



**COMPARATIVE ANALYSIS OF NON-PROFIT
HOUSING LEGAL FRAMEWORKS IN FIVE
COUNTRIES: AUSTRIA, BRAZIL, ENGLAND,
NETHERLANDS, AND SOUTH AFRICA**

URBAN LEGAL CASE STUDIES | VOLUME 12

UN HABITAT
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Comparative Analysis of Non-Profit Housing Legal Frameworks in Five Countries: Austria, Brazil, England, Netherlands, and South Africa

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TABLE OF CONTENTS

| | |
|---|------|
| LIST OF FIGURES | VI |
| LIST OF TABLES..... | VII |
| LIST OF ABBREVIATIONS | VIII |
| ABSTRACT | IX |
| PROTOTYPE OF A NON-PROFIT HOUSING FRAMEWORK AS AN OVERARCHING GUIDING DOCUMENT | XI |
| COMPARATIVE ANALYSIS OF FIVE NON-PROFIT HOUSING FRAMEWORKS: AUSTRIA, BRAZIL, ENGLAND, NETHERLANDS, AND SOUTH AFRICA | 1 |
| COUNTRY SPECIFIC SOCIAL HOUSING CONTEXT | 2 |
| | |
| I. ANALYSIS OF GOVERNMENT AND NGOs’ RELATIONSHIP..... | 5 |
| A. REQUIREMENTS FOR LICENSING, REGISTRATION, AND INTERNAL GOVERNANCE..... | 5 |
| B. COOPERATION AND PARTNERSHIP FRAMEWORKS..... | 13 |
| C. BUSINESS PLAN AND FINANCING INSTRUMENTS..... | 14 |
| | |
| II. NGOs AND HOUSING PROVISION MECHANISMS..... | 20 |
| A. ACCESS TO LAND AND HOUSING PROVISION/ACQUISITION..... | 20 |
| B. PLANNING, HOUSING STANDARDS AND APPROVAL PROCESS | 21 |
| C. MAINTENANCE AND OPERATION SYSTEMS | 23 |
| | |
| III. NGOs AND BENEFICIARY’S RELATIONSHIP | 27 |
| A. BENEFICIARY’S CRITERIA..... | 27 |
| B. HOUSING TENURE OPTIONS | 28 |
| C. RIGHTS AND DUTIES | 29 |
| D. COMMUNITY PARTICIPATION | 31 |

| | |
|---|-----|
| CASE STUDIES..... | 34 |
| I. NON-PROFIT HOUSING IN AUSTRIA..... | 35 |
| II. NON-PROFIT HOUSING IN BRAZIL..... | 53 |
| III. NON-PROFIT HOUSING IN ENGLAND..... | 90 |
| IV. NON-PROFIT HOUSING IN NETHERLANDS..... | 107 |
| V. NON-PROFIT HOUSING IN SOUTH AFRICA..... | 122 |
| KEY REFLECTIONS AND RECOMMENDATIONS..... | 136 |
| ANNEX: CHECKLIST FOR COUNTRIES TO ASSIST IN MODERNIZING, REVISING AND REVIEWING SOCIAL HOUSING LEGAL FRAMEWORKS..... | 138 |
| REFERENCES..... | 142 |

LIST OF FIGURES

| | |
|---|-----|
| Figure 1. Map Showing the Case Study Countries | 1 |
| Figure 2. Overview of Austria Non-Profit Housing..... | 35 |
| Figure 3. Registration Process of Social Housing NGOs in Austria..... | 37 |
| Figure 4. Timeline of select Housing Movements and Policy for Self-Management in Brazil | 56 |
| Figure 5. Overview of Housing Association Registration to qualify for federal funding in Brazil..... | 57 |
| Figure 6. Overview of Licensing, registration and Internal Governance for Associations in Brazil..... | 59 |
| Figure 7. Relationship framework of Self-Management Movement in Brazil | 62 |
| Figure 8. Relationship framework of Self-Management Actors in Brazil..... | 63 |
| Figure 9. Process of Developing Social Housing under MCMV-E | 66 |
| Figure 10. Overview of Non-Profit Housing in England..... | 90 |
| Figure 11. Registration Process of Social Housing NGOs in England..... | 91 |
| Figure 12. New Approaches to Housing Management..... | 101 |
| Figure 13. Overview of Non-Profit Housing in the Netherlands..... | 107 |
| Figure 14. Registration Process of Social Housing NGOs in Netherlands..... | 109 |
| Figure 15. Overview of Non-Profit Housing in South Africa | 122 |
| Figure 16. Registration Process of Social Housing NGOs in South Africa..... | 123 |

LIST OF TABLES

| | |
|---|----|
| Table 1. Checklist for Government and NGOs' Relationship | 18 |
| Table 2. Checklist for NGOs and Housing Provision Mechanisms. | 25 |
| Table 3. Checklist for NGOs and Beneficiary's Relationship..... | 33 |
| Table 4. Funding and Cost breakdown via MCMV-E Project Example in Brazil..... | 69 |
| Table 5. Financing Instruments of Select Movements..... | 71 |
| Table 6. Basic Standards and technical specifications for housing units, site planning and urban design for MCMV andMCMV-E | 78 |
| Table 7. The Regulatory Standards for Social Housing in England..... | 93 |

LIST OF ABBREVIATIONS



| | |
|---------------|---|
| BOD | Board of directors |
| CEO | Chief executive officer |
| GBV | Federation of Limited Profit Housing Associations (Austria) |
| GDP | Gross domestic product |
| LPHA | Limited Profit Housing Associations (Austria) |
| MCMV-E | Manuel Minha Casa Minha Vida Entidades |
| NGO | Non-government organization |
| NPHOs | Non-profit housing organizations |
| NPO | Non-profit organization |
| SDGs | Sustainable Development Goals |
| SHP | Social housing programme (South Africa) |
| UMM | Union of Housing Movements (Brazil) |

ABSTRACT

Housing is a fundamental human right and UN-Habitat recognizes its catalyst role in the sustainable development agenda. 'Housing at the centre', a global approach set out by UN-Habitat in 2015, puts people and human rights at the foreground of sustainable urban development policies to leave no one and no place behind. This approach re-establishes the important role housing has in development, in stimulating the economy, reducing poverty, and promoting inclusion in cities, and will position housing issues on the international development agenda in an increasingly strategic manner vis-à-vis the New Urban Agenda to meet the growing needs of urbanization in a way that benefits all people. This approach also recognizes that housing contributes, directly or indirectly, to the fulfilment of all 17 Sustainable Development Goals (SDGs) and many of its 169 targets. In turn, many SDG targets contribute to the realization of the right to adequate housing which are not only focused on domestic space, its facilities, its immediate environment, or the way of inhabiting it, but they are also centred around the reduction of poverty rates, access to health and education, gender equality, and reduction of social and economic inequalities, among many others.

Around the world there are programmes to ensure that households in vulnerable situations have access to housing that is safe, adequate, and affordable.¹ More than 1.8 billion people worldwide lack adequate housing and the number of people living in informal settlements has passed a billion. It is estimated that 15 million people are forcibly evicted every year and that approximately 150 million people are homeless.² Affordability issues play a key role in this global housing crisis. The housing affordability gap is equivalent to USD 650 billion per year, or 1 per cent of global GDP. In some of the least affordable cities, the gap exceeds 10 per cent of local GDP.³

A more coherent and comprehensive framework of affordable housing is necessary to ensure broad access to this necessity of life, one which facilitates cooperation across socio-economic backgrounds and creates shared interests in a safe community, a strong economy, and a vibrant social scene to harness the framework's transformative potential.

The affordable housing solutions generated by the non-profit housing sector provide a novel framework for reforming affordable housing policy and legal frameworks. UN-Habitat has conducted an analysis of the non-profit housing sector in five countries (**Austria, Brazil, England, Netherlands, and South Africa**) with a specific emphasis on the potency of their legal and policy frameworks.

In generating a scheme for meeting the aggregate demand for housing and creating a legal framework that not only develops the non-profit housing sector but also provides for its support and sustainability, five countries were assessed because of their significant successes in this

¹ Affordability is one of the 7 components of the right to adequate housing as enshrined in art. 11 of the International Covenant on Economic, Social and Cultural Rights. See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <https://www.refworld.org/docid/47a7079a1.html>

² <https://undocs.org/en/A/HRC/43/43>

³ The McKinsey Global Institute and the World Bank (2014), 'A Blueprint for Addressing the Global Affordable Housing Challenge.'

area. Through this assessment, UN-Habitat seeks to promote the participation of the non-profit sector in the provision of social housing to meet the demand for urban housing needs and to bridge the housing affordability gap. This document is intended to not only help countries create or strengthen their legal frameworks to support the participation of non-profit organizations in the housing sector, but also proposes new governance frameworks to facilitate this.

PROTOTYPE OF A NON-PROFIT HOUSING FRAMEWORK AS AN OVERARCHING GUIDING DOCUMENT

The overview of country frameworks and suggested modifications provide a pathway for technical support towards the development or revision of a non-profit housing regime to enhance urban development. The comparative analysis of the five different case studies is to guide users such as policy makers in elaborating and refining their national frameworks in their local country settings. This document is a guide, an archetype, with a variety of examples from countries that have thriving social housing systems.

The primary purpose is to provide a framework for the successful development, support, and sustenance of a non-profit housing sector in any country that seeks to adopt this approach to diversifying the housing stock. Naturally, its application depends on development priorities. To capitalize on the best practice available, a country must first conduct an internal assessment on its housing needs, existing policy and legal framework, and financial means. A country checklist to assist with assessing an existing social housing framework and the tools for creating or revising one is provided in the Annex.

To this end, UN-Habitat has developed three components of the assessment framework that can be adapted to a country's objectives. The components have a further ten elements, as shown below:

I. Government and NGOs relationship

- A. Requirements for licensing, registration, and internal governance
- B. Cooperation and partnership frameworks
- C. Business plan and financing instruments

II. NGOs and housing provision mechanisms

- A. Access to land and housing provision/acquisition
- B. Planning, housing standards and approval process
- C. Maintenance and operation systems

III. NGOs and beneficiaries' relationship

- A. Beneficiaries' criteria
- B. Housing tenure options
- C. Rights and duties
- D. Community participation

COMPARATIVE ANALYSIS OF FIVE NON-PROFIT HOUSING FRAMEWORKS: AUSTRIA, BRAZIL, ENGLAND, NETHERLANDS, AND SOUTH AFRICA

The analysis is based on the case studies of Austria, Brazil, England, Netherlands, and South Africa, which serve as best practice legal frameworks for a robust and sustainable social housing sector.




Figure 1: Map Showing the Case Study Countries.

The countries were selected specifically for the instrumental and substantial contribution of the non-profit sector in the production and delivery of affordable housing for the neediest households. The countries also demonstrated the following:

- Clear criteria for beneficiary eligibility
- Variety of financing mechanisms for public and social housing
- Variety of models for non-profit sector involvement, roles, and responsibilities
- Variety of housing tenure options
- Beneficiaries' financial contribution

- Consideration for neighbourhood planning in social housing construction

This comparative analysis seeks to identify a pattern for the successful development and growth of the social housing sector by taking note of the legislative and procedural mechanisms that characterize such development. The case study report has also been developed based on a desk review of existing materials, such as a literature review, and secondary data and in-force laws (and their implementation records) in the selected countries. Interviews with experts and practitioners (including NGOs) in the selected countries were part of the data collection process.



This report outlines similar approaches to legal frameworks among the countries analyzed, some distinct features and best practices. Additionally, recommendations are made to better guide the application of the information in each section.

To better appreciate the impact each framework has on the social housing sector, the country specific housing context is outlined. Below are social, economic, and environmental characteristics of the five countries in the case studies, which serve as a comparative base to assist any country to determine applicability of the legislative and procedural mechanisms.

Country specific social housing context

AUSTRIA

Austria is a regionalized federation of 9 provinces, approximately 2,400 municipalities and the city of Vienna. Social housing is overseen by the Federation of Limited Profit Housing Associations (GBV), an association of charitable building associations or a federation of limited-profit housing associations. Non-profit rental housing is provided by Limited Profit Housing Associations (LPHAs).

Social housing is provided by roughly 185 organizations that contribute 23 per cent of the housing stock and 59 per cent of the rental housing stock. Of the 185 LPHAs, 98 are cooperatives, 77 limited liability companies and 10 public limited companies. The GBV manages 938,440 apartments, of which the cooperatives manage 431,920 and corporations (limited liability companies) 506,520 apartments. Approximately, 12,000 to 15,000 new housing units are under construction each year and LPHA housing units compose approximately 25 to 30 per cent of the total housing construction sector.

Financing mechanisms are possible through

a combination of federal province loans and grants, with commercial loans raised via bonds and developer/tenant equity. The social housing sector is supported by EUR 2.5 billion in annual government expenditure, with beneficiary financial contributions of between 0 and 15 per cent.

BRAZIL

The case study explores an example of non-profit sector engagement in social housing. This is the Union of Housing Movements (UMM), a federation of housing movements associations that develop housing projects via commissions of residents and prospective residents who self-manage the project from initial planning to facility maintenance. They are supported by cooperation with government entities and technical advisers. The UMM comprises 50,000 members across the State of São Paulo.

ENGLAND

Housing associations are private, non-profit making organizations that provide low-cost social housing, and they engage in building or acquiring, owning, and managing the properties. They also provide tenancy and employment support, community development and regeneration. There are approximately 1,500 registered organizations that contribute 7.5 per cent of the total housing stock, with a portfolio of over 559,000 social housing units built. These efforts are made possible through three main finance mechanisms: government grants, private financing through loans or raising funding via capital markets, and via housing association reserves that are to be reinvested into the development of the sector. Annual government expenditure totals approximately GBP 26.8 billion, which also includes housing benefits from local authorities that assist in covering all or a portion of a tenant's weekly 'below-the market' rent.

NETHERLANDS

This country has the largest share of social housing in the European Union. The social housing sector is managed by approximately 425 registered housing associations accounting for 32 per cent of the country's total housing stock and 75 per cent of the rental stock. The associations currently offer 87 per cent of housing as rental tenure and 13 per cent as home ownership, which are mostly single-family homes. The associations must contribute to the quality of life in social housing neighbourhoods and must invest in the construction of new dwellings and sustainability. They also provide housing to elderly and disabled, building, and letting social property like schools.

The financial relationship between the State and these private entities is unique and provides an example of an independent financing scheme. At the end of 1993, an agreement between the government and the associations established that all money owed to the government by the organizations would be offset by the future subsidies the government would owe the organizations, which meant the government would no longer subsidize the associations and the associations would be financially independent. The associations look for funding on the open market and were encouraged to engage in "higher end" housing, from which revenues earned could cross-finance the construction and operation of the social housing units. Additionally, there is the Central Fund of Social Housing and the Guarantee Fund for social housing.

Annual government expenditure on social housing is EUR 2 billion, with a third of tenants of housing associations receiving rent subsidies that cover an average of 40 per cent of the total rent due.

SOUTH AFRICA

The case study gives insight into the South African Social Housing Programme, which was created

to address the spatial, economic, and social inequities entrenched by Apartheid by providing affordable housing in well-located urban areas. By the end of 2018, there were 83 social housing institutions which have contributed 13.6 per cent of the total housing stock. The social housing sector is supported by the financial mechanisms of government subsidies through capital grant funding and below-market rental sums. The approximate annual government expenditure is ZAR 2.3 billion.



Houses in Loxton, South Africa. Photo by Juanita Swart source : Unsplash

I. ANALYSIS OF GOVERNMENT AND NGOS' RELATIONSHIP

A. REQUIREMENTS FOR LICENSING, REGISTRATION, AND INTERNAL GOVERNANCE

All five countries assessed have implemented overarching legislation intended to regulate the establishment and operations of non-profit housing organizations (NPHO) in their various forms; whether associations, cooperatives, non-profit organizations, organizations for public interests or other similarly purposed organizations. The actual content of the legislation may be detailed or skeletal in setting out the parameters for creation, operations, and scope of work, to suit a country's housing objectives. In this analysis, reference to legislation shall also encompass any similar regulatory or statutory instrument or

administrative framework that intends to regulate social housing in part or its entirety.

The legislation should stipulate that the NPHO are to manage and maintain the social housing units and can require that the organizations also manage and maintain the immediate surroundings of the properties. Moreover, it can be required that social housing providers also provide tenancy engagement, community development or regeneration. A key lesson would be the incorporation of financial regulations that provide for monitoring through mandatory audits and stipulate a minimum reserve of surplus to facilitate reinvestment into the affordable housing sector to continue to meet any demands for new housing units.

Recommendations

Where the social housing sector may be new or in a developing stage, a more detailed legal structure is suggested. This can help create a definite path for organizations to follow, with greater certainty about their legal compliance. It also creates an identifiable point of reference when it is time to evaluate the strengths and weaknesses of the existing legal framework implemented.

However, where various housing guidelines exist within law, then a more skeletal framework can be adopted to allow organizations to be innovative and facilitate organic development, as governments improve the framework through administrative responses.

Given the foundational nature of this section, it is divided into 'registration/licensing' and 'internal governance'.

I. REGISTRATION/ LICENSING

The key lesson from the case studies is the creation of a registration system that aims to assess the NPHOs' long-term financial capability to deliver quality social housing. Therefore, the registration process inclusive of processing time and fees, as well as the documents required

should be clear, transparent, and cost-effective.

A formal registration, licensing or accreditation system should be outlined to enable the government to keep track of and monitor NPHO, their contribution to the housing stock and to facilitate the provision of any public financial assistance or other benefit such as tax exemptions. Only entities that are registered, licensed, or accredited under the legislation would be considered as a social housing provider for said purposes. In this analysis, registration

shall also refer to licensing.

The respective legal framework can dictate what types of organizations are eligible for registration. Most social housing schemes are managed by non-profit organizations (NPO) such as co-operatives and housing associations. Housing can also be provided by limited liability companies or stock corporations that are either not-for-profit or that have an ancillary function of providing social housing. Irrespective of the type of entity considered eligible, the State should mandate that only organizations with business plans and internal governance procedures that prove a non-profit structure for the provision of social housing should be registered for such purpose to ensure low costs and accessibility for low-income people. As detailed below, it can be stipulated by this legal framework that all surpluses should be channelled back into the maintenance of existing and/or the creation of new social housing units.

Registration as a two-step process

As observed in the case studies, most entities must first be registered as a foundation, a NPO, a company or other legal body. Thereafter, these organizations can apply to be registered as a social housing provider.

An application process through an online portal, as in Austria and the Netherlands, is exemplary due to its accessibility without restriction to office hours. Both systems have relatively short turnaround times of seven weeks for the Netherlands and from 31 to 60 days for Austria. It has been observed that where an online portal exists for the submission of applications to be registered, the approval process is shorter. It is therefore advised that an e-filing system be adopted which can be aided by prescribed forms and templates already stored and accessible via the same online portal. Where payments can



State of São Paulo, Brazil—photo by Ian Talmacs, source: Unsplash

be made directly to the registrar via the same portal, this will improve efficiency.

Such a timely approach can be contrasted with the three-step process in England which, despite its online filing system, has an additional two-step application process to be registered as a social housing provider. After an organization

is registered as a legal entity, the first step is an initial assessment of eligibility, and the second step is a more detailed assessment with fulfilment of documentary requirements. It is not known whether such a process specifically delays approval, but the turnaround time for approval in England is up to one year.

Recommendations

A two-step registration process could hamper the ease with which a potential NPO can enter the housing market space. In many instances, a two-step process requires duplication of governance documents and legal deeds, which creates high administrative costs at the onset. Legal revisions to reduce the process to a single-step registration where the NPO is solely or primarily responsible for non-profit housing could significantly increase viability.

In the context of secondary functions of the NPO, any revision to the law should stipulate that the single registration process would only be available to entities that provide ancillary urban development such as community spaces, garages, or small enterprise spaces in a similar non-profit manner, that contribute to community development of affordable housing areas. Where an entity may have grown and wants to diversify their portfolio, then the option to establish a separate entity that could later serve as a subsidiary or be incorporated via a merger could be facilitated via the two-step process.

Approval timelines

Approval should be timely and of note is the stipulation in Austria that once an applicant for registration has met the requirements under law, the authority must approve the foundation. Borrowing from this example, a country may introduce approval by default once eligibility and registration requirements are met and an application has not been approved within a specified time frame. However, special audit requirements and/or penalties can be imposed after the registration process to ensure due diligence.

As can be adopted from England's example, a due diligence measure can be a governance and financial viability assessment that can be added

to the registration process to bolster internal governance guarantees, as shall be explained below.

Required documentation

With respect to the required documents, this would depend on the framework adopted. Where a country provides for the registration of existing legal entities as NPHO in a two-step registration process, then establishing documents such as a Deed of Incorporation or Articles of Incorporation would be required. However, where the registration process facilitates the creation and registration of an organization for the purpose of social housing, then this would not be required. This initial registration of the organization should entail its name, address,



purpose, stakeholders, or members.

The board should outline its strategic and leadership roles as well as the key functions that cannot be delegated. These non-delegable duties should include:

Other documents that should be required are:

- i. Constitution or by-laws that detail the composition and internal governance of an organization
- ii. Notarized deed or testament with funds dedicated to a defined goal with charitable character or for the public interest
- iii. Details of management structure that can be set out within the Articles of Incorporation or Association
- iv. A business plan, containing a recent balance sheet, profit and loss account and budget
- v. An institutional portfolio with financial policies, internal management policies, code of conduct, letters of appointment of directors (with the directors' curriculum vitae), a long-term strategic business plan, risk management policies and procedures, property development policies and procedures, tenant management and engagement policy, any tax clearance certificates and any other certification that attracts the grant of public benefit such as, by way of example, student housing certificate for additional tax rebates or exemptions.

The documents required should reflect the type of organization being registered, whether it is a co-operative or a private company, and should be thorough, requiring high levels of transparency in governance and accountability

where government subsidies and other public benefits are provided.

A registration fee should be imposed sufficient to contribute to system maintenance costs or other public administrative expenses but should not be burdensome or onerous as to be a deterrent.

An alternate process to registration is accreditation as applied in South Africa. Accreditation would validate the purpose and activities of a legal entity in the social housing sector without mandating that the legal entity be registered solely for that purpose. The application procedure and requirements for the accreditation of an entity as a social housing provider can remain the same as that of registration to ensure that such an entity is held to similar standards. A time limit on the validity of accreditation can be implemented with accreditation lasting for a period of three to five years for example and can be renewed on review.

A regulatory body

A regulator of all NPHO should also be established under the legal framework as this allows for a more centralized and focused dedication of administrative effort to the social housing sector without overburdening any governmental department which oversees housing in general. This body should be the public authority for NPHO, even where the existing legal system allows for the registration of entities that have a varied portfolio. The regulator would maintain the register and should be empowered to conduct unscheduled audits and impose administrative orders, where considered necessary. The legislation would outline the composition and function of the regulator as well.

Where appropriate to the needs of the country, the




Salvador, Brazil. Photo by Perotto. source: Envato elements

legislation should also regulate the management of the use of land, building, financing, operations and administration, outline housing and building standards. Tailored to the existing social housing regime, the legislation can also provide for the allowance of ancillary functions of registered entities, such as the building of garages and community spaces. Additionally, provisions can guide the execution of mergers or acquisitions to keep track of registered organizations and ensure that all operations are compliant with the fundamental principles of social housing.

A country with a new or budding social housing sector should provide for the creation of an apex body in its legislation, whereby all NPHO can share resources as members by way of subscription. The body can take the form of an association, co-operative, or federation, but should monitor the progress of its members and allow for the provision of resources at a cheaper rate in comparison to NPHOs' independent outsourcing. An example of such provision would be a compliance unit, legal unit, or auditing unit. Additional benefits would be shared knowledge on best practices, sample documents for registration, architectural guides and templates for internal governance codes or policies. Additionally, it should represent and promote the interests of the NPHO and the general public in advocating before the government and provide the meeting point for discussions among each other.

II. INTERNAL GOVERNANCE

For most countries, the registration process requires the provision of information on internal governance, such as the details of membership composition and leadership structure. Another favourable feature required at the registration process is that of the provision of regulations of



the organization for its own internal governance. Such a requirement is an easy way to ensure a NPO has the right internal governance structures.

A suggested approach to make registration easier with respect to internal governance is the provision of sample regulations or by-laws either made available via the online portal for individual adaptation or via a collective body which supports the many NPOs dedicated to affordable housing.

Membership composition

It is suggested that members of associations or cooperatives and similar member-controlled organizations hold non-redeemable shares as exemplified in England. Where the NPHO is a company, it should not have a share capital and thereby cannot distribute shares or pay dividends to members as practiced in South Africa. Moreover, such NPOs should be 'limited by guarantee', and its members undertake to pay a stated amount to its creditors in the event of liquidation. Such a measure gives heightened accountability for actions and internal governance.

In the Netherlands, housing law requires that the composition of affordable housing organizations must include members who are from a household with an income that does not exceed the national income limit. This is useful for relatability and should be reflected in the requirements for registration. An additional requirement is that the CEO or director must not be part of any other housing organization, which guarantees against any conflict of interests or other advantages.

It should be noted however that despite the appealing features of the Netherlands' model,

the membership composition of housing associations requires that the proprietors of at least five adjacent residential units – that form a residential block, either financially, administratively, physically, or otherwise, - may establish a housing organization. With the impetus on growth, and accounting for the fact that many low-income families are currently without ownership of their residential space, such a requirement should not be imposed if this model is to be followed. Another example may be taken from Austria with respect to personnel restrictions and business activities. Specifically, that any monitoring body or association of NPHO should be independent from the construction sector to prevent deals or agreements that may be detrimental to the beneficiaries of social housing. Austria's example of requiring personnel in the organization to be independent from the construction sector is key to ensuring operations remain non-profit and minimize the chances of any deviant behaviour in housing schemes to gain profit. Moreover, the primary areas of business should include construction, maintenance, and renovation of apartments, while the ancillary businesses could include construction of business premises, garages and community facilities. This allows for a focused development plan.

The Netherlands has an additional requirement that housing organizations split their social (non-economic) activities and commercial activities into separate 'entities' either legally or administratively. This is to ensure that the financing for housing is kept separate and viable. Though this creates an administrative burden, it is a necessary one and should be carried out by NPOs that intend to have a broader portfolio to protect the primary purpose of affordable housing.

Leadership structure

Key lessons from the case studies are, firstly, the average use of two internal governance bodies via a Board of Directors to provide strategic direction and a chief executive officer to oversee operational matters, and secondly, the importance of having roles and duties clearly outlined for accountability.

Leadership normally comprises of a Board of Directors (BOD), which provides the strategic direction for the NPO, and an executive office that manages operations and maintenance of the housing units.

Where a country aims for ease in creation and increase in growth of NPHO, a size-specific approach should be taken. Therefore, a NPHO which delivers housing units on a small scale or is just entering the market should be able to register and operate with a BOD as the single leadership unit responsible for both strategic direction and operational matters. Where a NPHO is large enough to require and support a separation of duties then a BOD and executive office should be established with duties and functions delineated within its internal regulatory system. In the case of an executive branch, leadership would come in the form of a chief executive officer (CEO). The CEO would maintain a clear division of responsibilities, yet maintain an effective link, between the board and the staff, and is responsible for informing and implementing the strategic decisions of the board.

With respect to the duties and responsibilities of the BOD, the structural example of that in England can be used as a thorough guide for board establishment and direction. Board members must adhere to independence and impartiality standards and must not be controlled by any

third party. Its ultimate responsibility shall be directing the activity of the NPHO, ensuring its viability, and delivering the outcomes for which it has been set up.

The board should outline its strategic and leadership roles as well as the key functions that cannot be delegated. These non-delegable duties should include:

- i.** Setting and approving policies, plans and budgets to achieve objectives and monitoring performance
- ii.** Ensuring compliance with all relevant regulations, laws, and other requirements
- iii.** Ensuring financial strength, solvency, and good performance
- iv.** Appointing, determining remuneration of, and appraising the CEO
- v.** Ensuring that proper arrangements are made to appraise and monitor the performance of the CEO and senior management team
- vi.** Ensuring that the vision, mission and values and activities remain true to its objects
- vii.** Setting and maintaining a framework of delegation and internal control where appropriate
- viii.** Agreeing all policies and decisions on matters which might create significant risk

For smaller Associations, where some board members may need to be directly involved in operational decisions and matters, their articles of association should clearly separate their strategic and operational roles.

Recommendations

Fewer internal governance requirements motivate smaller NPOs to participate in social housing. Therefore, where entities are small, it is recommended that the business plan and articles of association serve to separate the strategic and operational roles.

Where an NPHO has grown into a complex business structure and provides a significant percentage of the housing stock to the extent it warrants greater scrutiny of work, then the entity should be required to create a supervisory board as seen in the Netherlands. Indicators of growth can be benchmarked by the State, with factors for consideration being: a membership of over 5,000, over 200 management staff, an annual surplus of more than 30 per cent or the production of over 200 housing units annually. The criteria for a mandatory supervisory body can be altered to combat possibilities of corruption, fraud, or abuse of power, most notably to the detriment of beneficiaries of affordable housing.

A supervisory board is an internal mechanism for greater compliance. In the Netherlands model, the supervisory board is to include experts in different fields including the real estate business, public housing finance and accounting, and supervises, advises, and advocates for the governance of the organization. It also supervises managerial decision-making and serves to advise and guide the BOD. The supervisory board decides on the appointment, assessment, suspension or dismissal of a CEO or director. Like the Netherlands, the supervisory board should be appointed and approved by a Ministry of Housing or other similarly purposed government department. Where this may be too bureaucratic a process, the ministry can gradually develop a roster of suitable candidates who can register their interests and submit evidence of their credentials, from which an NPHO can appoint, or their membership can elect to the supervisory board.

Governance

Legislation can provide governance guidelines serving as the minimum standard for internal operations or can stipulate that self-regulation is to entail particular guidelines. Self-regulation is to be encouraged and internal guidelines should exist to regulate auditing, pricing on accommodation and real estate, business conduct and the production of the balance sheet containing more detailed provisions on how the balance sheet and income statement should be written up. An external measure for greater transparency and accountability can be the requirement that annual audits be publicly available. This not only empowers tenants but also the creditworthiness and overall compliance of NPHOs. This in turn sustains the financial health of the sector.

Notably, within Austria, according to their Housing Act, a NPHO is exempt from corporate tax for primary and secondary functions of business as an award for having internal governance structures that uphold their obligations. This approach is recommended as it serves as an incentive for the NPO to be regulatory compliant. Evaluations and enforcement by the government would be bureaucratic, time consuming and expensive, therefore where this can be lessened through the efforts of the NPOs it is encouraged.

B. COOPERATION AND PARTNERSHIP FRAMEWORKS

A key lesson from the case studies is that multiple stakeholder partnerships are beneficial in providing different perspectives, serving a variety of needs like technical expertise, and establishing a strong system of collaboration, accountability, and oversight. Where used, partnership agreements should be drafted with the roles and responsibilities of the stakeholders clearly defined.

In most countries, the rudimentary partnership framework is vertical, whereby housing organizations have an obligation to cooperate with the housing authority or State department responsible for social affairs. In this context, the government provides the overall housing leadership and creates an enabling environment. However, more diverse frameworks are possible.

Decentralization

A country can benefit from the introduction of cooperation and partnership frameworks between local authorities and a NPHO. Local authorities can provide oversight, social welfare, regional planning and building codes. A relationship between the two can ensure that the peculiar needs of an urban area are adequately met.

In Brazil, the Union of Housing Movements is the primary provider of social housing. It is a federation of housing associations that develop housing projects through the cooperation of three components: government support, technical advice, and popular movements (housing associations). With respect to government support, independent housing councils at the municipal, State and federal levels have created platforms for organizing

movements to engage with the government. Housing associations are invited to municipal planning conferences to debate policy and establish recommendations. Brazil has shown that such cooperation and partnership, through intimate consultations and participation at the local level, is a useful tool for housing providers to directly communicate with the government, establishing a dialogue that contributes to the rich portfolio of work accomplished and relevant service to beneficiaries.

Another example can be borrowed from the structure of the Netherlands, whereby a housing organization must inform a local municipality of its wishes to undertake a social housing development project in a local municipality's area of authority and must receive a declaration of no objection. Municipalities can also request housing organizations to develop a social housing project as well. In this manner, local authorities in urban areas can engage a NPHO for the neediest of areas and that NPHO will be serving where most needed, leading to efficient use of resources. Further, these two bodies can also engage any tenant organizations to establish local performance agreements. Tenant organizations, like the purpose of the apex body suggested above, would represent the interests of tenants.

Moreover, where local authorities previously provided social housing, housing development agreements can be drafted between the local authority and a NPHO to facilitate the transfer of property to the NPHOs for a more efficient management of the residential space. A model can be adapted from that of transfers of housing stock, tenancy, and ownership by local councils in England, through partnerships with housing associations. This involves the transfer of 500 or more tenanted and leasehold properties.

Where land allocation has been an issue, local authorities can identify restructuring zones and dedicate specific areas to affordable housing, as is done in South Africa. This is then offered to a NPHO at below-market pricing for social housing development. As seen in the Netherlands, this seeks to increase the link between the investment capacity of housing organizations and the social housing needs on the local level to ensure social benefit.

Private sector participation

Another partnership framework is that between private developers and a NPHO. In Brazil, as

government funding has decreased, the financial sector and developers converged to achieve various housing goals. Technical advisory firms have also traditionally provided their expertise and have facilitated various aspects of the planning and development processes. Borrowing from this example, countries should, where appropriate, create the space for dialogue and partnership between private sector actors and the social housing sector. The two parties can develop relationships for technical advice and participation, which can assist in the achievement of planning and housing standards.

Recommendations

Governments should facilitate this possible relationship by offering incentives for participation by the private sector, such as discounted registration fees to construction companies who dedicate a percentage of their work to non-profit housing.

An alternative partnership framework within the private sector context is that between proprietors of private property and a NPHO, to facilitate the transfer of property and its conversion to affordable housing. This is dealt with further under acquisition of property.

Lastly, the establishment of an apex body, such as a non-profit housing organizations' association, should be encouraged. Such an association can be modelled after South Africa's National Social Housing Organization or Austria's Federation of Limited Profit Housing Associations (the GBV). Both membership organizations are designed to bring together all housing NPOs to not only negotiate with the government on their behalf but also to support members through capacity building and to promote the exchange of good practice among its members. This level of

cooperation and partnership can be critical where the provision of social housing by a NPHO is in its infancy or is developing. Indicators of this would be the presence of several NPHOs capable of developing housing units or that have contributed to more than 100 housing units but are most cost efficient with shared resources via subscription services, for example.

C. BUSINESS PLAN AND FINANCING INSTRUMENTS

The key lesson learnt from the case studies with respect to business plans is to keep the content clearly outlined. The document should be requested at the time of registration to facilitate the assessment of the purpose and capacity of a NPHO, as well as to ensure its viability.

As noted in the case studies, most countries

require the submission of a business plan accompanied by a yearly budget at registration. The component parts of a business plan as required by England can be used as best practice. Such a plan should contain:

- i.** An executive summary detailing the relationship to be had with central and local government, funding, and regulation
- ii.** Mission and objectives which can include the delivery plan, key commitments, and a vision
- iii.** A five-year blueprint that could specify the actions needed to achieve the vision
- iv.** Business plan priorities
- v.** Strategic planning context

- vi.** Operational context which would encompass staffing, board structure and membership
- vii.** Risk and business development which can outline key achievements and means to mitigate risks
- viii.** A medium-term financial plan which can comprise of a five-year financial projection on income, expenditure, surplus/deficit for each year.

In addition to a business plan, other financial instruments required at registration include a project or work plan indicating current and future housing developments, a financial risk assessment relating to equity, loan and investments, and general financial regulations including guidelines for expenditure.

Recommendations

To assist with the ease of registration and to ensure quality standards are upheld, sample business plans can be made available. Templates are already available in various housing associations in England, which share such documentation on their websites. As previously mentioned, if an apex body is created to support NPHOs, then this organization can provide sample documents for registration that can include suitable templates of financial documents.


Adaptable templates can provide a minimum standard for performance and be the basis for the sound execution of the project and its sustainability through good governance and management. It fosters consistency and allows for the ease of process, which in turn allows for growth.

Financing

A key lesson from the case studies highlighted is that it is prudent to have multiple funding sources for a NPHO, which should also be permitted by law. As can be adopted from the Austrian example, a structured system for financing social housing should be outlined under policy or should be requested as part of business plan during the registration process. LPHAs of Austria have a structured system composed accordingly:

- i.** 20-60 per cent conditional subsidies
- ii.** 5-15 per cent developer equity
- iii.** 0-15 per cent equity of future tenants
- iv.** 50-70 per cent commercial loans financed by commercial bonds and housing banks

A structured mechanism to access State funds should also be established, with predefined funding amounts for predictability.



With respect to financing, many State governments aid NPHOs via grant funding or subsidies. This guarantees a higher probability of completion within set pricing as leaving the provision of affordable housing to the work of a NPHO and market trends may not accommodate people who are unable to access private credit facilities, such as mortgages from banks. Grants and subsidies can vary and should be a balance between government objectives for the social housing sector and available financial resources. It should be noted that where adequate housing is provided at a cost that low-income people can reasonably afford, then this may offset other government expenses in the provision of rental subsidies and other social welfare benefits.

Grant funding and housing subsidies can be burdensome for governments. Financing options can be two fold depending on the rate of development desired. A combination of government funding and private financing through bank loans can be employed to create the space for greater and quicker integration of NPHOs and their participation in the housing market.

The model of the Netherlands is exemplary for the provision of bank loans that are supported by the State and municipalities as potential guarantors of last resort. This option allows a NPHO without enough assets for collateral to apply for financing when they may not be the recipients of grant funding or cannot solely relying on government subsidies. More organizations can enter and participate in the housing market when the availability and variety of funding is multifaceted. This also releases the government of the additional financial pressure so efforts can focus on assisting new NPHOs in need of financial support.

It is noted that, the risk of financial loss and repayment to private banks would have to be factored into the annual budgets of public authorities. The Netherlands mitigates this risk with a safety net of two bodies. One being a Social Housing Guarantee Fund which assesses and monitors the financial health of the housing organization and ensures that it can borrow against favourable interest loans. The second body is that of the Central Housing Fund which oversees the financial health of the housing organization sector and reports to national government on matters related to the success of the loan. The administrative costs of these bodies should be analyzed against the benefit of widening the financing options detailed above. Additionally, as done in Austria, auditing reports can be used by housing authorities to determine the credit worthiness of a NPHO.

Recommendations

Allowing for a varied portfolio of financing options for a NPHO is encouraged. Create a framework that does not restrict the financing options available but does regulate how those funds are acquired and used.

Charitable sources for start-ups or even crowd funding can be permitted if properly regulated. To combat possible corruption or fraud, increased auditing and reporting measures should be established, most notably where charitable donations are a source of funding that significantly contribute to the housing development, such as a 30 per cent contribution or more.

It should be accepted however that social housing, by its very nature, may not generate a surplus and providers in many instances would be operating at a loss save for government subsidies either made directly to providers or to tenants whose rent serves to finance the NPHO.

Non-government funding

Austria's model of housing banks issuing convertible bonds to raise funds for affordable rental housing can also be explored if banks and investors are interested. This, however, would be useful for the most viable of housing developments with a great prospect of surplus yield and high equity of future tenants, as bonds by their nature must be redeemed with interest. A portion of accumulated surplus must be reserved for repayment of financing. This reservation of surplus must be balanced against reinvesting those reserves into tackling the demand for social housing. To ensure a good balance between reserves for repayment of loans and that of reinvesting, regulations can stipulate various percentages that reflect financial obligations to creditors and financial needs of maintaining housing units.

Where a NPHO is operational and has acquired a surplus, the law should mandate that reserves are to be reinvested to meet any future costs or financial obligations as done with revenue

reserves in England. Additionally, once future costs and financial obligations are reasonably accounted for, then any surplus should be reserved and reinvested in the continued and increased building of social housing.

Borrowing the concept of the supportive dynamic from the case study of Brazil, an apex body (if a country chooses to provide the framework for one) can create an internal finance policy whereby the apex body provides financing or credit facilities to its members, to develop, maintain or refurbish properties. The financing can be derived from contributions of each affiliate member, whether through subscription dues or membership fees proportional to organization size. It should be noted that the creation of finances sufficient to support member housing developments, or the provision of credit to do so, would take some time and is feasible where the non-profit housing sector is robust enough to facilitate cyclical financial activity (credit provision and repayment or financing and increased member dues or subscriptions).

