanding”, it is a very valuable part of the process and developing a comprehensive due diligence process is an essential part of project planning.
702. While the term “due diligence” is a process as opposed to a single activity, the standard dictionary definition of each of the words, when used together, offers a good description of the process. Webster’s Dictionary defines the word “due” to mean “appropriate” and gives the definition of the word “diligence” to be “the attention and care legally expected or required of a person”. When the two definitions are used together they define the term “due diligence” as the “appropriate....attention and care legally expected or required...” When this definition is used in conjunction with the statement in the VSI referenced Legion report, it suggests that “due diligence” would be the “appropriate care and attention legally expected or required to understand complex issues.” That is a very good description of what is expected of an entity involved in a “due diligence” process.

The entity doing the due diligence has the responsibility to take the “appropriate care and attention” necessary to determine whether or not the project being contemplated is viable.

703. There is no standard, or normal, or best way to exercise “due diligence”. The due diligence process will need to be developed on a case by case basis and will always be project specific. In fact, each step of the planning process will have its own due diligence requirement.
704. Take as an example the case of a Legion branch that wants to explore the possibility of building seniors’ housing. The first step in this planning process will be to determine if there is a need for seniors’ housing in the area. Determining the need for the housing is a step in the over-all due diligence process, but it will also be necessary to use due diligence in deciding how to determine the need. In other words, it is incumbent on the branch to use the “appropriate care and attention legally expected” when developing the parameters of the needs’ study, because the information obtained in the study will only be as good as the process used in the study, the questions asked, and the services provided. Information on whether or not there is currently a need for seniors’ housing is important, but because the housing will be around for 30 years or more, it is also necessary for the needs’ study to provide an analysis on the long-term need for seniors’ housing in the area to ensure that there will be enough future demand for the housing being

constructed to ensure maximum building occupancy during the life of the project.

705. The five essential elements in a Legion housing development “due diligence” process are:

- a. Market Analysis/Needs Assessment;
- b. Understanding of Branch Long-Term Needs;
- c. Project Viability;
- d. Project Sustainability; and
- e. Responsibilities/Liabilities.

MARKET ANALYSIS/NEEDS ASSESSMENT

706. The terms “Market Analysis” and “Needs Assessment” are sometimes used interchangeably, but in the context of due diligence, this process is used to determine:

- a. What the catchment area will be for any branch project;
- b. What the client base will be;
- c. If the client base within the catchment area has a need for housing;
- d. What type of housing will best meet the client needs;

- e. How much average income the clients have to spend on housing;
- f. What services, in addition to housing, will the clients need; and
- g. How long will the demand last.

This last parameter (how long will the demand last) is absolutely vital information necessary to help determine the viability and sustainability of the project.

DETERMINATION OF BRANCH LONG-TERM NEEDS

- 707. This step, unique to Legion development, is very often over-looked when consultants are mandated to develop the due-diligence process for Legion projects.
- 708. In addition to helping meet the need for housing in a community, a Legion branch typically develops housing to supplement the branch income flow and to enhance its asset base. If this is the case, then making sure that the housing development can meet these needs is a very important part of the due diligence process. Because it is a stand-alone need that is unique to Legion developments it is often not included in a “standard” due diligence process. For example, a housing project may be found to be viable and sustainable in the long-term, but if it is unable to meet the Legion need of providing an alternative income flow to the branch, the question remains as to whether it is a viable project “for the branch”. If it does not meet the

branch needs, then it may not be a good project for the branch even if the stand-alone project is viable. In these cases, the project may still go ahead, but perhaps in a different format.

PROJECT VIABILITY

709. In simplest terms, a development is likely viable if:
- a. Suitable financing can be obtained for the project;
 - b. The short-term and long-term incomes exceed the short-term and long-term expenses; and,
 - c. Appropriate succession planning can be put into place to ensure that the facility will be properly managed and services properly provided in the long-term.
710. While “project viability” is generally considered to be only a financial analysis element, financial viability is not the only consideration that must be addressed. A project is not viable if it is not financially viable; however whether or not it continues to be financially viable very often depends on how the project is managed, how and what services are provided, how tenant needs are addressed and how well positioned the project will be to be able to change and adapt to future needs. Assessing and analyzing these areas are a very important part of determining project viability.