Checklist for NGOs and Housing Provision Mechanisms

| Social Housing Framework Elements | Yes | No |
|---|-----|----|
| A. Registration, Licensing and Internal Governance | | |
| Is there a legal or regulatory framework for social housing? (either a standalone statutory instrument or incorporated into National Housing statutory instruments) | | |
| Does a Regulator for social housing exist? | | |
| Is there a registration process required for social housing NGOs? | | |
| Are there eligibility requirements as a condition for registration approval? (including documents required) | | |
| Is there a registration cost structure and processing timeline? | | |
| Is there an appeals procedure if registration is denied? | | |
| Is there an electronic filing system (with payment option, prescribed forms and templates)? | | |
| Are there mandatory internal governance structures for social housing NGOs? (e.g. Board of Directors/ Executive/ membership or shareholder restrictions) | | |
| Are the internal governance structures differentiated for larger and smaller social housing organizations? | | |
| B. Cooperation and Partnership Frameworks | | |
| Is there a government framework to monitor the activities of social housing NGOs? (i.e. (financial and performance audits, programmatic reporting as conditions for access to public funding) | | |
| Are there opportunities to collaborate private sector entities? (e.g., in design and constructing the housing units, property maintenance etc.) | | |
| C. Business Plan and Finance Instruments | | |
| Are social housing NGOs required to have business plans? | | |
| Are there models/templates or guidance for social housing NGOs on the content to include in their business plans? | | |
| Can social housing NGOs access public funding? (e.g. government grants, bonds and subsidies) | | |
| Are there tax incentives, rebates or other related financial assistance? | | |
| Can social housing NGOs access/generate private funding? (e.g., donations, bank loans, bonds) | | |

Table 1: Checklist for Government and NGOs' Relationship



Children playing outside their home, Barreirinhas State of Maranhão, Brazil. Photo by Leo Wallace, source: Unsplash

II. NGOs AND HOUSING PROVISION MECHANISMS

A. ACCESS TO LAND AND HOUSING PROVISION/ACQUISITION

Land and housing acquisition by NGOs would depend on physical availability and accessibility of land. A particular area may have a high demand for social housing but the availability of land to develop housing schemes may be limited due to lack of vacant lots or the presence of protected areas, such as heritage sites or protected environments. Where most of the vacant land or existing infrastructure is in private ownership, accessibility is limited by the ease with which people are willing to transfer the property, most notably at a favourable rate. The more costly it is to acquire property, the less accessible it is.

A key lesson observed from the case studies is that the establishment of clear purchasing schemes for a NPHO facilitates long-term project planning and financial forecasting. However, it is advised that government institutions should create innovative and cost-effective mechanisms to supply a NPHO with property. Sample models from the case studies are detailed below.

Where vacant land is scarce in core urban areas or is primarily privately owned, a government may need to employ robust land acquisition methods. To maximize efforts, varied possibilities in land acquisition can be explored to increase availability of urban space for development.

State allocation

Where land is available and currently under government control, the government can identify and release surplus central land for housing development. This is seen in England's Public Land for Housing Programme.

Local authorities can also provide land or existing buildings for refurbishment, similar to the model in the Netherlands. As already mentioned, under cooperation and partnership frameworks, housing organizations must seek approval from local authorities to acquire land for housing development. In addition, the organization must submit an "intention for work", explaining the intended contribution of the housing development project to the housing stock in the area. In the Netherlands, the local authorities provide land or existing buildings at a price below market value for such development.

Where possible, a country can also resort to the restructuring of zones to create more residential space. The South African Government provides subsidies to social housing projects in designated restructuring zones, which should, in principle, be situated in the urban core. A similar approach can be adopted where plausible, as some urban spaces may have more available land and restructuring possibilities than others.

As another resort to property acquisition, a country can engage in public acquisition for social housing where the availability of land, especially in a particular urban core, is limited or non-existent. In England, housing authorities have delegated authority for the compulsory purchase of property with very clear guidelines that mitigate the infringement of property rights covering compensation and dispute settlement procedures.

Recommendations

To ensure that such public spaces are optimised and continue to benefit the public, various environmental restrictions can be placed, such as specifications on mandatory green spaces or community recreational space. Additionally, other restrictions such as energy efficiency in architectural planning can be introduced, along with any other national development goal for urban space.

Finally, when the land or housing is acquired, a country could use a combination of leaseholds, usufruct and freeholds when transferring property. A country may adopt England's example of issuing building leases, conditional disposals, or other contractual arrangements to a NPHO. The lease arrangement would allow for greater accountability on the part of developers to perform efficiently, as a lease would contain conditions that set development milestones. In the event of failure to meet milestones or other requirements, the housing authority would have the power to terminate the lease and bring the land back to the market. A similar model is found in the Netherlands, whereby a NPHO can acquire land, earmarked as "intended for a social purpose", through a leasehold or usufruct from the municipality. The usufruct would end when the beneficiary dies, with a possibility of transfer to a family member if they met the lower-income requirements and were dependent on the main beneficiary.

Private sources

In addition to the public allocation of land or public acquisition of private land, a legal framework can also be created to facilitate the regulated transfer of private land to a NPHO. This can take the form of regulations that set price limits or structure the calculation of property prices based off factors such as market value, constructions costs and tax rebates (as an incentive to sell). Two examples that could be adopted is the "off-the-shelf schemes" in England whereby

newly constructed properties are offered on the open market by a contractor/developer for a fixed price, and "rehabilitation schemes", where existing dwellings are purchased from an owner. The existing dwellings should not have been privately occupied for more than 12 months from completion, which is a safeguard to ensure that low-income tenants live in good housing conditions.


As an alternative but useful step, where appropriate, progressive taxation of unproductive urban land can be implemented to incentivize the development of urban space or the selling of the property to the State.

B. PLANNING, HOUSING STANDARDS AND APPROVAL PROCESS

A key lesson from the case studies is that detailed design and planning standards ensure an adequate standard of living. Planning standards often include modalities for resident involvement in planning, design, and allocation process. In general, the usual approval process for planning permission and the required housing standards and appeals process apply to a NPHO.

Planning permits

Before embarking on a social housing project, most countries require that developers should obtain a building permit and an environmental permit if the housing development will have an environmental impact on the area. The



application for the building permit would require documentation, such as proof that designs and construction plans meet minimum standards, inclusive of fundamental requirements in national laws and policies. Most building and housing standards are regulated at a national level and must ensure an adequate standard of living.

It is advisable that where it is not specified in existing planning law, countries should adopt an approach to planning approval based on the satisfaction of housing standards and technical specifications. For ease of compliance, a detailed list of specifications can be made available annexed to the same law or published regularly in a publicly available space or available on request from local authorities. An example of such a list can be seen in the housing standards and technical specification list detailed in the case study of Brazil.

The grant of building permits would vary and depend on how thorough a planning department is with the approval process. In the Netherlands, processing time is about 26 weeks and depends on the size of the project. However, if the application is not processed within 26 weeks, the permit is tacitly approved. If a country desires a quick approval procedure, this approach can be adopted according to strict criteria, such as mandatory approval, where building plans have a low environmental impact, are part of a standard housing scheme (and have therefore been previously approved), have been awarded a public subsidy after competition (as detailed below) or where the building plans follow a housing associations or government's template for a particular province.

In England, the law allows a NPHO to enter into an agreement with the local planning authority to provide affordable housing according to infrastructure requirements to secure the grant

of planning permission. Internal incentives such as this organically generate the action that governments tend to desire from a NPHO. This process is negotiated alongside the planning decision-taking process which takes eight weeks but can take 13 weeks for major development or a longer period as agreed in writing.


The planning decision can be appealed to the Planning Inspectorate in writing. The statutory timelines for the appeal to be heard and determined is around six weeks. Such a structured process with stipulated timelines can be adopted for a more flexible approach to approval, which also involves the engagement of developers.

Additionally, Austria's example of an appeal's process can be utilized whereby a maximum period is set for the decision to grant or refuse an application. Where a decision has not been made within that timeframe, an appeals process is initiated. This can be time consuming and burdensome on administration, and therefore should be applied for more complex development works.

Competition as a method to enhance standards

With the objective of increased social housing, a country can adopt a proactive approach to the provision of quality housing as exemplified in Austria via a system of 'quality competition' for public subsidies. A NPHO would bid for public subsidies and would be judged by an independent jury against three criteria:

- i.** planning qualities
- ii.** environmental impact and costs, including guarantees by the developer concerning rent levels
- iii.** maintenance costs



This competition would foster innovative approaches to land use and building renovations, would ensure adherence to minimum standards in planning and design, and would create the space for higher standards in planning and maintaining residential housing. By presenting proposals, a country can select what is deemed at the local level the most suitable development plans.

To facilitate the determination of the best suited recipient for an award for public subsidies, South Africa's model of a market and social survey study can be made a requirement for a NPHO in their submission of bids. Under South Africa's framework, social housing institutions are to carry out a market and social survey study to determine the housing needs and target groups of a particular area. The suitability of the intended project must match the housing needs. It should also comply with the development vision of the local municipality as indicated in its planning instruments.

Planning efficiently

To ensure high quality housing standards and the greatest use of public funding of social housing, planning permission should prioritize the development of community spaces and infrastructure. Though it should not be a requirement for planning permission, providing a report on the social impact of the development project should be encouraged. Incentives for the development planning, inclusive of community development projects, would be: expedited approval times due to prioritized applications, reimbursement of or discounted building permit fees and tax rebates. As in the case of Brazil, it would be beneficial to introduce the requirement of a similar "responsibility matrix" which is a compilation of commitments to meet the demand

of future residents of the project, in response to a neighbourhood impact assessment.


Where core urban spaces are densely populated, maximizing the utility of housing space can be encouraged, such as vertical condominiums, along with planning for the incorporation of other community amenities, such as stores, public service offices, health clinics or day care on the first or ground floors, as in Brazil. Also in Brazil, as some social housing schemes are self-managed, renting the ground floor for commercial use contributes to the financial resources of the housing organization, which can aid with maintenance and continued development.

C. MAINTENANCE AND OPERATION SYSTEMS

Most housing organizations are responsible for building, renting, managing and maintaining social housing projects. Operation and maintenance can be guided by regulations or decrees that outline the minimum requirements due from a NPHO. One such example is the statutory duty to ensure the property is free from hazards.

The minimum requirements of housing maintenance in the Netherlands are instructive in this regard. Adoption of similar criteria would ensure that particular standards for living spaces are upheld and sustained. Some favourable legal requirements are that NPHOs are to:

- i. Build and acquire buildings to serve a communal and social purpose for the residents of the social housing units.
- ii. Develop and approve a "maintenance and operational plan"
- iii. Maintain and manage the maintenance of buildings for communal and social purposes.



iv. Contribute to the quality of life in the immediate vicinity of housing or other immovable property related to the social housing project.

An adaptation of England's model on the provision of an outline of expenditure assumptions of annual operating costs to guide a NPHO would be prudent where the social housing sector is in the developmental stage. This guide can be provided by the local housing authority, which would be privy to a multitude of sample expenditures through submission of audit reports and balance sheets. Alternatively, this can be provided by an apex body if one is created, as shared information on expenditure throughout the year can allow for more accurate predictability on expected expenses.

Another measure that can be adopted is that of a repairs and maintenance service by landlords. A good example is from England, as administered by Salix Homes, which uses an online portal which allows customers to report a repair, cancel repairs, change appointments, and give feedback. This method is not only time efficient, but modern and provides the space for feedback which can enhance service delivery.

England also has a 'Right to Repair Scheme' that enables housing association tenants to have urgent, minor repairs that affect health and safety fixed within a prescribed period. The scheme establishes the right of tenants to specific repairs according to prescribed response times. Examples are: one working day for total loss of power; three working days for blocked sink; seven working days for leaking roof. The right to repair also entitles a tenant to compensation if a contractor fails to complete qualifying repairs within the prescribed period. In short, it gives effect to the right to repair, failure

to which the tenant has a right to compensation.

Where social housing is self-managed as in the Brazilian model, residents who are also homeowners are individually responsible for repairs and even upgrades to the housing units. Before housing projects are complete, beneficiaries are trained on home management and finance, to prepare and equip the future residents with the skills necessary to fulfil their responsibilities as tenants.

Lastly, to maintain affordability, a rent management system may also be adopted to ensure price levels stay within reach of low-income households. This system should include a rent setting policy, a rent increase system, and a rent collection policy.

Checklist for NGOs and Housing Provision Mechanisms

| Social Housing Framework Elements | Yes | No |
|---|-----|----|
| A. Access to Land and Housing Provision or Acquisition | | |
| Are there schemes for social housing NGOs to acquire land or housing? (i.e., designated area by local authorities/ residential re-zoning/ public acquisition by government) | | |
| Are there mechanisms to subsidize land prices and land/housing markets for NGOs? | | |
| Are there mechanisms for low-cost acquisition of land/housing from private owners? | | |
| Are there schemes for transfer of the ownership of social housing units from local authorities or private entities to the NGOs? | | |
| B. Planning, Housing Standards and Approval Process | | |
| Is there a requirement for statutory planning and construction approval? (i.e. planning application, fees, and issuance of planning and construction permit) | | |
| Is there an appeals process available when planning permission/building permit is denied? | | |
| Are there mechanisms for early beneficiary consultations and/engagement in planning and design process? | | |
| Are there measures to ensure providers account for housing needs? (ethnic/ cultural/ environmental/ social) | | |
| Are there special planning standards or exemptions/incentives through taxes or fees? (density and floor area bonuses, tax abatement programs, expedited permitting process and waived fees) | | |
| Are there requirements for housing typologies? (mixed-use, mixed income, multi-family or single family (attached, detached housing) | | |
| Are there requirements for social amenities? (open/green spaces, recreational spaces) | | |
| Is there a requirement for consideration of neighborhood planning? (access to transportation, access to urban core, employment, healthcare) | | |
| C. Maintenance and Operation Systems | | |
| Are social housing NGO responsible for the management and maintenance of social housing properties? | | |
| If yes, are there minimum management systems required? (repair and inspection system/ local authority to monitor and conduct compliance) | | |
| Are there measures to cover service charges and repair costs? | | |

Table 2: Checklist for NGOs and Housing Provision Mechanisms



Hallstatt mountain village, Austria. Photo by Fineas Anton, source: Unsplash

III. NGOs AND BENEFICIARY'S RELATIONSHIP

A. Beneficiary's criteria

Beneficiary selection should not only be specific to the country it is used in but it should also be suitable to the urban area. A country should define what is considered low-, middle- and higher-income households and determine the population distribution and other relevant factors that contribute to an equitable mix of residents who can benefit from social housing.

In all countries under review, the core eligibility criteria are set by the government or regulator, however a NPHO may add additional criteria based on specific groups they may prioritize. A key lesson from the case studies is that target beneficiaries should be low-income households, with priority given to vulnerable groups. Therefore, a country can have a mixed pool of beneficiaries, but the focus would be on those households who would not be able to acquire housing save for a social housing development. As in Austria and England, there is no income cap, but being from a low-income household is a criterion for allocation.

Countries can look to the example of the Netherlands, which has a diverse portfolio allowing for a social mix and diversity of beneficiaries. Housing units are allocated respective to percentages set according to the income range of households and thereafter eligible applicants are prioritized based on factors such as age and health status. Housing allocation is provided accordingly:

- i. 80 per cent to persons/households with an income level below the national average wage
- ii. 10 per cent to people of a particular income

range, earning above group i.

- iii. 10 to people of an income range earning above group ii.

This can be coupled with a system of priority factors for allocation to vulnerable groups. Such factors could be age, health status, adequacy of living conditions, size of household; vulnerable groups could be victims of crime, evicted people, people with disabilities and special groups such as persons who served in the armed forces. South Africa reserves 10 per cent of total social housing stock for applicants aged over 80, war veterans, those living in informal settlements and considers the length of stay in targeted projects.

A percentage of the housing stock can also be reserved for priority groups such as asylum seekers whose application for international protection is pending approval. Another approach could be borrowed from the example of Brazil where, because funding sources and applicable policies vary, so too should the eligibility criteria that each social housing provider must adhere to. This would enable the government to vary the social or prioritized vulnerable groups who are to benefit from the housing scheme and guard against a general or focused grouping. Specifically, in Brazil, policies reflect eligibility standards such as prioritizing low-income women and victims of domestic violence in social housing projects financed with public resources. This would empower governments to aid strategically, where the social need is greatest.

Where a participation scheme exists like that implemented in Brazil, as detailed above, then social engagement serves as the eligibility requirement for eventual access to social

housing. The benefit of this eligibility standard is the possibility of participants' socio-economic development - those who are not restricted by their assets and who can gain knowledge and experience in housing and community development organically, without fear of losing their home, even when they exceed their previous socio-economic status.

For most countries, beneficiaries are required to be nationals or residents. However, in England, foreign nationals can access social housing, with restrictions, subject to specific immigration controls. In Austria, it is provided that social housing allocation favours nationals or residents, but it is not a precondition. Austria allows applications for social housing by foreigners who lost Austrian citizenship after 6 March 1933 and emigrated from Austria for political, racial or religious reasons but have returned to the country and intend to settle there permanently.

Another mechanism aimed at assisting low-income beneficiaries, as noted in the studies, is stipulated rental or instalment payment limits. A limitation on rent pricing, as in Austria for example, stipulates that social housing residents should not pay more than 20 to 25 per cent of household income on housing. Figures should reflect the features of the country in which they are applied.

B. Housing tenure options


In all the countries under review, rental is the

preferred tenure for the allocation of social housing units with varying tenancy duration, from a minimum of three years to unlimited (lifelong) tenancies. Residents usually pay between 25 and 30 per cent of their income on housing, and rents are adjusted on a yearly basis (as income fluctuates). A key lesson learnt from the case studies is the ability to achieve an equitable approach to levying rental expenses by simply setting rental amounts as a percentage of a household's income.

Like the beneficiary criteria, housing tenure options would differ according to housing unit options. Where land is scarce and demand is high in core urban areas, it is recommended that leasehold agreements are a more viable option in contrast to freeholds. The period of tenure for leasehold agreements can vary and should be longer where the housing facility is for family units. Collective ownership tenures are allowed but are not common across the selected social housing case studies. Rent-to-buy schemes are allowed in all the countries under certain conditions (e.g., minimum years of tenancy, respect of minimum social housing quotas). Where possible, mechanisms should be in place to consider transfer of ownership to beneficiaries after a specified number of years. Freeholds are most plausible where there is vacant land or available transferable infrastructure that can accommodate several housing developments.

Recommendations

Where the annual population growth rate and the aggregate demand for housing within urban areas is rapidly increasing or changing, a Country should opt for leasehold agreements as the rate of development needed has not been determined. In such a circumstance, the possibility of outright ownership can and should be explored after a specific time frame to provide some level of certainty to beneficiaries.



With respect to a mechanism for ownership and acquiring a freehold, re-payment options can be constructed to reflect household income and the ability to pay, similar to the system employed in Brazil. In this case, private financing on the part of the beneficiaries is available through specific loan programmes. In this case study, mortgage payments are made over a stipulated amount of time, as defined by the housing programme. In general, payments are 10 per cent of the household income and households that earn below a specified amount pay a flat rate every month.

This is plausible where financing options for beneficiaries are heavily subsidized or form part of a financing scheme that can support such lines of credit with minimal or no interest to be accrued on the housing loan.

Security of tenure and protection from eviction will be dealt with in the section on tenant's rights and duties below.

C. Rights and duties


A country may revise its laws to entrench the right to adequate housing in its housing laws and/or make the grant of building permits conditional on the satisfaction of minimum regulatory requirements that uphold this right. Additionally, where providers are also managers, a repair and inspection system should be implemented to ensure housing standards are maintained and housing value is retained. This contributes to fulfilling the right to adequate housing. Minimum stipulations on housing demands and priority areas such as the needs of women and people with disabilities can be borrowed from South Africa's extensive requirements for housing project approval. Some other requirements include the support of the economic development of low- to medium-income communities and

the provision of amenities that contribute to the social environment, such as play areas, landscaping, parking, laundry and drying areas, and community meeting rooms. This approach emphasizes that the right to adequate housing is not simply a right to a sound physical structure but to other crucial amenities as well.

In England, the law provides that the landlord owes the tenant certain duties of care, such as the duty to prevent personal injury or damage to property caused by defects in the home. This duty is owed to the tenant, members of his/her family and to visitors. This approach can be adopted, which enables a reference point for dispute resolution and even some predictability in litigation. Moreover, when duties are entrenched in law, people who hold the duty tend to be more compliant, thereby lessening the need for dispute resolution or litigation.

A complaints system is a useful tool in open communication from tenants and feedback to housing providers. It also serves to give effect to advocating for one's right to adequate housing. A NPHO should have complaints and dispute management policies which allow all parties to submit complaints and get an opportunity to present their case. Where the matter is unresolved internally, an external appeals process should be available.

In South Africa, unresolved disputes can be taken to court. The ease with which one can access domestic courts to litigate a matter should be avoided however and a housing ombudsperson, as in England, can be used. On review of the matter, an ombudsperson might ask the landlord to rectify the problem, apologize, to improve administrative procedures or to pay compensation. The powers of an ombudsperson can be broadened or narrowed according to



country objectives with respect to tenant rights and support. Ombuds services also have the advantage of guaranteeing due process as the bodies are independent, free and impartial.

Local laws should facilitate the creation of an apex body for tenants that represents their interests to local authorities, NPHOs and the government. Such a body can advocate on behalf of tenants in various aspects of building development, from inception of design to upkeep. Moreover, tenants should be able to seek advice and legal support, such as rent arbitration. In South Africa, a NPHO must create a tenant management system, inclusive of a complaint and dispute-management system. In Austria, a tenant association exists and additionally provides an assistance hotline for timely help and guidance. The existence of such measures removes the administrative burden of providing multiple housing personnel and an ombuds office or other appeals tribunals specific to social housing disputes.

Eviction

Best practice adopted from the case studies highlights the need to outline in regulation or housing policy the right to receive adequate notification of the termination or modification of a housing contract.

Apart from the right to adequate housing which influences the grant of planning permission and building permits as outlined above, tenants should be provided protection in the case of eviction, which should be entrenched in law or the policies that provide for social housing as a condition for funding and/ or planning permission. In England for example, grounds for eviction from social housing are clearly outlined and divided into “discretionary grounds” (for which the court must decide if it is reasonable

for the tenant to be evicted) and “mandatory grounds” (for which the court must order the tenant to leave if the local council proves that the ground applies).

It is recommended that a NPHO are also duty bound to create, within their internal controls, a system to resolve non-payments due to loss of income or other financial burden. In Austria, low-income households are not to lose their home in case of a sudden illness or unemployment.

Transfer


There should also be delineation of the right to transfer tenancy. In Brazil, where it is intended that beneficiaries are to be owners of the housing unit, they have the right to decide when and whom to sell to. Any equity derived from the difference in selling price and the cost of acquiring the unit should be retained with the beneficiary.

However, a distinction is made with varied tenure, such as the right of possession and the right of use of the housing unit. Where a beneficiary has the right of possession, the unit cannot be sold but must be returned to the provider or the government. In the case of a right to use, this right attaches to the lifetime of the beneficiary and is also hereditary, passing on to the heirs of the beneficiary. These distinctions in tenure help in dictating the rights allotted to beneficiary.

Duties

Generally, beneficiaries have a duty to make payments for the retention of their housing units, to regularly allow access to the property for repairs, to report damage or inform about major improvements to the property and for the general upkeep of their unit.

If a country opts to adopt a model like that of Brazil, whereby beneficiary participation is



an eligibility requirement to access to social housing, then pre-tenancy activism and continued engagement would be a core duty and responsibility of a beneficiary and should be entrenched in law or established in policy.

A NPHO should be encouraged to establish rules that residents are to follow. As noted from the Brazilian example, the residents of a housing project can set rules specific to residency, and it is the responsibility of each beneficiary to adhere to those rules.

D. Community participation

A key lesson from the case studies is the inclusion of education, career training and information sharing provided as part of tenancy in social housing. Such engagement is to serve as a support service to empower tenants, get them involved as active participants in a community and generate a sense of ownership in the housing development.


Part of providing suitable social housing is understanding the needs of beneficiaries. That is why tenant consultation is important and is encapsulated in the ‘Tenant Involvement and Empowerment Standard’ of England. Such a standard can be adopted and adapted, while also providing the space for housing providers to develop their own methods to engage tenants. A set standard ensures that this component of tenant engagement is adhered to. Some examples of tenant outreach and engagement include surveys and social meals.

Brazil has a unique system whereby a movement exists to help support and grow the provision of social housing and creates an avenue for people to become beneficiaries of social housing. Prospective beneficiaries join the movement by attending meetings and offering time and

service to ongoing projects. Where such a model is preferred, minimum time requirements and participation specifications should be outlined in policy or other rules which can be referenced by people wishing to benefit from the housing project. In Brazil, a points system is used to measure the engagement of beneficiaries and these count toward their eligibility for social housing. This system can be adopted since it will not only enhance public participation, but also provide legitimacy to the eligibility criteria.

This approach to engagement not only creates an environment for skill development and knowledge sharing in the realms of planning, construction, and governance, but also creates avenues for empowerment. As seen in the Brazilian case study, the pre-tenancy activism creates opportunities for leadership roles among women in fields that are predominantly male oriented. This in turn creates a social dynamic that creates a strong foundation for socio-economic growth, as people are empowered to engage in activities beyond those they would ordinarily be identified with.

In the Brazilian model, beneficiaries are still required to participate in self-management even after receiving a home, in the form of resident-run commissions with a democratic decision-making process. Each commission is unique to the needs of the housing community, and all dedicated to the success of the development and its residents. Some commissions are committed to the cause of health and elders, others are dedicated to the environment or entrepreneurship. The benefits of this model are immense when it comes to creating a sense of ownership from inception, fostering a sense of independence and empowerment, and generates commitment to the housing scheme among residents.



It should be noted that although some NPHOs engage in public participation to ensure housing projects meet targeted needs, continued engagement is the aim for sustained accurate maintenance and provision of housing amenities. To this end, it is recommended that a country adopts a similar, centralized information portal for tenants as seen in Austria, which provides information on various items of interest such as financing assistance, rental agreements, and residential rights.

Another component that can be introduced is information to empower tenants to understand the social housing programme and the management of their estates and surrounding neighbourhoods as advocated in South Africa. Here the Social Housing Policy encourages the involvement of residents in the project and/or key stakeholders through, meaningful consultation, information sharing and education, training, and skills transfer.

Checklist for NGOs and Beneficiary's Relationship

| Social Housing Framework Elements | Yes | No |
|--|-----|----|
| A. Beneficiaries' Criteria | | |
| Is the beneficiary criterion based on identity and/ residency? | | |
| Is the beneficiary criterion based on income and/ asset eligibility? | | |
| Does the beneficiary criteria consider family status (e.g., widowed, divorced, single/ multi-family homes)? | | |
| Does the beneficiary criterion consider individual circumstances such as (long term medical and health condition/ disability/ retirement age/ long term unemployment)? | | |
| B. Housing Tenure Options | | |
| Are there provisions for social housing ownership? (e.g., freehold/mortgage/ shared equity scheme) | | |
| Are there requirements for leasehold ownership? (rent privately funded/ rent subsidized/ rent with the option to purchase) | | |
| Are there provisions for social housing ownership through the usufruct contract? | | |
| C. Rights and Duties | | |
| Does the social housing tenant have access to repairs and regular property inspection? | | |
| Does the social housing tenant have the right to buy / sell the allocated unit? | | |
| Are there inheritance and succession rights? | | |
| Do beneficiaries/tenants have the right to participate in provision (construction) and/ or maintenance of social housing? | | |
| D. Community Participation | | |
| Is there a Tenant Apex Body (Associations/ Co-operatives/ League) to safeguard the interests and rights of social housing tenants? | | |
| Are there opportunities for tenant engagement? (e.g., forums, committees, on-site employment opportunities) | | |
| Is there a formal/informal complaints process (e.g., Internal complaints procedure with the landlord/ Public Housing Ombudsman) | | |
| Are there volunteer opportunities/on-site staff support? | | |

Table 3: Checklist for NGOs and Beneficiary's Relationship

CASE STUDIES



Salzburg, Austria. Snow covered buildings and river banks by anelenbakot - source: emrator.com/prints

I. NON-PROFIT HOUSING IN AUSTRIA

This section will provide a detailed assessment of each of the five countries’ legal frameworks for non-profit housing organizations’ delivery of affordable housing for the neediest households.

| Model of non-profit - who and what they are doing? | Units of Subsidized Housing/Contribution to housing stock | Financing Mechanism | Annual government expenditure on affordable housing | Housing tenure | Beneficiaries’ financial contribution | Eligibility Criteria & Income Levels |
|--|---|---|---|---|--|--|
| Limited profit housing - housing provided on a non-profit basis by investors who can access public subsidies. Registered – roughly 185 Build, own, rent/sell and maintain. | 23% total housing stock and 59% of rental housing stock (built around 840,000 dwellings). | Combination of federal provinces loans and grants, with commercial loans raised via HCC Bonds and developer/tenant equity. Tied-up assets (profits are reinvested in the association). | €2.5 billion | Rental and owner-occupied housing. 40% is multi-family housing. | 0-15%: equity of future tenants (right to buy in some circumstances) | Limited-Profit Providers have to apply income and social criteria determining priority in the allocation of dwellings. |




Figure 2: Overview of Austria Non-Profit Housing. Source of images: <https://www.housinginternational.coop/co-ops/austria/>

Brief Background

Austria is a regionalized federation of nine Bundesländer⁴ (provinces), including approximately 2,400 municipalities and the city of Vienna. Municipalities have been providing rental housing ‘beyond the market’, also known as public housing. It was not until after the Second World War that social housing through the non-profit sector grew and became mainstream under the Österreichischer Verband Gemeinnütziger Bauvereinigungen (GBV), also known as the **Austrian Association of Charitable Buildings Associations** or the **Austrian Federation of Limited-Profit Housing Associations**. Founded in 1946, the GBV promotes economic welfare by

providing a steady supply of affordable housing rental units across Austria which are made accessible to both Austrians and immigrants.

Non-profit rental housing is provided by **Limited Profit Housing Associations (LPHAs)** (Gemeinnützige Bauvereinigungen) which are regulated by the **Austrian Limited Profit Housing Act (1945)**. In the European Union, Austria is recognized as having the second largest social housing stock at 23 per cent of the total housing stock in the country.⁵

LPHAs are organized as co-operatives, limited liability companies and stock corporations, which operate as non-profit developers (“**common good**

⁴ The nine Bundesländer include Vienna (Wien), Lower Austria (Niederösterreich), Upper Austria (Oberösterreich), Styria (Steiermark), Tyrol (Tirol), Carinthia (Kärnten), Salzburg, Vorarlberg, and Burgenland.

⁵ Bonsnstetter, E. (2018). “Importing the legal framework of limited profit housing associations into the affordable housing system of the United States.”

providers) and can access public subsidies. The housing regulatory framework oversees the management of land, building costs, financing and administration while ensuring high quality housing standards are met through regulation and competition. LPHAs are also subject to strict financial regulations based on their investments and profits. For instance, their surpluses must be reinvested into the affordable housing sector and continue to meet the demands for new housing units. Those associations that cannot meet the regulatory demands can merge with other associations.

LPHAs target a range of household income levels. This means that there is greater social mix and diversity among the housing developments, and they are therefore not solely aimed at benefiting low-income populations, which may be more common among public housing projects. In fact, one in six residents in Austria occupies an apartment that was either built or managed by a LPHA.

All LPHAs are required to belong to the Austrian Federation of Limited-Profit Housing Associations (GBV), which is the representative body of all LPHAs and has the dual function of monitoring (e.g., conducting regular audits of LPHAs) as well as representing and promoting the interests of the associations and the general public.

Historical context of LPHAs:

1910:

Through the creation of the public loan funds, communities and common good providers were provided with State assistance.

1920:

The emergence of a large municipal housing programme in the City of Vienna to address the massive housing shortage (Red Vienna). The policy of rent control and legal protection of tenants was

first introduced into contract law to address the needs of a growing working class.

1940s

Following the Second World War, there was a growing need protect tenants from unexpected rent increases.

1946:

The Austrian Federation of Limited-Profit Housing Associations (GBV) was founded to promote economic welfare by providing a steady supply of affordable housing rental units across Austria for both Austrians and immigrants.

1980s:

Municipal and GBV housing associations developed in parallel to promote affordable housing.

1981:

The Tenancy Law was the first step towards rent deregulation.

1984:

The Housing Promotion Law led to urban renewal and a shrinking stock of low-cost housing units in the private sector.

1988:

Decentralization of social housing policy led to increased inequality between and within federal States, increasing the role of private builders.

1990s:

Housing laws and policies became regionally decentralized as legal responsibilities shifted from the federal authority to the provincial governments. This also caused the municipal housing stock to be transferred to the GBV, which also managed a large portion of the construction process.

1990s:

GBV tenants were granted the right-to-buy newly built, non-profit housing units.

Present:

There are 185 LPHAs in Austria of which 98 are cooperatives, 77 are limited liability companies and 10 public limited companies.⁶ The GBV currently manage 938,440 apartments, while the cooperatives manage 431,920 apartments, and the corporations (e.g., public limited companies and limited liability companies) oversee 506,520 apartments.⁷ Between 12,000 and 15,000 new housing unit are under construction each year. LPHA housing units

make up between 25 and 30 per cent of the total housing construction sector, which ensures there is a high sense of social mix and quality homes for low- and middle-income households.

1. Government and NGO relationship

A. Registration, licensing, and internal governance

I. Licensing and registration

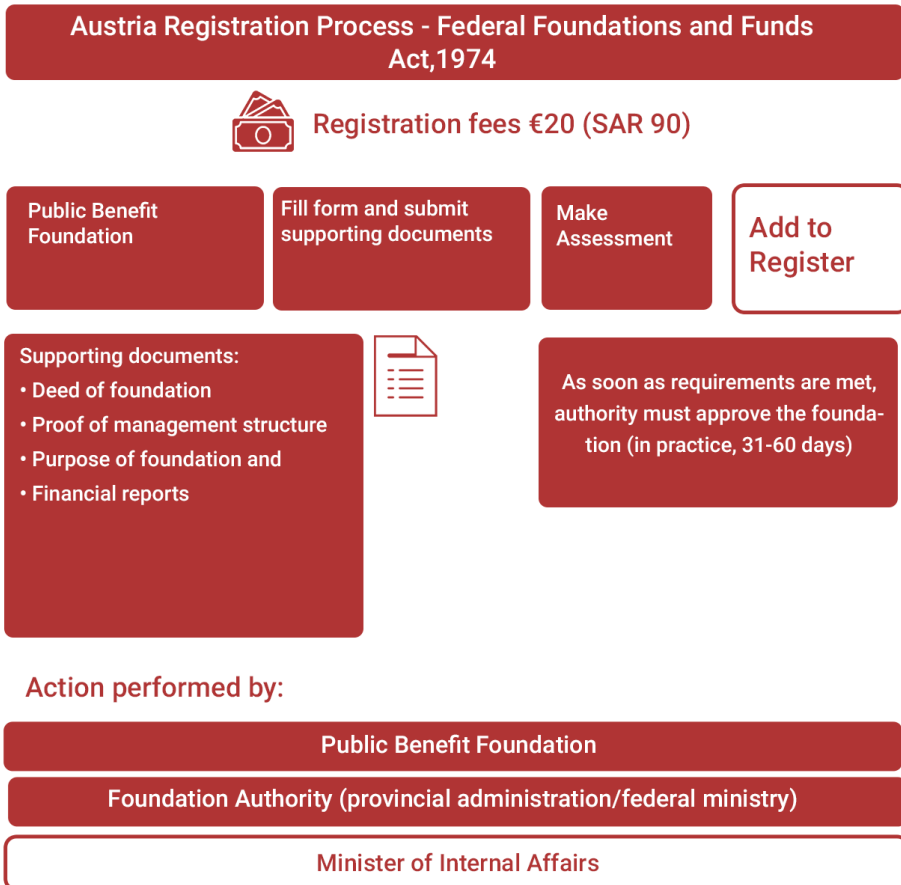


Figure 3: Registration process of social housing NGOs in Austria.

⁶ https://cms.gbv.at/repos/files/GBV/Pressemappe/Pressemappe_dokumente/A4_Info_Folder_eng.pdf

⁷ Ludl, H. (2004). <https://www.yumpu.com/en/document/read/6997180/limited-profit-housing-associations-in-austria-sozialbau-ag>

The legislative framework falls under the federal government's competency while the provincial governments are responsible for its execution. The provinces provide oversight over the LPHAs, social welfare, regional planning and building codes. In terms of policymaking, the main responsibility of the provinces is defining the mechanisms over the housing subsidy.

The **Limited-Profit Housing Act, 1945, also known as the Housing Charity Law (WGG)**, sets the regulations regarding the conduct of the LPHAs. The decrees issued to implement the Act include:

- a) Decree on the auditing guidelines to be applied to LPHAs (the Prüfungsrichtlinienverordnung)
- b) Decree that governs the prices for the provision of accommodation and real estate by LPHAs (the Entgeltsrichtlinienverordnung)
- c) Decree on business conduct guidelines containing rules for the proper business conduct of LPHAs (the Gebräungrichtlinienverordnung)
- d) Decree on balance-sheet guidelines, containing more detailed provisions on how the balance sheet and income statement of LPHAs should be written up (the Bilanzgliederungsverordnung)⁸

LPHAs are established as foundations. In Austria, there are two types of foundations: public benefit and private. Public benefit foundations, if active in more than one province, are governed under the **Law for Federal Foundations and Funds of 1974** (BSFG) and are established based on the transfer of assets used for public benefit and purposes for the common good. Private foundations are regulated under the **Private Foundation Act-Privatstiftungsgesetz (PSG) 1993**. These may

⁸ Ludl, H. (2004). <https://www.yumpu.com/en/document/read/6997180/limited-profit-housing-associations-in-austria-sozialbau-ag>

be established for any purpose; for example, they can pursue public benefit activities in addition to private activities. However, only few private foundations are organized in such a manner to exclusively focus on public benefit activities.

According to the Law on Federal Foundations and Funds, a public foundation is established because of a notarized deed or testament with funds dedicated to a defined goal with charitable character or for the public interest, accepted by the relevant Foundation Authority (either the provincial government or federal ministry).

The written deed of the foundation (Stiftungserklärung) is the instrument that dedicates assets for activities that fulfil a public benefit and beneficial purpose (Article 4 and 5). If the foundation is established while the founder is alive, the deed to set up the foundation must be witnessed by the court or a notary. The foundation governing personnel must hire a lawyer to draft statutes within six months to register the foundation before the first governing structure has started its term of office following its appointment by the foundation authority. The statutes should contain the foundation's name and domicile, assets, purpose, beneficiaries, and rules on annual accounting.⁹ Once these legal requirements are fulfilled, the public foundation is approved by Foundation Authority.

Under the PSG, private foundations need to be established through notarial deed or through a will. While provincial approval is not required, the private foundation must be registered on the company register with the Commercial Court.

The Ministry of Internal Affairs maintains a register of all foundations and funds that belong under the BSFG. Private foundations

⁹ <https://www.efc.be/uploads/2019/11/Austria-2014.pdf>

must register in the company register. Financial reports must be deposited at the provincial government or the GBV (Stiftungsbehörde) which is the foundations' supervising agency. A significant part of the work of GBV is focused on providing financial supervision and the fulfilment of these financial conditions. The GBV employs 40 accountants, specially trained to audit non-profit organizations and co-operatives. Every year they generate a financial report on each LPHA which is delivered to the relevant provincial government for approval.

The cost of the registration fee to set up the association is EUR 20, with no recurring costs. There is an optional annual audit costs of EUR 3000+ for official tax-exempt status for donations to be tax-deductible and/or EUR 500+ for a quality seal of approval (Spendengütesiegel).

II. Internal Governance

The organs of a foundation or association includes the: a) General Assembly of Members; b) Board of Directors; c) Auditors; d) Advisory Board; and e) Arbitral Tribunal.¹⁰

1. The General Assembly

All members are entitled to participate in the General Assembly. Voting and election rights are based on the Articles of Association and all members have eligibility to vote; each member has one vote. The General Assembly is properly convened with attendance or representation of at least half of the members.

The General Assembly has the following powers:



Election and removal of the president and his/her deputies and the other members of the board, the auditors, and the Advisory Board



Resolution on the budget



Acceptance of the statement of accounts and the accounts



Resolution on the appropriation of the annual surplus



Determination of the amount of the membership fees



Decision on appeal against exclusion from membership



Resolution on amendments to the articles of association and the voluntary dissolution of the association



Consultation and resolution on other items on the agenda


The General Assembly can, in a specially convened general assembly, voluntarily dissolve the association with a majority of three quarters of the submitted votes.

2. The Board of Directors

The Board of Directors consists of a minimum of six and a maximum of 15 members, including the president or chairman, his/her deputies, and the assessors. Up to four deputies can be appointed for the role of president or chairman. The term of office for the Board of Directors is two years and lasts until the election of the new Board of Directors takes place. A Board Member has the right to leave during the office term and another member will be elected in his or her place.

The Board of Directors makes its decisions with a simple majority. In the event of a tie, the chairperson has the casting vote. The General Assembly can at any time remove Board of Director members from their function.

¹⁰ <https://www.gemeinnuetzig-stiften.at/der-verband>



The Board of Directors has the following powers and responsibilities:

- a. Preparation of the annual budget and the drafting of the statement of accounts and closing of accounts
- b. Implementation of the association's resolutions
- c. Preparation and convening of the ordinary and extraordinary general meetings
- d. Administration of the association's assets
- e. Admission, exclusion, and removal of members of the association
- f. Provide suggestion for members to the advisory board
- g. Admission and termination of employees of the association
- h. Issuing rules of procedure for the Board of Directors

Special duties of individual Board Members include:

The president/chairperson or his/her deputy represents the association externally. The Board of Directors may act through a managing director who takes care of the current business. The managing director is an optional management option of the association and oversees the day-to-day business under the guidance and supervision of the president or chairman.

3. Advisory Board

The Board of Directors has the right to consult an Advisory Board as an Advisory Body. The Advisory Board consists of up to 15 members. The term of office of the Advisory Board is two years. After the end of the functional period,

the members of the Advisory Board can be re-elected. The appointment and dismissal are carried out by the General Assembly. The elected member of the Advisory Board will be replaced by another at the end of the term of office. Simultaneous membership on the Board of Directors and the Advisory Board is not permitted. The advisory board advises and supports the Board of Directors in performing its various duties. One duty includes submitting proposals for the preparation of the annual programme and provides advice in the case of awarding prizes.

4. Auditors

The General Assembly elects two auditors. The duration of the function is three years and re-election is permitted. The auditors are responsible for ongoing business controls and reviews of the accounts that take place in the “interest of the general public” to ensure that there are public checks and balances. The General Assembly may at any time have one or both of its auditors be removed. The audit will examine the formal principles of the balance sheet accounting and the profitability of the LPHA that is in alignment with the Limited Profit Housing Act.

5. Court of Arbitration

This is for the settlement of all disputes arising from the association relationship. It is an “arbitration body” in the sense of Association Act 2002. The arbitral tribunal is composed of three members.

B. Cooperation Agreements and Partnerships

Austria has a strong corporatist tradition. This tradition is evidenced in the 77-year history of the “Social Partnership” (Partnership), a term

that refers to the “*institutionalized relationship between the government, political parties and certain interest groups in the field of labour, social and economic policy*” within Austria. The partnership’s relevance depends upon the participation of a combination of voluntary and compulsory membership organizations. While the partnership itself is not a creature of the law, the interaction of private-industry and government in the housing market has been institutionalized through the various provisions of the Limited-Profit Housing laws.¹¹

The Austria Federation of Limited Profit Housing Associations (GBV) represents the interests of the 185 members in negotiations with the government.

The fundamental principles of the LPHAs are anchored within the Limited Profit Housing Act (WGG). In return for upholding the obligations outlined in the WGG, LPHAs are exempt from corporation tax within their primary and secondary functions of business. The primary principles include: coverage of costs, limitation of profits, asset commitments, personnel restrictions, limited business activities and audit requirements.¹²

- a.** Coverage of costs: The GBV must agree on and provide a reasonable fee for its customers in which the cost of rent should “not be set higher or lower” than the costs required to construct, finance and maintain or manage the residential building.
- b.** Limitation of profits: Income components are integrated within the cost-covering prices and defined within the WGG and other regulations which set the upper limits for

possible rent.

- c.** Asset commitment: Equity is permanently tied up for limited-profit purposes. This is used to ensure that there is an obligation in place to invest regularly in housing construction. The shares in a LPHA may be sold off at a nominal value of the investment made.
- d.** Personnel restrictions: GBVs must be independent entities from the construction sector to prevent deals or agreements that may be detrimental to the customers and renters overall.
- e.** Limited business activities: The primary areas of business include: construction, maintenance and renovation of apartments, while the ancillary businesses include construction of business premises, garages and community facilities.
- f.** Audit requirements: All LPHAs must be a member of an auditing association and must be audited annually by independent auditor, who checks whether the accounting principles and regulations within the WGG are adhered to, in addition to the economy and operating efficiency of the association.

Other several lobby or umbrella groups exist with special interests related to housing. Traditionally in Austria, the “Wirtschaftskammer Österreich” (WKÖ, Austrian Chamber of Commerce) and the “Arbeiterkammer Österreich” (AK, Austrian Chamber of Labour) have a huge impact on Austrian politics and on housing matters. As self-regulatory public-law institutions, the WKÖ (e.g., the construction industry, real estate agents and enterprises) and AK (e.g. workers and employees) represent interests of their members.

¹¹ <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1234&context=ilr>

¹² <https://www.gbv.at/english/>

Additional key lobby groups apart from WKÖ and AK include:¹³

1. Österreichischer Haus- und Grundbesitzerbund as representatives of homeowners and landlords
2. Österreichischer Verband gemeinnütziger Bauvereinigungen as representatives of limited-profit housing associations
3. Österreichischer Mieter-, Siedler- und Wohnungseigentümergebund as representatives of possessors of dwellings (e.g., tenants, homeowners, owners of dwellings in condominiums against landlords, housing administrations, real estate developers and governmental representatives)
4. Mietervereinigung Österreich as representatives of tenants
5. Verein für Konsumenteninformation as representatives of consumers

C. Business plan and financing mechanisms

The Bilanzgliederungsverordnung,¹⁴ a decree on balance-sheet guidelines, contains more detailed provisions on how the balance sheet and income statement of LPHAs should be written up. The balance sheet classification regulation is based on BGBl. II No. 157/1997 repealed by BGBl. II No. 437/2016. The balance sheet documents


the assets that were standing at the end of the financial year and at the end of the previous financial year. The categories that appear on the balance sheet include: fixed assets (intangible, tangible and financial assets), current assets (e.g. property, plant and equipment held for sale; claims, offsetting and other assets, and securities and shares), prepaid expenses, equity (e.g. business credit, share capital, capital reserves, revenue reserves), balance sheet profit and loss (e.g. sales, capitalized administrative costs, operating income, depreciation, etc.), and liabilities.

Austria has a very structured system for financing provision of social housing and housing banks have played an increasing role in issuing Housing Construction Convertible Bonds (HCCB) to raise funds for affordable rental housing. Six banks were established to issue HCCBs to raise funds to finance loans for housing construction and the GBV is the largest user of these HCCB loans. It combines long-term public loans at favourable conditions and grants defined at the level of federal provinces, with commercial loans raised via HCC bonds and developer-tenant equity. Promotion of social housing is also supported by municipal land policy. A typical project comprises the following elements of finance:

- 20-60 per cent: conditional subsidies (e.g., grants, low-cost loans) with limits to keep construction and financing costs down
- 5-15 per cent: equity of developer
- 0-15 per cent equity of future tenants (e.g., “right to buy” in some circumstances)
- 50-70 per cent: commercial loans financed by commercial bonds and housing banks, which are refinanced by HCCBs with very favourable conditions

¹³ <http://www.iut.nu/wp-content/uploads/2017/03/National-Report-for-Austria.pdf>

¹⁴ <http://www.ris.bka.gv.at/Ergebnis.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&index=Titel=bilanzgliederungsverordnung&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=16.11.2009&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&WxeFunctionToken=83062f05-1c5b-4fc8-8ba1-2033e46865ef>



Housing budgets are endorsed for five years by agreements between the provinces and the federal government. Nearly 75 per cent of the total budget is refinanced from the federal authority with the remainder covered by regional sources. These include the repayment from public loans, certain local duties and, in case of strong demand, the provinces make a direct contribution from their own budget. In times of excess demand, the regional authorities adjust the housing assistance budget to the expected demand.

Rents are calculated based on costs combined with rent limitation defined by the subsidy schemes. The federal legislation (i.e., Limited Profit Act & Promotion Act) outline principles for rent setting to meet the cost coverage goal. The cost coverage rent is established by setting a maximum and minimum allowable rent, related to the original cost of land and construction, the age of the building and the dynamic financing costs of the project.

Initial rents in LPHA housing is defined by the rental cost per m² which can be increased each year with the consumer price index, and the revenues should be sufficient to replay the annuity of the capital loan in addition to the interest on the public loan. Moreover, LPHAs may only charge a rent amount equal to that “necessary to cover the costs for managing the building, taking into account a justified amount to cover the costs of managing the housing association and to form reserves”. LPHAs can also earn 2 per cent more for risk mitigation.

Base rent can be reduced based on a several components, including:

- a.** obtaining land at the lowest possible price
- b.** providing own equity
- c.** accessing low-cost loans
- d.** applying for subsidies and public loans
- e.** capping project management and construction costs
- f.** using cost effective building techniques
- g.** ensuring cost efficient management of the associations and their building assets

The GBV through its specialized entity (Revisionsverband) audits and regulates individual associations across the nine provinces. Its reports are delivered to the provinces’ supervisory authorities, who have the right to order additional checks. This arrangement improves the creditworthiness, the financial health of the sector and the LPHAs overall compliance with the law.^{15, 16} The GBV is funded by member’s fees and charges for auditing and advice. The audit process, most importantly, ensures the tenant’s protection, in terms of price and rent, regarding the quality of rental units provided and against possible undesired and unlawful activities of management. The completed audit is filed with the government and certain excerpts are also made available to the public. The provincial governments, which act as supervisory authorities, have the power to “order remedial action against any defects (in documents, conduct or accounts) and, if this order is not complied with, they can give official notice to eliminate them.”¹⁷

¹⁵ Czerny, M, Weingärtler, M. and Dusek, M. (2007). Housing construction as an economic tool of economic prosperity. Vienna: WIFO.

¹⁶ Deutsch, E. & Lawson, J. (2012). “International measures to channel investment towards affordable rental housing: Austrian case study.” RMIT Research Centre accessed from https://www.ahuri.edu.au/_data/assets/pdf_file/0014/31119/AHURI_Research_Paper_International_measures_to_channel_investment_towards_affordable_rental_housing_Austrian_case_study.pdf

¹⁷ Ludl, H. (2004). <https://www.yumpu.com/en/document/read/6997180/limited-profit-housing-associations-in-austria-sozialbau-ag>

Inspections occur annually for three weeks by specialist auditors who examine the LPHA's accounts, activities, and investment plans. Evaluations may also be carried out every two years to inform renovation strategies.



2. NGOs and Housing Provision Mechanisms


A. Access to land and housing acquisition

Land banking strategies and urban planning policy play an integral role in affordable housing development and there is a legal obligation for municipalities to find suitable development sites for housing. This was accomplished through diverting grants and loans to specific housing developments on more suitable sites throughout

the city. In some housing subsidy schemes, there are limitations on land prices. As housing associations have a strong position in multi-story housing, they mostly succeeded in free competition on the land market.¹⁸

In larger cities, there are a few different strategies that can assist LPHAs to acquire land for social housing. First, many of them are strong in equity. Second, they have privileged access to housing subsidies. Dwellings for middle-income groups

¹⁸ https://www.researchgate.net/profile/Wolfgang_Amann2/publication/37390965_The_Austrian_System_of_Social_Housing_Finance/links/54d8ccb00cf2970e4e795559.pdf



would not be marketable without subsidies. Third, high land prices are sometimes compensated with higher density.¹⁹

Regulatory law requirements on new and/or old habitable dwellings are enacted in laws such as the federal monumental protection statute Denkmalschutzgesetz (1953). Although the construction laws of the nine Austrian provinces differ in some significant aspects, they all usually provide rules for planning and execution of construction works, for hygienic, health and environment protection, for security reasons, for energy saving, heat insulation and heating systems in general, for parking lots or garages.

For the construction of new buildings and major adaptation or improvements of buildings or dwellings, a building permit (Baubewilligung) is required. The authorities must consider the provisions for planning and execution of construction works by proofing the construction plans according to the actual common standards of construction. Furthermore, a valid permission of usage by the local construction authorities, the baubehördliche Benützungsbewilligung, for the new constructed building and for existing buildings is required.²⁰

On behalf of the government, increasing the available land that can be used for construction is through the following: planning ordinances, re-designation of construction land, expropriation for urban development projects, declaration of land reserved for special use, declaration of usage rights under the public law, collecting fees on vacant construction land, merging construction land, implementation of fees and duties, or by construction obligations by real estate property transfer ordinances.

¹⁹ Ibid.

²⁰ <http://www.iut.nu/wp-content/uploads/2017/03/National-Report-for-Austria.pdf>


In residential areas, land can be used differently, which is a cause for rising prices, especially for newly built apartments. The zoning law or the Land Sourcing Act (Bodenbeschaffungsgesetz) (1974) provides instruments that can help to improve this situation, such as the possibility to reserve construction land for subsidized housing, increase the amount of construction land in residential zones or increase the level of allowed construction density in residential zones. As of 2021, 26 per cent of the construction land in residential zones in Austria is not used for housing. Since there is no obligation to use the land according to its zoning, the owners can decide when they want to realize projects according to the zoning plan. Despite the increase in construction land in residential zones, only a portion of the construction land is available. A surplus of construction land in residential zones is confronted with a high demand for available construction land that can be used for subsidized housing.

Taxation revenue and contributions are dedicated towards subsidization programmes for the refurbishment of older housing units and the development of new residential buildings (92 per cent) and a small budget for demand assistance (8 per cent).

B. Planning, housing standards and approval process

I. Planning process

The quality and standards of social housing are related to a range of fundamental requirements within national and local laws and policies. They refer both to spatial planning issues and to the architectural design; at the same time, they are closely linked to the planning and maintenance of technical and social infrastructures.



Austria has introduced a system of quality competition for public subsidies without changing its social housing policies. For example, in 1996, Vienna introduced compulsory competitions for all new subsidized housing. Each project was judged along three criteria:

1. planning qualities
2. ecology and costs, including guarantees by the developer concerning rent levels
3. maintenance costs

These competitions led to a significant increase in housing quality while reducing construction costs by almost 15 per cent. They have led to improving environmental quality, promoting socially inclusive design, encouraging innovation, and transparently reducing costs. This experience is perceived as a successful way of introducing market elements into a social housing system.

The Austrian example demonstrates how regulation can be used to ensure that new social housing incorporates design standards and other features which reflect social housing policy objectives. The administration and decision-making are, in this case, devolved to local governments, which is particularly appropriate where local governments are responsible for planning and land-use control, and for administering any subsidy regime for social housing.


The municipal rental law (MRG), which establishes the landlord-tenant relationship contains the housing standards and must meet (especially older buildings) minimum standards and installations (e.g., heating, bathroom located in the corridor or in the apartment, hot water supply, etc.).

II. Approval Process

Depending on the construction project, it is also possible that a **construction negotiation** may occur, although not in all federal States. During the construction negotiations, all the people and authorities involved are given the opportunity to assert their rights and interests. If all the prerequisites are met, LPHAs are granted a **building permit, also known as a** Baubewilligung. All the nine provinces have their own building law which makes site acquisition and permitting more complex and therefore not a standard procedure that is unified across Austria.²¹ This suggests that the timescales will vary widely based on the building laws of the province, however, the maximum time set is anywhere between 8 and 24 weeks. If building permission must be obtained, a decision to grant or refuse the application must be issued within six months of the date of the application. If the decision is not made within this six-month timeframe, an appeals process can be initiated which can take up to another six months. Other reasons for delaying or denying building permission could be based on health or environmental concerns, for example. **A building application** should be delivered to the province otherwise a **building notice** is needed to obtain a permit for the implementation of the given construction project. Other required documentation includes:

- Blueprints
- Written building descriptions
- Proof of property
- Static calculations
- Energy certificate, etc.

²¹ https://www.gsma.com/publicpolicy/wp-content/uploads/2013/05/GSMA_BaseStation_Austria.pdf



The building permit can expire if the LPHAs do not begin their determined construction projects. Furthermore, the building must be completed within a certain period from the date that the permit was granted. An application to extend the period to start or to complete the construction project can be submitted to the building authority. Beyond a certain limit, a new building permit must be applied for. Depending on the land, the deadlines can be extended via application. Austria does not require a final site inspection conducted by building authorities.

In some provinces, a construction start notice is required and, at the end of the construction project, a **usage permit** or **completion notice** is required. In Austria, the building may be taken into use after a notification of completion has been submitted to the municipal authority. Furthermore, applicants must pay a fee to obtain a building permit. The value of the building permit fee is calculated based on the floor area and building use.

C. Maintenance and operation systems

LPHAs are not only responsible for the construction of new social housing developments but also the building management. The property management must be efficient. Some responsibilities, include, but are not limited to:

- Transfer of the house into administration (e.g., preparation of the house and apartment inventory, contract processing and handover in case of rental or sale, transfer of accommodation, reporting)
- Preparation and filing of settlements (e.g., operating costs statement, EVB billing, billing of heating costs)

- Organization, administration and care for the ongoing maintenance and improvement of construction facilities (e.g., preparation of maintenance plans, assignment, performance of traffic safety obligations)
- General administrative activities (e.g., property, fee and legal matters, contact with authorities)

For the landlords and the LPHAs to cover the maintenance of the buildings through the tied-up assets, the landlord may collect an administrative cost lump sum that is part of the total rent to which the expenses are either added or reimbursed at the end of the year.

There are three types of tenancy agreement:

1. Short-term contract up to six months
2. Befristet: contract limited to a specified number of years

Introduced in 2001, this contract period is a minimum of three years, and includes the details on periodic rent hikes and the percentage thereof, notification of rental deposit and termination with a few months' notice in advance.

3. Unbefristet: Unlimited contract

This contract was used prior to 2001 and is still used to provide tenant security of tenure. Under this contract, the tenant has unlimited tenancy and few details are provided other than the deposit needed, which does not accumulate interest.

In accordance with **Section 14, Paragraph 1, Item 5 of the WGG**, the Conservation and Improvement Contribution (EVB) is part of the monthly fee and is used to finance necessary conservation and useful improvement work. Depending on the age of the building, the

amount of the maintenance and improvement contribution may vary.

According to the **Limited Profit Housing Act (WGG)**, a non-profit developer shall provide its tenants with the following accounts annually until 30 June at the latest:

1. an "operating cost statement"
2. a heating bill (Heating Cost Accounting Act (HeizKG))
3. a statement of conservation and improvement contributions (EVB)

Pursuant of **Sections 21-24 of the MRG and Section 14 of the WGG**, the operating costs for the LPHAs include but are not limited to the following:

- Water and sewage
- Waste collection
- Electricity for lighting the generally accessible parts of the house and common areas (e.g. stairwell, sidewalks)
- House insurance against fire damage, tap water damage (incl. corrosion damage) and the statutory liability insurance of the house
- Communal facilities (e.g. elevator, laundry room, playground)
- Administrative costs

Established in 2000, Housing Service of Vienna (Wohnservice Wien Ges.m.b.H.) provides a centralized information portal for all available subsidized apartments in the city. Tenants can view available properties and register their applications via this site. The service is supported by the Fund for Housing Construction and Urban Renewal, the Wohnfond and the City of Vienna.

Some of the services include:

1. Information on available housing (e.g. subsidized rental and co-operative apartments, subsidized condominiums, co-operative apartments that can be re-rented and renovated apartments in old buildings)
2. Assistance with subsidies (e.g. housing allowances)
3. Financing assistance (e.g. loans for tenant contribution)
4. Rental agreements (e.g. advice on rents and tenancy conditions)

The Tenant's Association of Austria, Mietervereinigung Österreich²² is a national umbrella organization (each province has its own tenants' association), which provides counselling and support regarding tenants', landlords' and owners' rights, including rent arbitration. The association was founded in 1911 with the purpose of exerting political pressure to ensure that Austrian citizens were able to access improved living conditions. The association is an active lobby group in the legislative process but offers advice on tenancy and housing law and provides legal representation for its members. It also has an assistance hotline to discuss rental assistance, construction subsidies, and it provides an arbitration board for legal housing matters such as calculating the rent and cost assessment. Tenant protection is also provided in case of eviction²³ and finding accommodation for migrants.²⁴ The Tenant's Association's activities are made possible through the financial contribution of its 60,000 members.

²² <https://mietervereinigung.at/>

²³ <http://members.aon.at/fawos/en/Wohndregscheibe>

²⁴ http://sozialinfo.wien.gv.at/content/en/10/InstitutionDetail.do?it_1=2098511&senseid=14



House over Austrian alps in Hallstatt, Austria by ASphotostudio source: Envato Elements

3. NGOs and Beneficiaries

A. Eligibility criteria

Under Article I, paragraph 8 of the Austrian Charitable Housing Act,²⁵ non-profit building associations must allocate housing units based on i) date of application, ii) housing needs and actual living conditions of the applicants, iii) number of people living together in one household, iv) age of the applicants (e.g., young family, older people) and v) income (particular consideration for low-income households).

Additionally, all activities of a non-profit building association should favour housing provision for i) Austrian citizens, ii) foreigners who have been in Austria continuously and legally for more than five years and possess a test certificate from the Austrian Integration Fund (ÖIF), iii) person with a permanently poor physical or psychological

state of health (with proof provided by an official medical report), and iv) those who have established their primary residence in Austria for the first time after the age of 60.

The national net income limit for applying to social housing is 3.140 €/month for a single person and 5.297 €/month for a household of up to three persons.

Austrian nationality or a valid residency permit is a precondition for applying. Yet Austria allows applications from foreigners who lost Austrian citizenship after March 6, 1933, had to emigrate from Austria for political, racial, or religious reasons, have returned to Austria and intend to settle in Austria permanently.

B. Tenure options

The Austrian social housing sector provides two tenure options for beneficiaries. The Open-ended tenancy agreement (unbefristeter Mietvertrag) with the following features:

²⁵ Government of Austria (1979). Charitable Housing Act. Updated 2020. Retrieved from <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011509>

- Tenancy agreement is not limited in duration.
- Valid until one of the contracting parties terminates the contract.
- Minimum notice period of one month (can be extended upon agreements between parties).
- The landlord can only terminate for a serious legally recognized reason, (non-payment of rent).

The **fixed-term tenancy agreement** (befristeter Mietvertrag) with the following features

- The minimum tenancy period is three years.
- It can be extended in writing any number of times for any given duration.
- The minimum time span of each subsequent extension of the contract is three years, however, there is no maximum duration unless indicated by contract.
- Legal termination is permissible before the end of contract. However, the contract cannot be terminated before the end of the first year.
- Minimum period of notice of three months.

C. Rights and Duties

The discipline applicable for market housing sector with respect to rights and duties (Law of Tenancy²⁶) is applicable to all rental contracts and specifies exemptions for flats rented by limited-profit housing associations within the framework of assisted housing programmes (listed in in § 1 (3) Law of Tenancy).


²⁶ Government of Austria (1981) Law of Tenancy. Updated 2020. Retrieved from <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002531>

The Law of Tenancy provisions that apply to limited-profit housing associations include among others:

- Restoration obligation.** If a rental unit becomes unusable in whole or in part by accident, the tenant is obliged to restore the rental unit in accordance with building law and construction engineering regulations to the extent that the benefits from an existing insurance are sufficient.
- Scope of the right of use.** Entitled to use the rental unit in accordance with the contract. Tenants must maintain the rental unit and the facilities intended for the rental unit, such as lighting, gas pipes, water pipes, heating (including central heat supply systems) and sanitary facilities and, unless it is a matter of solving serious problems. If it is necessary to remedy serious damage, the tenant is obliged to notify the landlord without delay and allow access to the property
- Change (improvement).** Tenants must notify the landlord of a major change (improvement) to the rented property. The tenant or other beneficiary of an apartment who, in the last twenty years before the end of the tenancy or other usage relationship in the apartment provided for use, has made expenditures for substantial improvement (§ 9 of the Tenancy Law) that is related to his rental or other useful lives are effective and useful, is entitled to reimbursement of expenses upon termination of the lease or other usage relationship according to certain conditions.

D. Community Participation

Partnership between social landlords and residents, known as the “Mietermitbestimmungsstatut”



(tenant's participation statute) of the Vienna municipality, outlines the terms of cooperation between the City of Vienna and its approximate 220,000 tenants. Established in 2000 and renewed in 2015, it ensures tenants participation rights regarding maintenance costs, erection and maintenance of elevators, and common utilities and housing management. This provides tenant control over living environment and ensures a sense of ownership.

Balanced neighbourhoods and social cohesion is also pursued through the *Wohnsfond Wien* policy that ensures the mixed tenure of housing blocks, with the aim of maintaining an urban social balance giving Vienna some of the lowest levels of social unrest in the European Union.



Morrio dos Prazeres on the slope of Santa Teresa, Brazil. by karkozphoto source: envato elements

II. NON-PROFIT HOUSING IN BRAZIL

Brief Background

In Brazil, non-profit housing associations and cooperatives produce stable and formal housing projects with government subsidies and limited sweat equity, targeting the neediest households. Additionally, some cooperatives produce housing via private sector financing and sweat equity. These developments typically take place in mid-size cities with low land values, reaching low- to moderate-income households. This case study focuses on non-profit housing associations collaborating with government housing programmes to develop housing projects that target families earning no or very little income.

The NGO, the Union of Housing Movements in São Paulo (UMM-SP), is a federation of housing movement associations that develops housing projects via *autogestão*, which is a distinct descriptor, methodology of housing production and movement for social housing in Brazil that is characterized by collective action, resident empowerment, mutual aid (*mutirão*) and democratic decision-making. *Autogestão* translates to “self-management” in English – henceforth the authors will use “*autogestão*”, “self-management” and “self-managed” interchangeably throughout this case study. Less than 2 per cent of Brazilian housing funding targeting extremely low-income populations goes to non-profit housing development and *autogestão* constitutes a best practice in this diverse sector.

Autogestão housing stands in stark contrast with most of the social housing production in Brazil that is led by for-profit, private developers who seek to maximize profits and meet only minimum quality standards without any community participation. The key to *autogestão* developments are commissions of residents who self-manage every aspect of the project from initial planning, design and labour contracting to long-term resident health promotion and facility maintenance. Self-management is made possible by the cooperation of government entities, non-profit technical advisors and popular movements. Of all the low-income housing produced in Brazil, third-sector production accounts for just a small fraction. While there are other third-sector movements that practice *autogestão*, this study focuses on one federation of actors led by UMM-SP, which was founded in 1987 following the end of Brazil’s military regime to fight for the right to housing and urban reform and building on the social momentum that led to the creation of many other popular movements during that time. Work is carried out with local groups and associations, engaging municipal housing departments in collaboration with leaders of the national movement. Functioning as a network, the movement represents hundreds of neighbourhoods and regional organizations, altogether comprising 50,000 members across the State of São Paulo.

This case study is a composite of scholarly research, document analysis, key informant interviews, review of social housing laws and

regulations in Brazil, and the authors' fieldwork. Between 28 February and 13 March 13, 2020, the authors conducted intensive fieldwork in São Paulo that included site visits to 12 *autogestão* projects, semi-structured key informant interviews, and group interviews with leaders of the social movements, landscape architects and residents of the housing projects. Following the UN-Habitat comparative scheme, this case study traces the formal relationship between third-sector social housing production and self-management's space in the governmental and regulatory framework in Brazil. It details how *autogestão* projects plan, operate and allocate housing among participant-residents. The final section describes the ways that residents self-manage their projects and uses stories from three projects to highlight the diversity of tenure and organizational structures among *autogestão* projects.

1. Non-profit housing: current landscape and historical context

Housing cooperatives and associations first took part in federal housing policy during the military regime in 1964.²⁷ At this time, cooperatives and associations did not serve the urban poor, targeting the middle-class housing development instead.²⁸ The history of State-non-profit partnerships for social housing production runs parallel with the history of democratization and of urban social movements in Brazil.²⁹ One housing movement in particular has advocated for and proposed models of self-managed housing. Founded in 1987, UMM-SP and its affiliated

organizations are highly involved throughout the housing development process, from policy advocacy to housing delivery.³⁰ Since the fall of Brazil's military regime and social reform in the 1980s, these non-profit associations have been instrumental in shaping the country's housing policies. Although for-profit housing developers produce most publicly subsidized low-income housing units, non-profit housing associations have contributed since the 1970s at the municipal, State, and federal levels.

Besides the consolidated model implemented by housing movements and associations in partnership with governments, non-profit housing production in Brazil also takes place with independent financing via public and private banking systems. This is the case of the COOHABRAS, the Cooperative Central of Brazil.³¹ With a model of self-management and the goal of producing affordable housing, COOHABRAS has been successful in producing moderate-income housing. Some of the challenges include land prices that have restricted these developments to small and mid-size cities where land is less costly.³² Furthermore, international non-profits have provided transitional and emergency housing for the most insalubrious dwelling conditions in informal settlements. This is the case of Techo, a non-profit organization acting in 19 Latin American countries, including Brazil. Under a sweat equity model, Techo relocates informal dwellers to less risky areas, usually

²⁷ Maricato, E. (1987). *Política habitacional no regime militar: Do milagre brasileiro à crise econômica*, Petrópolis: Voze.

²⁸ Véras, M. P. B. and Bonduki, N. G. (1986). *Política habitacional e a luta pelo direito à habitação*. In: COVRE, M. L. M. (Org.). *A cidadania que não temos*. São Paulo: Brasiliens, pp. 39-72.

²⁹ Earle, L. (2013). Drawing the line between state and society: Social movements, participation and autonomy in Brazil. *The Journal of Development Studies*, 49(1), 56-71, p. 60.

³⁰ Donaghy, M. M. (2013). *Civil society and participatory governance: Municipal councils and social housing programmes in Brazil* (Vol. 5). Routledge, p. 92.

³¹ Dickmann, I., Dickmann, I, Assisio Magri and C.Mendonça dos Santos, A. *Cooperativa de Habitação e Educação Popular*. São Paulo, p. 153. Available online at <https://drive.google.com/file/d/1CvfEBD1DLPwJAplg3Jdm500-uUgeK3sB/view>. Consulted on 13 December, 2020.

³² Araújo Dias, S., president of COOHABRAS, personal communication, 10 December, 2020.

within the same informal settlement.³³ Virtually all non-profit housing development in Brazil relies on a home ownership model, except for one incipient housing association, FICA. FICA is a collectively owned real estate fund that manages one apartment rental for a low-income family and is in the process of acquiring its second rental unit.³⁴ A multi-modal approach for low-income housing development is welcomed to address Brazil's housing deficit of 7.8 million housing units as of 2017.³⁵ Notably, 84 per cent of the housing deficit is shouldered by low-income households (defined as earning less than three minimum wages, or approximately BRL 2,900/month or USD 1,090 /month).³⁶

In recent years, legislators, public institutions, the financial sector and developers have converged for the first time toward common housing goals.³⁷ In 2005, Congress approved a bill proposed by the urban reform movement under popular demand, establishing the Sistema e Fundo Nacional de Habitação de Interesse Social (Social Housing National Fund and System, or SNHIS and FNHIS) to house families

representing the lowest-income levels.³⁸ UMM-SP proposed the bill and helped collect over one million signatures to approve it via popular amendment.³⁹ In addition to establishing funding for social housing, this law has required the establishment of independent housing councils at the municipal, State and federal levels, and has created a platform for organizing movements to have a seat at the table. The 2008 Law of the Free Technical Advisory Program is a law that has had a major impact⁴⁰ on self-management efforts. This law ensures the right of low-income families to technical advisory firms in the design and construction of social interest housing. These firms provide invaluable support to the housing movement through expertise in land use, architecture, public policy and social work. This law ensures technical advisory support free of charge, but in practice this has only been provided to beneficiaries via specific housing and slum upgrading programmes.⁴¹

1964 Following the military coup and in association with the National Brazilian Conference of Bishops (CNBB), Basic Ecclesial Communities (CEBs), neighbourhood groups originating in the Catholic Church, become prominent political outlets for grassroots organizing.

1970s The Movement for the Defence of Favela Residents first becomes active.

³³ Vaccari, M. S., Sanderson, D., Loosemore, M., and Mojtabehi, M. (2020). Fit for purpose? Lessons from transitional shelter provision for internally displaced persons in urban informal settlements in Brazil. *Disaster Prevention and Management: An International Journal*, 29(6), pp. 943-959. And Pimentel Pimentel Walker, A. P., and Arquero de Alarcón, M. (2018). The competing social and environmental functions of private urban land: the case of an informal land occupation in São Paulo's south periphery. *Sustainability*, 10(11), p. 4160.

³⁴ Cymbalista, R., board member of FICA, personal communication, October 2020. More information available at <https://fundofica.org/?lang=en>.

³⁵ Gavras, D. (January 6, 2019). Déficit habitacional é recorde no País. *O Estado de S. Paulo*, <https://economia.estadao.com.br/noticias/geral,deficit-habitacional-e-recorde-no-pais,70002669433>.

³⁶ Correa Cunha, G.A. (2020). "Déficit Habitacional: o Tamanho da Desigualdade Social no Brasil," *Boletim Economia Empírica*, 1(1), p. 61.

³⁷ Shimbo, L. (2019). An unprecedented alignment: State, finance, construction and housing production in Brazil since the 2000s. *International Journal of Housing Policy*, 19(3), p. 343.

³⁸ Moraes Valença, M. and Bonates, M.F. (2010). The trajectory of social housing policy in Brazil: From the National Housing Bank to the Ministry of Cities, *Habitat International*, 34, p. 166.

³⁹ União Nacional por Moradia Popular. (2019). *Cartilha de autogestão em habitação*. 1ª edição. São Paulo: UNMP, p. 5. https://autogestao.unmp.org.br/wp-content/uploads/2019/09/cartilha_autogestao.pdf.

⁴⁰ Fundação João Pinheiro: Diretoria de Estatística e Informações. (2018). *Déficit Habitacional no Brasil 2015*, p. 73. <https://novosite.fjp.mg.gov.br/deficit-habitacional-no-brasil/>.

⁴¹ Lima, V. (2018). Social housing under the Workers' Party government: an analysis of the private sector in Brazil, *Third World Quarterly*, 39(8), pp. 1640-1655.

1979 The municipality of São Paulo established the Substandard Housing Dwellers Support Fund (FUNAPS).⁴²

1987 Movimento dos Trabalhadores Sem Terra Leste 1 (MST-Leste 1) is established.

1987 UMM-SP is founded to fight for the right to adequate housing and urban reform in the city of São Paulo.

1988 The Caravanas à Brasília (or Marches to Brasília) begins, representing the start of a coherent expression of housing demands in the capital city.

1989 The National Movement for Popular Housing (UNMP) formation is catalysed as part of an effort to pass the first Popular Initiative Bill, eventually leading to the creation of the Sistema Nacional de Habitação por Interesse Social (National System for Social Interest Housing).⁴³

1989 The city of São Paulo establishes the Self-Management Housing Provision Programme (FUNACOM).⁴⁴

1990 The First National Popular Housing Seminar, organized by the Brazilian National Bishops Council, plants the seeds for the National Social Housing Fund.

1991 Unificação das Lutas de Cortiços e Moradia (ULCM) is established.

1993 The National Movement for Popular Housing (UNMP) is established at the first ever

National Meeting for Popular Housing.⁴⁵

2000 The Constitutional Amendment is enacted, making housing a positive right.

2001 The 2001 City Statute provides legal instruments for land access and right to housing and urban development.

2003 The Ministry of Cities is established.

2004 The federal Crédito Solidário (Solidarity Credit Programme) is established. The Ministry of Cities provides financial assistance to UNMP towards production of self-managed housing through the new programme.⁴⁶

2005 Federal Law 11124 establishes the Social Housing National Fund and System (FNHIS and SNHIS)⁴⁷

2008 Law of the Free Technical Advisory programme is enacted.

2009 Minha Casa, Minha Vida and Minha Casa, Minha Vida Entidades Program (My House, My Life, and MCMV/MCMV-E) are launched.⁴⁸

2016 Law 16.587 is signed, establishing a self-management housing programme in the municipality of São Paulo.

Figure 4. Timeline of Select Housing Movements and Policy for Self-Management in Brazil

⁴² Pasternak, S. and D'ottaviano, C. (2014). Half a century of self-help housing in Brazil. Bredenook, J., Lindert, P. and Smets, P. Housing the poor in an urbanizing world. Amsterdam: Earthscan.

⁴³ Mineiro, E. H. and Rodrigues, E. (2012). Do Crédito Solidário ao MCMV Entidades: uma história em construção. In: L. Lago (ed.) Autogestão habitacional no Brasil: utopias e contradições. Rio de Janeiro: Letra Capital/ Observatório das Metrópoles, pp. 19-48.

⁴⁴ Pasternak, S. and D'ottaviano, C. (2014). Half a century of self-help housing in Brazil. Bredenook, J., Lindert, P., Smets, P. Housing the poor in an urbanizing world. Amsterdam: Earthscan.

⁴⁵ União Nacional por Moradia Popular. (2020). O que é a UNMP. Retrieved from <http://www.unmp.org.br/o-que-e-a-unmp/>.

⁴⁶ União Nacional por Moradia Popular. (2020). O que é a UNMP. Retrieved from <http://www.unmp.org.br/o-que-e-a-unmp/>.

⁴⁷ Moraes Valenca, M. and Fialho Bonates, M. (2010). The trajectory of social Housing policy in Brazil: From the National Housing Bank to the Ministry of Cities. Habitat International, 34, p. 166.

⁴⁸ Mineiro, E. and Rodrigues, E. (2012). Do crédito solidário ao MCMV entidades: Uma história em construção. In: L. Lago (ed.) Autogestão habitacional no Brasil: utopias e contradições. Rio de Janeiro: Letra Capital/ Observatório das Metrópoles, pp. 19-48.

2. Government and NGOs Relationship

2.1 Requirements for licensing, registration, and internal governance

2.1.1 Registration

In Brazil, the term NGO (ONG in Portuguese) does not have a specific legal designation. Nevertheless, several organizations fit the non-profit third sector description, such as associations, cooperatives, institutes and foundations; each of these organizations possess a distinct legal framework.⁴⁹ A federal law passed in 1999 established the Organização

da Sociedade Civil de Interesse Público (OSCIP, or Civil Society Organizations of Public Interest), which is the closest definition to an NGO.⁵⁰ Regulated by the Civil Code, the association is the least bureaucratic of the NGOs and the least costly to set up. The official registration of associations entails the physical filing of documents with a Public Notary Office for Civil Registry of Legal Entities. Prior to registration, interested parties must announce the constitutional assembly meeting via publication in the official government gazette and the approved association statute must be signed by a lawyer. Registration must conform with the Law of Public Registry (Law 6.015 of 1973) and its updates.

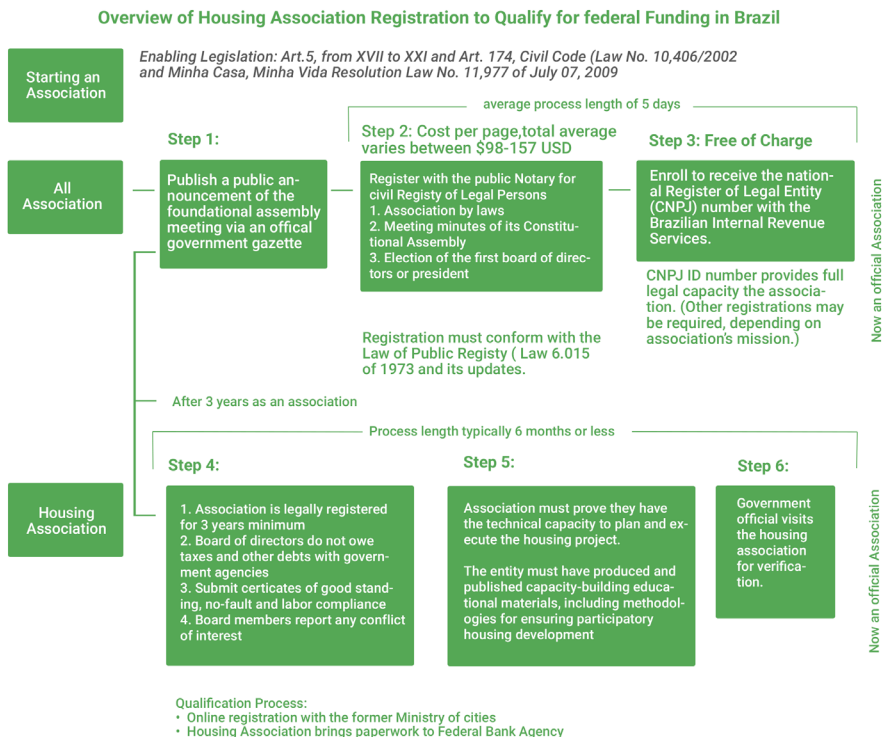



Figure 5: Overview of Housing Association Registration to Qualify for Federal Funding in Brazil

⁴⁹ SEBRE. As principais diferenças entre associação e cooperativa. Portal Sebrae, accessed August 14, 2020, <https://m.sebrae.com.br/sites/PortalSebrae/artigos/artigosCoperacao/entenda-as-diferencas-entre-associacao-e-cooperativa,5973438af1c92410VgnVCM100000b272010aRCRD>.

⁵⁰ Aquino Alves, M. and Massaco Koga, N. (12 September,

2018). Brazilian non-profit organisations and the new legal framework: An institutional perspective. *Revista De Administração Contemporânea*, 10, pp. 213-234, <https://doi.org/10.1590/s1415-6552006000500011>.