PROJECT SUSTAINABILITY

711. Once it is determined that there is a long-term client base with a need for the housing being provided, it is then necessary to understand that the needs of these clients will likely change over time. For a project to be sustainable, a plan will need to be in place so that these needs can be identified and met quickly and efficiently. If this plan is not in place, the tenants may decide to move to a newer, more modern facility where their developing needs can be met. While much of this plan will involve the provision and delivery of services, it may also be necessary to make physical changes or adaptations to the building.

RESPONSIBILITIES/LIABILITIES

712. Branches need to know when they become involved in housing projects exactly what short-term and long-term responsibilities and/or liabilities they may be incurring. Very often these issues are dealt with when a new "housing entity" is developed; however, there may be many other concerns that should be addressed. For example, if a Legion branch gives a long-term lease to a housing entity to provide seniors' housing, the contingent liability to the branch may increase in each year of the lease. If a Legion branch "must provide" members to sit on the board of the new entity, that is obviously a long-term commitment for the branch. Many of the issues surrounding "responsibility" and "liability" are legal and technical in nature and these matters should be thoroughly discussed with the branch lawyer before any commitments are made or any contracts signed.

CHAPTER VIII

PROPERTY DEVELOPMENT CHECKLIST FOR LEGION BRANCHES

801. The Property Development Checklist for Legion Branches contained in this handbook is provided strictly as a guideline. It is intended solely for the purpose of assisting Provincial Commands and Legion branches to better understand both the planning process and the “Legion” approval requirements for Real Property Development. Provincial Command and branch requirements may differ from area to area and all branches should check with their individual Commands for information in this regard. Some Commands have also developed their own property approval guidelines and, in those cases, the guidelines developed by the Commands are those for Legion branches within those commands.
802. Property Development Committee. In every case where a Legion Branch is contemplating the use and/or development of Branch property for development purposes, the branch should establish a Property/Development Committee. Its purpose would be to explore possibilities and investigate the feasibility of any proposed project and to report back to the branch executive. The committee should be set up in accordance with the following parameters.

- a. The Committee should not be made entirely by members of the Branch Executive;
 - b. The only focus of the building committee will be the proposed development;
 - c. The committee, being an extension of the Executive, would only make recommendations to the Executive and not make decisions; and
 - d. Having the committee separate from the Executive gives the Executive the latitude to question committee recommendations.
803. There must be a motion to establish this committee and the motion must be approved by the branch executive at a general meeting. The motion should specify the terms of reference of the property committee. The motion could include approval to spend up to a specified amount, to investigate existing government grants available and to proceed with grant applications if no financial liability is incurred.
804. The committee would be appointed by the branch executive and approved by the general membership. The committee should have a minimum number of five (5) members consisting of the Chair and four (4) members at large.
805. The committee should report to the branch executive and the general membership, and it should not have the authority to spend money, borrow money, sign contracts or to commit the

branch legally, financially or contractually, in any way whatsoever, other than as outlined in the motion made to establish the committee, without the prior approval of the general membership. The committee should make progress reports to the general membership on a monthly basis.

806. Once the Committee has been established it should contact the Provincial Command to see what resource assistance or Information may be available.
807. The branch should notify the Provincial Command of any potential developments. After the committee determines the feasibility of any proposed project, the same committee may be given approval by the branch executive, ratified by the general membership, to proceed with other stages of project planning and development.

~ IMPORTANT ~

808. Committee members must perform their committee duties and responsibilities in a manner so as not to put themselves in a position of real, or perceived, conflict of interest, both personally and with respect to any relationship, or dealings with the branch.
809. Determination of Branch Options. The Property Development Committee shall perform the following steps:
 - a. First of all identify the current financial situation of the branch;