Registering as a Civil Society Organization of Public Interest requires the filing of the association bylaws along with the meeting minutes of the constitutional assembly, including the list of presences and election results. The Civil Registry of Legal Entities charges per page fees on any documents above five pages; thus, final costs usually vary from BRL500 (USD 98.34) to BRL800 (USD 157.06).^{51,52} Following registration, the next step is to obtain an identity (ID) number, the Cadastro Nacional das Pessoas Jurídicas (CNPJ, or National Registry of Legal Entities), with the Internal Revenue Service (Receita Federal). Since 2015 the federal revenue ID number can be obtained during the registration process at the local Public Notary offices for the Civil Registry of Legal Entities and it takes an average of five days to obtain the CNPJ ID.⁵³ The CNPJ number will allow the association to carry out financial transactions, contracts and agreements, including hiring employees. After obtaining the CNPJ, the entity has full legal capacity.

The second phase consists of qualifying the established association to receive government funding to produce low-income housing. This phase applies for the associations that can prove three years of service. The qualification process

is only required of housing associations that receive government funding to produce very low-income housing and it is discussed in the next section. Since the late 1980s, Brazilian municipal, State and, later, federal governments have had programmes that funded associations and cooperatives to construct low-income housing via self-management and mutual aid.⁵⁴ These government policies have been fundamental in producing permanent, scalable and high-quality homes with community participation.

⁵¹ Dr. Barbosa, B.D., personal communication, 12, December 12, 2020. The price estimates for registering a housing or neighbourhood association do not include lawyers' fees. The price range has been obtained from an interview with Dr. Benedito Roberto Barbosa, lawyer with the Centre Gaspar Garcia for Human Rights in São Paulo. The Centre Gaspar Garcia provides free legal assistance to low-income communities, including support to legally establish an association.

⁵² Conversion from Brazilian real to United States dollars throughout this case study is based on the exchange rate on 16 December, 2020.

⁵³ REDESIM diminui o tempo médio de abertura de empresas no Brasil de 8 para 5 dias (Internal Revenue Services lower the average number of days to obtain CNPJ from eight to five days). Referenced from: <https://receita.economia.gov.br/noticias/ascom/2018/dezembro/redesim-diminui-o-tempo-de-abertura-de-empresas-no-brasil> . Consulted on 14 December, 2020.

⁵⁴ Pasternak, S. and D'Ottaviano, C. (2014). Half a century of self-help housing in Brazil. Bredenoek.

| | |
|---|--|
| Objective | Execute a social goal such as education, political representation, social assistance. |
| Registration Process | Simpler and less expensive than other modalities, such as foundations and cooperatives as it takes an average of five days. Registration of bylaws, meeting minutes of its Constitutional Assembly and, if applicable, the election of the first Board of Directors or president must be deposited with the local office of the Civil Registry of Legal Persons. The next combined step is to enrol to receive the National Register of Legal Entity (CNPJ) number with the Brazilian Internal Revenue Services. The CNPJ number will allow the association to carry out financial transactions, contracts, agreements, including hiring employees. After CNPJ, the entity has full legal capacity. However, depending on the association's mission and actions, other registrations may be required. For those involved in public housing delivery, see the requirements below (2.1.2) and the flow chart (Figure 7). |
| Enabling Legislation | Art. 5, from XVII to XXI, and Art. 174, §2nd and Civil Code (Law No. 10,406 / 2002). |
| Membership and Internal Governance | Minimum of two people (who must be residents of Brazil, but not necessarily citizens) sharing common purpose and voluntarily united, without a profitable objective to achieve social goals. Although the law does not require it, associations usually establish a Board of Directors with a president, a vice-president, secretary and treasurer. There are no required qualifications for managers. |
| Ownership and Revenue Model | Members do not own equity in the association. Profit stays within the organization. Assets come from member fees, donations or reserves. |
| Legal Standing | Associations have broad standing and can sue in the public interest. Multiple neighbourhood associations can join together in class action style lawsuits. |

Figure 6: Overview of Licensing, Registration, and Internal Governance for Associations in Brazil

2.1.2 Registration of associations for social housing delivery with federal funds

Housing movements have advocated for non-profit, third sector housing production since the 1970s, and have asserted that for-profit, private developers should not be the only players in building very low-income housing that rely on public funding.⁵⁵ Instead, they believe that the beneficiaries of publicly subsidized housing, organized in associations, cooperatives and NGOs, are well-positioned to efficiently build high-quality housing projects.⁵⁶ Through negotiations and consensus building, the Brazilian Government has enacted several programmes for third-sector housing development with similar registration requirements to qualify for social housing funding.

The latest federal housing programme, MCMV-E, established that associations, cooperatives and other non-profit entities that were officially registered with the Ministry of Cities were able to access funding allocated for the development of low-income housing.⁵⁷ The registration process was specified via regulations, which were updated periodically as the programme was renewed. The Brazilian Federal Bank, Caixa Econômica Federal (CEF), is responsible for receiving and analyzing the necessary documentation for the qualification of the non-profit entity.

Registration is a two-step process. First, the organization must prove that associations are

⁵⁵ Kowarick, L. and Bonduki, N. (1994). Urban space and political space: from populism to redemocratization. In Kowarick, Lúcio (ed.), *Social struggles and the city: The case of São Paulo*. New York: Monthly Review Press, pp. 121–147.

⁵⁶ Da Gloria Gohn, M. (2010). "Movimentos sociais e redes de mobilizações civis no Brasil contemporâneo," 2. ed. Rio de Janeiro: Vozes.

⁵⁷ The Ministry of Cities was established in 2003 and since January 2019 it has been merged with the former Ministry of National Integration into the Ministry of Regional Development.

legally registered for at least three years and that their Board of Directors (president, secretary, and treasurer) do not owe taxes and other debts with government agencies. The role of the housing association board members under the MCMV-E programme is to ensure that housing development follows the self-management process for each project, which is discussed in the next section. Associations and other non-profits must submit certificates of good standing, no-fault and labour compliance. Furthermore, board members must report any conflict of interest with the registration application, especially any relations with public entities.

Second, the association, cooperative or non-profit entity must prove that they have the technical capacity to plan and execute the housing project. Previous experience in self-management or housing management processes can be demonstrated by proving the delivery or ongoing construction of a housing development project of at least 20 units. The housing developments, self-managed or not, must include technical assistance, social work, and land tenure regularization. Likewise, the non-profit entities must prove that they have staff or contracted staff available in their geographic area to support the housing development. The entity must have produced and published capacity-building educational materials, including methodologies for ensuring participatory housing development.⁵⁸

The qualification process takes place online and in person. In addition to an online registration with the former Ministry of Cities, the housing association brings the paperwork to a local Federal Bank Agency. There are no deadlines, but interviews with housing association leaders and

⁵⁸ Normative Instruction No. 12, of June 7, 2018, Regulates the Minha Casa, Minha Vida-Entities Programa (PMCMV-E) of the Ministry of Cities, the Federative Republic of Brazil.

non-profit technical advisory staff reveal that the approval does not take longer than six months. After all the documents have been submitted, a representative of the federal government visits the housing association to ensure that it is not a ghost association. Most housing associations are run by low-income residents themselves who may have limited years of formal education. As a result, the most time-consuming portion of the process is to gather and synthesize all required documents.⁵⁹ Therefore, housing associations that belong to federations, such as UMM-SP, can benefit from the organizational support of housing leaders.

2.2 Cooperation and partnership frameworks

2.2.1 Role of associations in developing housing

Associations take a comprehensive role in developing social housing. UMM-SP has used dialogue with elected officials at various levels of government, organized protests and occupied underused buildings and unproductive land to highlight housing issues for people living in extreme poverty and at the lowest income levels.⁶⁰ UMM-SP leadership also develops popular education materials and capacity building for affiliated organizations to better serve and advocate for the most vulnerable population.⁶¹

⁵⁹ Fidelis, C., social worker, personal communication, 10 December, 2020. Ms. Fidelis is a social worker with Peabiru Technical Advisory NGO and the Centre Gaspar Garcia for Human Rights. Ms. Fidelis provides support for housing associations to further develop their social work and educational plans in the process of applying and implementing new housing projects.

⁶⁰ Donaghy, M. M. (2013). *Civil society and participatory governance: Municipal councils and social housing programs in Brazil* (Vol. 5). Routledge, p. 92.

⁶¹ Tatagiba, L. and Chaves Teixeira, A.C. (2016). *União Nacional por Moradia Popular and social innovation in housing policies for the poor in Brazil*. ImPRovE Case Study, 11(21), p. 12.

Municipal, State, and federal governments have established housing programmes that allow non-profit housing entities to participate directly in the development of zero to low-income housing (Figure 5). Under these programmes, UMM-SP has provided support and capacity building for its 27 affiliated organizations who act as housing developers through the facilitation of autogestão, and joint-effort projects in which prospective residents collectively identify land, and plan and manage the construction of their housing.

Housing associations in Brazil exist in networks forming important blocks of housing movements. Affiliated associations work together to promote popular education, community organizing and capacity building of associations. UMM-SP acts as an umbrella association, providing support and technical assistance to affiliated associations, which then propose housing developments and apply for project funding from the government (see Figure 5). Relationship Framework of Self-Management Movements in Brazil). Executive coordinators represent UMM-SP and are responsible for leading the organization. These positions are elected every two years at a State meeting. The organization also appoints secretaries as advisory bodies to represent various aspects related to the right to housing and the city. These positions include Secretary of Slum Tenements, Secretariat of Favelas, Secretariat for the Elderly, Youth Secretariat, Women's Secretariat, and Black Secretariat. Furthermore, association coordinators meet weekly to organize various activities. As an advocacy association, UMM-SP supports its local groups in informal settlements and affiliated associations to increase their involvement in housing and upgrading projects and policy reform. This association fosters community building and organizing and mediates potential conflicts with public agencies. UMM-SP

states that the organization's principles include "internal democracy, horizontal organization and autonomy, in defense of the right to housing and the city, public policies with popular participation and self-management as a tool for building citizenship". The movement is dedicated to advocating for the implementation of housing programmes for very low-income populations and empowering women and families through participatory governance and self-management.

Under MCMV-E guidelines, each project is

overseen by a range of actors including the Managing Body (Ministries of Cities, now a department within the Ministry of Development) and the Brazilian Federal Bank (CEF), two association-based resident committees that manage and oversee the project, and non-profit Technical Advisory Firms (TCA) that are made up of architects, social workers and other technical experts. The Enterprise Representatives Committee (CRE), composed of at least three members (one from the broader association and two future residents), manage

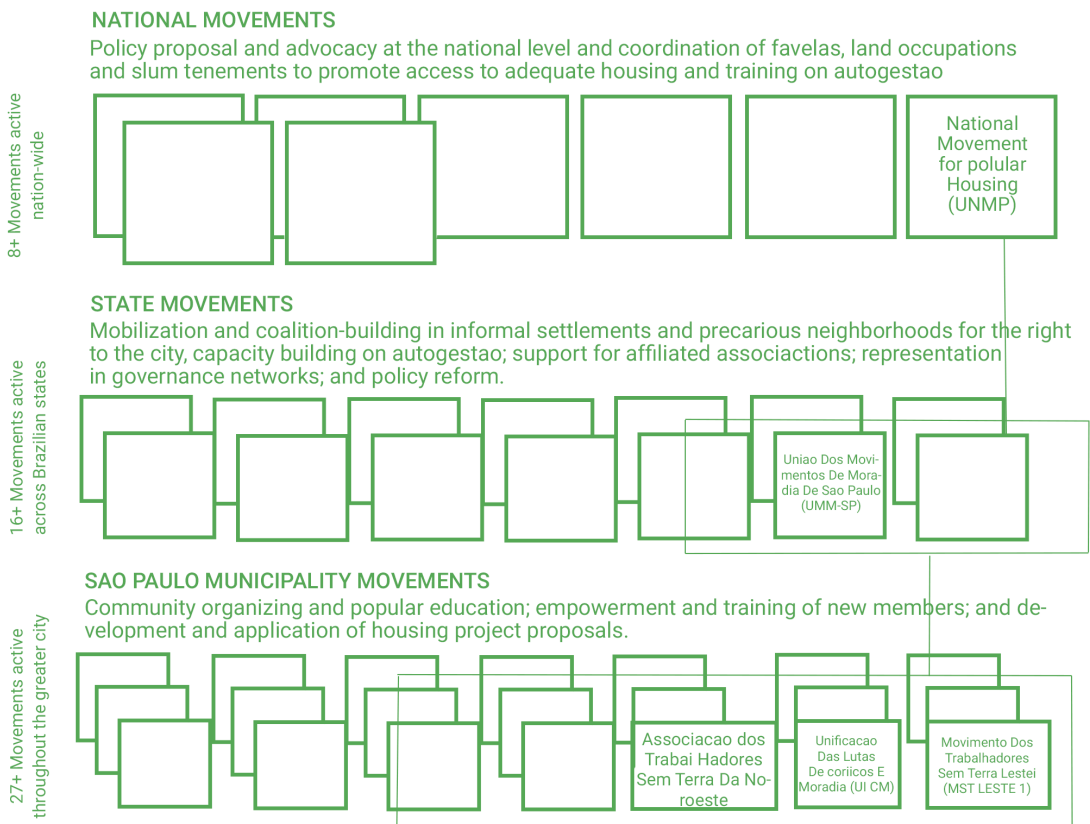


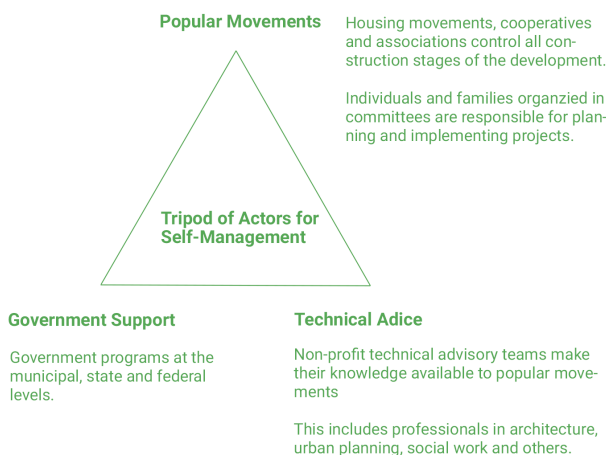
Figure 7: Relationship Framework of Self-Management Movements in Brazil

and move the financial resources destined for the production and legalization of the enterprise, to execute price quotations, to make payments and to render accounts, to which publicity will be given to beneficiaries. The Work Monitoring Committee (CAO), having a similar composition to the CRE, has the responsibility of monitoring and inspecting the execution of the undertaking through dialogue and support from the TCA.⁶²

The beneficiaries under the MCMV-E programme, households under the association who meet the programme conditions, are registered in the SITA Housing File Treatment System by CEF during project approval.

Tripod of Actors for Self-Management and Committees

Self-management is made possible by the cooperation of three components:



The Enterprise Representatives Committee (CRE)

Composition:

At least three participants, of which:

- One is a managing member of the EO as provided by statute
- Two are future beneficiaries of the venture

Responsibilities:

- Oversight of the housing developments finance committee
- Opening and handling the bank account that will receive the funds
- Accountability to beneficiaries regarding the application of the funds released

The Work Monitoring Committee (CAO)

Composition:

At least three participants, of which:

- A participant is a managing member of the EO, as provided by statute or an administrative member of the EO
- Two are future beneficiaries of the venture

Responsibilities:

- Monitoring project approval and project oversight
- Accountability to beneficiaries, regarding progress of works

Minimum Committees Required by MCMV-E

Figure 8: Relationship Framework of Self-Management Actors in Brazil

⁶² Normative Instruction No. 12, of June 7, 2018, Regulates the Minha Casa, Minha Vida-Entities Programa (PMCMV-E) of the Ministry of Cities, the Federative Republic of Brazil.

Participants in *autogestão* housing are expected to engage in educational courses, site meetings and demonstrations to support the project and further individual understanding of the construction process. Under the leadership of UMM-SP, affiliated associations such as ULCM and MST-Leste 1 provide capacity-building through education and guidance of committee members, using a deep well of institutional knowledge and ability to organize to ensure the success of the individual beneficiaries and the project as a whole.

2.2.2 Partnership models between government institutions and associations

In Brazil, the partnership between the government and UMM-SP has been supported by (1) social housing programmes and (2) laws and government policies that have enabled movements and associations to develop housing via self-management (Figure 6). Government programmes such as the federal MCMV, The City of São Paulo's FUNAPS Comunitário (Self-Management Housing Provision Programme, or FUNACOM), and the federal Crédito Solidário (Solidarity Credit, or CSP) provided financial and programmatic support for associations, cooperatives and NGOs to develop housing for the poor.⁶³ However, the current federal administration has not expressed plans to continue subsidizing self-managed housing – this leaves crucial support and funding pending, and is a missed opportunity for the expansion of this model and for desperately needed housing for low-income Brazilians.⁶⁴ MCMV,

⁶³ Denaldi, R. (1997). Viable self-management: The FUNACOM housing programme of the São Paulo Municipality. *Habitat International*, 21(2), pp. 213-227. [https://doi.org/10.1016/s0197-3975\(97\)89957-2](https://doi.org/10.1016/s0197-3975(97)89957-2).

⁶⁴ Pasternak, S. and D'ottaviano, C. (2014). Half a century of self-help housing in Brazil. Bredenook, J., Lindert, P., Smets, P. Housing

for example, had a defined group of projects for households making between none and three minimum wages, which used funding through the federal budget and the Fundo de Garantia de Tempo de Serviço (FGTS) subsidizing project operations up to 90 per cent of the final price.⁶⁵ While the project operations were well subsidized by the government through various programmes, development and construction were left to the private sector, exemplifying the need for increasing multi-sector involvement, including associations formed by beneficiaries and organized via self-management principles.⁶⁶

MCMV-E—the non-profit modality—is an example of a government programme that was created in response to pressure from the housing movements. Under this modality, three categories of participatory housing were allowed: self-management, co-management and global enterprise. Using the self-management model, the associations under UMM-SP function as one side of a cohesive *autogestão* housing tripod, with a relationship with the State and the technical assistance firms needed at the other two sides. This partnership model is what allows the housing movement to successfully scale *autogestão* housing and will be discussed in further detail below. Beyond the various government housing programmes and the grants, subsidies and programming that directly provided for associations and cooperatives to develop housing projects, various laws have

the poor in an urbanizing world. Amsterdam: Earthscan.

⁶⁵ Klink, J. and Denaldi, R. (2014). On financialization and state spatial fixes in Brazil. A geographical and historical interpretation of the housing programme My House My Life. *Habitat International*, 44, p. 220-226. <https://doi.org/10.1016/j.habitatint.2014.06.001>.

⁶⁶ Klink, J. and Denaldi, R. (2014). On financialization and state spatial fixes in Brazil. A geographical and historical interpretation of the housing programme My House My Life. *Habitat International*, 44, pp. 220-226. <https://doi.org/10.1016/j.habitatint.2014.06.001>.

supported self-managed housing production.

A successful partnership between UNMP and the government includes funding and programmatic support from the government at a national level through models previously discussed. It also includes requirements prescribed by the government housing programme for autogestão housing, such as regularization of the land, social work involvement requirements, and construction requirements to be elaborated upon in upcoming sections.⁶⁷ Housing conferences and municipal planning conferences have been common, providing a platform for housing movements, the private sector and the government to come together to debate policy and establish recommendations. Municipal, State and country level policy and recommendations were often debated and voted on. The goal was to address the needs of the movement and confront what did and did not work between their efforts, goals and current policy. This was a tool for movements to directly communicate with the government, establishing a dialogue within their partnership.⁶⁸

2.2.3. Process of developing social housing with public funding.

As explained previously, to access funding through MCMV-E, housing entities must be certified by the federal government. After qualification, housing associations organize their members and verify their income and other eligibility criteria to receive the subsidy. It is their responsibility to provide the documentation to CEF. The latest changes in eligibility criteria were established by the Ministry of Regional Development Regulation n. 2.081 of

31 of March 2020. Once the project is selected for funding by CEF, non-profit entities will enrol beneficiaries who meet the requirements of the programme, while a percentage of the housing must be set aside for vulnerable groups. During assembly, registered via meeting minutes, the housing association must discuss the eligibility criteria and elect the members who will represent the future residents in the required Enterprise Representative Committees (ERC) and Work Monitoring Committees (WMC).

The housing association or any non-profit entity must also present the housing development proposal so that the CEF can analyze its legal, urbanistic, and financial feasibility. Once assessed as feasible, a complete project with construction details and budgetary and financial schedules must be submitted. The budget will include densities, parking, infrastructure, utilities and environmental compliance costs and scheduling. The housing association or non-profit entity must provide contracts and documentation of engineering firms responsible for construction. Ministry of Cities Regulation n. 660 of November 14, 2018, requires that all basic sanitation and electricity be running before approval. The project must be located within the consolidated urban fabric and include a system of open space areas for residents and neighbours to enjoy.

CEF requires that the project meet physical, social and environmental standards for social housing. Movements must obtain land suitable for the project, which is a challenge. The programme allows for 15 per cent of the total project costs to be used towards advanced land purchase in metropolitan areas defined by the census and 10 per cent in other cities.⁶⁹

⁶⁷ Ministry of Cities. (December, 2014). Ordinance No. 747. DOU. Section 1.

⁶⁸ Donaghy, M. M., (2013). Civil society and participatory governance: Municipal councils and social housing programmes in Brazil. 5, Routledge.

⁶⁹ Caixa Econômica Federal (CEF). Manual Minha Casa Minha Vida Entidades (MCMV-E E Manual). Retrieved from: https://www.caixa.gov.br/Downloads/habitacao-minha-casa-minha-vida/MANUAL_MCMV_ENTIDADES.pdf

While the Advanced Land Purchase Agreement allowed housing entities to proceed with the project without having to obtain the land before funding was awarded, this process alone could take up to four years.⁷⁰ Development plans must be approved by technical departments in all three levels of government in order to obtain execution permits, environmental license and approval from the fire department and utility providers. Those developments located on

environmentally sensitive land must meet the unique environmental requirements for the area, such as the federal Forest Code. Timelines for environmental licensing are discretionary and vary according to each municipal secretary of the environment. The process usually takes several months. CEF releases project funds in stages, once entities provide necessary documentation; the process can be managed through the CEF web portal.

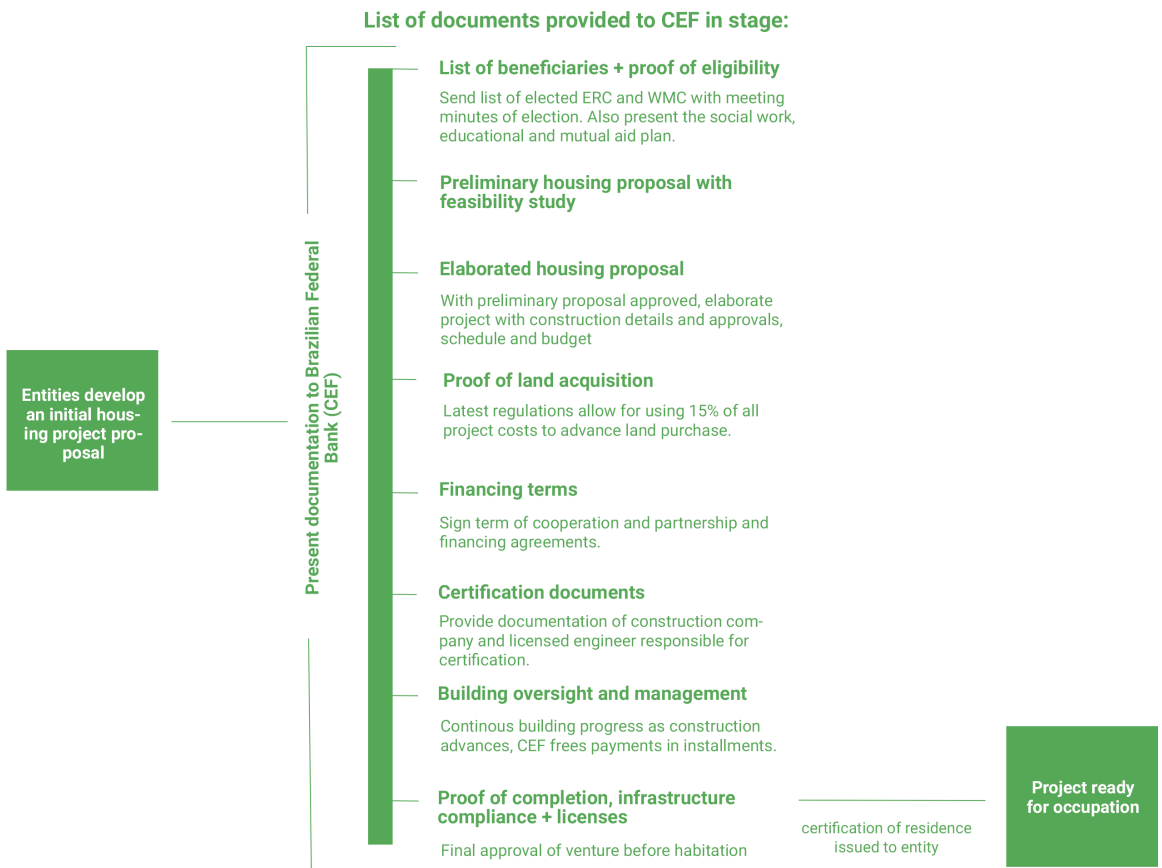


Figure 9: Process of Developing Social Housing under MCMV-E

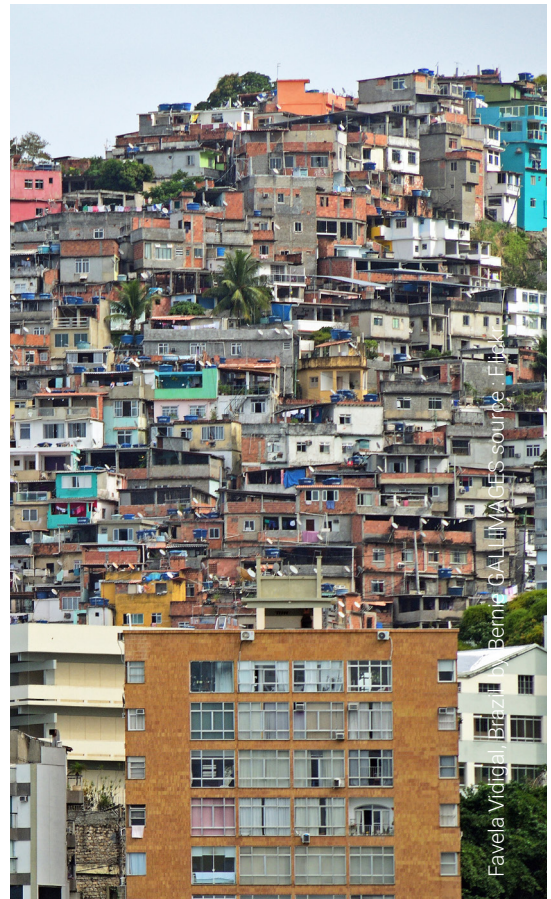
⁷⁰ Patrícia Maria de Jesus. (2016). The inclusion and access of social housing movements to Minha Casa Minha Vida: the emergence of the Entidades modality. *Revista Brasileira de Estudos Urbanos e Regionais*, 18(1), p. 105.

Under MCMV-E, the organized entities are responsible for the monitoring of project execution, with the CEF approving the distribution of funds. CEF plays a key role in the programme implementation monitoring at the national and local levels. CEF and the Ministry of Cities report mainly on project resource allocation, costs and number of units built. CEF's central office collects information from regional agencies, producing national level reports along with the Government Vice Presidency (Vice Presidência de Governo), the National Body of Social Housing (Superintendência Nacional de Habitação Social), and the National Body for Real Estate Credit Management (GEICI - Gerência Nacional Gestão de Informação do Crédito Imobiliário).⁷¹

2.3 Business plan and financing instruments

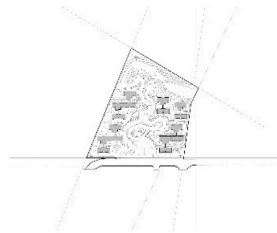
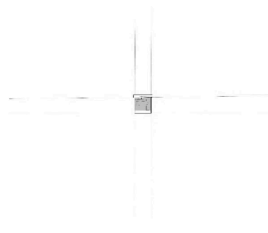
UMM-SP has an internal finance policy, which covers about 75 per cent of its costs, and is based on a contribution model of the affiliated entities proportional to the size of each movement. The movement also receives support from a number of outside organizations, such as: Misereor, an international cooperation organization connected to the German Catholic Church; E-changer, a Swiss North-South partnership for solidarity cooperation that works with social movements in Latin America and Africa; CESE, an organization created by Christian churches in Brazil engaged in the struggles for political, economic and social transformation; and the Ford Foundation, which funds programmes to promote democracy and reduce poverty around the world. Affiliated associations rely on support and recognition from all three levels of government to finance housing development. Table 5 explains the funding mechanisms for

three projects, managed by three UMM-SP affiliated associations in the city of São Paulo. Changes in government administrations can put funding for projects at risk, setting housing projects back months or even years. New municipal administrations will often require the same or similar paperwork to be resubmitted, sometimes demanding a full audit of the project's finances.⁷² Some administrations are unreservedly hostile, not only to the housing movement associations and their goals, but also to any NGO-led housing project, considering only the for-profit sector as legitimate housing developers.



⁷¹ UN-Habitat (2013). Scaling-up affordable housing supply in Brazil. United Nations Human Settlements Programme, 44.

⁷² De Souza Mascarenha, D., resident Paulo Freire, personal communication, 29 February, 2020.



Edifício Dandara

**Mutirões Florestan
Fernandes e**

Projeto Barra do Jacaré

José Maria Amaral

| | | | |
|----------------------------------|---|---|---|
| Leading Association | Unificação das Lutas de Cortiços e Moradia (ULCM) | Movimento dos Trabalhadores sem Terra Leste 1 (MST-Leste 1) | Associação dos Sem Terra da Noroeste + Associação Vale das Flores |
| Total Number of Units | 120 units | 396 units | 592 units |
| Total Land Area | 520 sq. m. | 18,771 sq. m. | 28,075 sq. m. |
| Total Built Area | 5,461 sq. m. | 28,531 sq. m. | 37,337 sq. m. |
| Sources of Funding | Total Funding: R\$ 27,714,881 | Total Funding: R\$ 42,249,527 | Total Funding: R\$ 69,908,693 |
| Federal Government | 91.4% (R\$ 25,235,956) | 69.53% (R\$ 30,072,061) | 61.92% (R\$ 43,285,610) |
| State Government | 8.6% (R\$ 2,378,92) | 18.31% (R\$ 7,920,000) | 16.94% (R\$ 11,840,000) |
| Municipal Government | 0% (R\$ 0) | 5.25% (R\$ 2,269,906) | 16.94% (R\$ 11,840,000) |
| Task Force | 0% (R\$ 0) | 6.50% (R\$ 2,812,848) | 0.17% (R\$ 115,440) |
| Counterparts | 0% (R\$ 0) | 0.40% (R\$ 174,712) | 4.05% (R\$ 2,828,033) |
| Cost Breakdown of Project | Total Cost: R\$ 27,714,881 | Total Cost: R\$ 42,249,527 | Total Cost: R\$ 69,908,693 |
| Land Fee | 54.66% (R\$ 15,150,000) | 2.67% (R\$ 1,126,240) | 12.16% (R\$ 8,499,876) |
| Building Costs | 35.95% (R\$ 9,962,145) | 49.69% (R\$ 20,993,348) | 64.53% (R\$ 45,115,277) |

| | | | |
|------------------|---------------------|-----------------------|------------------------|
| Equipment | 1.11% (R\$ 306,479) | 1.49% (R\$ 629,139) | 1.42% (R\$ 994,320) |
| AT | 3.31% (R\$ 917,400) | 7.52% (R\$ 3,176,973) | 4.96% (R\$ 3,470,545) |
| TTS | 0.66% (R\$ 182,400) | 1.42% (R\$ 601,920) | 12.59% (R\$ 8,801,376) |
| Legal Fee | 4.32% (R\$ 65,294) | 1.58% (R\$ 668,014) | 2.26% (R\$ 1,580,870) |

Table 4: Funding and Cost Breakdown via MCMVE Project Examples in Brazil Source: *União Nacional por Moradia Popular (UNMP), "Revista da Produção de Habitação em Autogestão: Empreendimentos da União Nacional por Moradia Popular no Programa Minha Casa Minha Vida-Entidades,"* accessed May 5, 2020, http://autogestao.unmp.org.br/wp-content/uploads/2019/09/revista_autogestao.pdf.

UMM-SP advocates on behalf of the residents of slums, tenements, homeless populations and land occupations living in overcrowded or otherwise substandard housing. Its mission is to organize, empower and serve this population. Members of the movement are primarily households making between none and three minimum monthly wages, particularly those experiencing homelessness or inadequate housing. UMM-SP performs outreach in communities throughout São Paulo through affiliated movements organized in city-district neighbourhoods. Families registering with the movement attend meetings detailing the history of the movement, its struggles and its key housing and urban policy proposals. Activists and academics in the movement produce educational programming and publications covering the various issues surrounding the low-income housing deficit and how to overcome it. Movement members lead or participate in marches and protests throughout São Paulo and the capital. The movement also coordinates organized occupations of unused buildings and land. These occupations are built around a predefined agenda of demands and aim to create a discourse around the right of low-

income households to live in the central areas of the city. UMM-SP leaders hold dialogue with elected officials, participating in the Municipal Housing Council for both São Paulo and the neighbouring municipality of Diadema, providing the movement with a seat at the table to co-produce policy.

One of the organization's greatest strengths is its connections to numerous organizations throughout São Paulo and the nation. Connections with national organizations give UMM-SP access to a larger network and a louder voice in federal policy discussions. UMM-SP is highly involved with many local movements throughout São Paulo, contributing in capacity building for smaller organizations and facilitating self-managed housing development.

| | Movimento dos Trabalhadores Sem Terra Leste 1 (MST-Leste 1) | Unificação das Lutas de Cortiços e Moradia (ULCM) | Movimento dos Trabalhadores Sem Terra da Zona Oeste e Noroeste |
|---|---|---|---|
| Year of Establishment | 1987 | 1991 | 1990 |
| Number of Projects Constructed | 28 Project | 7 Projects | 35 Projects |
| Number of Housing Units Built | 5,688 Units | 644 Units | 5,301 Units |
| Objective | Fight for the right to housing and the city, advocate for self-management via public policies. | Defend the right for decent housing, with quality of life in central areas of the city through the Habilitação de Interesse Social project. | Ensure decent housing and building citizenship. |
| Form of Coordination and Number of Leaders | Executive coordination is formed by 13 members elected in plenary. The expanded coordination has about 80 people (two representatives for each of the 36 groups of origin and joint efforts). | It has 45 affiliated groups of origin in different neighbourhoods of the city totalling 80 coordinators. Its executive is composed of nine of these coordinators. | Executive coordination is formed by 18 members elected in plenary. The leadership meeting has about 100 people (two representatives for each of the 35 groups of homeless and task forces). |
| Decision-Making Bodies | Annual planning and weekly meetings of the extended coordination. | Decision-making bodies are formed at a general plenary. | Fortnightly meetings with the leaders. It also operates in nine favelas. |
| Alliances and Partnerships | UMM-SP, UNMP, Central de Movimento Popular (CMP), technical assistance firms, and social workers | Gaspar Garcia Human Rights Centre, Bom Parto Pastoral Centre, UMM-SP, and the Central de Movimento Popular (CMP) | UMM-SP and the Central de Movimento Popular (CMP) |

| | | | |
|--------------------------|---|---|--|
| Challenges | <ul style="list-style-type: none"> ● Fight against the expulsion of the low-income population and guarantee the fulfilment of the social function of the property. ● Fight for housing programmes accessible to this population. ● Ensure self-management in housing production. | <ul style="list-style-type: none"> ● Fight against real estate speculation with large construction companies to guarantee housing in a well-structured area with all social facilities and strength, with the public authorities to subsidize part of the resource for low-income families, as well as the transfer of public areas. | <ul style="list-style-type: none"> ● Recognition by public agencies of the importance of the popular movement in the construction of government programmes in the area of housing. ● Guarantee popular participation. ● Defending the Mutirão with self-management in projects. |
| Movement Finances | Each family contributes monthly the value of two bus tickets (USD 1.50). Contribution is not mandatory. | ULCM is a non-profit association. It receives a non-mandatory contribution and is maintained with the achievement of each project. | Membership contribution (USD 2 monthly). |

Table 5: Financing Instruments of Select Movements. Source: Rodrigues, E., personal communication, August 2020.

UMM-SP has assisted in the production of more than 30,000 homes, mostly across the urban periphery, but also via the renovation of unused or unoccupied buildings in the urban centre.⁷³ The movement also engages in legislative advocacy, organizing around housing policy and programmes that benefit low-income Brazilians. Individuals and families often join the movement in response to the threat of eviction and tend to

be very low-income. The movement represents hundreds of neighbourhood and regional organizations, altogether comprising 50,000 members across the State of São Paulo.⁷⁴ The majority of movement members are women of colour who are the head of their households, and many are single mothers.

⁷³ UMM. "História" Accessed 8 August, 2020. Retrieved from: <https://sp.unmp.org.br/historia/>.

⁷⁴ UMM. "História" Accessed 8 August, 2020. Retrieved from: <https://sp.unmp.org.br/historia/>.



Circuito Favela, Brazil. by Defensoria Pública source: Flickr

3. NGOs and Housing Provision Mechanisms

3.1 Access to land and housing provision/acquisition

Brazil has several mechanisms through which NGOs may acquire land and housing, particularly as it applies to associations. Land acquisition for *autogestão* housing mainly occurs through the purchase of private land, adverse possession of private land, or concession of use rights of public lands. Housing programmes like MCMV and MCMV-E promoted the acquisition of private land for housing mainly by funding and subsidizing land purchase in municipalities that implement the instruments of the Federal City Statute of 2001, especially those that combat underused land in areas with infrastructure and those with Zonas Especiais de Interesse Social (Special Zones of Social Interest, or ZEIS).⁷⁵

⁷⁵ Rolnik, R, Klintowitz, D, Reis, J and Bischof, R. (2010). "Como

Furthermore, MCMV ranks higher housing projects where municipalities or States donate land in consolidated urban areas for social housing development.⁷⁶ UMM-SP supports affiliated associations pursuing *autogestão* housing by helping to identify appropriate land parcels for future development. Vacant areas with ZEIS designation could facilitate the use of well-located, centralized urban lands with access to infrastructure for the urban poor and social housing. However, these areas have not been pursued by the for-profit private market and remain underdeveloped.⁷⁷ Therefore, ZEIS

produzir moradia bem localizada com os recursos do Programa Minha Casa Minha Vida?" Ministry of Cities, p. 132, Retrieved from: http://www.fau.usp.br/cursos/graduacao/arq_urbanismo/disciplinas/aup0535/Anos_Anteriores/Cartilha_-_Minha_Casa_Minha_Vida.pdf.

⁷⁶ Normative Instruction No. 12, of 7 June, 2018, Regulates the Minha Casa, Minha Vida-Entities Programa (PMCMV-E) of the Ministry of Cities, the Federative Republic of Brazil.

⁷⁷ Pimentel Walker, A.P. and Arquero de Alarcón, M. (2018). The Competing Social and Environmental Functions of Private Urban Land: The Case of an Informal Land Occupation in São Paulo's South Periphery. *Sustainability*, 10(4160), p.13.

alone is a passive tool and too frequently inadequate for allocating lands for social housing in central, metropolitan locations. Experts have suggested that, combined with other tools like progressive taxation of unproductive urban land and expropriation, land banks or community land trust, ZEIS could have better served MCMV and MCMV-E. Existing legal instruments could also be deployed to access land, municipal governments have a special role to play in deploying land expropriation, land donations and concession of use easements.⁷⁸ In its second iteration, MCMV-E facilitated the acquisition of land by establishing the practice of advanced land purchase; this allowed associations to access funding to purchase land prior to the assembly of all components of the project, allowing associations to be somewhat more competitive in acquiring land in central, urban locations.

For individuals and families living in *favelas* and land occupations, several land tenure mechanisms have been consolidated. Brazil's 1988 Constitution established a new framework for adverse possession, providing a pathway for households that peacefully occupied private urban land of no more than 250m².⁷⁹ The 2001 City Statute brought with it an additional provision: *usucapião coletivo*, or collective adverse possession for informal settlements.⁸⁰ If the group makes a successful claim, the judge can either establish a quasi-condominium in which each member receives an equal fraction of the occupied land, or they can create a special

⁷⁸ Corrêa Lago, L. (2011). Autogestão da moradia na superação da periferia urbana: conflitos e avanços. E-metropolis: Revista Eletrônica de Estudos Urbanos e Regionais, 5, p.6.

⁷⁹ Krueckeberg, D.A. and Paulsen, K.G. (2000). Urban Land Tenure Policies in Brazil, South Africa, and India: an Assessment of the Issues. Lincoln Institute of Land Policy, p.5.

⁸⁰ Macedo, J. (2008). Urban land policy and new land tenure paradigms: Legitimacy vs. legality in Brazilian cities. Land Use Policy, 25, p.262.

undivided condominium.⁸¹

Public land acquired using concession of use rights prevents households from claiming freehold ownership.⁸² Claimants have to meet essentially the same criteria as those pertaining to adverse possession claims. Similarly, they are also able to apply collectively.⁸³ Notably, this right is hereditary and transferable and can be used as loan collateral.⁸⁴ Once executed, this contract documenting the formal concession of use rights is then filed at the public property registry.⁸⁵ The only cost is the per page filing fee. The Concession of Special Use for Housing Purposes, Provisional Measure No. 2220/2001 further underscores the Concessão do Direito Real de Uso (Real Right to Use Concession, or CDRU) for housing purposes. CDRU rights are signed public contracts authorized by the legislative authority. The measure promotes and protects collective concession of land, enabling a simplified regularization process for informal settlements.⁸⁶ These rights are enforceable in the court of law and offer the same level of protection against eviction as a freehold private property title would.

Despite all these land tenure innovations, the MCMV-E mainly accepts land purchase options.

⁸¹ United Nations Human Settlements Programme (2005). "Land Tenure, Housing Rights and Gender in Brazil". Nairobi: UN-Habitat, p.44.


⁸² United Nations Human Settlements Programme (2005). "Land Tenure, Housing Rights and Gender in Brazil". Nairobi: UN-Habitat, p.46.

⁸³ Rodrigues, E. and Barbosa, B.R. (2010). The City Statute of Brazil: A Commentary. São Paulo: Cities Alliance and Ministries of Cities, p.34.

⁸⁴ Macedo, J.(2008). Urban land policy and new land tenure paradigms: Legitimacy vs. legality in Brazilian cities. Land Use Policy, 25, p.262.

⁸⁵ United Nations Human Settlements Programme (2005). "Land Tenure, Housing Rights and Gender in Brazil." Nairobi: UN-Habitat, p.46.

⁸⁶ United Nations Human Settlements Programme (2005). "Land Tenure, Housing Rights and Gender in Brazil." Nairobi: UN-Habitat, p.47.



Only in very exceptional cases, the Ministry of Cities and CEF would consider consensual expropriation lawsuits and Concession of Use Rights of public land.

3.2 Planning, housing standards and approval process

3.2.1 Role of the community in developing *autogestão* housing

The production of housing for low-income households in Brazil is typically led by a collaboration of government, private developers, and construction companies. The families that eventually live in these projects have no say over their design or management, while developers construct them to minimize costs and maximize profits. This means that units are just large enough to comply with government standards, public spaces are haphazardly designed and there is little to no concern for residents' needs.

In contrast, self-managed housing projects under UMM-SP are based on principles of democratic participation, mutual aid (*mutirão*), solidarity, collective action and capacity building. Self-management is made possible by the cooperation of three components: government support, technical advice, and popular movements. Government support includes funding, land, and administration assistance. Programmes at the city, State and federal level have provided the assistance for the development of self-management projects, putting housing within reach for many that the for-profit market leaves behind. Technical advisory firms provide their expertise to the popular movements and facilitate various aspects of the planning and development processes. This includes architects, landscape designers, social workers, and environmental specialists. Lastly, popular movements are the

distinguishing characteristic of *autogestão*. Housing movements, cooperatives and associations control all aspects of the housing project. Together, these three components form the "Tripod of Self-Management". See Figure 8.

Autogestão housing is distinct from other models of housing production in that future residents have complete agency over each stage of the project. Current and future residents of UMM-SP housing projects collectively manage the planning, design, and construction processes via popular participation. Non-profit technical advisory professionals make their knowledge available to popular movements, guide them through all stages of a project, and help them navigate design, zoning, and environmental regulations. These professionals are experts in the fields of architecture, urban planning, landscape architecture, social service and others. Communities develop the technical capacity and political understanding necessary to realize their own housing and fight for their rights. All participants contribute their labour to the production of housing and engage in mutual aid, paying it forward to those still waiting for their own housing even after they have received their own unit. These contributions take several forms, including manual labour, decision making, and advocacy. Most of this labour is performed by women.

Each housing project is managed by a series of commissions. Members must join at least one commission, in which tasks vary. Common commissions across projects are construction and labour, project management, environment, health, finance, social education, safety, elders, political training, communication, and youth.⁸⁷

⁸⁷ União Nacional por Moradia Popular. (2019). Cartilha de *autogestão em habitação*. 1ª edição. São Paulo: UNMP, p. 35. Retrieved from: <https://autogestao.unmp.org.br/wp-content/>



The commissions can vary from project to project depending on the community preferences and needs. The commissions meet regularly throughout the different stages of the project and any decision regarding the project is decided through a democratic voting process. The dedication and involvement of tenants from the initiation of the project ensures the construction of more spacious, quality housing units that use the best materials and construction techniques possible.

3.2.2 Housing standards

Members of the housing movement associations are the drivers of housing projects. Their needs and preferences determine project location, typology, aesthetics and amenities. While most developer-led, low-income housing projects tend to be located in underdeveloped peripheral areas, projects under the movement prioritize accessibility and proximity to job opportunities, transit options and other public amenities. However, the availability of such sites for housing low-income families is a major challenge. In such situations, the movement not only builds housing, but fights to bring public services, transportation, health clinics, schools, day care facilities and other community amenities to the periphery.⁸⁸ Mutirões Florestan Fernandes and José Maria Amaral is one such housing project where members have built a childcare centre and recreation room for the community in addition to the housing units.⁸⁹ This emphasis of defining low-income housing as beyond just shelter to encompass many other basic amenities and services distinguishes social housing projects from lucrative developer-led projects.

uploads/2019/09/cartilha_autogestao.pdf .

⁸⁸ Oliveira, C., Resident Mutirões Dorothy Stang, Jerônimo Alves e Martin Luther King, personal communication, 26 March, 2020.

⁸⁹ Gaboni, R., Ambiente Arquitetura, personal communication, 29 February, 2020.

Since land in accessible metropolitan areas tends to be limited and expensive, housing typologies of vertical condominiums are the most common. In small rural towns, single family detached homes typology is also common. On occasion, the movement claims underused buildings in well-located neighbourhoods and undertakes retrofit projects to achieve high quality housing units. Edifício Dandara is one such retrofit project that is centrally located in São Paulo, within walking distance of three metro stations. Unlike other self-managed housing projects, this project revitalized a formerly unused Ministry of Labour building rather than constructing from scratch. This project illustrates that amenities and unit designs considered “luxurious” are accessible and affordable to all when executed by social housing movements using the principles of self-management.⁹⁰ Although MCMV and MCMV-E do not promote mixed-income developments because of income limits, later versions of the programme allowed for mixed-use developments, with first floor rooms dedicated to commerce and services. The rental of these spaces allows for residents to offset the costs of homeowners’ association fees, which is important since some families do not have any income.⁹¹

Self-managed units are more spacious and of higher quality than the minimum standards required by government programmes.⁹² Established in 2018, Federal Regulation No. 660 requires minimum size and quality standards,

⁹⁰ Pita, S., resident Edifício Dandara, personal communication, 5 March, 2020.

⁹¹ Dos Santos, C.D., personal communication, August 2020. Cleonice Dias dos Santos is a professional social worker and staff at Ambiente Architecture, a technical assistance NGO providing services for social movement-led, low-income self-management housing production in São Paulo and beyond.

⁹² União Nacional por Moradia Popular. (2019). Cartilha de autogestão em habitação. 1ª edição. São Paulo: UNMP, p. 21. Retrieved from: https://autogestao.unmp.org.br/wp-content/uploads/2019/09/cartilha_autogestao.pdf

some of which are documented in Figure 9. For example, UMM-SP *autogestão* units range from 35 per cent to 42 per cent larger than the minimum requirements established by MCMV and MCMV-E (from 56.55 m² to 59.69m², compared to minimum 42m² of the earlier versions of MCMV) and followed by for-profit developers.⁹³ Despite their larger size, one evaluation found that many autogestão projects cost as little as 40 per cent to comparable housing projects built by for-profit developers.⁹⁴ In interviews with a social architect and residents from the Mutirões Florestan Fernandes and José Maria Amaral housing project, the authors inquired about private sector housing units: their price, size and qualification process. One resident said that the market units they visited were exactly

38 m² in São Paulo, the present minimum standard for both MCMV and MCMV-E. They also reported issues with the housing quality to the extent that most houses had no internal walls, among other issues, wherein design outcomes are in opposition to the needs of residents.⁹⁵ In contrast, the resident's current housing, constructed through self-management, is 58 m², with high-quality finishes and amenities suited to their individual needs and preferences. Of their experience with self-management, the resident said "there is no comparison between private sector low-income housing projects and social movement-led housing projects"⁹⁶. Furthermore, interviews with residents of 12 autogestão projects in the city of São Paulo between February and March 2020 revealed that residents do not financially qualify for mortgages with the private sector, and that self-managed projects are therefore often their only option to access quality housing.

⁹³ Martin, C. and Lynch, C. (2011). Green Cities: Sustainable Low-Income Housing in Brazil. World Bank Group. Retrieved from: <http://documents.worldbank.org/curated/en/284471468224395437/pdf/701870ESW0P1180e0Low0Income0Housin.pdf>.

⁹⁴ Acioly Jr., C. (2018). Providing Affordable and Adequate Housing Options for the Poor. UN-Habitat, p.26. Retrieved from: http://capacitybuildingunhabitat.org/wp-content/uploads/workshops/2018-innovative-approachesto-deliver-affordable-housing-options-in-asia/Presentations/Acioly_IUTC%20Housing%20Course%202018/Acioly_8%20Housing_Municipal%20Housing_FUNACOM_ENG3.pdf.

⁹⁵ Gaboni, R., Ambiente Arquitetura and Kelly, F., resident Mutirões Florestan Fernandes José Maria Amaral, personal communication, February 29, 2020.

⁹⁶ Kelly, F., resident Mutirões Florestan Fernandes José Maria Amaral, personal communication, 29 February, 2020.

Housing Unit Standards for Federal MCMV and MCMV-E Programmes

| | |
|--|--|
| Minimum Usable Area (excluding the walls) | Typology: Houses 36 sq. m., with external service area 38 sq. m. with internal service area Typology: Apartments 39 sq. m. |
| Minimum Area Programme | Living room + 1 master bedroom + 1 bedroom (2 persons) + kitchen + bathroom + service area. |
| Living Room | Minimum width: 2.40 m Minimum furniture required: 1 sofa +1 dining table (4-seater) + 1 TV cabinet/bookshelf |

| | |
|---|---|
| Master Bedroom | <p>Minimum width: Based on room layout</p> <p>Minimum furniture required: 1 bed (1.40 m x 1.90 m) + 1 nightstand (0.50 m x 0.50 m) + 1 wardrobe</p> |
| Bedroom (2 person) | <p>Minimum width: Based on room layout</p> <p>Minimum furniture required: 2 beds (0.9m x 1.90m) + 1 nightstand (0.50 m x 0.50 m) + 1 wardrobe</p> |
| Kitchen | <p>Minimum width: 1.80 m</p> <p>Minimum fixtures required: 1 sink (1.20m x 0.50m)</p> <p>Minimum appliances required: 1 stove (0.55m x 0.60m) + 1 refrigerator (0.70 m x 0.70 m).</p> |
| Bathroom | <p>Minimum width: 1.50 m</p> <p>Minimum fixtures required: 1 washbasin with counter + 1 toilet with attached flush box + 1 shower cubicle (0.90m x 0.95 m)</p> |
| Service Area | <p>Minimum width: Based on room layout</p> <p>Minimum fixtures required: 1 tank (0.52 mx 0.53 m)</p> <p>Minimum appliances required: 1 washing machine (0.60 mx 0.65 m)</p> |
| Minimum Ceiling Height | Minimum height of 2.50 m, 2.30 m permitted in the bathroom. |
| Building Standards | |
| Parking | Parking spaces as per municipal legislation |
| Elevator | For buildings above two floors, the space for the elevator must be provided and indicated on the plan and stated in the owner's manual. |
| Accessibility | Accessibility must be ensured for all aspects of site planning. Specified adapted units layouts must comply with standards and ensure provisions of fit support bars, modified counter heights and additional circulation spaces throughout the unit. |
| Site Plan and Urban Design Standards for Federal MCMV and MCMV-E Programs | |
| Condominium Size | Maximum of 300 UH, in the case of a building or group of multifamily buildings. |
| Size of court (for new instalments with no specific municipal legislation) | <p>Maximum dimension: 200 m.</p> <p>Maximum: 25,000 sq.m</p> |

| | |
|----------------------------|---|
| Site Access | <p>Access to the project cannot be done directly by road or expressway.</p> <p>The access road to the enterprise must:</p> <p>a) be paved, provided with public lighting and allow access to public transport, and</p> <p>b) allow the comfortable and safe circulation of bicycles through the creation of bike lanes or, if these elements cannot be provided, by the adoption of appropriate vertical or horizontal signs.</p> |
| Roads | <p>The minimum dimensions of the roads must comply with the municipal legislation. In the case of the absence of a specific law, the following minimum dimensions of the bed must be adopted:</p> <p>Local routes: 7 m</p> <p>Collecting ways: 12 m</p> <p>Arteries: 18 m with a central bed of at least 1.5 m.</p> <p>Sidewalks: Minimum 1.5 m</p> |
| Institutional Areas | <p>The institutional areas must have dimensions, shape and topography compatible with the installation of equipment intended for them, as defined by the respective sectoral policy in their federal, State or municipal level, as the case may be.</p> |
| Commercial Areas | <p>The commercial areas must have dimensions compatible with the demand created by the project and be in line with the municipal policy of land use and occupation.</p> |
| Recreational Area | <p>Recreation area should include a court with a playground and gym equipment. Floors must be treated with defined paths and integrated into the public sidewalk. It should also include shaded spaces.</p> |

Table 6: Basic standards and technical specifications for housing units, site planning and urban design for MCMV and MCMV-E projects as specified in Federal Regulation No 660 of 2018.⁹⁷ Note: This table includes only select standards from the federal regulation and is not an exhaustive list.

⁹⁷ Ministry of Cities, (November 2014, 2018), Regulation No. 660, DUO, Retrieved from: https://www.in.gov.br/web/guest/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/50484132/do1-2018-11-16-portaria-n-660-de-14-de-novembro-de-2018-50483803

3.2.3 Approval process and special regulations for social housing projects

The approval process for MCMV and MCMV-E must follow the same regulatory steps as similar projects in the private market. These social housing projects do not undergo expedited or simplified approval processes. They must

follow federal and municipal regulations, sometimes having higher safety and quality standards because they are publicly funded. Private and third sector developers applying for MCMV and MCMV-E must produce a report on neighbourhood services and infrastructure, assessing the impact of their proposed project, including services of education, health, social assistance, transport, commerce and infrastructure. This document also proposes solutions to address any deficiencies in services. The second document, which is required of projects of any size, is the responsibility matrix. The responsibility matrix is a compilation of commitments to meet the demand of future residents of the project, in response to the neighbourhood impact assessment. This required document must be signed by the head of the Executive Branch of the Public Entity who has assumed the commitments.⁹⁸

Few *autogestão* projects receive special concessions, and when they do, the exemptions are minimal. In fact, in most cases, additional stringent regulations are imposed on social housing projects, which delays the project timeline by many years. For example, each city uses their discretion to allocate municipal property taxes, and this imposes a huge burden on social housing projects already on a tight budget; UMM-SP has fought to exempt social housing developments from property taxes.⁹⁹

Environmental licensing is another major regulation imposed on social developments. Often, the property acquired for social housing lies in proximity to Permanent Preservation Areas (APPs).

However, maintaining an APP is an additional burden on the popular housing organization. APPs are protected areas (covered or uncovered by native vegetation) with the environmental function of preserving water resources, the landscape and biodiversity. It was established via Brazil's Forest Code, a federal law established in 1965 to protect and preserve the country's rich ecosystems.¹⁰⁰ Every development project present in the proximity of an APP, regardless of its nature, needs to meet the legal requirements defined by the Forest Code by acquiring an environmental license. Environmental licensing is a decentralized process in Brazil, with distinct authorizing bodies for each State and differing criteria by the nature of activity involved, extent of the environmental impacts or scale of the project. The process includes four stages: 1. environmental proposal; 2. preliminary licensing; 3. installation licensing; 4. operating licensing.¹⁰¹ Each step of this process can take up to four months to complete and they have varying costs.¹⁰² The license ensures that native vegetation is always maintained within APPs or replanted in case it has been cleared for development, regardless of when deforestation occurred, and shall be done so by the owner of the area, possessor or occupant under any title. Each plant present on site is catalogued before development and is reassessed before the license is granted at the time of completion. A plant that has not survived post development could potentially prevent a project from being occupied. In addition to a high cost of preservation, these environmental laws


¹⁰⁰ Law Nº 12.651. (March, 2012). Código Florestal. Retrieved from: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/112651.htm

¹⁰¹ de Mello Florêncio, T. and Malpass, G.R.P. (2015). A brief explanation about environmental licenses in Brazil. Technical report, Uberaba.

¹⁰² Companhia de Tecnologia e Saneamento Ambiental, Retrived from: <https://cetesb.sp.gov.br/licenciamentoambiental/programas-de-recuperacao-de-interesses-social-nas-bacias-dos-reservatorios-billings-e-guarapiranga-aprm-b-e-aprm-g/>

⁹⁸ Ministry of Cities. (November, 2014, 2018). Regulation No. 660, DUO. Retrieved from: https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/50484132/do1-2018-11-16-portaria-n-660-de-14-de-novembro-de-20

⁹⁹ Poletti, V.L., resident of Condomínio Vila Patrimonial, personal communication, 9 March, 2020.



are stringent and complex. With already limited resources, most social housing projects are unable to meet the requirements prescribed by the environmental license and are often delayed as a result; furthermore, the APPs often require additional funding, separate from the housing project, to fulfil environmental requirements.

3.3 Maintenance and operation systems

Just as resident committees are involved through the planning and construction phases of the project, committees continue to organize and prepare for long-term repairs and maintenance. There are no federal or State programmes to support these upkeep expenses through a project's lifecycle. Instead, residents commonly pay association fees that are pooled together and saved for large-scale repair projects.¹⁰³

While large infrastructure maintenance and repair is funded collectively, the upkeep for each unit is the responsibility of each occupant. Because residents in *autogestão* projects are homeowners, they take individual responsibility for repairs and upgrades to their homes. Resident-led committees play an important role here as well. Before the projects are complete, residents are trained on home management and finance so that they are prepared for the responsibilities that come with homeownership. This comprehensive education and homeowner preparation is an important and longstanding component of the *autogestão* model that has only recently been adopted by municipal governments as a needed component for traditional, developer-led social housing projects.

For large, site-wide repair and maintenance projects that require collective fundraising, resident commissions are involved in every step of these processes, engaging in democratic decision-making to ensure upgrades and alterations are suited to the needs of residents. One typical example is a set of large maintenance projects at Paulo Freire, one of the oldest housing complexes constructed through *autogestão* in São Paulo. Residents collectively pooled funds in order to construct a water tower, paint the entire complex and eventually even redesign the entryways to the property to include space for parking.¹⁰⁴ These experiences at Paulo Freire highlight how homeowner association fees and other collective fundraising efforts help *autogestão* projects maintain their self-reliance and self-management as physical structures age and require maintenance.

Another typical example occurred at the Condomínio Iracema Euzebio project, where residents collectively decided to lease the building's ground-floor common space to a commercial business in order to raise funds for repairs, keeping monthly fees low for the residents.¹⁰⁵ Other projects use this model as well; renting out portions of the ground-floor for commercial use provides an income stream that can be saved for future large-scale repairs to the site and creates employment opportunities for residents. This is a critical component of self-management that speaks to the model's ability to be sustainable over time. Even after residents move in, the democratic process and shared sacrifice remain intact, giving hope that projects will continue to thrive long into the future.

¹⁰³ Cidade de São Paulo (2018). Sehab e Fundação Banco do Brasil se reúnem para alinhar cronograma de ações do Projeto Agir e Transformar. Retrieved from <https://www.prefeitura.sp.gov.br/cidade/secretarias/habitacao/noticias/?p=250152>.

¹⁰⁴ De Souza Mascarenhas, D., resident of Paulo Freire, personal communication, 29 February, 2020.

¹⁰⁵ Ministry of Cities. (June, 2018). Instução Normativa No. 12, DOU. Retrieved from: http://www.imprensanacional.gov.br/materia/-/asset_publisher/Kujrjw



Favela cantagalo, Brazil by Rodrigo Bastias source: Flickr

4. NGOs and Beneficiary's Relationship

4.1 Beneficiaries' criteria

Eligibility requirements for *autogestão* projects are a function of the funding sources they use to buy the land and construct the project. For example, MCMV-E is one of the primary federal sources of funding for self-managed, low-income housing. As of 2018, MCMV-E eligibility was restricted to households earning up to BRL 1,800 per month, about USD 337.50 in 2020.¹⁰⁶ A São Paulo municipal programme, FUNAPS Comunitário, financed projects of between 20 and 200 units for households earning between one and five minimum wages.¹⁰⁷ Policies can

¹⁰⁶ UN ECOSOC (2014). Brazil: contribution to the 2014 United Nations Economic and Social Council (ECOSOC) integration segment. Retrieved from <http://www.un.org/en/ecosoc/integration/pdf/Brazil.en.pdf>.


¹⁰⁷ Acioly Jr, Claudio. (2018). Providing Affordable and Adequate Housing Options for the Poor. UN-Habitat. Retrieved from http://capacitybuildingunhabitat.org/wp-content/uploads/workshops/2018-innovative-approaches-to-deliver-affordable-housing-options-in-asia/Presentations/Acioly_IUTC%20

also affect eligibility standards—a recent policy change for federal programmes like MCMV prioritizes low-income women and victims of domestic violence in social housing projects financed with public resources.¹⁰⁸ As funding sources and applicable policies vary among *autogestão* projects, so do the eligibility criteria that each must adhere to.

Beyond the eligibility rules defined by a project's funding source, there are no eligibility requirements to join the movement other than participation. There are no barriers based on income, family status, employment status or age. To join the movement, a participant begins by attending meetings and dedicating their time and labour to ongoing projects and various activism efforts. It is recommended that a participant

¹⁰⁸ [Housing%20Course%202018/ Acioly_8%20Housing_Municipal%20Housing_FUNACOM_ENG3.pdf](https://www12.senado.leg.br/noticias/materias/2019/12/06/mulheres-vitimas-de-violencia-poderao-ter-prioridade-em-programas-de-habitacao)

108 Agência Senado (2019). Mulheres Vítimas de Violência Poderão ter Prioridade em programas de Habitação. Retrieved from <https://www12.senado.leg.br/noticias/materias/2019/12/06/mulheres-vitimas-de-violencia-poderao-ter-prioridade-em-programas-de-habitacao>.



dedicate two days of labour per month to the movement on a regular basis, and when a project is at a crucial point in construction, to dedicate every weekend to construction efforts. As members participate in the movement, they earn points through their participation, working towards qualifying for a unit themselves through the movement. A participant may help construct numerous housing projects over a number of years before qualifying for a unit for themselves. This point system is a joint system for participation and is developed based on a series of various point-earning activities, such as attending capacity building meetings, participating in protests or political advocacy initiatives, or working on housing sites. Family members work towards a single point count and if someone is unable to participate in a particular event (due to physical limitations, etc.) they can provide a substitute volunteer or proxy on their behalf. This system not only encourages participation in the movement itself but is a major contributor to the movement's ability to get housing physically built.

While a beneficiary's past ability to sustain a successful tenancy is not a criterion, commitment is vetted through their point system, requiring residents to dedicate years of their lives to the movement before receiving housing. This level of time commitment helps ensure their tenancy commitment. Many families dedicate over a decade of participation to become a beneficiary of self-managed housing. This level of dedication highlights the need for more social housing in Brazil alongside a need for greater support of current efforts, such as UMM-SP.


Most of the families in the movement are female heads of households, many of them single mothers. Jaqueline de Cássia dos Santos, a resident of Barra Jacaré stated "most of the work

here was done by women. Of the 592 families who live here, we count 300 families where only the women work. Women were always present. They did the site grading. They cooked. They swept around the condominium site and any other services they could do".¹⁰⁹

Women are not only the majority of movement members, they lead the movement. The opportunity for a leadership role as a woman is something many might not have and the movement provides these roles by fostering skills women can transfer into other aspects of their lives and careers—particularly in labour and construction, fields typically reserved for men.

Autogestão housing is managed by resident-run commissions with a focus on democratic decision making. Every housing project will have several commissions, or committees, dedicated to the success of the development and the residents of the project, and every member is required to participate in at least one commission. While all housing projects' committees change based on their needs, examples include an entrepreneurship committee, education committee, communication and hospitality committee, environmental committee, health and elders committee, and project management committee. Driven by the makeup of *autogestão* communities, these projects have an abundance of resources and services tailored to the needs of women and children of the housing movement. Foundational to the social and support programmes at each project is the resident committee model characteristic of *autogestão*. Youth committees and women's commissions are involved from the early planning and design stages of each project to ensure that

¹⁰⁹ De Cássia dos Santos, J., resident of Projeto Barra Jacaré, personal communication, 7 March, 2020.



the final development will meet the needs of its residents. The physical design of projects often incorporates self-contained, spacious play areas and formal playground equipment. Childcare and early education are also prioritized in the design. Projects like Mutirões Florestan Fernandes e José Maria Amaral include built-in education centres that serve children who live on-site and in the surrounding communities. These important pieces of the sites built infrastructure provide spaces for recreation, education, childcare and socialization for the residents.

One of the main goals of the movement is to not only provide families with safe and attainable housing, but also to use this as a tool in their socio-economic development. Unlike many other social housing programmes across the globe, once families gain economic success, they do not outgrow their home. Beneficiaries work towards owning their homes (not renting), which is their first step towards lifting themselves out of poverty. These attainable payments ensure families have more flexibility to spend their income on other needs, such as education, further helping their socio-economic status. Because there are no real eligibility requirements to attain housing beyond their involvement in the movement, it allows complete freedom for beneficiaries to exceed their previous socio-economic status without fear of losing their home. After receiving a home, beneficiaries are still required to participate in the self-management nature of their home through various means as described above.

4.2 Housing tenure options

As previously explained, housing programmes like CSP and MCMV-E enabled associations and social movements to act as legal entities and

access State and federal funding to develop social housing. The resulting housing tenure models varied based on the type of housing programme pursued by the association and how land was acquired to develop the housing project.¹¹⁰ Typically, in all housing projects developed by the associations and built via self-management or co-management, the residents are owners of their final housing units after they pay off their subsidized mortgage over a stipulated amount of time, defined by the housing programme. Under MCMV-E, residents pay-off a 10-year mortgage leading to a freehold title.¹¹¹ Payments are calculated based on household income and reflect the family's ability to pay. Typically, each household pays 10 per cent of their income each month for 120 months, and this money goes back into the Social Development Fund.¹¹² Households earning less than BRL 1,600 (USD 315.48) are entitled to a flat rate of BRL 80 (USD 15.77) per month.¹¹³ This model of payment reflects ideas of social justice, where there is a higher rate of housing subsidy for households with lesser income. After a mortgage is paid off in ten years, the unit is theirs' to do with as they wish. They could sell the unit on the market and gain further equity; households may even be willed as inheritance. Residents are empowered homeowners under *autogestão*, a method that has improved the lives of over 100,000 families.

¹¹⁰ UNMP. (2012). *Autogestao e Moradia*. Retrieved from: <https://autogestao.unmp.org.br/>

¹¹¹ Mineiro, E. H. and Rodrigues, E. (2012). *Do Crédito Solidário ao MCMV Entidades: uma história em construção*. In: L. Lago (ed.) *Autogestão habitacional no Brasil: utopias e contradições* (pp.19-48). Rio de Janeiro: Letra Capital/ Observatório das Metrópoles.

¹¹² Amore, C. S., Shimbo, L. Z. and Rufino, M. B. C. (2015). *Minha casa... e a cidade. Avaliação do Programa Minha Casa, Minha Vida em seis estados brasileiros*. Rio de Janeiro: letra capita.

¹¹³ Conversion from Brazilian real to United States dollars throughout this case study is based on the exchange rate on 16 December, 2020.

4.2.1 Examples of land and housing tenure models adopted by UMM-SP

1. FFJMA: Advance Purchase of Land + Ownership with Mortgage under MCMV-E

The Florestan Fernandes and José Maria Amaral project, located in the east zone of São Paulo, set a new precedent for self-managed housing production through its course of development. Organized under MST-Leste 1, the property identified for the production of self-managed housing was in a peripheral neighbourhood with poor infrastructure. To acquire the land, MST-Leste 1, along with UMM-SP and non-profit technical advisory firm Ambiente Arquitetura, presented a proposal to the Ministry of Cities in 2009 (around the time of the MCMV-E programme launch). This was a request to contract one of the earliest advance purchases of land through Caixa (CEF) and to release resources for a pre-work site survey and inspection.^{114,115} Subsequently, resources would be released for the construction of houses; the land would remain in the name of the association (MST-Leste 1) until the release of resources to build the houses against the real guarantee of the land. In April 2010, with the land purchased, the association along with the technical advisory firm submitted plans to develop self-managed housing on the property under the MCMV-E programme.¹¹⁶ The association collected BRL

43 million (almost USD 8.5 million),¹¹⁷ 70 per cent of which came from the federal government. Under the programme guidelines, 90 per cent of the housing is subsidized and residents pay mortgages for the remaining amount over 10 years. Residents own their unit and are entitled to full rights of ownership once the mortgage has been paid in full.

2. Edifício Dandara: Transfer of Ownership + Ownership with Mortgage under MCMV-E

Edifício Dandara, located at Avenida Ipiranga in São Paulo, is one of the successful models of an urban requalification project under the MCMV-E programme. Built in the former abandoned headquarters of the Federal Regional Labour Court, the building was donated to ULCM for the purpose of social interest housing through a concession of ownership of property via an ordinance from the Secretariat of the Union Patrimony of the Ministry of Planning, Budget and Management in 2009.¹¹⁸ The association was given two years for the approval of the rehabilitation plan, which was later reissued in 2012 through an ordinance with more definition on the nature of transfer of ownership of the building to the residents who would eventually occupy it. Primarily, this was possible because the property was owned by the State prior to the transfer of ownership. The provision for the social function of property in Brazil allowed the association to acquire the property with little resistance. Through the MCMV-E programme, ULCM accessed a total investment of BRL 11.9 million (USD 2.3 million), of which BRL 9.1

¹¹⁴ Moreno de Camargo, C. (2020). *Minha Casa Minha Vida - Entidades: Novos arranjos para a operação da política habitacional no Brasil*. SciELO. São Paulo. 35(102). Retrieved from: https://www.scielo.br/scielo.php?pid=S0102-69092020000100514&script=sci_arttext

¹¹⁵ UMM (2014, September). *Mutirões Florestan Fernandes e José Maria Amaral. Autogestão e Moradia*. Retrieved from: https://autogestao.unmp.org.br/wp-content/uploads/2014/09/LESTE_FlorestanJMA.pdf.

¹¹⁶ Ambiente Arquitetura (2018). *Conjuntos Florestan Fernandes e José Maria Amaral. Assessoria Técnica Ambiente Arquitetura*. Retrieved from: <https://ambientearquitectura.com/trabalhos/condominios-florestan-fernandes-e-jose-maria-amaral/>.

¹¹⁷ Conversion from Brazilian real to United States dollars throughout this case study is based on the exchange rate on 16 December, 2020.

¹¹⁸ Folha de S. Paulo (May 14, 2018). *Vazio Por Anos, Prédio é Reformado Por Sem-Teto e Agora Vira Exemplo Em SP*. Folha UOL. <https://www1.folha.uol.com.br/cotidiano/2018/05/vazio-por-anos-predio-e-reformado-por-sem-teto-e-agora-vira-exemplo-em-sp.shtml>.

million (USD 1.8 million) came from the federal government, BRL 2.3 million (USD 453,000) from the State government and BRL 465,000 (over USD 91,600) from the Companhia Metropolitana de Habitação de São Paulo (the Metropolitan Housing Company of São Paulo City, or COHAB) to complete this project.¹¹⁹ In 2014, the association carried out the rehabilitation of the property partnering with the technical advisory firm INTEGRA and residents officially moved into Edifício Dandara in 2018.

3. Mutirão Paulo Freire: Concession of Use of Social Character + Purchasing Option Pending Land Expropriation Suit under COHAB Municipal Programme

Mutirão Paulo Freire, located in the outskirts of São Paulo in Tiradentes, represents an early instance of self-managed housing production prior to programmes like CSP and MCMV-E. Organized under the MST-Leste 1, Mutirão Paulo Freire represented 100 families who waited for years to be housed by COHAB or CDHU (Development Company for Urban Housing of the State of São Paulo). In early 2000, when ongoing negotiations for a vacant parcel of land in Cidade Tiradentes met bureaucratic resistance from city officials, the association and its partner, technical advisory firm Usina CTAH, decided to occupy the land.¹²⁰ After years of resistance, occupation and negotiation, the association was able to secure the land for their project, including the right to use it; however, since the land in the area around Tiradentes was not regularized, the association did not receive a formal land title. Regardless, in 2003, collective work plans

and proposals were developed by Usina CTAH and MST-Leste 1 to begin construction under the Programa de Mutirões Autogeridos of COHAB, São Paulo City's housing development company. However, with changes in political regimes, dismantling of funding sources and resistance to social housing, construction went on until 2010, and eventually families began occupying their unfinished units. Currently, there is a pending judicial expropriation lawsuit for the property, which prevents the concession of freehold title until mortgages are discharged in full. Land regularization will take place once the judicial expropriation becomes finalized, i.e. once all residents have repaid their mortgages in 10 years, after which the land parcel will be registered for condominiums, with options for titling for the association and residents.¹²¹

MCMV-E programme rules dictate that the resulting housing tenure is homeownership with a freehold title once the mortgage has been paid in full. Leaders from UMM-SP and UNMP are currently brainstorming proposals that promote collective property and shared equity models of tenure. The rationale is twofold: housing using taxpayers' money should be protected from commodification and gentrification, and housing built via self-management and mutual aid is based on sweat equity, which should stay permanently affordable.


4.3 Rights and duties

Acquiring a unit of self-managed housing brings with it certain rights and responsibilities. Owners enjoy full rights of ownership of their unit after the mortgage period and can decide when and to whom the unit will be sold; in the newest government programme, MCMV, the mortgage

¹¹⁹ Conversion from Brazilian real to United States dollars throughout this case study is based on the exchange rate on 16 December, 2020.

¹²⁰ Carmen, B. (2015). Mutirão Paulo Freire. Retrieved from: https://www.academia.edu/10218475/Mutir%C3%A3o_Paulo_Freire.

¹²¹ USINA CTAH (2016). Mutirão Paulo Freire: Movimento Popular, Arquitetura e Pedagogia Da Práxis. Retrieved from: <http://www.usina-ctah.org.br/mutiraopaulofreire.html>.



term is 10 years. If sold, the owner is entitled to any equity earned from the sale. These rights can be bestowed on the owners' heirs. Rights of possession cannot be sold—only returned to the movement or government, though this only applies to rare cases of self-managed projects. Furthermore, rights of use are for life and are hereditary; in other words, transferable to heirs.

With these rights, owners of self-managed housing units have certain responsibilities. Pre-tenancy activism is a crucial aspect of acquiring a unit and most members continue this activism after they gain ownership of their own unit. In the development phase of the building, residents are also required to help organize and participate in a commission and this is consistent across projects. One responsibility that varies based on the project is the extent to which owners are required to participate in the construction of units. Owners are also responsible for making payments on their mortgage and any periodic payments to their home-owners association, if applicable. Once completed, the rules for a housing project are collectively set by the residents and it is the responsibility of each resident to follow those rules once set. Finally, as owners of the unit, residents are responsible for repairs of their own unit.

4.4 Community participation

Inherent in self-managed housing through UMM-SP is the participation of current and future residents in every aspect of the housing process. Participation begins with member recruitment, predominantly from low-income families, and continues as projects are funded, planned, designed, constructed, and managed. Through this system of deep and meaningful member engagement, members are empowered rather than limited by their housing situation.

Residents learn new skills, build community, and can maintain economic freedom not typically possible under market-led housing systems.


Facing Brazil's estimated affordable housing deficit - more than 7.8 million units - and a lack of adequate funding or programmatic support from the government, the demand for *autogestão* housing far exceeds the supply.¹²² For this reason, many people wait for years before they are able to obtain a housing unit. For example, one resident at Edifício Dandara waited 13 years before being placed in housing through UMM-SP.¹²³ During this time, people remain dedicated to the movement and gain “points” through participation in various movement activities, such as protests, meetings, political activism, among others. In many cases, these points are used to determine the order in which members are placed into a housing unit—the more participation points a member has, the more quickly they will receive housing. Not only does this system encourage meaningful and necessary participation in the movement, but it also avoids any bias or favouritism in deciding the order in which waitlisted members receive housing. Acknowledging that members will have varying levels of ability to participate in movement activities (due to physical ability, age, employment, etc.), UMM-SP allows for proxies to be sent to achieve participation points. Often, older members are able to participate more often because they are no longer employed full time.¹²⁴

This system of participation does not begin and end with the process of obtaining housing

¹²² Gavras, D. (16 January, 2019). Déficit habitacional é recorde no País. O Estado de S. Paulo. Retrieved from: <https://economia.estadao.com.br/noticias/geral,deficit-habitacional-e-recorde-nopais,70002669433>.

¹²³ Ramos, W., resident of Edifício Dandara, personal communication, 5 March, 2020.

¹²⁴ Pita, S., movement member, personal communication, 5 March, 2020.



on an individual level. Members of the UMM-SP housing movement are deeply involved in envisioning, funding, and bringing projects to fruition, working together to identify and acquire land and seek funding for the projects. Future residents work with social architecture firms, like Ambiente Arquitetura, Peabiru Trabalhos Comunitários e Ambientais, and Usina CTAH, to design buildings, units, and community spaces according to community needs and desires. In some cases, residents are able to tweak the design of their individual units to best meet their needs.

Once housing projects are funded and designed, future residents are engaged in the construction process. Complex and highly technical construction work (like electrical and plumbing systems) is contracted out to professionals and residents take part in construction activities like building internal walls, painting and landscaping that are appropriate for their skill levels. Frequently, residents spend their weekends performing construction work at the sites after a full week at their normal jobs. At one UMM-SP housing project, Condomínio Vila Patrimonial, future residents physically stomped down uneven ground to prepare it for construction.¹²⁵ Future residents are also involved in the acquisition of construction materials, going shop to shop to identify the lowest prices of building materials, fixtures, equipment, and finishes. This is one of the main reasons that the movement can achieve high-quality construction on a tight budget.¹²⁶

From the outset of project design, individuals and families organize into committees so that they can participate in aspects of the process in which they have experience or are otherwise

interested. For instance, environmental commissions investigate the conditions of the project and ensure adherence to legally binding environmental standards; they often consider landscape architecture, pollution mitigation and stormwater management, depending on the preferences of residents. Financial commissions seek to secure funding for the project and budget for renovations. Additional commissions include, but are not limited to: construction and labour, project management, kitchen, health, social education, safety, elders, political training, communication and youth.¹²⁷ These committees, formed early in the project planning and development process, remain in place as the projects are constructed and as residents begin to move in. They form the basis for governance and decision-making within the housing projects, with major decisions being subject to an assembly vote. Each month, the commissions host meetings to allow for the coordinators to exchange updates on the project status and the work of different commissions, make plans for future events and regularly convene with one another.

The multitude of its members is the movement's biggest strength, and through this deep and meaningful participation in each aspect of the housing process, residents find freedom and empowerment. Involvement in construction and participation in committees allows residents to learn new skills and create close-knit communities. Collective action enables communities to develop the political understanding and technical capacity to resist policies that advance market-driven housing and enables them to fight for their rights, becoming protagonists of their housing

¹²⁵ De Souza Mascarenhas, D., resident of Paulo Freire, personal communication, 29 February, 2020.

¹²⁶ Gaboni, R., Ambiente Arquitetura, personal communication, 29 February, 2020.

¹²⁷ União Nacional por Moradia Popular. (2019). Cartilha de autogestão em habitação. 1ª edição. São Paulo: UNMP, p.35. Retrieved from: https://autogestao.unmp.org.br/wp-content/uploads/2019/09/cartilha_autogestao.pdf

projects. Participation in the movement has been particularly empowering for women, who are able to find independence that is not possible under prohibitively expensive market-led housing models.