- b. Identify the short-term and long-term issues/needs and goals of the branch to ensure that any proposed real property development addresses those needs, etc. to the greatest extent possible. Short-term issues could include cash flow problems, outstanding financial commitments, requirement to do repairs and renovations to the branch building, financial/business trends, etc. The long term issues might be declining membership, a facility that is too large or too expensive to maintain by the members, financial and business trends over an extended period, etc.;
- c. Ensure that the branch objectives established to address any issues are realistic;
- d. Establish various options available to the branch, such as downsizing, severance of a portion of the property for sale or development, amalgamating with another branch or share space with another service organization;
- e. Evaluate options and determine which option is the most desirable and achievable, etc., given the needs of the branch and ensure that due consideration is given to how well the option will address the needs of the branch; and

- f. Select preferred option and prepare proposal.
 - c. Will the property pass an environmental assessment?
 - d. Can a clear, unencumbered title to the property be obtained (re: mortgage, easements, flood plains, etc.)?
 - e. Can the property be severed?
 - f. How much development will the lot size allow?
 - g. What is the soil's capacity for the lot? and
 - h. What is the assessed value of the property?
814. The primary purpose of this preliminary assessment is to get a clear understanding of what development options the proposed site allows and to determine as soon as possible whether or not the project can proceed for site reasons.
815. In addition to the physical analysis of the site, it is necessary to assess, as much as possible, the financial, marketing and funding viabilities of the proposed project before a branch commits large expenditures to the development. Some elements to consider include:

- a. What project expenditures may be necessary to assess preliminary viability? Is there a need for soil testing or rezoning? Will a market study be required? Will there be relocation expenses?;
 - b. What equity can be brought to the project? (Land value, cash, grants, development concessions, donations, "sweat equity");
 - c. The development of preliminary a pro forma. (Income/expense - and - construction cost); and
 - d. What are the possible, and best, funding sources available to the project? If possible obtain a letter of Commitment for project funding from the developer or a recognized lender. If Canada Mortgage and Housing (CMHC) is to be involved it will be necessary to determine what information it will require for mortgage insurance purposes. The income/expense and construction cost pro forma will be valuable information when negotiating for funding.
816. The property development committee may be able to obtain this information on its own, but it may be necessary to involve a mortgage and/or financial expert.
817. The key consideration in this step is to determine, as early as possible and thoroughly as possible, if the proposed project can be financed in a manner, and at a rate, acceptable to the Branch. If the preliminary proposals cannot

810. Preliminary Assessment of Project. Branches must be aware that renovations and/or development to an existing facility may have a short-term negative impact on branch operations. It is important, as much as is practically possible, to do a preliminary assessment of the viability of the proposed project as early as possible.
811. This is especially true with respect to the financial viability of the proposed project. As much information as possible should be obtained with respect to the financing options of the development before financial commitments are made to architects, planners, etc.
812. While branches may not have firm details about proposed projects in place at this stage, they usually have a general idea as to what type of development they want to consider. Some possible options are:
- a. Housing (assisted vs. market rentals, condos, life-lease, etc.);
 - b. Commercial use of land; and
 - c. Sale or lease of land.
813. One of the first things to evaluate is the actual "site" capacity:
- a. Is Branch land available or does land need to be acquired?
 - b. Is there a need for rezoning or a zoning variance, and what will be the new highest and best use value of the property after the rezoning?

be readily financed, perhaps it may be necessary to change the development or re-think the project.

818. To further determine project feasibility, it is necessary to develop a preliminary project plan. This plan should define the tasks to be done, develop the sequence in which the tasks should be carried out and allocate the costs and time-frames associated with each task. Some areas to consider when developing a project plan could include:

- a. The scope of the feasibility assessment must be identified. For example, is rezoning required? Is it necessary to do a market assessment or is one available? If a market analysis has already been carried out in your area it may not be necessary to have another one done. The key is to determine the need and if that need has already been determined there is no need to do it again; and
- b. The identification of project specific tasks. This should include expected outputs, time lines and cost estimates. Project specific tasks could include:
 - i. market analysis
 - ii. rezoning applications
 - iii. parking study

iv. noise assessment

v. business plan.

819. The costs of preparing needs assessments, rezoning applications, etc. may vary depending on project specific requirements. It is important to get firm estimates for these costs early in the planning process. It is also important to determine what professional assistance may be required to help carry out the identified tasks. You should contact local municipal officials to check on the zoning and other site specific requirements for the proposed development.

Some questions that might be answered by municipal officials are:

- a. What is the present zoning of the 'property'?
- b. What does this zoning allow?
- c. What is the minimum time-frame for approval of an uncontested rezoning application or zoning variance?
- d. What are the costs associated with a rezoning or zoning variance approval?
- e. Assuming that the property can be rezoned to accommodate the proposed project, are there any building restrictions (i.e. Height, maximum development

capacity, set-back requirements, line of sight issues, etc.)?

- f. What are the development fees?
- g. Are there any easements, restrictions, or other impediments to development that affect the property?
- h. What is the assessed value of the property?
- i. What are the dimensions of the property?
- j. Is there a plan for the property on file?

Identify possible funding sources to cover the estimated costs:

Example:

Proposal Development Funding (PDF) - CMHC
Seed Funding (CMHC)
Branch funding
Community write-offs and deferrals, etc.

Determine any funding gaps between the tasks to be performed and funding sources and amounts identified.

820. Branch approval of the Preliminary Project Plan (PPP). Once a preliminary project plan (PPP) is established by the property development committee and the plan is deemed to be feasible, the PPP must then be approved by the branch general membership by way of a proper Notice of Motion.

821. Command Review Process (Preliminary Project Plan). Commands are generally prepared to work with Branches at each stage of their project to reduce turn around time. Branches should contact Command right away to ensure that Command is well informed of each step of the project. Commands will generally provide a review as quickly as possible but the onus is on the Branch to give a reasonable time frame for consideration by Command.
822. Once the branch has completed its preliminary viability assessment it may then decide to do a more in-depth project analysis. This may necessitate engaging additional professional help. There could be rather substantial costs associated with this planning stage. Some of the work required at this stage could include:
- a. Obtaining the funding that was identified as a “funding gap” when the preliminary project plan was developed. This money will likely be needed to help cover the expenses associated with this stage of the project;
 - b. Getting detailed architectural and survey plans (i.e. Final architectural drawings, engineering plans, and landscaping plans)
 - c. Obtaining a quantity cost analysis. This is a detailed professional construction costs analysis that will be needed to develop the final pro forma.

- d. Developing financial information. (Construction cost income and expense pro forma).
- e. Developing a Business Plan. This plan will include information such as: rental incomes and operating expenses, and market plans, succession planning, property management options and long-term clientele projections;
- f. Developing a mortgage application package; and
- g. If necessary, the incorporation of a separate "Holding Company". Depending on the nature of the development, it may be necessary to incorporate a separate company to own and operate the project. As part of the planning process, the on-going relationship between the branch and the new corporation will have already been determined. It is important that the Letters of Incorporation for the new company be drafted to allow this relationship.

Example:

- i. will the branch be completely at "arms-length" from the new corporation?
- ii. will there be a limitation of branch liability in the project?

- iii. will the branch have access to future project profits if that is one of the objectives of the branch?
 - iv. will any relationship established between the branch and the new company comply with the Conflict of Interest Guidelines? (See Conflict of Interest Guidelines attached as Appendix A).
823. This step may have already been initiated as part of the preliminary assessment of project viability; however completion of the Letters of Incorporation for the new “holding company” will likely be finalized at this stage of planning. This is an extremely important step in the planning process and the branch and/or project solicitors must be involved in these meetings.
824. Final approval of Proposed Project by Branch. Once the proposed project is determined to be feasible and viable, it is necessary to get the final approval to proceed from the branch membership and to have this approval reviewed by the Provincial Command. As with the branch approval of the PPP, this final approval by the branch general membership must be by way of a proper notice of motion.
825. Final Review of Proposed Project by Provincial Command. At this stage, the primary focus of the Provincial Command review will be to ensure that all steps in the Property Approval Process have been followed.

826. Once the project has received final approval from the branch general membership and Provincial Command has reviewed that approval, it is assumed that the new corporation will carry out all further actions with respect to the project.