North Yorkshire coast in the northeast of England by SteveAllen/istockphoto.com

III. NON-PROFIT HOUSING IN ENGLAND

| Model of non-profit - who and what they are doing? | Units of Subsidized Housing/Contribution to housing stock | Financing Mechanism | Annual government expenditure on affordable housing | Housing tenure | Beneficiaries' financial contribution | Eligibility Criteria & Income Levels |
|---|--|--|---|--|--|---|
| <p>Housing associations - private, non-profit making organisations. Registered – 1, 500.</p> <p>They can build; opt to buy/acquire, operate and maintain the units; and promote community well-being & provide tenancy support.</p> | 17.5% total housing stock (built over 559,000 social homes). | Three funding sources: a) government grants (e.g. £1.7 billion - SAR 8.3 billion); b) private finance, which consists of bank loans or funding raised on the capital markets; and c) housing association's reserves. | £26.8 billion | Rental, home ownership and shared ownership schemes. Rent-to-buy is also provided. | <p>Tenants pay weekly "below-the market" rent.</p> <p>Tenants may be eligible for Housing Benefits – administered by local authorities - to cover either all or a proportion of their weekly rent.</p> | Targeted to vulnerable groups within the population and priority is given to certain categories, including people who are homeless. |



Figure 10: Overview of Non-Profit Housing in England. Source of images: <https://homefinderuk.org/property-detail/444977844-1804145>

Brief Background

In England in the United Kingdom, housing associations are private, non-profit making organizations that provide (build/acquire, own and manage) low-cost social housing for people in need of a home. They also undertake social functions such as tenancy and employment support, community development and regeneration.¹²⁸

Historical context of housing associations¹²⁹

¹²⁸ Chartered Institute of Housing, UK - New approaches to housing management, 2020. <http://www.cih.org/resources/New%20approaches%20to%20housing%20management.pdf>

¹²⁹ <https://www.housing.org.uk/about-housing-associations/the-history-of-housing-associations/#:~:text=The%20history%20of%20housing%20associations&text=The%20modern%20housing%20association%20movement,homeless%20people%20and%20alleviate%20poverty.&text=By%201980%2C%20there%20were%20more,housing%20association%20homes%20in%20England>

1960 & 1970

Many new housing associations were founded during this time with a clear aim of helping to tackle rising homelessness.

1974

New Housing Act meant housing associations could receive significant public funding for the first time to build new social homes. By 1980, there were more than 400,000 housing association homes in England.

Late 1980

Many local councils transferred their social housing into housing association ownership through large-scale voluntary transfer agreements. Housing associations were also given new freedoms to borrow private funding to build new homes, topping up the funding they received from the government. They built 419,000 new homes between 1990 and 2010.

2010

Funding for building affordable housing reduced by 60 per cent and funding for new social rented housing was stopped altogether. Housing associations adapted to this change by generating their own income to build social and affordable rented homes. They began to develop more homes for sale and market rent, and invested the proceeds into building more social homes and into supporting their local communities. They built almost 20,000 social rented homes in this way between 2015/16 and

2018/19 as well as nearly 77,000 for affordable rent and nearly 43,000 for shared ownership.

NOW

Social housing accounts for **17.5 per cent** of the total homes in England. Over the years, they have built over 559,000 homes.

1. Government and NGO relationship

A. Registration, licensing and internal governance¹³⁰

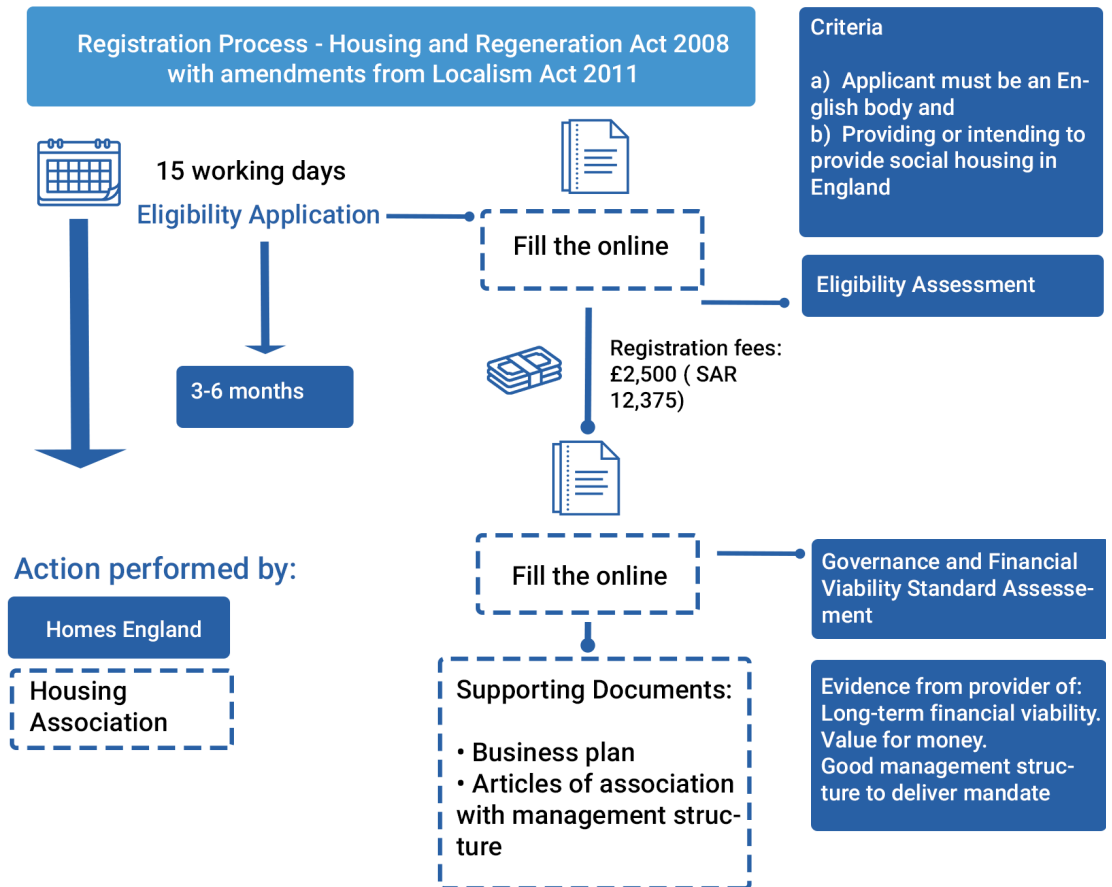



Figure 11: Registration process of social housing NGOs in England.

¹³⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/801982/Becoming_a_registered_provider.pdf; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685417/



All providers of social housing need to be registered. These include not-for-profit organizations such as housing associations and cooperatives as well as local authorities and for-profit providers. Registration is a prerequisite for those providers seeking public funding.

The Regulator of Social Housing (RSH) regulates registered providers of social housing. This function is carried out by **Homes England**, which is the new non-departmental public body, sponsored by the Ministry of Housing, Communities and Local Government (MHCLG). It was founded on 1 January 2018 to replace the Homes and Communities Agency. It is a statutory corporation created by the Housing and Regeneration Act (HRA) 2008 (**as amended by the Localism Act 2011**).

The regulator is responsible for maintaining the register of social housing providers and for setting out the regulatory framework within which they must operate. The law also outlines the way in which the regulator should carry out its functions.

Depending on the nature of the application for registration and the responsiveness of the applicant to requests for additional information, the registration **process can take as much as a year or more to complete**.

Section 117 of the HRA 2008 enables the regulator to charge fees for registration, currently set at GBP 2,500 per application.

There are two stages to the registration process:

a. Preliminary application process/eligibility criteria (section 112(2) of the HRA 2008):

Submission of proof of eligibility requirements that are: (1) the applicant must be an English

body; and (2) providing or intending to provide social housing in England. A decision on the preliminary application should be made within 15 working days of the application being received by the regulator. The pre-screening process is designed to ensure that applicants who cannot meet the eligibility requirements do not waste time completing the detailed application.

b. Detailed application stage (section 112(3) of the HRA 2008):

The Regulator usually **takes 3-6 months to reach a decision** to determine whether the applicant meets the registration criteria from the time the application was received. The objective of this phase is to assess if the provider meets the Governance and Financial Viability Standard. To this end, the Regulator requests evidence on the following documents:

- a. Business plan, forecasts of income, expenditure and cash flow, the assumptions on which the forecasts are based, evidence as to the accuracy of assumptions and evidence of the resilience of the plan to adverse changes in the operating environment.
- b. A constitution or articles of association and management arrangements (see below) that enable it to demonstrate the capacity to meet the 'Regulatory standards'. These standards include (**section 193-194 HRA 2008**):

| Standard | Summary of requirement |
|------------------------------------|---|
| Governance and Financial Viability | Ensure effective governance and resource management that delivers long-term financial viability |
| Value for Money | Obtain best value from assets and resources |
| Rent | Charge rent in line with government rules |
| Home | Keep homes safe, decent and in a good state of repair |
| Tenancy | Let homes and manage tenancies in a fair, transparent and efficient |
| Neighbourhood and community | Keep the wider area clean and safe, help to tackle anti-social behaviour and promote community wellbeing |
| Tenant Involvement and Empowerment | Understand and respond to the diverse needs of tenants, provide choice and opportunities for involvement, resolve complains fairly and promptly |

Table 7: The Regulatory Standards for Social Housing in England. Source: Regulator of Social Housing – Becoming a Registered Provider

Each of the two stages requires the completion of an application form and the provision of supporting information. The two forms, available from the RSH website, contain guidance on how to complete each section and an email contact for clarifications (enquiries@rsh.gov.uk). The regulator’s preference is for electronic applications. The signed and completed form should be scanned and submitted to the Registry and Notification team: RNTeam@rsh.gov.uk. If it is not possible to submit electronically, the application should be sent through the Regulator’s post address.

Once on the register, housing associations must meet their social housing obligations (build and maintain social housing units and promote community wellbeing). They must also annually notify the Regulator of certain activities and submit data returns or provide other information when requested. Housing associations are also required to register with the housing ombudsperson. This involves

subscription for membership which is based on the number of units the association manages. The 2020-21 subscription has been set at GBP 2.16 per unit. The association is required to make payment by bank transfer, quoting its registration number. Subsequently, it should sign and scan the initial invoice and certification form, checklist, and managed stock form, and send them through to membership@housing-ombudsman.org.uk.¹³¹

Section 119 of HRA 2008 - Registered provider status is not easy to relinquish voluntarily. If a registered provider is providing social housing, there are **de-registration criteria** to be met (i.e., satisfactory arrangements are in place to ensure the continued protection of tenants and satisfactory arrangements are in place to ensure there is no misuse of public funds).

¹³¹ <https://www.housing-ombudsman.org.uk/wp-content/uploads/2020/05/Membership-guidance-notes-20-21.pdf>

Management and internal governance¹³²

The RSH requires that housing associations are led and controlled by a board which ensures delivery of its objects, sets its strategic direction, and upholds its values. This board is appointed by a shareholding membership. Members hold a GBP 1 share which is non-redeemable, and which generates no return. The Regulator may attend a board meeting to inform its assessment.

The board must have the following officers: chair, vice chair, treasurer, and secretary, with their roles and responsibilities clearly outlined and formally recorded. The overall maximum terms of office for individual board members shall be no more than three terms with a maximum of nine years.

Board members must ensure that they remain independent and do not come under the control of any external organization or group of individuals.

The board has the ultimate responsibility for directing the activity of the association, ensuring it is well run and delivering the outcomes for which it has been set up. The board should have a statement of its strategic and leadership roles and of the key functions which cannot be delegated. These should include:

- a.** Setting and approving policies, plans and budgets to achieve those objectives and monitoring performance
- b.** Ensuring compliance with objects, purposes and values
- c.** Ensuring the financial strength, solvency and good performance of the association

- d.** Ensuring that the association complies with all relevant regulation, laws and the requirements of the department
- e.** Dealing with the appointment and appraisal of the association's chief executive/senior officer
- f.** Setting and maintaining a framework of delegation and internal control where appropriate
- g.** Agreeing all policies and decisions on matters which might create significant risk to the association - financial or otherwise
- h.** Ensuring that the board makes proper arrangements to appraise and monitor the performance of the chief executive/senior officer and senior management team and determine the remuneration of the chief executive/senior officer and other senior staff
- i.** Ensuring that the association's vision, mission and values and activities remain true to its objects

The chief executive/senior officer has the responsibility for maintaining a clear division of responsibilities between the board and the staff. The chief executive/senior officer should provide an effective link between board and staff, informing and implementing the strategic decisions of the board.

Board members should focus on the strategic direction of their association and not seek to become too operationally or directly involved in decisions that have been properly delegated to staff but, rather, should hold account through the chief executive/senior officer.

For smaller associations, where some board members may need to be directly involved in

¹³² <https://www.communities-ni.gov.uk/governance-guide-section-2-board>

operational decisions and matters, they should clearly separate their strategic and operational roles.

B. Cooperation agreements and partnerships

In England, cooperation agreements are strategic deals made between the devolved MHCLG department (Homes England) and housing associations to ramp up building of affordable homes. This normally marks the first step towards a new way of working between Homes England and its partners to establish a programmatic approach to delivery and funding opportunities that can further generate additional supply. Moreover, local councils have been partnering with housing associations to transfer their housing stock, tenancy and ownership.

These two options are discussed below:

I. Strategic partnerships with Homes England:

Pursuant to **Section 19 and 32 (13) of the HRA 2008**, Homes England has a duty to promote investment in social housing and fund new affordable housing. In 2018, Homes England entered into strategic deals with eight housing associations to provide a funding package of roughly GBP 590 million to deliver 14,280 additional affordable homes to March 2022.

Homes England provides the application form for registration to be an investment partner especially for organizations delivering programmes through the Shared Ownership and Affordable Homes Programme 2016 to 2021 and associated Affordable Housing programmes. It also furnishes the standardized grant agreement as well as the Heads of Terms for the standard form of contract for organizations awarded grant allocations. **See the financing section below for**

the funding process and conditions.

II. Local government agreements for large-scale voluntary transfer (LSVT):

A local council that is exploring options for the future ownership and management of its housing stock can transfer ownership of its homes with the agreement of its tenants to a new or existing registered provider through a large scale voluntary transfer (LSVT) in exchange for a transfer price.

A LSVT is the transfer of 500 or more tenanted and leasehold properties. A number of 499 and fewer is considered a small-scale voluntary transfer (SSVT).

Pursuant to the **Housing Act 1985 (as amended by the Housing Act 1996)**, the key features of a LSVT/SSVT are:

- i. The new landlord must be a registered social landlord (based on process mentioned earlier) to secure government funding
- ii. Transfer price is determined by 'tenanted market value'. (This values the stock as social housing, assuming affordable rents and good standards of maintenance. It does not reflect either the value of the 'bricks and mortar' or the market value, and is usually less than either of these values)
- iii. Transfers are funded entirely by the private sector (stock market transfer). When stock is transferred, the related debt will need to be repaid, and if the value of the transferred stock is insufficient for full repayment, central government will need to cover the shortfall. This is a process known as overhanging debt write-off. Generally, government support for overhanging debt is not available for SSVTs.

Therefore, most transfers that take place are LSVT.

- iv. There is no longer a government-enabled annual stock transfer programme and any individual council wishing to undertake a LSVT must adhere to certain statutory requirements - particularly relating to tenant consultation (see below) - and follow the process set out in the MHCLG: Housing Transfer Manual.
- v. Process cannot proceed without a tenants' ballot. Tenants usually have concerns about rent levels and standards of service. This is addressed by the local authority and the new landlord agreeing **a formal transfer consultation document** that includes legally enforceable commitments on tenancy rights, rent guarantees, investment in the stock, representation on the Board of Management and proposed housing policies. An independent body, such as Electoral Reform Ballot Services is employed to conduct the ballot.
- vi. The Secretary of State has to consent to the transfer.

C. Business Plan and Financing Mechanisms

I. Business Plan:

The business plan is a document required as part of the registration process and must meet the said Governance and Financial Viability Standard.

All registered providers are also required to prepare their annual accounts in accordance with the Regulator's Accounting Direction and the 2018 Statement of Recommendation Practice for registered social housing providers. (For

example, **Section 177(4) of the HRA 2008** requires providers to show their Disposal Proceeds Fund (DPF) in their accounts, which is meant to record the proceeds of sales under the Right to Acquire, Social Home Buy, Preserved Right to Buy grant products.)

Samples from Impact Housing Association and Unity Housing Association, demonstrate that in practice, the business plan contains:

- a. Executive summary (relationship with central and local government, funding and regulation).
- b. Mission and objectives (i.e., delivery plan, key commitment, and vision)
- c. Five-year blueprint (actions for the vision e.g., poverty reduction, digital inclusion, funding opportunities etc.)
- d. Business plan priorities (i.e., asset management, wider community development, value for money, housing services etc.).
- e. Strategic planning context (i.e., accountability with Financial Conduct Authority and Housing Ombudsman etc.)
- f. Operational context (i.e., staffing, board structure and members).
- g. Risk and business development (i.e., outlining key achievements and how to mitigate risks such as government funding cuts).
- h. Medium-term financial plan (five-year financial projections on income, expenditure, surplus/deficit for each year).

II. Financing:

The provision of new housing and associated land costs is financed through three funding sources: a) government grants (see also partnership above); b) private finance, which consists of bank loans or funding raised on the capital markets; and c) housing association's reserves.

Government grant:

The State subsidy is coordinated by Homes England. The Addendum to the Shared Ownership and Affordable Homes Programme Prospectus invites bids against the available funding for the range of tenures available, including rent to buy/ social rent. Bidding can be done through the Homes England's Investment Management System. The government has set aside GBP 1.4 to deliver a further 40,000 affordable homes by 2021.

Bidding will be assessed on an on-going basis in a process of Continuous Market Engagement (CME). This means that each scheme should be able to stand alone, with no cross subsidy or interdependence with other schemes submitted by a provider, including where schemes are on the same site. Bids assessment uses the same quantitative and qualitative metrics which emphasize value for money and deliverability.

The Capital Funding Guide (CFG) contains the rules and procedures for all providers delivering affordable housing through any of the Homes England's programmes. For instance, all affordable rent and social rent lettings must be recorded on a Continuous Recording (CORE) lettings log.

Homes England manages the annual Compliance Audit Programme using a web-based IT system. Providers must maintain accurate and complete

records both for reporting and audit purposes such as:

- a. Valuation report for the site/property acquired
- b. Documentary evidence to indicate that the procurement arrangements were approved by the provider's governing body
- c. Surveys, drawings, specifications, specialist and other consultants' reports
- d. Details of prospective rents documented on the provider's development files
- e. Terms of appointment of consultants
- f. Evidence of the basis of selection of consultants and building contractor
- g. Copies of the building contract document and final account documentation
- h. Planning permissions, building regulations approval and any other statutory consents
- i. Details of the insurance of the property during construction and following completion
- j. Certificate of Practical Completion.

Private finance and loans:

Housing associations also source their funding from the corporate bond market. A corporate bond is a type of debt security whereby a company gets the capital it needs and, in return, the investor is paid a pre-established number of interest payments at either a fixed or variable interest rate. When the bond expires, or 'reaches maturity', the payments cease and the original investment is returned.

The Bank of England (BoE) has a bond-buying programme (Corporate Bond Purchase Scheme) which is financed by central bank reserves, via the

Asset Purchase Facility. The scheme currently stands at GBP 745 billion with a benchmark interest rate of 0.1 per cent. Due to the pandemic, BoE has introduced a coronavirus bond scheme and several housing associations are eligible. The scheme is designed to support liquidity of larger firms with cash flows by purchasing unsecured, short-term debt.

Housing association reserves:

Reserve is a savings account or other highly liquid asset set aside by an individual or business to meet any future costs or financial obligations, especially those arising unexpectedly.

Housing associations have begun to develop more homes for sale and market rent and have invested the proceeds into building more social homes and into supporting their local communities. They have built almost 20,000 social rented homes in this way between 2015/16 and 2018/19.

There are two types of 'reserves' (revenue and capital) maintained by Housing Associations:

1. Revenue reserves

- a. **Accumulated surplus** – this represents an accumulation of surpluses generated by the association from their normal operating activities after transfers have been made to restricted reserves.
- b. **Restricted reserves** – these are surpluses on which there are restrictions imposed by regulatory bodies or other external parties (e.g. banks). Reserves should not be confused with cash balances which may have been used to fund the purchase of land or property assets.

2. Capital Reserves

- a. **Revaluation reserves** – this is most likely to arise if the association includes the value of properties on the Statement of Financial Position at current value rather than historical cost. Revaluation reserves can only be realized as cash on the disposal of an asset.



Plymouth, Devon, England, by Chris source, Flickr

2. NGOs and housing provision mechanisms

A. Access to land & housing acquisition

Housing associations take on land-led development as it allows them to retain control over what is built and how it is built.

I. Land acquisition

MHCLG administers the Public Land for Housing programme (2015-2020) which supports the government's Estate Strategy aim to identify and release surplus central government land. The aim of the programme is to release land with capacity for at least 160,000 homes in England from the central government estate by 31 March, 2020.

Within this programme, Homes England has an important role in assembling land for housing. It has broad compulsory purchase powers under section 9 of the HRA 2008 which can be used to assemble land for housing development and regeneration projects.

Concerning land disposal, instead of freehold sales, Homes England in many cases uses building leases, conditional disposals or other contractual arrangements which grant developers (NGOs) permission to build homes on its land. Freeholds (title to the land) are passed directly to homeowners. The building lease contains conditions that set development milestones. In the event of failure by developers to meet milestones or other requirements in the lease, Homes England has the power to terminate leases and bring the land back to the market.

II. Housing acquisition


Housing associations have several options

available to acquire existing dwellings for social housing, including the large-scale voluntary transfer scheme. Others include:

- a. **Off-the-shelf schemes** - consist of newly constructed properties, offered on the open market by a contractor/developer for a fixed price based on a single conveyancing contract (a purchase contract). Properties acquired in this way are for first-time occupation by housing associations or have been occupied privately for period(s) not exceeding 12 months from completion and need to meet fully the association's requirements as they stand – especially as the opportunity for changes will be limited by statutory approvals already obtained, and by the need to avoid any nugatory works and costs.
- b. **Acquisition and works (rehabilitation)** - is where existing dwellings are purchased from an owner and require substantial repair and improvement, conversion or extension for social housing for rent use. The total works cost of each unit have to exceed GBP 10,000 - excluding VAT. Existing dwellings generally must have a 'structural' life expectancy of at least 30 years and comply with all statutory requirements on completion of the construction works.

B. Planning, housing standards and approval process

Section 106 of the **Town and Country Planning Act 1990** (as revised by the **Growth and Infrastructure Act 2013** and **Housing and Planning Act 2016**), commonly known as an S106 Agreement is an agreement with the local planning authority in which the developer



agrees to provide affordable housing in kind, or as a commuted payment along with other infrastructure requirements, in order to secure the grant of planning permission (“planning gains”).

Section 106 agreements are negotiated alongside the planning decision-taking process. Negotiations should be concluded within the statutory timeframes of 8 weeks, but 13 weeks for major developments or a longer period agreed in writing between the applicant and local planning authority (“agreed extension of time”).

The planning decision can be appealed to the Planning Inspectorate in writing. This must be accompanied by a copy of the existing Section 106 agreement and a full copy of the application which was sent to the local planning authority. The interim timelines for the appeal to be heard and determined is around six weeks.

Variations to the agreement can take place through signing a deed of variation which often relates to changes in site phasing rather than to the delivery of affordable housing as a whole.

An approved development plan for all developments will define the policy framework, housing densities, layout and design, infrastructural requirements and land use proposals to guide development decisions within the specified area. New build dwellings generally must meet the design requirements contained in Design Standards Guide and, on completion, must have a ‘structural’ life expectancy of at least 60 years and comply with all statutory requirements on completion of the construction works. This guide takes into account the obligations under the Equality Act 2010 to ensure that housing services meet the standards for the following equality strands (race, age, gender reassignment, pregnancy and maternity, religion or belief, sex,

sexual orientation, disability and marriage and civil partnership).

The guide’s objective is to ensure that social housing will be fit for purpose and that the end product will, *inter alia*:

- a. cater as far as possible, for tenants’ present and future needs by the provision of accessible/lifetime homes environment to ensure the home is flexible, adaptable and accessible
- b. provide a user-friendly quality product of sufficient size and with account taken of arrangement, safety and security, energy efficiency, fittings and equipment, construction etc., that will aim to deliver tenant satisfaction, and pride and participation in the care of the dwelling and its environs
- c. deliver value for money by striking an appropriate balance between the capital and maintenance costs of various design solutions and choice of construction materials

C. Maintenance and Operation Systems

Housing associations are involved in what is broadly termed “housing management”. This involves fulfilling both the landlord-tenant contractual obligations and social welfare duties. MHCLG provides expenditure assumptions (called “allowances”) of annual operating costs to guide the housing association reserves. For instance, on management, the annual allowance is GBP 396 per unit while the annual maintenance allowance is GBP 464 per unit for new build and GBP 805 per unit for rehabilitation.

| Contractual |
|---|
| <ul style="list-style-type: none"> ● Rents and service charge collection ● Allocation and letting of properties ● Tenancy management ● Estate management ● Repairs and maintenance (including managing empty homes) |
| Social |
| <ul style="list-style-type: none"> ● Meeting house need ● Tenancy support (including money advice and 'coaching' activity) ● Housing and health ● Community development and regeneration ● Employment support |

Figure 12: New Approaches to Housing Management, 2020 Source: Chartered Institute of Housing, UK - New Approaches to Housing Management, 2020

The landlord is legally responsible for keeping in repair:

- a.** The structure and exterior of the home, for example, the walls, roof, foundations, drains, guttering and external pipes, windows and external doors
- b.** Basins, sinks, baths, toilets and their pipework
- c.** Water and gas pipes, electrical wiring, water tanks, boilers, radiators, gas fires, fitted electric fires or fitted heaters

Pursuant to the Decent Homes Standard, the property must be free of category 1 hazards. Landlords are guided by the risk-based evaluation tool, the Housing Health and Safety Rating System which was introduced by the Housing Act 2004. If a hazard is a serious and immediate

risk to a person's health and safety (can lead to death, i.e. unsafe water supply, pollutants etc.), this is known as a category 1 hazard. If a hazard is less serious or less urgent, this is known as a category 2 hazard.

Moreover, according to the Defective Premises Act 1972, the landlord owes the tenant certain duties of care, such as the duty to prevent personal injury or damage to property caused by defects in the home. This duty is owed to the tenant, members of his/her family, and also to visitors.

Homes England requires social housing landlords to have a repairs and maintenance service that responds to a tenant's needs, with reasonable time and aims to get the work done right first time. For instance, Salix Homes which manages roughly 8,000 homes in Salford, Greater Manchester, has created the My Salix

Portal which allows customers to report a repair using chatbot. The portal also allows tenants to cancel repairs, change appointments and give feedback, meaning more repairs done right first time, decreasing avoidable contact and improving access with an aim of 70 per cent of transactions being self-service.

The Right to Repair Scheme enables Housing Association tenants to have urgent, minor repairs fixed within a prescribed period. Only certain types of repairs are covered under this scheme. These are called qualifying repairs, which include insecure windows and doors, unsafe power sockets or electrical fittings, leaking roofs and broken entry phone systems. Additionally, the repair should not exceed an estimated cost of GBP 250. In this scheme, the response time should be for example one working day for total loss of power; three working days for blocked sink/basin and seven working days for leaking roof. Tenants can complain and be compensated if these timeframes have not been complied with.

A tenant is supposed to use the following complaint process:

- a. **Internal complaints procedure** – the tenant makes a formal complaint in writing to the landlord keeping a copy of the letter and any response.
- b. **Housing ombudsperson** - If the complaint remains unresolved, social housing tenants can complain to the housing ombudsperson. This is an executive non-departmental public body, sponsored by MHCLG. However, the Localism Act 2011, requires that the complaint should first go through a “designated person”. A designated person can be a Member of Parliament, a local councillor, or a recognized tenant panel (the ombuds keeps a register). The aim is

to: a) protect the tenant from unnecessary delays as a complaint to the ombuds may take some time to be investigated; and b) allow/give time for the housing association to make amends as ombud findings appear on public record and may impact its future grant applications.

If the designated person is unable to resolve the matter, the complaint is directed to the ombuds. Some of the actions the ombud might ask from the landlord include: i) an apology; ii) improved administrative procedures; or iii) payment of compensation - which could be based on actual financial loss, distress, inconvenience or unfair impact; level of rent or service charges; the landlord’s own compensation policies; or the levels of compensation for similar cases paid by other UK ombud.



3. NGOs and beneficiaries

A. Beneficiary criteria

The 1996 UK Housing Act¹³³ creates the regulatory framework for social housing. Article 166 sets the rules for allocating housing by “local housing authorities” (or “housing councils”). Local housing authorities must have a scheme (their “allocation scheme”) for determining priorities.

Citizenship-related criteria include British citizenship or citizenship of another country with the right to stay in the UK with no restrictions. Additionally, restrictions are provided for foreign nationals subject to immigration control in the UK.

Priority must be given in the scheme to the following categories:

- Homeless persons
- People who are owed a duty by any local housing authority who are found to be homeless or threatened with homelessness
- People occupying unsanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions
- People who need to move on medical or welfare grounds (including any grounds relating to a disability)
- People who need to move to a locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others)

Special consideration is also given to people who served or are serving in armed forces with special needs (e.g., disabilities, injuries, etc.).

¹³³ Housing Act (1996) Retrieved from <https://www.legislation.gov.uk/ukpga/1996/52/introduction>.

Other factors which the scheme may allow to be considered include:

- The financial resources available to a person to meet his or her housing costs.
- The behaviour of a person (or of a member of the household) which affects his or her suitability to be a tenant.

Any local connection (within the meaning of section 199) which exists between a person and the authority's district.¹³⁴

B. Tenure options

The UK policy statement on rents for social housing¹³⁵ sets weekly rent caps at GBP 141.43 for one-bedroom units and up to GBP 183.00 for six or more bedrooms. From 2020 to 2021, rent caps will increase by Consumer Price Index (CPI) (in September of the previous year) + 1.5 percentage points, each year.

Part IV of the Housing Act 1985¹³⁶ sets different types of tenancies. New local housing authority and housing association tenants may be offered an introductory tenancy that lasts for 12 months. Unless the authority or the association have either started action to evict the tenant or extended the introductory tenancy for additional six months thereafter.

The 12 months tenancy automatically becomes, based on agreement between landlord and beneficiary, either a secure (or assured) tenancy

¹³⁴ A person has a local connection with the district of a local housing authority if he or she has a connection with it: (a) because he or she is, or in the past was, normally resident there, and that residence is or was of his or her own choice, (b) because he or she is employed there, (c) because of family associations, or (d) because of special circumstances.

¹³⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781746/Policy_Statement.pdf

¹³⁶ Housing Act (1985) Retrieved from <https://www.legislation.gov.uk/ukpga/1985/68/contents>

for an indefinite period, or a flexible tenancy usually for a period of five years.

Joint tenancies are also allowed for married couples or couples in a registered civil partnership. Cohabiting couples or relatives must have lived together at the property for at least 12 months.

C. Rights and duties

Article 166 of the Housing Act provides that social housing applicants have the right to:

Request such general information as will enable applicant to assess:

- How the application is likely to be treated under the scheme (including whether the applicant is likely to be regarded as a member of a group which is to be given preference).
- Whether housing accommodation that is appropriate to applicants' needs is likely to be made available to applicant and, if so, for how long

Request the authority to inform applicant of any decision about the facts of the applicant's case, which is likely to be, or has been considered in assessing whether to allocate housing accommodation.

Request a review of the decision and the grounds for the decision

After the first 12 months from the beginning of tenancy, tenants have the following rights:

- Rent out rooms - but not sub-let the whole property
- Swap the house with another local authority or housing association tenant

- Transfer the tenancy to someone else under some circumstances
- Make improvements to the house under permission of the association or local authority

The Housing Act 1985 and the "Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 SI 1994/133"¹³⁷ provides that "secure tenants" must not carry out any improvements without the written consent of the landlord, however consent must not be unreasonably withheld and if it is unreasonably withheld it is to be treated as given. Secure tenants have also the right to compensation for such repairs and improvements. At the same time, flexible tenants do not have any right to carry out improvements or to receive compensation for improvements made.

D. Community participation

Pursuant to section 1.2 of the 2017 Tenant Involvement and Empowerment Standard,¹³⁸ registered housing providers shall ensure that tenants are given a wide range of opportunities to influence and be involved in:

- Formulation of landlord's housing-related policies and strategic priorities
- Decision-making on how housing-related services are delivered, including setting service standards
- Scrutiny of landlord's performance and making recommendations for improvement
- Management of homes, where applicable

¹³⁷ <https://www.legislation.gov.uk/uksi/1994/133/made>

¹³⁸ <https://www.gov.uk/government/publications/tenant-involvement-and-empowerment-standard>

- Management of repair and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and the sharing in savings made, and agreeing local offers for service delivery.

Local housing authorities and associations devise specific community participation strategies to implement these standards and devise, on a discretionary basis, training and

career support programmes.

For example, Riverside Housing Association created 'Job Clubs' across the UK to help social tenants search for jobs. Housing associations also offer apprenticeships and the chance to volunteer in the community under their management.¹³⁹

¹³⁹ Riverside Housing Association (2020) Employment and Training. Retrieved from <https://www.riverside.org.uk/you-your-home/employment-training/community-job-clubs/>



IV. NON-PROFIT HOUSING IN NETHERLANDS

| Model of non-profit - who and what they are doing? | Units of Subsidized Housing/Contribution to housing stock | Financing Mechanism | Annual government expenditure on affordable housing | Housing tenure | Beneficiaries' financial contribution | Eligibility Criteria & Income Levels |
|---|---|--|---|--|---|--|
| Private non-profit organisations (Woning corporaties). Registered – roughly 425 Build, maintain, sell and rent social housing stock and provide services, directly related to the use of the dwellings to the occupants. | 32% of total housing stock and 75% of rental housing stock. | Independent (Central Fund of Social Housing (CFV) and the Guarantee Fund for Social Housing) Revolving Fund Model (NGOs guaranteed capital market loans and rent-price regulation). | €2 billion. | Rental (87%) and home ownership (13%) Mostly single-family homes. | Roughly 1/3 of tenants within housing associations receive rent subsidies, covering, on average, 40% of their total rent. | Targeted approach (group of disadvantaged people or socially less advantaged groups) – determined by public authorities. |



Figure 13: Overview of Non-Profit Housing in the Netherlands. Source for the images: <https://www.global-housingdebt.org/a-short-overview-of-the-public-housing-in-the-netherlands/>

Brief background

Netherlands has the largest share of social housing in the European Union, accounting for 30 per cent of the total housing stock¹⁴⁰ and 75 per cent of the rental stock in the country.¹⁴¹ The social housing sector is managed by registered housing associations (woning corporaties – hereafter housing organizations).¹⁴² These organizations are private entities that were given free reign over social housing affairs in

the early 1990s.¹⁴³ This so-called “free reign” commenced at the end of 1993, through the “brutering” or balancing out agreement between the State and the social housing organizations at the time.¹⁴⁴ The agreement determined that all the money owed to the government by housing organizations was to be offset by the future subsidies the government would owe the housing organizations.¹⁴⁵ As such, the government no longer needed to subsidize the industry which relieved them of a large burden, and the social housing organizations became financially independent.¹⁴⁶ From this point

¹⁴⁰ The Housing Europe Observatory (2019). The State of Housing in the EU 2019: Country Profiles The Netherlands. Available at https://drive.google.com/file/d/1Q_5shuFVrg_Housing_Organisation_QOG_fDMtFx6Hv_tdr/view

¹⁴¹ Housing Europe (2010). Social Housing in Europe: The Netherlands. Available at <https://www.housingeurope.eu/resource-117/social-housing-in-europe>

¹⁴² van Gent, W. and Hochstenbach, C. The Neo-Liberal Politics and Socio-Spatial Implications of Dutch Post-Crisis Social Housing Policies (2020) International Journal of Housing Policy 156.

¹⁴³ Kadi, J. (2011). Neoliberal Dutch Housing Policies? Analyzing Market-Oriented Regulatory Reforms in Amsterdam’s Housing Market, Amsterdam Institute for Social Science Research, Amsterdam 11.

¹⁴⁴ Cloudt, S. (2015). Organisatieontwikkeling bij Woningcorporaties: De praktijk van het Maatschappelijk Ondernemen. Boom Lemma Uitgewers Amsterdam 58.

¹⁴⁵ Ibid.

¹⁴⁶ Kadi, J. (2011). Neoliberal Dutch Housing Policies? Analyzing

onwards, housing organizations had to finance their activities and were encouraged to look for funding on the capital market. In order to secure their financial viability, the organizations were further encouraged to engage in the provision of “higher end” housing and use the revenues from this activity to cross-finance the construction and operation of the social housing units.¹⁴⁷

It is the primary task of the registered housing organizations to provide housing for households with lower incomes. As such, they are responsible for the provision of adequate and affordable housing and must contribute to the quality of life in social housing neighbourhoods and must invest in the construction of new dwellings and sustainability.¹⁴⁸ Other general obligations include providing housing to elderly people and people with disabilities, building and letting social property such as schools and sports facilities, appointing caretakers and neighbourhood managers, maintaining houses and the immediate surroundings and selling rented properties to tenants and other house seekers.¹⁴⁹ There are approximately 425 registered housing organizations in the Netherlands who must fulfil their mandate within a comprehensive legal framework consisting of national laws and regulations.¹⁵⁰ Housing organizations also act in partnership with municipalities – each with

Market-Oriented Regulatory Reforms in Amsterdam’s Housing Market, Amsterdam Institute for Social Science Research, Amsterdam 11.

¹⁴⁷ Kadi, J. (2011). Neoliberal Dutch Housing Policies? Analyzing Market-Oriented Regulatory Reforms in Amsterdam’s Housing Market, Amsterdam Institute for Social Science Research, Amsterdam 11.

¹⁴⁸ Aedes Vereniging van Woningcorporaties (2016). Dutch Social Housing in a Nutshell: Examples of Social Innovation for People and Communities. Aedes. The Hague 3.

¹⁴⁹ Government of the Netherlands (2020). Housing Associations. Available at: <https://www.government.nl/topics/housing/housing-associations>.

¹⁵⁰ Aedes Vereniging van Woningcorporaties (2016). Dutch Social Housing in a Nutshell: Examples of Social Innovation for People and Communities. Aedes. The Hague 3.

their own responsibilities at the local level. Other role-players or stakeholders include tenants and tenant organizations. The responsibilities and tasks for each stakeholder varies between different regions as approaches are tailored to local and regional contexts.¹⁵¹

1. Government and Non-profit Relationships

1.1 Requirements for licencing, registration, and internal governance

The licensing, registration, and internal governance of housing organizations is regulated jointly by the 2015 Housing Act (*Woningwet 2015*) and the Decree on Admitted Public Housing Institutions 2015 (*Besluit Toegelaten Instellingen en Volkshuisvesting 2015*). By law, a registered housing organization is regarded as an association or foundation with legal personality (legal entity) with the full legal autonomy to enable its members to independently provide for the management and maintenance of social housing areas and immediate surroundings of such areas.¹⁵² As mentioned above, housing organizations are independent organizations. They determine their own objectives, internal organizational structure and are solely responsible for their finances.¹⁵³ As such, housing organizations enjoy a fair amount of freedom to determine their own affairs.

Only registered housing organizations may participate in social housing development. To do so, the entity must first be registered as a foundation or as an association.¹⁵⁴ The legal

¹⁵¹ Ibid.

¹⁵² Article 18a of the *Woningwet* (2015).

¹⁵³ Housing Europe (2010). Social Housing in Europe: The Netherlands. Available at <https://www.housingeurope.eu/resource-117/social-housing-in-europe>.

¹⁵⁴ Article 5(1) of the *Besluit Toegelaten Instellingen en*

Netherlands Registration Process - Decree on Admitted Public Housing Institutions 2015

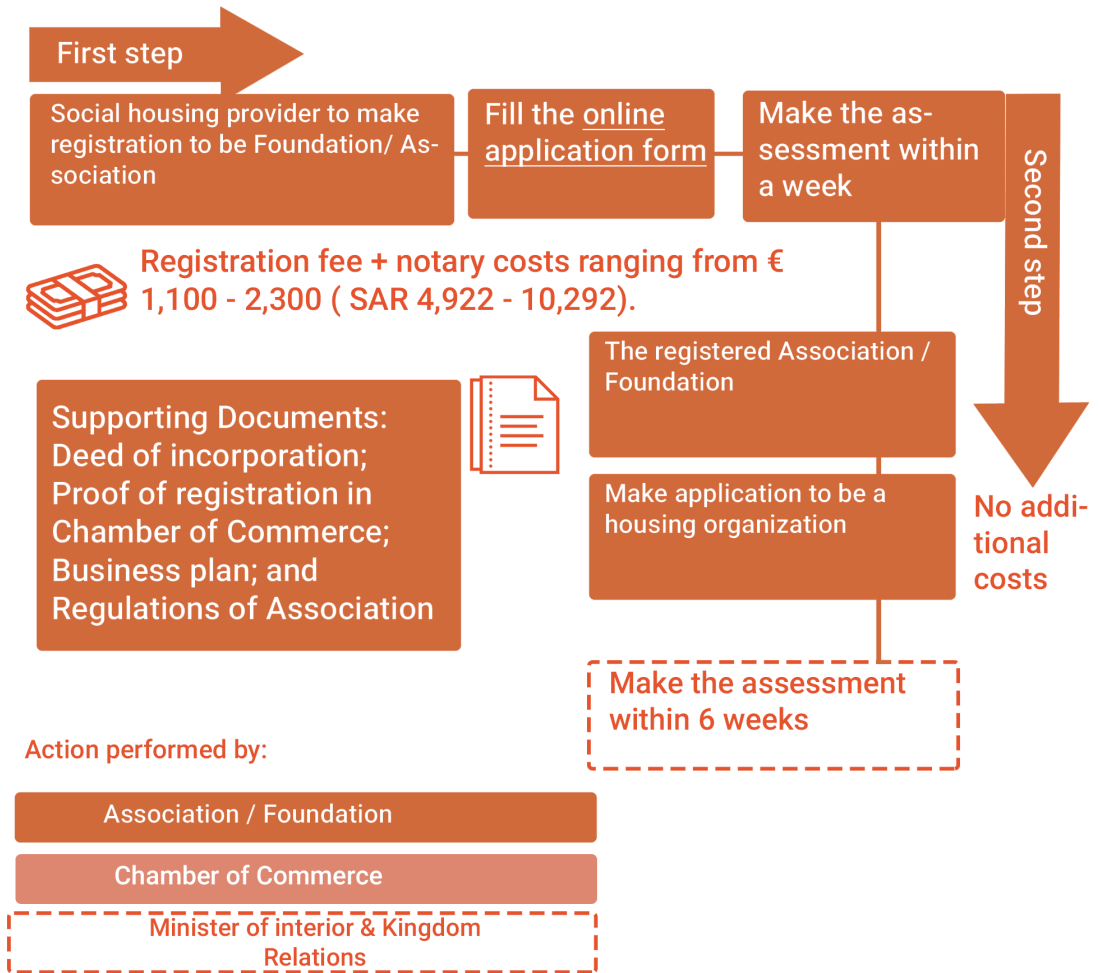


Figure 14: Registration process of social housing NGOs in the Netherlands.

difference between these two is marginal. Generally, foundations are incorporated for charities and do not have any members, whereas an association must have members.¹⁵⁵ However,

Volkshuisvestiging 2015 – also known as the Decree on Authorised Institutions for Public Housing in 2015.

¹⁵⁵ Netherlands Chamber of Commerce (2020). Register Your Company at the Netherlands Chamber of Commerce available at <https://business.gov.nl/starting-your-business/registering-your-business/registration-at-the-netherlands-chamber-of-commerce/>.

there is an exception for housing organizations as these organizations can register as a foundation which must include members.¹⁵⁶ All other requirements regarding establishment, governance and taxes are the same.¹⁵⁷ Both a

¹⁵⁶ Netherlands Chamber of Commerce (2020). Register Your Company at the Netherlands Chamber of Commerce available at <https://business.gov.nl/starting-your-business/registering-your-business/registration-at-the-netherlands-chamber-of-commerce/>.

¹⁵⁷ Netherlands Chamber of Commerce (2020). Register Your

foundation and an association must register its name with the Commercial Register/Chamber of Commerce.¹⁵⁸ The cost for the registration is EUR 50.¹⁵⁹ Other costs related to establishing an association or foundation include notary costs which varies between EUR 400 and EUR 800 – depending on the extent of the activities to be undertaken by the housing organization.¹⁶⁰ If the foundation or association also plans to conduct commercial activities (as many housing organizations do) it must file annual reports. Depending on the extent of the commercial activities the administration costs can range from EUR 600 to EUR 1,800.¹⁶¹ The application to establish a foundation or association must be completed on the prescribed forms. Turnaround time for application for a foundation or association is about one week.¹⁶²

Only after a foundation or association has been registered can an application to be registered as a housing organization be made. The application must be submitted to the Housing Corporations Authority (Autoriteit Woningcorporaties), which is a statutory body established under article 60 of the Housing Act (see 1.2.2 below). The application procedure is regulated in detail by the Decree on Admitted Public Housing

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Company at the Netherlands Chamber of Commerce available at <https://business.gov.nl/starting-your-business/registering-your-business/registration-at-the-netherlands-chamber-of-commerce/>.

¹⁵⁸ Netherlands Chamber of Commerce (2020). Register Your Company at the Netherlands Chamber of Commerce available at <https://business.gov.nl/starting-your-business/registering-your-business/registration-at-the-netherlands-chamber-of-commerce/>.
¹⁵⁹ Ibid.

¹⁶⁰ Netherlands Chamber of Commerce (2020). Association available at <https://business.gov.nl/starting-your-business/choosing-a-business-structure/association/>; and Netherlands Chamber of Commerce (2020) Foundation available at <https://business.gov.nl/starting-your-business/choosing-a-business-structure/foundation/>.

¹⁶¹ Ibid.

¹⁶² Article 6 of the Besluit Toegelaten Instellingen en Volkshuisvesting 2015 – also known as the Decree on Authorised Institutions for Public Housing in 2015.

Institutions 2015 (Besluit Toegelaten Instellingen en Volkshuisvesting 2015). This registration application must include an authentic copy of the deed of incorporation of the association or foundation; proof that the association or foundation is registered in a public register kept by the Chamber of Commerce; the regulations of the association or foundation; a three to five-year business plan, including the most recent balance sheet, profit and loss account and budget of the association or foundation. The average turnaround time for the application is six weeks.

The registered housing organization must include members who are from a household with an income that does not exceed the national income limit.¹⁶³ Owners or tenants from at least five adjacent residential units that form a residential unit, either financially, administratively, physically or otherwise may establish a housing organization.¹⁶⁴ A housing organization must further consist of a CEO who acts as the director. The CEO/director is responsible for establishing and fulfilling the operational and housing development strategies.¹⁶⁵ The CEO/director may not form part of any other housing organization, Municipal Council, Provincial Department or Water Board.¹⁶⁶ The CEO must be supported by a management team/ Board of Directors and a Supervisory Board (Raad van Commissarissen). The Supervisory Board should include experts in different fields, including the real estate business, public housing finance and accounting. The Supervisory Board supervises, advises and advocates for the governance of the

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¹⁶³ Article 2(1), *ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ Cloudt, S. (2015). *Organisatieontwikkeling bij Woningcorporaties: De praktijk van het Maatschappelijk Ondernemen*. Boom Lemma Uitgewers Amsterdam 55.

¹⁶⁶ Nederlandse Woonbod (2015). *Nuwe Woningwet: Wat Verandert er in de Sociale Huursector?* Nederlandse Woonbod. Amsterdam 6.

organization.¹⁶⁷ It also supervises managerial decision-making and serves to advise and guide the board and decides on the appointment, assessment, suspension or dismissal of the CEO/director. The Ministry of Housing and Civil Service approves and appoints the Supervisory Board. The Supervisory Board consists of three or more members who are appointed for a term of four years and who can be reappointed for a subsequent term of office of four years.¹⁶⁸ People who wish to form part of the Supervisory Board must pass the “suitability” or “fit and proper” test for directors/managers”.¹⁶⁹ The test aims to improve the quality and integrity of the directors and the internal supervision of housing organizations.

Matters related to structure and governance of housing organizations are regulated by three mechanisms: 1) internal supervision (through the Supervisory Board); 2) self-regulation within the sector; and 3) external supervision by the national government through the Housing Corporations Authority.¹⁷⁰ Internal and self-regulation should be in accordance with the Governance Code for Housing Organizations (*Governancecode Woningorganisaties 2020*). The Governance Code was developed by the AEDS (the Trade Association of Housing Corporations in the Netherlands) and the Association of Dutch Municipalities. The Governance Code includes provisions on integrity, transparency, competences, exemplary behaviour, social cohesion and risk management. It is the task of the Supervisory Board to ensure that the housing organization operates within the parameters of

¹⁶⁷ Czischke, D. (2014). *Social Housing Organisations in England and The Netherlands: Between the State, Market and Community*. PhD Thesis Delft University of Technology. Delft. 51.

¹⁶⁸ Article 30 of the Besluit Toegelaten Instellingen en Volkshuisvesting 2015 – also known as the Decree on Authorised Institutions for Public Housing in 2015.

¹⁶⁹ Article 25(2), *ibid*.

¹⁷⁰ *Supra* note 54.

the Governance Code. External supervision, in turn, focuses on the legality of actions, tackling (incidental) issues of fraud and safeguarding that the equity of housing associations is used to the fullest for social housing or urban regeneration as well as to secure the financial continuity of housing associations.¹⁷¹ Furthermore, the Housing Corporations Authority¹⁷² plays an important role in financial supervision since it assesses if housing associations are eligible for guarantees on their loans.

Finally, it is important to note that the 2015 Housing Act (*Woningwet*) requires housing organizations to split their social (non-economic) activities and commercial activities.¹⁷³ This provision has direct implications for the organizational structure of housing organizations as they have to divide their social and commercial activities into separate ‘entities’ either legally or administratively.¹⁷⁴ If the housing organization opts for an administrative division, it must calculate all of its income, expenses and assets and liabilities and separate them administratively in terms of their social (non-economic) and commercial activities.¹⁷⁵ All secured loans (loans guaranteed by central government and municipalities) must fall under the social housing (non-commercial) function/branch of the housing organization.¹⁷⁶ Finances and administration for each branch must be kept separate. The housing organization must

¹⁷¹ Cloudt, S. (2015). *Organisatieontwikkeling bij Woningcorporaties: De praktijk van het Maatschappelijk Ondernemen*. Boom Lemma Uitgewers Amsterdam 55.

¹⁷² Article 60 of the Besluit Toegelaten Instellingen en Volkshuisvesting 2015.

¹⁷³ *Supra* note 58.

¹⁷⁴ Article 50 of the Besluit Toegelaten Instellingen en Volkshuisvesting 2015.

¹⁷⁵ De Rijksoverheid (2015). *Bird's-eye view of the Housing Act 2015*. <http://www.rijksoverheid.nl/onderwerpen/woningcorporaties/documenten-en-publicaties/publicaties/2015/03/17/woningwet-2015-in-vogelvlucht.html>

¹⁷⁶ *Ibid*.

ensure that each branch remains financially viable. Government loans are only available for the social/non-commercial work of the housing organization. Conversely, if the housing organization opts for a legal division, it must transfer all non-commercial (social) property to one or more housing companies/subsidiaries. In doing so, it must ensure correct cost allocation between non-commercial/social housing and commercial housing projects.¹⁷⁷ It must further ensure that both itself and the other subsidiaries are financially viable and independent.¹⁷⁸ Smaller housing organizations, with an annual income of less than EUR 30 million per year, can request to be exempt from the provision to split their social and commercial activities.¹⁷⁹ The purpose of this exception is to ease the administrative burden on such smaller associations.

1.2 Cooperation and partnership frameworks

1.2.1 Voluntary cooperation

There are no formally mandated structures or arrangements for cooperation and partnerships. Housing organizations, municipalities and tenant organizations have the freedom to at their own initiative form partnerships for the delivery of social housing. If a housing organization wishes to undertake a social housing development project in a municipal area, it must inform the local municipality and receive permission to proceed with the project. Municipalities further have the option to determine the need for social

housing projects, through analyzing the housing market of the local area. If there is a need for social housing, the municipality can request the housing organization to develop a social housing project. Municipalities should establish a vision for social housing in their housing and development policies. Municipalities may establish public housing targets or strategies that housing organizations should contribute to as part of their housing vision. These targets may also pertain to the development of new social housing projects, payment options, rental and sale quotas of social housing projects, energy efficiency of social housing projects, targets for specific social groups and general requirements for the quality and sustainability of social housing projects.

Housing organizations typically also work in partnership with tenant organizations. A tenant organization consists of a group of people, large or small, living in a block, street, specific building, region, city or even a country, who have come together to take up issues of common concern in relation to their housing, community, and environment.¹⁸⁰ Tenant organizations can be established by any type of tenant group, including for example, tenants of social housing. In the Netherlands, a tenant organization must be established on the initiative of at least two or more tenants of a specific social housing project.¹⁸¹ Tenant organizations have voting rights and must be included in decision-making procedures of the housing organization.¹⁸² Both the local municipality and the relevant tenant

¹⁷⁷ Nederlandse Woonbod (2015). Nuwe Woningwet: Wat Verandert er in de Sociale Huursector? Nederlandse Woonbod. Amsterdam 6.

¹⁷⁸ Ibid.

¹⁷⁹ De Rijksoverheid (2015). Bird's-eye view of the Housing Act 2015. <http://www.rijksoverheid.nl/onderwerpen/woningcorporaties/documenten-en-publicaties/publicaties/2015/03/17/woningwet-2015-in-vogelvlucht.html>

¹⁸⁰ International Union of Tenants (2020). Guide to Setting up a Tenants' Association <https://www.iut.nu/policy/set-up-a-ta/>

¹⁸¹ <https://www.rijksoverheid.nl/onderwerpen/huurwoning/vraag-en-antwoord/rechten-huurders> De Rijksoverheid (2020) Welke Rechten hebben Huurdersorganisaties en Bewonerscommissies? organisatie-bewonerscommissie.

¹⁸² Terlingen, G. (2016). Huurdersparticipatie in beeld: Stand van zaken van de huurdersparticipatie in de corporatiesector na de Woningwet 2015. Dordrecht: FREAY 2.

organizations must receive detailed information/ reports from the housing organizations regarding their finances (yearly statements, auditing reports) and regarding current and future housing development projects.¹⁸³ The rationale behind the sharing of this information is to ensure transparency and a level of accountability of the housing organizations to municipalities and tenant organizations.¹⁸⁴

Municipalities, housing organizations and tenant organizations may also establish local performance agreements for social housing policy.¹⁸⁵ Any of the parties may initiate the development of a performance agreement. Such agreements have legal status. These local performance agreements aim to establish how all parties involved in the social housing sector contribute to the realization of the local (social) housing objectives for a specific period.¹⁸⁶ It seeks to increase the link between the investment capacity of housing organizations and the social housing needs on the local level to ensure social benefit. Such agreements also serve to facilitate and ensure cooperative, but non-permissive, networks of municipalities, housing organizations and tenants' organizations for the co-creation of social policy and to strengthen the supervision of housing organizations.¹⁸⁷

1.2.2 Compulsory cooperation

This form of cooperation is mandated by law and serves to provide a supervisory, monitoring, and quality assessment role. Housing organizations have an obligation to cooperate with the Housing

¹⁸³ Nederlandse Woonbod (2015). Nuwe Woningwet: Wat Verandert er in de Sociale Huursector? Nederlandse Woonbod. Amsterdam 5.

¹⁸⁴ Ibid.

¹⁸⁵ Article 45(2) of the Woningwet 2015.

¹⁸⁶ Schilder, F. and Scherpenisse R. (2018). Policy and Practice: Affordable Housing in the Netherlands PBL Netherlands Environmental Agency Amsterdam 82.

¹⁸⁷ Supra note 69.

Corporations Authority. The purpose of this authority is to supervise the social housing sector independently from the influence of politics. The authority supervises the following matters: the professionalism of the sector; lawfulness of actions and omissions; governance and integrity of policy and management; maintaining financial continuity; protection of socially designated assets; solvency and liquidity of housing associations; quality of risk management, management, direction and accountability; and State aid.¹⁸⁸ The authority further monitors the development of key financial indicators, like the loan-to-value ratio and the interest coverage ratio.¹⁸⁹ If Housing organizations fail to meet the financial requirement set by the regulator, a policy direction may be given, or it deems it necessary, the authority may directly intervene in the decisions and activities of the housing organization.¹⁹⁰

Finally, housing organizations are legally obliged to undergo physical assessment/visits from expert agencies. These assessments must take place one every four years. The aim of this assessment is to investigate the public housing and social performance of the housing corporation. The review also provides an opinion on the quality of governance and on the way in which the housing association has given interested parties (municipalities and tenants) the opportunity to influence policy.¹⁹¹ After the assessment, the housing organization

¹⁸⁸ Ministerie van Binnelandse Zaken en Koninkrijksrelaties (2020). Autoriteit Woningcorporaties. <https://www.woningmarktbeleid.nl/onderwerpen/governance/autoriteit-woningcorporaties>

¹⁸⁹ Schilder, F. and Scherpenisse, R. (2018). Policy and Practice: Affordable Housing in the Netherlands PBL Netherlands Environmental Agency Amsterdam 82.

¹⁹⁰ Ibid.

¹⁹¹ Ministerie van Binnelandse Zaken en Koninkrijksrelaties (2020) Verantwoording Woningcorporatie. <https://www.woningmarktbeleid.nl/onderwerpen/governance/verantwoording>.

will receive a report with the findings of the evaluation. The housing organization must send the report, with the opinion of the supervisory board, to the Housing Association Authority and to all interested parties within six weeks of receipt. This process aims to foster transparency in decision-making and compliance monitoring.

1.3 Business plan and financing mechanisms

Investments for social housing projects are financed by housing organizations' own equity and loans from banks or the Dutch Government. The collective assets of all social housing organizations are used as collateral for financiers through a sectoral guarantee fund, which also watches over risk management.¹⁹² Bank loans are supported by the Dutch State and municipalities, which act as potential guarantors of last resort¹⁹³ This results in more favourable financing terms and counter-cyclical investments, without any direct subsidies for new investments.¹⁹⁴ The loan and financing system for housing organizations is supported by a financial safety structure that enables these organizations to attract loans at interest rates somewhat lower than other bodies, which also have to borrow on the financial markets. This safety net comprises two bodies – the Social Housing Guarantee Fund (WSW) and the Central Housing Fund (CFV).¹⁹⁵ The WSW is tasked with assessing and monitoring the financial health of the housing organization and ensuring that it can borrow against favourable interest loans.¹⁹⁶ The

¹⁹² Aedes Vereniging van Woningcorporaties (2016). Dutch Social Housing in a Nutshell: Examples of Social Innovation for People and Communities. Aedes. The Hague 6.

¹⁹³ Czischke, D. (2014). Social Housing Organisations in England and the Netherlands: Between the State, Market and Community. PhD Thesis Delft University of Technology. Delft. 86

¹⁹⁴ Supra note 79.

¹⁹⁵ Supra note 80.

¹⁹⁶ Cloudt, S. (2015). Organisatieontwikkeling bij Woningcorporaties: De praktijk van het Maatschappelijk

CFV, in turn, serves to oversee the financial health of the housing organization sector and reports to national government on matters related to the success of the loan.¹⁹⁷ In addition to loans and equity, housing organizations can generate an income from the services they offer. Such services may relate to any matter pertaining to the needs of the tenants, including, amongst others, laundry and cleaning services.¹⁹⁸

Since housing organizations have the authority and freedom to determine their own financing, the structures and instrumentation for financing differs widely and depends on the administrative size and financial resources of the organization. From the literature review, it appears that at a minimum, such organizations must have the following financial instruments: a four-to-five-year business plan with yearly budget, a project or work plan indicating current and future housing developments (indicating, amongst others, operational and projected costs and the market value of housing developments), a treasury statute and annual plan, an investment statute and annual plan,¹⁹⁹ board regulations (determining remuneration) and financial risk assessments (with information relating to equity, loans and investments), and general financial regulations including guidelines for expenditure.²⁰⁰

Ondernemen. Boom Lemma Uitgewers Amsterdam 55.

¹⁹⁷ Ibid.

¹⁹⁸ Woningstichting Nieuwkoop 2020 Governance <https://wst-nieuwkoop.nl/Governance/6283>; Jutphaas Wonen 2020 Goedebestuur <https://www.jutphaas.nl/jutphaas-wonen/toezicht/>

¹⁹⁹ Article 15 of the Regeling Toegelaten Instellingen Volkshuisvesting 2015.

²⁰⁰ Woningstichting Nieuwkoop 2020 Governance <https://wst-nieuwkoop.nl/Governance/6283>; Jutphaas Wonen 2020 Goedebestuur <https://www.jutphaas.nl/jutphaas-wonen/toezicht/>; Maasdelta Groep 2020 Folders en Verslagen <https://www.maasdelta.nl/over-maasdelta/publicaties/folders-en-verslagen/>; Wonenbregurg 2020 Onse Organisatie <https://www.wonenbregurg.nl/over-ons/onze-organisatie/governance/>. Also see Articles 34 – 36 of the Besluit Toegelaten Instellingen en Volkshuisvesting 2015 – also known as the Decree on



Netherlands by Joost (formerly habeebee) source: Flickr

2. Non-profits and Housing Provision Mechanisms

2.1 Access to land and housing provision/ acquisitions

According to the Decree on Authorized Institutions for Public Housing, prior to undertaking a development project in a specific municipal area, housing organizations must request a “declaration of no objection” from the municipality.²⁰¹ This process also includes submitting an “intention for work” to the Ministry of Housing, Spatial Planning and the Environment.²⁰² These declarations must explain the intended contribution of the housing organization to the housing stock in the municipal area or region.²⁰³ In accordance with the mentioned intentions, the municipalities provide land or existing buildings for refurbishment as well as the necessary permits to social housing organizations,²⁰⁴ while the housing organizations build and manage social housing and contribute to other issues closely related to housing at local level. The land or existing building(s) provided by the municipality is sold to the housing organization at a price below market value.²⁰⁵ The determination of the price is calculated using the residual calculation or by a negotiation of the parties.²⁰⁶ The residual calculation sets the price through the net present value of all

Authorized Institutions for Public Housing in 2015.

²⁰¹ Article 41(1) of the Besluit Toegelaten Instellingen en Volkshuisvestiging 2015 – also known as the Decree on Authorised Institutions for Public Housing in 2015.

²⁰² Article 41(a), *ibid.*

²⁰³ Article 43, *ibid.*

²⁰⁴ Czischke, D. (2014). *Social Housing Organisations in England and the Netherlands: Between the State, Market and Community*. PhD Thesis Delft University of Technology. Delft. 86.

²⁰⁵ Buitelaar, E. and Segeren, A. (2011). *Urban Structures and Land. The Morphological Effects of Dealing with Property Rights*. *Housing Studies*, 26(5) p.672.

²⁰⁶ Van Den Elzen, W (2014) *The Future Role of The Dutch Housing Corporations* Master Thesis in Spatial Planning. Radboud University Nijmegen 21.

expected cash flows. The maximum price of the land/building is the property price less the construction costs, additional costs, and a profit margin.²⁰⁷ This method is based on estimates of future costs, revenues, and a discount rate, these estimated can vary between municipalities and housing projects.

Land or an existing building for social housing can further be acquired through a lease hold or usufruct.²⁰⁸ In both instances, the municipality remains the legal owner and the conditions of the usufruct/lease is recorded in a notarial deed and registered in the land register.²⁰⁹ Whether for lease or usufruct, the ground or building should be earmarked by the municipality as “intended for a social purpose” and the beneficiaries must meet the minimum income requirements.²¹⁰ The usufruct ends when the beneficiary dies, but it is possible to transfer the right to a family member if they meet the lower-income requirements and were dependent on the main beneficiary.²¹¹ Leasehold contracts, in turn, can take two forms: continuous or perpetual. In continuous lease, the rent is adjusted every 50 or 75 years.²¹² Towards the end of this time, the rent is determined once again based on the adjusted value of the property at that time.²¹³ If the value has risen significantly, the rent will increase accordingly. In perpetual lease, a fixed rent is agreed and will remain at

that level permanently (in perpetuity).²¹⁴ With perpetual lease the risk of future fluctuations in ground rent is annulled. The price for the lease hold is calculated at 1.1 per cent of the market value.²¹⁵ The price is determined by the national interest rate. The Social Housing Organization must also pay administrative fees related to the leasehold agreement. These fees vary between municipalities. In The Hague, the administrative fee is EUR 27 for example.²¹⁶

2.2 Planning and housing standards and approval process

Building and housing standards in the Netherlands are regulated at a national level, by the 2012 Building Decree (Bouwbesluit) and the Living Environment Construction Work Decree 2018 (Besluit Bouwwerken Leefomgeving). The approval procedures (if they have an environmental impact) are regulated by the Environment and Planning Act 2020 (Omgewingswet). Municipalities also have the authority to regulate for these matters in their jurisdictions.

Before commencing with a building project, the housing organization must obtain the necessary building permit (bouwvergunning) and land-use rights from the local municipality in terms of its building codes and zoning plans (bestemmingsplan).²¹⁷ Depending on the environmental impact of the development, the housing organization may also have to apply for the necessary environmental permit (omgevingsvergunning).²¹⁸ All applications must be submitted to the municipality and must

²⁰⁷ Ibid.

²⁰⁸ Article 24(f) of the Besluit Toegelaten Instellingen en Volkshuisvesting 2015 – also known as the Decree on Authorised Institutions for Public Housing in 2015.

²⁰⁹ Ploeger, H., & Bounjouh, H. (2017). The Dutch Urban Ground Lease: A Valuable Tool For Land Policy? Land Use Policy, 63, pp.78-85.

²¹⁰ Article 24(e) of the Besluit Toegelaten Instellingen en Volkshuisvesting 2015 – also known as the Decree on Authorised Institutions for Public Housing in 2015.

²¹¹ Dutch Civil Law (date unknown) <http://www.dutchcivillaw.com/content/dutchcivillaw022.htm>.

²¹² Ploeger, H., & Bounjouh, H. (2017). The Dutch Urban Ground Lease: A Valuable Tool For Land Policy? Land Use Policy, 63, 80.

²¹³ Ibid, 81.

²¹⁴ Ibid, 80.

²¹⁵ The Hague Municipality (2020) General Provisions regarding the Lease of Land available at <https://denhaag.raadsinformatie.nl/modules/13/Overige%20bestuurlijke%20stukken/76783>.

²¹⁶ Ibid.

²¹⁷ Article 1.24 of the Bouwbesluit (Building Decree) 2012.

²¹⁸ See the Activiteitenbesluit (Dutch Activities Decree) 2007.

be accompanied with the necessary fees and documentation, including design plans, photos and reports. The cost of a building permit ranges from EUR 217 to EUR 258. The costs depend on the estimated construction costs. Processing time for building permits is around eight weeks.²¹⁹ Depending on the size of the project, and on whether multiple permits are required (for example, environmental permits), the processing time is 26 weeks.²²⁰ If the application is not processed within 26 weeks, the permit must be approved.²²¹

It is important to note that the technical details and application procedures regarding each permit varies significantly between municipalities and regions.²²² There are no standardized planning and approval procedures for social housing projects. These details for such projects are typically included in the performance agreement between the municipality, tenant organizations and the housing organization.²²³ The agreement is largely based on a vision document of the municipality in which housing organizations often participate. These contracts deal with information relating to the building of new social housing projects, renovation, and quality improvement of existing stock, including information pertaining to environmental sustainability and liveability.²²⁴

²¹⁹ City of Amsterdam (2020) Construction, Renovation and Home Improvements <https://www.amsterdam.nl/en/housing/construction/>.

²²⁰ Ibid.

²²¹ AngloInfo The Netherlands (2020). Guide to Building and Planning Permits in the Netherlands available at <https://www.angloinfo.com/how-to/netherlands/housing/building-permits>.

²²² Hartmann, T. and Spit, T. (2015). Dilemmas of involvement in land management – Comparing an active (Dutch) and a passive (German) approach. *Land Use Policy* 732.

²²³ Schilder, F. and Scherpenisse, R. (2018). Policy and Practice: Affordable Housing in the Netherlands PBL Netherlands Environmental Agency Amsterdam 82.

²²⁴ Buitelaar, E. and De Kam, G. (2012). The Emergence of Inclusionary Housing: Continuity and Change in the Provision of Land for Social Housing in the Netherlands, *Housing, Theory and Society* 67.

At a minimum, housing organizations must ensure an adequate standard of living in social housing projects as prescribed by local municipalities in their vision and development plans.²²⁵ Housing organizations must also ensure that the type of housing project matches the needs of the target group (i.e. whether for students, the elderly or persons with disabilities); and that the housing is aimed at the prescribed low-income group.²²⁶ Accordingly, housing organizations do engage in public participation activities to ensure that their projects meet the needs of target groups.²²⁷ For example, people with disabilities and elderly groups are given the opportunity to consult with design teams (in the development of the design plans) to provide input regarding their specific needs. Similarly, workshops are held at local schools in the area of housing projects to allow children and students to participate in the design of playgrounds, common areas and green areas.²²⁸

Social housing units must also be conducive to the health and safety (well-being) of people and the environment.²²⁹ In this regard, social housing units must be safe from fire, air and noise pollution,²³⁰ and must have access to acceptable and good quality drinking water.²³¹ Houses must also have access to sanitation services, at least one toilet and bathroom space (with a prescribed minimum size), warm water connections, electricity and gas connections

²²⁵ Cloudt, S. (2015). *Organisatieontwikkeling bij Woningcorporaties: De praktijk van het Maatschappelijk Ondernemen*. Boom Lemma Uitgewers Amsterdam 60.

²²⁶ Ibid.

²²⁷ Postema, T. (2012). *Citizen Participation in an Urban Renewal Project: A Case Study of the Amsterdam Bijlmermeer*, University of Amsterdam, Amsterdam 34.

²²⁸ Ibid.

²²⁹ Article 3 of the *Omgewingswet* (Environment and Planning Act) 2020.

²³⁰ Article 3(1) of the *Bouwbesluit* (Building Decree) 2012.

²³¹ Article 3 of the *Besluit Bouwwerken Leefomgeving* (Stb. 2018-291).

(complying with national minimum standards), and an indoor ventilation system (complying with national CO2 monitoring standards and minimum standards for humidity).²³² There are also minimum standards for energy efficiency, load bearing structures, floor areas, staircases and ramps, fire and safety escapes, and access to a sufficient amount of natural daylight.²³³ These minimum standards however differ between municipal areas and vary for new building projects, renovations on existing buildings, and the refurbishment of historical buildings or monuments.²³⁴

2.3 Maintenance and operational systems

As mentioned earlier, housing organizations are responsible for building, renting, managing and maintaining social housing projects.²³⁵ They are also responsible for maintaining the quality of the immediate surroundings of such projects.²³⁶ Depending on the target group of the project, such surroundings can include playgrounds, parks, alleyways, clinics and student centres.²³⁷ Housing organizations do not fulfil their maintenance activities in isolation, they generally form agreements and partnerships with tenants, the police, welfare services, local municipalities and other housing organizations.²³⁸

While housing organizations have the freedom to determine the extent of their maintenance operations, they are at the very least, legally required to a) build and acquire residential

accommodation intended for permanent residence and the necessary infrastructure for such accommodation; b) demolish existing buildings and residences for purposes of establishing a development right or usufruct, and/or erecting a new building for social housing purposes, c) allocate, rent, and sell social housing units, d) provide services to the residents of social housing units – these services must be directly related to living in social housing projects, e) build and acquire buildings to serve a communal and social purpose for the residents of the social housing units; f) maintain and manage the maintenance of buildings for communal and social purposes; and g) contribute to the quality of life in the immediate vicinity of housing or other immovable property related to the social housing project in accordance with the agreement with the local municipality and tenant organizations.²³⁹

Housing Organizations are permitted to employ a maintenance person or technical team to carry out maintenance duties. The Director and Supervisory Board must also develop and approve a “maintenance and operational plan” indicating repair and renovation projects with details regarding activities, timeframes and estimated costs.²⁴⁰ The maintenance plan must be circulated to the tenants and tenant organizations.²⁴¹ In the event that tenants have complaints, regarding maintenance, service charges, rent, or nuisance, they may submit a complaint to the complaint committee of the particular housing organization. If the complaint committee does not resolve the complaint to the satisfaction of the tenant, the tenant may submit a complaint to the National Rent Tribunal. The complaint must be submitted in Dutch and on

²³² Article 3, *ibid.*

²³³ Articles 2, 3 and 4 of the *Bouwbesluit* (Building Decree) 2012. Also see Article 4 of the *Omgewingswet* (Environment and Planning Act) 2020.

²³⁴ Article 2 the *Bouwbesluit* (Building Decree) 2012.

²³⁵ Article 45 of the *Woningwet* 2015.

²³⁶ *Ibid.*

²³⁷ Article 45(3), *ibid.*

²³⁸ *Woningstichting Nieuwkoop 2019 Jaarverslag Woningstichting Nieuwkoop Amsterdam 13.*

²³⁹ Article 45(1) – (2) of the *Woningwet* 2015.

²⁴⁰ Article 12(d)(3), *ibid.*

²⁴¹ Article 12(d)(3), *ibid.*

the relevant form (available on the webpage of the Rent Tribunal). Depending on the complaint, the tribunal can inspect the accommodation and interview the parties. After this inspection and interview, the Rent Tribunal will draw up a report of its findings. The tenant and the landlord are then invited to a meeting of the Rent Tribunal. They can respond to the report during this meeting.²⁴² After the meeting, the tribunal will decide on the case. The Rent Tribunal sends the ruling to both parties by email, normally within six weeks of the meeting.

²⁴² Rent Tribunal 2020 What is the Rent Tribunal <https://www.huurcommissie.nl/over-de-huurcommissie/about-the-rent-tribunal-in-english>

3. NGOs and Beneficiaries

3.1 Beneficiary criteria

Housing corporations in the Netherlands must allocate 80 per cent of social housing (sociale-huurwoningen) to households with an income of up to EUR 39,055; 10 per cent is allocated to households with an income between EUR 39,055 and EUR 43,574; 10 per cent may be allocated to higher incomes.²⁴³

Housing corporations also account for urgency criteria in allocating social housing units including medical reasons, family related reasons, age, commuting distance (for example from workplace) and inadequate housing conditions.

If housing corporations do not use the 10 per cent free allocation space for the target group (up to EUR 43,574), they must give priority to predetermined categories of households (specified by the municipalities).

Priority is given to households experiencing health or safety related issues, or in need of housing due to force majeure or calamities.

Dutch nationality or legal residence in the Netherlands is a requirement for obtaining the housing permit, that is in turn a precondition set by municipalities for granting social housing to applicants (Art. 10 Housing Act 2014).²⁴⁴

3.2 Housing Tenure Options

Tenants can purchase the social housing unit by entering into a purchase agreement. Housing

²⁴³ Government of the Netherlands (2020) Rules for Allocating Social Rental Housing. Retrieved from <https://www.rijksoverheid.nl/onderwerpen/woningcorporaties/toewijzen-betalbare-woningen>; and Government of the Netherlands (2020) Housing Associations. Retrieved from <https://www.government.nl/topics/housing/housing-associations>.

²⁴⁴ Government of the Netherlands (2014) Housing Act. Retrieved from <https://wetten.overheid.nl/BWBR0035303/2019-07-01#Hoofdstuk2>.



corporations can sell the housing unit, under the condition that the social housing quota of 10 per cent of free allocation space for the target group (up to EUR 43,574) is met.²⁴⁵

Tenures options include both fixed and non-fixed tenancies.

Fixed-period tenancy agreement (or temporary) is up to two years (for an independent dwelling) or up to five years (for a non-independent dwelling). The tenancy agreement ends automatically on the final date specified in the contract. The landlord must confirm this in writing at least one month – but no more than three months – before the tenancy ends. Tenants can terminate the tenancy before the final date.

A non-fixed tenancy agreement (or indefinite) is one closed for more than two years (for an independent dwelling) or five years (for a non-independent dwelling). The agreement cannot be terminated before the final date unless both the tenant and the landlord agree. The tenancy does not end automatically on the final date. Both the tenant and the landlord must terminate the agreement by means of a written notice sent by registered post.

3.3 Rights and duties

Rights and duties of tenants of market housing as provided by Book 7 of the Dutch Civil Code (particular agreements), Section 7.4.5 (lease of residential spaces) apply also to social housing.²⁴⁶

Tenant's duties include payment of rent on time; abiding to the agreed house rules; allowing repairs to be made (within a reasonable period); and giving notice of one rental payment to terminate

the contract.

Tenants' rights correspond to the landlord's duties and include ensuring availability of the property within the agreed rental period; covering any necessary repairs (within a reasonable period); solving structural and minor problems affecting the tenant (plumbing, electricity, internet, etc.); and giving valid reasons and notice (three to six months) to terminate the contract.

Eligibility of tenants is reviewed annually against the beneficiary criteria.

Beneficiaries of rent allowances must report changes in their status that may affect their eligibility within four weeks. Failure to do so can result in a fine from EUR 385 to EUR 5,514. If the beneficiary does so with intent or negligence, a fine can be issued for up to 150 per cent of the allowance received or requested.

²⁴⁵ Government of the Netherlands (2020). Housing Associations. Retrieved from <https://www.government.nl/topics/housing/housing-associations>.

²⁴⁶ Civil Code of the Netherlands. Retrieved from <http://www.dutchcivillaw.com/civilcodebook077.htm>.



Aerial view of shantytown in South Africa by rushay1977, source: envato elements

V. NON-PROFIT HOUSING IN SOUTH AFRICA

| Model of non-profit - who and what they are doing? | Units of Subsidized Housing/Contribution to housing stock | Financing Mechanism | Annual government expenditure on affordable housing | Housing tenure | Beneficiaries' financial contribution | Eligibility Criteria & Income Levels |
|--|---|---|---|---|---------------------------------------|--|
| <p>Social Housing Institutions – they are accredited non-profit companies. Roughly 30 registered.</p> <p>SHI's can develop, own, facilitate and manage the properties, collect rentals and repay any loans secured to develop the units.</p> | 13.6% | Government finances and provides a partial subsidy to SHI through capital grant funding called the Consolidated Capital Grant (CCG) and below-market rental sums. | ZAR 2.3 billion | Rental (bachelor and 1-3-bedroom units). Residents may exercise an option to buy. | Below-market rents. | Beneficiaries are low- and middle-income households earning from R1,500 and up to R 7,500 per month. |

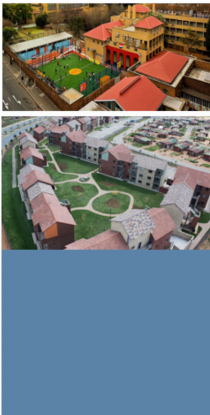


Figure 15: Overview of Non-Profit Housing in South Africa. Source for images: <https://www.nasho.org.za/projects/>

Brief background

With the advent of its new democracy in 1994, the South African Government became actively involved in addressing the country's housing challenges. One of the key programmes developed for this purpose includes the South African Social Housing Programme (SHP) which is aimed at redressing the spatial, economic and social inequities entrenched by Apartheid by providing low- and moderate-income households with good quality and affordable rental housing opportunities in well-located urban areas.²⁴⁷ Social housing institutions (SHIs) emerged in 1995 as robust, sustainable institutions, established to assist the national government in fulfilling its housing provision mandate.²⁴⁸ A SHI is defined in law as an institution which is

accredited by the Social Housing Regulatory Authority (SHRA) established under the Social Housing Act 16 of 2008 to undertake projects for the provision of social housing, and to manage the rental housing stock.²⁴⁹ SHIs have played an important role in addressing the country's housing provision shortages. By the end of 2018, there were a total of 83 SHIs which had been fully or conditionally accredited by the SHRA.²⁵⁰ To date SHIs have contributed 13.6 per cent of the total housing stock.²⁵¹ This figure has increased from 5.6 per cent in 2002.²⁵²

²⁴⁹ Section 1 of the Social Housing Act 16 of 2008.

²⁵⁰ Social Housing Regulatory Authority (2017). The State of the Social Housing Sector Report Social Housing Regulatory Authority Johannesburg 54.

²⁵¹ Statistics South Africa 2018 Statistical Release General Household Survey Statistics South Africa Pretoria 4.

²⁵² Ibid.

²⁴⁷ Fuller Centre for Housing (2014). Housing Delivery in South Africa Fuller Center for Housing Cape Town 3.

²⁴⁸ National Housing Code 2009.

1. Government and Non-profit Relationships

1.1. Requirements for licencing, registration, and internal governance

South Africa- Social Housing Act, 2008 & Companies Act,2008

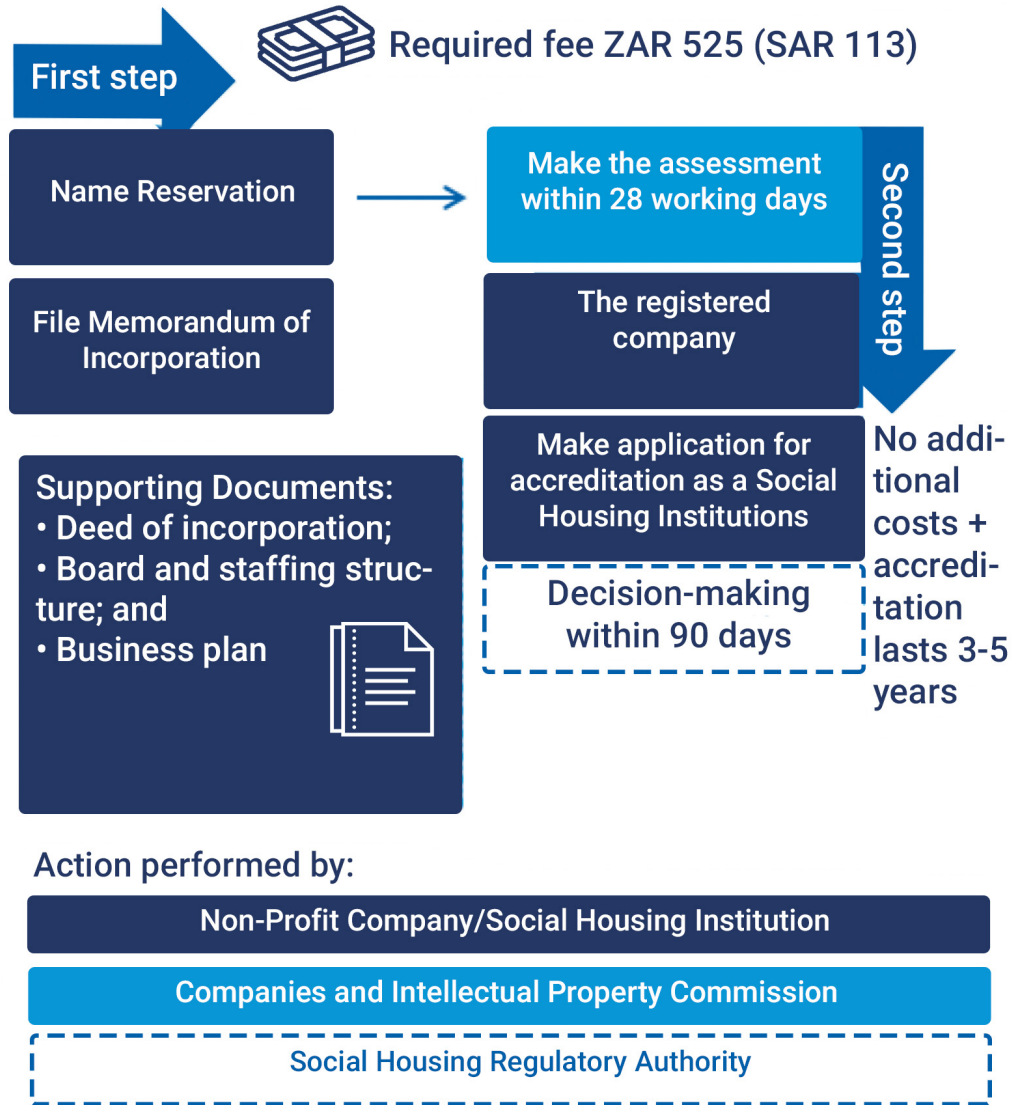


Figure 16: Registration process of social housing NGOs in South Africa.