CHAPTER IX

CONFLICT OF INTEREST GUIDELINES

901. The Conflict of Interest Guidelines contained in this Hand-book are guidelines only and may, or may not, be included as a part of any Command or branch official policies. Time-frames, reporting deadlines and things of this nature are suggestions only and may be changed by Commands and/or branches as they deem necessary.
902. Preamble. It is important for the Legion Provincial Commands and/or branches that are considering housing projects to address conflict of interest situations. Conflict of interest can be both real and perceived and since some provinces have implemented rules and legislation relating to conflict of interest issues involving non-profit housing providers, Legion branches should check provincial legislation to see if any regulations or guidelines exist on this subject.
903. Definitions. In these guidelines “conflict of interest” includes, but is not limited to, situations where:
- a. A director of a branch initiated housing project is also a member of the Legion branch executive; and/or
 - b. The Legion branch and the housing corporation have a formal and/or

informal business arrangement, and one or more of the decision makers has decision making capacity for both entities; and/or

- c. Any member(s) of the branch executive, or a person related to the member(s) stands to receive a direct or indirect gain, benefit, advantage or privilege as a result of the branch being involved with the housing corporation.

904. Avoiding Conflict of Interest. The Executive Members of a Royal Canadian Legion Branch, as an established and regular practice, should not enter into any relationship, arrangement or contract with any branch initiated housing project and / or housing corporation in a way that creates a conflict of interest. Nevertheless, it is recognized that there may be circumstances where real or potential conflict of interest situations are unavoidable. In these instances the person involved must provide a detailed, written notice of the real or potential, conflict of interest to the branch executive. The branch executive will copy the notice to Command. The branch executive shall then determine if there is a real or potential conflict of interest with respect to the affected member and if there is a conflict situation, the branch may attempt to resolve the real or potential conflict of interest, in accordance with the following procedure:

- a. Notice of the real, or potential, conflict of situation must be provided to the branch executive by the affected member within seven (7) days of the affected member becoming aware of the conflict situation;
- b. When the conflict situation is addressed by the branch executive, the affected member must leave the room and may not in any way participate in discussion. The executive may, at its discretion, recall the affected member to answer questions, but the affected member must again leave the room before any further discussion on the matter is undertaken by the executive;
- c. The branch executive shall advise the affected member of its interim decision, which will be subject to command review, in writing, no later than seven (7) days from the date of the meeting. Command will be concurrently advised within the same time-frame;
- d. Once command has reviewed the branch decision it will, within fourteen (14) days of its receipt of the decision, advise the branch of any objections, if any, that it may have; and
- e. If there are no objections from command the branch executive shall, within seven (7) days of receiving the command review, advise the affected member of the final decision.

905. In the case of a branch executive member living in a dwelling unit in the branch initiated housing development, the member may be employed by the housing corporation to perform routine tasks (i.e.. maintenance, unit rentals, etc.) but the member may not be employed in a managerial or supervisory role.
906. A branch executive member who does not live in the housing development may also only be employed by the housing corporation subject to the auditors of the conflict of interest guidelines.
907. Responsibility to Avoid Conflict of Interest. Branches shall closely monitor their dealings to ensure that these guidelines are followed and that conflict of interest issues are quickly identified and resolved.
908. Provincial Command / Branch disagreement RE: Conflict Situation. In the event that Provincial Command does not concur with the branch interim decision, every effort will be made by the two parties to reach an agreed upon decision. If an agreed upon decision cannot be reached within fourteen (14) days of the initial written review provided to the branch by command, then the decision taken by command will stand.

909. Record Keeping It will be the responsibility of both the Provincial Command and the branch to keep detail records of all conflict of interest decisions. It will be the responsibility of the affected member to advise the branch of any change in a recorded conflict of interest situation; and it will be the responsibility of the branch to advise Command of any change in a recorded conflict of interest situation.

CHAPTER X

GUIDELINES FOR HIRING OF PROFESSIONALS

1001. At some stage during the development proposal process it will be necessary to retain some professional assistance. Professionals involved in the development of real property could include, but not be limited to: lawyers, architects, engineers, accountants, land surveyors, planners, development consultants, financial consultants, market analysts, professional fund raisers, realtors, traffic and noise consultants, property appraisers and environmental assessors.
1002. One important thing to remember when dealing with professionals is that they work for you. You are paying them for their advice and guidance, so it is important to retain professionals that you are comfortable with.
1003. Very often branches have lawyers and accountants that they work with on a regular basis and there is no need to involve another lawyer or accountant in the development process. Most lawyers and accountants, if they are not comfortable dealing with real property issues, will advise you accordingly. It is a good idea to ask your present lawyer and accountant if they are comfortable with real property development early in the planning process. If you need to retain someone else, you can do so as early as possible.

The following Guidelines should be followed when retaining professional help:

- a. Get three or more quotes from professionals like architects, planners, market analysts, fund raisers, realtors, engineers, specialty consultants, etc...very often it is possible to structure payment deals that might work best for the branch;
- b. Always insist on signing a working agreement with the professional, you intend to hire and never sign any agreement without first having it reviewed and receiving advice from your lawyer;
- c. Every working agreement should include, but not be limited to:
 - i. the cost of the services to be provided and how they will be billed (by the hour, by the job, will all hourly billings be the same, etc.)
 - ii. a provision to receive detailed accounts for all billings;
 - iii. a clear indication of the services to be provided;
 - iv. a clear indication of the time-frame for the provision of the services; and
 - v. a clear indication of when payment will be expected.

NOTE: Again, no agreements should be entered into without the proposed contract being reviewed by your lawyer. **64**

GLOSSARY OF TERMS

The definitions in this Glossary of Terms are not meant to be legal definitions, nor are they intended to necessarily be comprehensive definitions of the terms. The definitions are intended for the sole purpose of providing a basic understanding of what the terms mean in a real property context. For a complete and/or legal understanding of what these terms mean, it will be necessary to consult your lawyer.

Agreement of Sale:

A contract for the sale of real property made between The Owner (Vendor) who agrees to sell and The Buyer (Purchaser) who agrees to buy.

Arms Length Transaction:

A deal or agreement between two related parties made as if they were unrelated to avoid a conflict of interest. It could also be a deal made between two or more unrelated parties.

Chattels:

Personal property (i.e. washers, dryers, etc.)

Condominium Development (Strata Title):

In a residential context, the purchaser acquires a fee simple interest in the apartment and a tenants-in-common interest, together with the other tenants, in the common areas of the facility (i.e. gardens, pool, hallways, etc.)

Due Diligence:

In the context of real property, it refers to exercising of the appropriate care and attention legally expected or required to understand complex issues surrounding real property development.

Easement:

The right obtained by a landowner to have limited use of another's land (servient tenement) for the benefit of his land (dominant tenement).

Environmental Assessment (Phase I):

This is typically a process where a qualified Assessor conducts an inspection of a subject property to determine whether there is any sign of actual or potential environmental contamination. A Phase I assessment has four components:

1. Collection and Review of Background Information;
2. Site Inspection;
3. Interviews; and
4. Evaluation of Information and Documentation;

A Phase I does not involve intrusive sampling or the analysis of samples

Equity:

The amount of owners interest in a project. The amount by which an entity's assets exceeds it's liabilities.

Life Lease Development:

Self-contained units organized as a life-lease project where an individual purchaser has a right to occupy a unit for residential purposes for his life-time, or for a period of at least 20 years, not including renewals. The occupant pays for this right in advance and has the right to dispose of the life-lease interest pursuant to the terms of the life-lease agreement.

Letter of Intent:

A non-binding, conditional expression to do business. A Letter of Intent is often used to gauge interest in a project and to outline the conditions under which the guarantor of the Letter of Intent would consider doing business. It creates the parameters for a subsequent agreement.

Market Analysis:

In the context of real property, it is the process carried out to determine the housing needs of an identified client base within an established catchment area for a specified period of time.

Market Value:

The price that a willing buyer would pay to a willing seller, in an arms length transaction, in an open and competitive market place.

Mortgage/Charge:

An encumbrance against real property.

Pro Forma:

Financial Statements that have one or more assumptions or hypothetical conditions as part of their makeup. For example, income and expense projections would be a pro forma because some of the numbers used are assumptions.

Property Appraisal:

An opinion of value of real property provided by a qualified appraiser as at a certain date in time, normally referred to as the appraisal date.

Real Property:

Land and all things permanently affixed to it (i.e.. buildings, trees, fixtures, etc.)

Rental Units:

Housing units that are occupied by tenants who pay rent to a landlord (Owner) on a monthly basis, usually for a specified period of time.

Re-zoning:

The process required to change the legal use of real property. Re-zoning is normally a public process and the steps involved in the process may change from community to community.

Site Analysis:

The process used to ascertain the utility, marketability and development capacity of a real property site.

Value in Use:

The value of real property to its owner/user. This value may be subjective and may not represent market value.

Zoning Variance:

The process required to change a particular requirement within an established zone. For example, a zoning variance could be sought to change the parking requirements in a zone, while all other requirements within the zone would remain unchanged.

FREQUENTLY ASKED QUESTIONS

Q. Does the Command have any money to assist branches with housing projects?

A. At this time the Legion, Ontario Command does not have any money available to help branches with property development projects. The Command is available to provide assistance and guidance to all branches, at no cost to the recipients.

Q. If our branch builds a housing project does it become the property of Provincial Command?

A. No. The new housing development would be owned by the branch, or by a housing entity established by the branch solely for that purpose, depending on how the project was initially structured.

Q. If the housing entity is successful and makes money, can any of that money be used by the branch to cover operation costs?

A. That depends. If the facility is owned by the branch then the branch can likely access the money. However, if the facility is owned by a separate housing entity, then the branch cannot use the money. This issue is best dealt with during project planning. If the branch does want to create an income flow from the new housing development, this should be discussed with your lawyer very early in the planning process.

Q. How long will it take from the initial planning meeting until construction starts?

A. Depending on the size and complexity of the development, it could take between 16 and 24 months. If there are delays at any stage in the planning process it could take longer.

Q. How do we get started?

A. The first step is to decide exactly what it is that you want to accomplish. What are the long-term needs of the branch? What are the housing needs? Once the needs are determined, a plan can be developed to address those needs. If you don't know where you're going it's very hard to get there.

Q. Who should be on a Development Committee?

A. The right mix of people will change from area to area, but the key is to get a good cross-section of expertise from both inside and outside the branch. People on the committee who have experience in finance, building, project planning, report writing, etc. would be beneficial, as would people with experience in planning and dealing with municipal government. The Consultant from The Legion Seniors' Housing Centre for Excellence is also available to work with the committee and this would provide the group with a good general knowledge of project planning and development.

INCOME EXPENSE PRO FORMA

INCOME	
Rents	
Subsidies	
GROSS INCOME	
EXPENSES	
Depreciation	
Electricity	
Heat	
Insurance	
Interest and bank charges	
Interest on long-term debt	
Office and travel	
Professional Fees	
Repairs and maintenance	
Replacement reserve	
Taxes	
TOTAL EXPENSES	
NET INCOME	

CAPITAL COST AND FINANCING

LAND ACQUISITION OR SEVERING:			
Cost of Acquiring New Property			
Cost of Severing Existing Property			
OTHER ACQUISITION OR SEVERANCE COSTS:			
Legal Services			
Survey			
Registry Fees			
Appraisal			
OTHER FEES AND CHARGES:			
Environmental Assessment, Engineering, etc.			
Zoning Costs (if applicable)			

OTHER FEES AND CHARGES:			
Soils Analysis (if applicable)			
Site Analysis			
Development Capacity			
Set-back requirements			
Green space allocation			
Parking			
DEVELOPMENT COSTS:			
Construction Costs			
Development Fees			
Financing Fees			

FINANCING COSTS CONTINUED:			
Lender fees			
Broker fees			
Interest during construction			
Mortgage insurance fees			
Taxes during construction			
Insurance during construction			
PROFESSIONAL SERVICES:			
Architect			
Quality Surveys			
Project Manager			
Legal Services			

LANDSCAPING			
Chattels (fridges, stoves, laundry, etc.)			
Contingencies			
TOTAL CAPITAL COST:			
		LESS EQUITY CONTRIBUTION:	
AMOUNT TO BE FINANCED:			
GROSS MONTHLY INCOME:			
		LESS MONTHLY OPERATING COSTS:	
MONTHLY INCOME AVAILABLE FOR MORTGAGE FINANCING:			