The licensing, registration, and internal governance of SHIs is subject to national legislation, namely the Social Housing Act 16 of 2008, the Companies Act 71 of 2008, including the procedures for accreditation established by the SHRA.

In terms of the Social Housing Act, SHIs are tasked with the responsibility to manage social housing stock.²⁵³ As such, SHIs serve a public interest and are generally established as “non-profit” companies that are incorporated for a public benefit and where the income and property of which is not distributable to its incorporators, members or any persons related to them.²⁵⁴ These companies resemble business-oriented (for profit) companies in their legal structure, but do not have a share capital and cannot distribute shares or pay dividends to their members.²⁵⁵ Instead they are ‘limited by guarantee’, meaning that if the company fails, its members undertake to pay a stated amount to its creditors.²⁵⁶

A non-profit company which wishes to act as a SHI for the delivery of social housing projects and with governmental support in the form of subsidies must apply for accreditation from the SHRA.²⁵⁷ Before it can acquire the accreditation, the non-profit company must be established and registered in terms of the Companies Act.²⁵⁸ The registration must be submitted to the Companies and Intellectual Property Commission, the regulatory body established under the Companies

Act. The registration requirements pertain to the naming of the company (a name must be reserved and registered), the registration and incorporation procedure, relevant documentation and timeframes.²⁵⁹ The aim of this process is to reserve and register the company name and to file incorporation document. The documents (Application to Reserve Company Name, Notice of Incorporation, and Memorandum of Incorporation) are available on the Companies and Intellectual Property Commission webpage.²⁶⁰ The fees are ZAR 475 for both the Memorandum of Incorporation and Notice of Incorporation. The fee for the electronic name reservation is ZAR 50. The timeline for processing the applications are three days to reserve a name and 25 working days to register the non-profit company).

From the date and time that the incorporation of the company is registered, it receives the rights and status of a juristic person.²⁶¹ The company must consist of a CEO and a board of at least three directors.²⁶² It may also appoint any other necessary committee such as an audit committee, and a social and ethics committee.²⁶³ If the mentioned structures are in place, the SHI may proceed with the accreditation process with the SHRA. The turnaround time for accreditation is 90 days.²⁶⁴ The application must be submitted on the relevant forms (available on the *SHRA webpage*) together with an institutional portfolio, consisting of the following board approved items: financial control policies and procedures, long-term strategic business plan, board charter,

²⁵³ S 1 of the Social Housing Act 16 of 2008.

²⁵⁴ S 1 of the Companies Act 71 of 2008.

²⁵⁵ Mazhinduka, T., Burger, M. and van Heerden, A. (2020).

Financing of Social Housing Investments in South Africa, in Mazhinduka, T., Burger, M. and van Heerden, A. (eds.), *Advances in Human Factors, Business Management and Leadership* (pp. 297-303). Cham: Springer International Publishing. 298.

²⁵⁶ Social Housing Regulatory Authority (2019) *Social-Economic and Spatial Restructuring Impact of Social Housing*, Social Housing Regulatory Authority, Johannesburg 13.

²⁵⁷ S13(1) of the Social Housing Act 16 of 2008.

²⁵⁸ Companies Act 71 of 2008.

²⁵⁹ Sections 11 – 14 of the Companies Act 71 of 2008.

²⁶⁰ Companies and Intellectual Property Commission 2002 Company Forms and Fees <http://www.cipc.co.za/index.php/Access/companies/>.

²⁶¹ Section 19(1) of the Companies Act 71 of 2008.

²⁶² Section 66(1), *ibid*.

²⁶³ S 66(2)(b), *ibid*.

²⁶⁴ Social Housing Regulatory Authority (2020) *Accreditation Procedure* available at <http://www.shra.org.za/node/78>.

staff code of conduct, letters of appointment of directors, director CVs, internal management policies, conflict of interest register policies, risk management policies and procedures, founding documents (memorandum of incorporation and registration documents), property development policies and procedures, tenant management policy, tax clearance certificates, evidence of land availability, including the necessary Broad-Based Black Economic Empowerment Certificate.²⁶⁵

SHIs can be afforded full or conditional accreditation. Conditional accreditation is a temporary status given to SHIs that have not met all the criteria for full accreditation.²⁶⁶ SHIs with full accreditation have full access to government and SHRA subsidies and grants.²⁶⁷ Conditional accreditation may not exceed two years, thereafter the SHI must reapply for full accreditation.²⁶⁸ The status of full accreditation may not exceed five years. After five years, a SHI must reapply for full accreditation.²⁶⁹ Upon receiving accreditation, each SHI must, within 90 days, prepare and submit a corporate governance policy for approval by the SHRA.²⁷⁰ The corporate governance policy must provide details regarding the risk management and risk strategy policies, which include information pertaining to development, operational, financial, property management, human resources, the property and housing market, institutional and compliance risks, and internal control and audit models.²⁷¹ An accredited SHI must also consist of a competent development and

operations manager and a financial manager.²⁷² The development and operations manager is responsible for the day to day management of the social housing institution and the housing stock developed through funding obtained in terms of the social housing programme.²⁷³ The development and operation manager is also responsible for ensuring compliance with social housing legislation as well as communicating and representing the SHI with external parties such as SHRA.²⁷⁴ The financial manager is tasked with overseeing the financial management of the SHI in accordance with the SHIs business plan and in accordance with any grants and subsidies received.²⁷⁵

1.2 Cooperation and partnership frameworks

There are several actors involved in the provision of social housing. Key role-players include, amongst others, SHIs, municipalities and so-called other development agencies (ODAs).²⁷⁶ Other role-players (forming part of the government sector) includes national government, provincial government, the National Social Housing Organizations and the SHRA.²⁷⁷ National government must provide overall leadership for the social housing sector. It must create an enabling environment, develop policy and legislation, and establish grants and subsidies to fund the social housing sector.²⁷⁸ Provinces (together with municipalities) must identify restructuring zones (see 2.1 below), mediate conflicts between SHIs and municipalities, and

²⁶⁵ Ibid.

²⁶⁶ Department of Human Settlements (2016) Rules on the Long-Term Accreditation of Social Housing Settlements, Department of Human Settlements, Pretoria, 178.

²⁶⁷ Ibid.

²⁶⁸ Ibid, 179.

²⁶⁹ Ibid, 176.

²⁷⁰ S 15(1)(a) of the Social Housing Act 16 of 2008.

²⁷¹ S 15(1)(b), *ibid*.

²⁷² Social Housing Regulatory Authority (2012) Social Housing Regulations, Social Housing Regulatory Authority Johannesburg 14.

²⁷³ S15(1)(b)(i) of the Social Housing Act 16 of 2008.

²⁷⁴ S 15(1)(b)(iii), *ibid*.

²⁷⁵ S18(1), *ibid*.

²⁷⁶ Department of Human Settlements (2009) National Housing Code Department of Human Settlements, Pretoria 29.

²⁷⁷ *Ibid*.

²⁷⁸ *Ibid*, 54.

ensure compliance with social housing norms and standards.²⁷⁹ The National Social Housing Organizations is a membership platform for SHIs. It must promote the social housing sector, support its members through capacity building, promote the exchange of good practice among its members, and campaign and lobby on behalf of its members.²⁸⁰ Finally, the SHRA is the principle agency through which SHIs can obtain accreditation.²⁸¹ It serves a compliance and monitoring function and administers the subsidies available to SHIs.²⁸² It must also ensure the coordination of the social housing sector, by facilitating the entering of agreements between SHIs and municipalities, or agreements between national and provincial government regarding the social housing sector.²⁸³

There are several options available for cooperation. This section focuses on agreements between SHIs and municipalities, ODAs and tenants.

SHIs and municipalities - Municipalities and SHIs may enter into performance agreements.²⁸⁴ The SHI typically initiates the development of a performance agreement.²⁸⁵ When the details and conditions of the performance agreement have been agreed upon between the municipality and SHI, a copy of the performance agreement must be submitted to the SHRA. The performance agreement should contain

the following information: overview of the Land Availability Agreement, details regarding the social housing project (the plot, restructuring zone, target audience, development process, building plans, project deadlines and delivery schedules and maintenance operations), the financial plan (including an overview of budgets and investments), a stipulation of the responsibilities of the municipality as it relates to service provision and/or releasing available land.²⁸⁶ Details regarding liability and breach of contract, insurance and dispute settlements.²⁸⁷

SHIs and ODA - ODAs are organizations in the private sector that assist the SHIs in the provision of viable social housing projects.²⁸⁸ These organizations typically provide property development and management services that can range from architectural and design services, construction services, and maintenance and operational services. Cooperation between SHIs and ODAs must be facilitated through public-private partnerships (PPPs).²⁸⁹ PPPs must undergo formal procurement procedures established in the Public Finance Management Act 1 of 1999. Social housing projects are suited to two PPP models, namely, design, build, operate and transfer (DBOT) and design, finance, build, operate and transfer (DFBOT).²⁹⁰ In terms of the DBOT, the private company (ODA) is responsible for designing, building and operating the social

²⁷⁹ Ibid, 50.

²⁸⁰ Ibid, 56.

²⁸¹ Social Housing Regulatory Authority (2017) The State of the Social Housing Sector Report Social Housing Regulatory Authority Johannesburg 29.

²⁸² Social Housing Act 16 of 2008.

²⁸³ Section 11, *ibid*.

²⁸⁴ S5(d)(2), *ibid*.

²⁸⁵ A template for such an agreement, including the land availability agreement is available on the National Housing Association of South Africa webpage. See <https://www.nasho.org.za/wp-content/uploads/SP-Tools/SP-DOC-5-Project-Agreement-Template-PA.pdf>.

²⁸⁶ National Association of Social Housing Organisations (2019) Smart Partnership Template. Available at <https://www.nasho.org.za/wp-content/uploads/SP-DOC-5-Project-Agreement-Template-PA-jg5bpFNL.pdf>.

²⁸⁷ *Ibid*.

²⁸⁸ Social Housing Regulatory Authority (2016) The State of the Social Housing Sector Report Social Housing Regulatory Authority Johannesburg 29.

²⁸⁹ Social Housing Regulatory Authority (2006). Social Housing Policy for South Africa: Towards an Enabling Environment for Social Housing Development Social Housing Regulatory Authority Johannesburg 24.

²⁹⁰ National Treasury of South Africa (2018). Public-Private Partnerships National Treasury of South Africa Johannesburg 153.

housing project.²⁹¹ The control and ownership of the project is transferred to the SHI upon completion of the project. The DFBOT model is similar to the DBOT except that the private company (ODA) is also responsible for financing the social housing project.²⁹² Currently, there are no formally registered PPPs for social housing in the official database.²⁹³

SHIs and residents – Cooperation between SHIs and tenants is informal. SHIs should encourage and support residents in their efforts to fulfil their own housing needs in a way that leads to the transfer of skills and empowerment.²⁹⁴ Education, training and information sharing must take place before occupation by residents and must be done throughout the process in such a way that residents are able to make informed decisions about their housing and protect themselves as responsible housing consumers.²⁹⁵ Where possible, participation by residents at different levels and phases of social housing projects should be accommodated.²⁹⁶ In practice, however, it appears that participation campaigns are focused on increasing participation from the government sector (provincial and local government) in the delivery of social housing projects, rather than improving the participation of residents.²⁹⁷

1.3 Business plan and financing mechanisms

There are two main instruments through which SHI could obtain funding. The first being the Restructuring Capital Grant (RCG) and the second including the Institutional Subsidy.²⁹⁸ The RCG is intended to fund a proportion of the capital costs of the social housing project, while the remaining portion be funded by debt or other sources of funding.²⁹⁹ The amount of the grant is equal the amount required to allow rental income to cover the ongoing operating costs of the project, pay for debt service and build some reserves in the SHI. In practice, these grants contribute approximately 64 per cent of the capital costs per unit and are connected to designated restructuring zones³⁰⁰ (see 2.1 below). To qualify for the RCG, a social housing project must have at least 30 per cent of the units allocated to individuals in the primary target market, who would pay subsidized rent.³⁰¹

The Institutional Subsidy, in turn, is a conditional grant, financed by the National Department of Human Settlements that is allocated on a project-by-project basis by provincial governments for approved social housing projects.³⁰² The institutional subsidy caters the development of affordable rental projects that do not fall

²⁹¹ Blose, N. L. (2015). An Assessment of the Role of Public-Private Partnership Models in the Delivery of Affordable Housing in South Africa: A Case Study of SOHCO Property Investments, Durban Master's Thesis. University of Kwa-Zulu Natal, Durban 45.

²⁹² Ibid.

²⁹³ National Treasury of South Africa (2018). Public-Private Partnerships National Treasury of South Africa Johannesburg 160 – 163.

²⁹⁴ Department of Human Settlements (2009). National Housing Code Department of Human Settlements, Pretoria 25.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Social Housing Regulatory Authority (2017). The State of the Social Housing Sector Report Social Housing Regulatory Authority Johannesburg 39.

²⁹⁸ The Housing Development Agency and National Association of Social Housing Organizations (2013). Reviving Our Inner Cities: Social Housing and Urban Regeneration in South Africa, The Housing Development Agency Johannesburg 7.

²⁹⁹ Social Housing Regulating Authority (2019). Socio-Economic and Spatial Restructuring Impact of Social Housing Social Housing Regulating Authority Johannesburg 14.

³⁰⁰ The Housing Development Agency and National Association of Social Housing Organisations (2013). Reviving Our Inner Cities: Social Housing and Urban Regeneration in South Africa, The Housing Development Agency Johannesburg 7.

³⁰¹ Social Housing Regulating Authority (2019). Socio-Economic and Spatial Restructuring Impact of Social Housing Social Housing Regulating Authority Johannesburg 14.

³⁰² Ibid.

within the identified restructuring zones.³⁰³ As such, this grant is available to SHIs who provide alternative tenure options to low income, other than immediate ownership.

In 2017, the South African Government re-evaluated funding mechanisms and decided that the RCG and Institutional Subsidy should be streamlined and administered together by the SHRA, under one grant, namely, the Consolidated Capital Grant.³⁰⁴ The purpose of this decision was to improve the funding coordination of the social housing sector. From a literature review, it appears that these two funding streams are still available, but under one umbrella.³⁰⁵ The South African Government has recently committed to assist the social housing sector with ZAR 4 billion over the next five years. It is expected that by 2025, an additional 30,000 social housing units will be delivered in designated and strategic areas.³⁰⁶

In addition to the above, SHIs may also collect funding through rent, equity and loans.³⁰⁷ The mixture of funding per SHI differs by project and institution. In order to be eligible for the funding, the SHI must be accredited and must have a long-term strategic (five to ten years) business plan.³⁰⁸ The business plan must contain information relating to the manner in which a SHI plans to meet its financing obligations for development loans and ongoing maintenance

and management of the development property.³⁰⁹ It must develop an operational plan and budget which must contain information demonstrating the viability of its projects.³¹⁰ This information must include details regarding the financial resources that are available to cover any short-to medium-term operating deficits; contingency plans for vacancy and bad debt; applicable annual escalations; and detailed cash flows over loan or debt period.³¹¹

³⁰⁹ Regulation 24 of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

³¹⁰ Social Housing Regulatory Authority (2012). Social Housing Regulations, Social Housing Regulatory Authority Johannesburg 15.

³¹¹ Supra note 192.

³⁰³ Ibid.

³⁰⁴ Social Housing Regulatory Authority (2017). The State of the Social Housing Sector Report Social Housing Regulatory Authority Johannesburg 37.

³⁰⁵ Ibid.

³⁰⁶ Social Housing Regulating Authority (2019). Strategic Plan Social Housing Regulatory Authority Johannesburg 27.

³⁰⁷ Social Housing Regulatory Authority (2017). The State of the Social Housing Sector Report Social Housing Regulatory Authority Johannesburg 71.

³⁰⁸ Social Housing Regulatory Authority (2012). Social Housing Regulations, Social Housing Regulatory Authority Johannesburg 15.



2. Non-profits and Housing Provision Mechanisms

2.1. Access to land and housing provision/ acquisitions

The South African Government provides subsidies to social housing projects in designated restructuring zones. A restructuring zone is a geographic area which has been identified by a municipality, with the concurrence of the provincial government, for purposes of social housing.³¹² Such zones should, in principle, be situated in the urban core, and where possible municipalities must focus on infill development.³¹³ The restructuring zone may be located on the periphery if the identified area forms part of a future development corridor or zone.³¹⁴ The restructuring zones must be larger than individual project sites or specific township renewal projects. Municipalities must provide access to land and buildings for social housing development in the designated restructuring zones.³¹⁵ They must also provide access to the infrastructure and services for approved projects in designated restructuring zones. However, it seems that the law and policy framework is unclear whether social housing projects may be developed in areas falling outside of restructuring zones.³¹⁶ It also appears that restructuring zones are not being designated fast enough to keep up with social housing demand. Proposals have been made for municipalities to have the authority to designate areas for social housing

outside restructuring zones to accommodate larger social housing projects and more social housing stock.³¹⁷

SHIs can lease or purchase land, below market value, for purposes of developing social housing projects from their local municipality. The details of the land acquisition, whether by means of lease or purchase should be stipulated in a Land Availability Agreement between the municipality and the SHI. The Land Availability Agreement should include the intended purchase or lease price and conditions of lease or purchase, the intended transfer date or date of occupation for lease, a description of the land including of the roles and responsibilities of the contracting parties.³¹⁸

Time-lines for the acquisition of land depends on the size and extent of the social housing project. The general process is as follows: the SHI should, within the available restructuring zones in its municipal area, identify suitable land required for the project envisioned. The land must be suitable for medium- to high-density social housing development. Parallel to this process, the SHI should carry out a market and social survey study to determine the housing needs and target groups. The suitability of the intended project must be assessed and must match the housing needs. It should also comply with the development vision of the local municipality as indicated in its planning instruments (integrated development plan and spatial development plan).³¹⁹ Should the social and market survey reveal a need for social housing, including a

³¹² Section 1 of the Social Housing Act 16 of 2008.

³¹³ Department of Human Settlements (2017). Restructuring Zones: Report to the Portfolio Committee, Department of Human Settlements, Pretoria, 17.

³¹⁴ Elgin, R. (2017). Land Acquisition and Development for Human Settlement Development, AFESIS-CROPLAN, Port Elizabeth 3.

³¹⁵ S 5(c) of the Social Housing Act 16 of 2008.

³¹⁶ Social Housing Regulating Authority (2019). Strategic Plan Social Housing Regulatory Authority Johannesburg 29.

³¹⁷ Social Housing Regulating Authority (2019). Strategic Plan Social Housing Regulatory Authority Johannesburg 29.

³¹⁸ Social Housing Regulatory Authority (2011). Social Housing Institutions Operations Manual Social Housing Regulatory Authority Johannesburg 11.

³¹⁹ Department of Human Settlements (2017). Background to Restructuring Zones Department of Human Settlements, Pretoria, 5.



Township Cape Town, South Africa. by Isabel Sommerfeld, source : Flickr

relevant target group, and if the land forms part of a restructuring zone, the SHI should initiate communication with the local municipality in order to sign a Land Availability Agreement.³²⁰ The signing and implementation of a valid Land Availability Agreement concludes the land acquisition process.³²¹ There are no clear time-lines for the duration of the land acquisition process. The process is subject to approval and review by the municipal council.³²² It is further important to note that land acquisition procedures, whether lease or purchase, must also comply with local government financial and procurement procedures for tenders and partnership agreements as stipulated in the Local Government: Municipal Finance Management Act 56 of 2003.³²³

³²⁰ Supra note 201.

³²¹ Ibid.

³²² AFESIS-CORPLAN (2013). Land and Settlement Development Research Study: Land Acquisition Transfer, AFESIS-CORPLAN, Port Elizabeth, 9.

³²³ Specifically, Chapter 11 of the Local Government: Municipal

2.2. Planning and housing standards and approval process

The right of access to adequate housing is enshrined in the Bill of Rights in the South African Constitution.³²⁴ It is also underpinned in the Social Housing Act 16 of 2008. SHIs must ensure that their respective housing projects give full effect to this right. Social housing projects must be responsive to local housing demands and special priority must be given to the needs of women, children, child-headed households, people with disabilities and the elderly.³²⁵ The housing projects must also support the economic development of low- to medium-income communities by providing housing close to jobs, markets and transport, and must stimulate job opportunities to emerging entrepreneurs in the

Finance Management Act 56 of 2003

³²⁴ S 26(1) of the Constitution of the Republic of South Africa, 1996.

³²⁵ S 2(1)(a), *ibid.*

housing services and construction industries.³²⁶ They must further afford residents the necessary dignity and privacy by providing the residents with a clean, healthy and safe environment.³²⁷

Social housing projects must also address and implement the metering and consumption of water and electricity in a manner that suits the local municipality and the SHIs administrative capacity.³²⁸ Such projects must also include amenities that contribute to the social environment such as play areas, landscaping, parking, laundry and drying areas, and community meeting rooms.³²⁹ The SHI must allow for a wide range of accommodation options ranging from bachelor units to three bedroom units.³³⁰ The housing units must comprise of medium-to-high density units. Free-standing units on individual erven are not eligible.³³¹ The quality and design of individual units must comply with the minimum standards laid down in the National Building Regulation Building Standards Act, read with the South African Bureau of Standards National Building Regulations 0400-1990.³³² These regulations pertain to, among other things, minimum requirements for floor area ratios, lighting and ventilation, drainage, structural design, heating, and water and sanitation facilities.³³³ SHIs must submit building plans to their local municipality. If the SHI aims to renovate or refurbish existing buildings, it must also submit a building plan. The

³²⁶ S 2(1)(b), *ibid.*

³²⁷ S 2(1)(c), *ibid.*

³²⁸ Regulation 20(2) of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

³²⁹ Department of Human Settlements (2009) National Housing Code Department of Human Settlements, Pretoria 39.

³³⁰ Regulation 20(6) of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

³³¹ Regulation 20(4), *ibid.*

³³² Published as R 574 in Government Gazette 31084 of 30 May 2008.

³³³ Part B – D of the South African Bureau of Standards National Building Regulations 0400-1990.

submission procedures are determined by each local municipality. In general, the application must be submitted on the applicable forms (available on municipal webpages). Municipalities must reach a decision on the building plans within 30 to 60 days after submission of the plans for approval.³³⁴

In order to develop a social housing project, the SHI must ensure that the process does not contravene the local municipality's land use and zoning scheme, including the development principles in spatial development framework, integrated development plan, and relevant spatial planning by-laws.³³⁵ In this regard, the SHI should ensure that the project is developed in a designated restructuring zone, that the project complies with the medium prescribed densities, and that the project contributes to the housing development targets of the relevant municipality.³³⁶

From the available literature, it appears that the social housing projects do not undergo any special municipal planning procedures.³³⁷ However, the SHI must ensure that the housing project complies with existing zoning.³³⁸ If this is not the case, a rezoning process must

³³⁴ Ethekwini Municipality 2020 Development Applications and Approval: Building Plans and Permission to Build http://www.durban.gov.za/City_Services/development_planning_management/Development%20Applications%20and%20Approvals/Pages/FAQ.aspx#:~:text=The%20local%20authority%20is%20required,decided%20upon%20within%2030%20days.

³³⁵ Sections 22, 24 and 32 of the Spatial Planning and Land Use Management Act 16 of 2013.

³³⁶ Regulation 19 of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

³³⁷ Department of Human Settlements Date Unknown Social Housing available at http://www.dhs.gov.za/sites/default/files/documents/publications/Social_Housing.pdf; Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012, and Social Housing Regulatory Authority (2012) Social Housing Regulations, Social Housing Regulatory Authority Johannesburg 24.

³³⁸ Regulation 19(2) of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

be implemented to obtain the desired zoning and land-use rights to match the project.³³⁹ Rezoning and township application procedures vary between municipalities. The details are stipulated in the municipal planning by-law. In general, the SHI must provide notice of its intention to establish a township in the relevant Provincial Gazette and local newspaper.³⁴⁰ The notice must include details of the application including the street address, the name of the proposed township and the nature and general purpose of the application.³⁴¹ The decisions regarding rezoning applications must be reached within 90 days of the application submission.

Finally, the SHI must also prove (in the Land Availability Agreement) that it is cooperating with government in developing new homes that meet the economic and social needs of low-income communities in a sustainable manner.³⁴² It must secure access to bulk services, such as water, electricity and sewerage, and road access to the municipal street network, either by way of a service agreement or via written confirmation from the municipality.³⁴³ The principle instrument through which social housing projects are realized is through the Land Availability Agreement and the land acquisition procedure³⁴⁴ (described above).

2.3. Maintenance and operational systems

SHIs undertake property management/maintenance, rent and vacancy management and tenant management (tenanting, tenant

liaison and tenant empowerment).³⁴⁵ The maintenance responsibilities of SHIs include, emergency repairs on account of services malfunctioning, routine management and planned maintenance.³⁴⁶ The maintenance management system must include management arrangements and staffing resources that are sufficient to deliver excellent property management service, including a maintenance plan which makes adequate provision for the carrying out of periodic large scale works to buildings, reactive maintenance and unit turnover maintenance.³⁴⁷ SHIs must further conduct a comprehensive inspection of all housing stock at least every three years.³⁴⁸ The rent management system, in turn, must include a rent setting policy, a rent increase system, a rent collection policy.³⁴⁹ The tenant vacancy system must include information pertaining to the number of properties tenanted as a proportion of the number of properties and average turn-around time for vacant properties and number of vacant days divided by vacant properties.³⁵⁰

The tenant management system must also include a comprehensive complaints management system and a dispute management system. Complaints must be lodged to the SHI. All complaints must be systematically lodged, recorded, investigated and confirmed for the appropriate advice or action that must follow.³⁵¹

³⁴⁵ Social Housing Regulatory Authority (2019). Strategic Plan Social Housing Regulatory Authority Johannesburg 42.

³⁴⁶ Regulation 28(2) of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012

³⁴⁷ Social Housing Regulatory Authority (2012). Social Housing Regulations, Social Housing Regulatory Authority Johannesburg 23.

³⁴⁸ Regulation 8(e)(iii) of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

³⁴⁹ Regulation 8(f), *ibid.*

³⁵⁰ Regulation 8(g), *ibid.*

³⁵¹ Department of Human Settlements (2020). Breaking New Ground Journal Circular Departments of Human Settlements Pretoria 30.

³³⁹ Regulation 19(3), *ibid.*

³⁴⁰ See City of Johannesburg Municipal Planning By-Law 2016, City of Cape Town Municipal Planning By-Law 2015.

³⁴¹ *Ibid.*

³⁴² Regulation 9(a) of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

³⁴³ Regulation 19(4), *ibid.*

³⁴⁴ Regulation 19(4), *ibid.*

Disputes must be settled in terms of the SHIs conflict and dispute resolution policy. SHIs have a wide discretion to develop the complaints management system and dispute management policy.³⁵² At a minimum, the complaints and dispute management policies should allow all parties to submit complaints and receive the opportunity to present their case (have complaint heard).³⁵³ If a dispute cannot be resolved, the tenants also have the option to take an SHI to court.

Every SHI should further conduct an annual survey regarding the tenant satisfaction with the condition and maintenance of the property.³⁵⁴ The information obtained from the survey must inform the action the SHI will take to improve the maintenance services.³⁵⁵ Finally, the SHI must develop a tenant empowerment system which must ensure that tenants are empowered to understand the social housing programme and the management of their estates and surrounding neighbourhood.³⁵⁶ This system should also improve the tenant's ability to take on leadership and other roles that will contribute to the development of communities and any other challenges that the communities face.³⁵⁷

3. NGOs and Beneficiaries

3.1. Beneficiary criteria

The South African social housing sector targets mainly people with low income (i.e. below ZAR 7,500).

A guiding principle of the Social Housing Policy

³⁵² Ibid, 31.

³⁵³ Ibid.

³⁵⁴ Regulation 8(e) of the Social Housing Regulations published under GN R51 in Government Gazette 34970 of 26 January 2012.

³⁵⁵ Ibid.

³⁵⁶ Department of Human Settlements (2020). Breaking New Ground Journal Circular Department of Human Settlements Pretoria 30.

³⁵⁷ Ibid.

is to ensure income mix and where possible, a racial mix. The income-mix is prescribed per individual project, which specifies desired percentages for different income categories ranging ZAR 1,500 (to ZAR 7,500. Criteria for qualifying for housing assistance varies across provincial housing departments, but in all cases applicants must demonstrate a regular income which can sustain the monthly rental and provide a deposit equal to three months of rent.

In Cape Town for example, to qualify for a housing subsidy, applicants must:

- Earn a monthly income in the range determined by National Department of Human Settlements
- Lawfully reside in South Africa (citizen or permanent residence permit)
- Be legally competent to contract (i.e. over 18 years of age)
- Has not previously benefited from government housing assistance directly or indirectly through a spouse
- Not own a fixed residential property

The South African social housing sector also sets priority groups in the allocation of social housing including older people (80 years and older); military veterans; people residing in informal settlements (not suitable for housing development, i.e. wetlands and those identified for relocation); people within and outside of the targeted area with evidence of their length of stay in a particular area.

3.2. Housing tenure options

According to the South Africa Social Housing Policy, rental housing is the preferred tenure option.

It is not intended for beneficiaries seeking immediate individual ownership (other ownership options are available in the Housing Subsidy Scheme).

Rent increases annually (at CPIX) to ensure financial viability of projects and institutions and that there is a “harmonious” rent level for units of comparable quality across the social housing sector.

If households are unable to afford rent increases, they will be required to leave the project.

Transfer to individual ownership is permitted through express permission of the regulator, and on the assumption that a portion of subsidy will be repaid to bring the actual subsidy received into alignment

Typically, ownership can only be considered after 15 years of tenancy and is only permitted if approved by the regulator after careful consideration of the fundamental objectives of social housing, and on the assumption of a “buy-back” of part of the grant.

Collective forms of ownership are allowed on the condition that the people involved are fully aware, understand and subscribe to these forms of collective ownership options. Co-operative tenure allows for, and encourages, members’ contributions to be invested into projects as equity contributions, in order to reduce the overall project debt financing. Housing co-operatives must be structured in a manner that restricts members from financially gaining from any grant funding provided to the project.

3.3. Rights and duties

The relationship between residents and landlords is regulated by the Housing Act, 1997 and the Rental Act, 50 of 1999 - Chapter 3, section 4

(1) to (5).³⁵⁸

Residents need to be made aware of the tenure provisions of the social housing project prior to and upon acceptance of these provisions as a form of consumer protection.

Social housing is based on mutual respect for the rights of tenants and owners, and the speedy resolution of conflicts that may arise.

Pursuant to Rental Act, 50 of 1999 - Chapter 3, sections 4 and 5

The landlord’s rights against the tenant include his or her right to

- i. Inspection in a reasonable manner after reasonable notice to the tenants
- ii. Prompt and regular-payment of a rental or any charges that may be payable in terms of a lease
- iii. Recover unpaid rental or any other amount that is due and payable after obtaining a ruling by the tribunal or an order of a court of law
- iv. Terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease
- v. On termination of a lease to receive the rental housing property in a good state of repair, save for fair wear and tear and repossess rental housing property having first obtained an order of court
- vi. Claim compensation for damage to the rental housing property or any other improvements

³⁵⁸ Republic of South Africa (1997). Housing Act. Retrieved from http://thehda.co.za/pdf/uploads/multimedia/Housing_Act_107_of_1997.pdf; and Republic of South Africa (1999) Rental Act. Retrieved from <https://www.westerncape.gov.za/Text/2005/10/a50-99.pdf>

on the land on which the dwelling is situated, if any, caused by the tenant, a member of the tenants household or a visitor of the tenant

At the same time, the tenant's rights as against the landlord include his or her right not to have

- i. His or her person or home searched
- ii. His or her property searched
- iii. His or her possessions seized, except in terms of law of general application and having first obtained an order of court
- iv. The privacy of his or her communications infringed

Where possible, participation from residents at different levels, phases of projects and in various forms should be accommodated within the operations of the provider and manager of the housing option.

3.4. Community participation

The Social Housing Policy encourages the involvement of residents in the project and/or key stakeholders through meaningful consultation, information sharing and education, training and skills transfer

Social housing actors and the government cooperate to develop a consensus on roles and responsibilities, educate all parties on these roles and responsibilities, educate and allow for effective implementation of the contractual obligations of all parties.

Social housing must encourage and support residents in their efforts to fulfil their own housing needs in a way that leads to the transfer of skills and empowerment.

Education, training and information sharing must take place before occupation by residents and must be done throughout the process in such a way that residents are able to make informed decisions about their housing and protect themselves as responsible housing consumers.

KEY REFLECTIONS AND RECOMMENDATIONS

UN-Habitat, through this comparative analysis, has provided a comprehensive and global approach for successful social housing sectors. Through the lens of the five case study countries, it is hoped that from the evidence provided, countries can have a deeper appreciation of the value that adequate housing can bring to those marginalized and resource-poor in our society. The case studies showcase how impactful a structured and connected legal framework is to achieving social inclusion, individual empowerment, and a sound base for financial support for those in need. Countries are encouraged to establish social housing frameworks that provide and guarantee adequate housing and social support for holistic development and care of tenants.

The comparative analysis takes note of the peculiarities of each framework, specific to the country's objectives for process and development. Each country has created its own construct suitable for its peculiar purpose according to national needs, housing context and vision. But the study also highlights and ties in many similarities in structural components, which can be easily adopted or adapted for country specific applications. Additionally, countries are encouraged to be innovative and pioneer more efficient and cost-effective ways to achieving affordable housing.

It should be appreciated that the comparative analysis is an observation of countries' work, which can and should be built on and is not meant to be a rigid set of rules. The analysis is merely a guide for the best practice in constructing the most suitable and efficient social housing system in a State. It is evidence-based guidance that can be used as a point of reference for creation, growth, or development.

Reflecting on the three components of the assessment methodology, the topic on government and non-profits relationship showed that while there is no clear 'one-size fits all' approach, there are some commonalities that can be inferred. For example, the rules and regulations in the case study countries for establishing and registering an NGO contain well-articulated guidelines for the application process including clear timelines for the registration process, simple requirements for what entails an NGO including but not limited to governance structures, reporting requirements, registration fees, and requirements for the submission of business plan. Additionally, non-profits have two co-existing funding sources available to sustain their work (government grants and private financing through bank loans). The countries' legal frameworks also permit non-profits to off-set costs through revenue raising mechanisms such as rental payments, maintenance, and service charges. Multiple partnership agreements can be established between all stakeholders involved in the social housing project (central government, local government, tenant's associations, developer, social service delivery, among others).

The component on non-profits and housing mechanisms demonstrated that social housing programs contain clear and predictable land and housing acquisition schemes to make it affordable and cost-effective for non-profit participation. The legal frameworks contain design and planning standards to ensure an adequate standard of living for the beneficiary that promotes environmental sustainability, health & safety, and liveability. The rules and regulations may outline special planning

and approval procedures to act as an incentive for non-profit organizations to engage in housing initiatives. Additionally, the regulatory framework should outline the rights and responsibilities of both the tenant and the landlord including establishing clear steps and timelines for dispute resolution as well as avenues to appeal unresolved complaints.

The examination of the functional relationship between non-profits and housing beneficiaries revealed that the eligibility criteria are set at government level while at the same time non-profit housing organizations may set additional criteria based on specific groups they may prioritize. Low-income households are primary target of non-profit housing, and housing units tend to be allocated respective to percentages set according to the income range of households, and by then prioritizing eligible applicants based on factors such as age and health status. A limitation on rent pricing may also be established which stipulates that tenants of social housing should not pay more than 20-25% of household income for housing. Rent-to-buy schemes are allowed in all the case study countries, but certain stipulated conditions must be met. In all the case study countries, a valid residency permit is a precondition for successfully applying for social housing. Asylum seekers and foreigners who intend to settle in the country permanently, may be allowed to apply for non-profit housing.

ANNEX: CHECKLIST FOR COUNTRIES TO ASSIST IN MODERNIZING, REVISING AND REVIEWING SOCIAL HOUSING LEGAL FRAMEWORKS

| Social Housing Framework Elements | Yes | No |
|---|-----|----|
| A. Registration, Licensing and Internal Governance | | |
| Is there a legal or regulatory framework for social housing? (either a standalone statutory instrument or incorporated into National Housing statutory instruments) | | |
| Does a Regulator for social housing exist? | | |
| Is there a registration process required for social housing NGOs? | | |
| Are there eligibility requirements as a condition for registration approval? (including documents required) | | |
| Is there a registration cost structure and processing timeline? | | |
| Is there an appeals procedure if registration is denied? | | |
| Is there an electronic filing system (with payment option, prescribed forms and templates)? | | |
| Are there mandatory internal governance structures for social housing NGOs? (e.g., Board of Directors/ Executive/ membership or shareholder restrictions) | | |
| Are the internal governance structures differentiated for larger and smaller social housing organizations? | | |
| B. Cooperation and Partnership Frameworks | | |
| Is there a government framework to monitor the activities of social housing NGOs? (i.e. (financial and performance audits, programmatic reporting as conditions for access to public funding) | | |
| Are there opportunities to collaborate with national/ local authorities? (e.g., land acquisition agreements, construction modalities or other mechanisms to directly address the housing needs) | | |

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| Are there opportunities to collaborate private sector entities? (e.g., in design and constructing the housing units, property maintenance etc.) | | |
| Is there an Apex Body such as a Non-profit Housing Providers' Cooperative/Association/Federation/League that allows membership for social housing NGOs and represents their interests? | | |
| C. Business Plan and Finance Instruments | | |
| Are social housing NGOs required to have business plans? | | |
| Are there models/templates or guidance for social housing NGOs on the content to include in their business plans? | | |
| Can social housing NGOs access public funding? (e.g., government grants, bonds and subsidies) | | |
| Are there tax incentives, rebates or other related financial assistance? | | |
| Can social housing NGOs access/generate private funding? (e.g., donations, bank loans, bonds) | | |
| 2. NGOs AND HOUSING PROVISION MECHANISMS | | |
| A. Access to Land and Housing Provision or Acquisition | | |
| Are there schemes for social housing NGOs to acquire land or housing? (i.e., designated area by local authorities/ residential re-zoning/ public acquisition by government) | | |
| Are there mechanisms to subsidize land prices and land/housing markets for NGOs? | | |
| Are there mechanisms for low-cost acquisition of land/housing from private owners? | | |
| Are there schemes for transfer of the ownership of social housing units from local authorities or private entities to the NGOs? | | |
| B. Planning, Housing Standards and Approval Process | | |
| Is there a requirement for statutory planning and construction approval? (i.e., planning application, fees, and issuance of planning and construction permit) | | |

| | | |
|--|--|--|
| Is there an appeals process available when planning permission/building permit is denied? | | |
| Are there mechanisms for early beneficiary consultations and/engagement in planning and design process? | | |
| Are there measures to ensure providers account for housing needs? (ethnic/ cultural/ environmental/ social) | | |
| Are there special planning standards or exemptions/ incentives through taxes or fees? (density and floor area bonuses, tax abatement programs, expedited permitting process and waived fees) | | |
| Are there requirements for housing typologies? (mixed-use, mixed income, multi-family or single family (attached, detached housing) | | |
| Are there requirements for social amenities? (open/ green spaces, recreational spaces) | | |
| Is there a requirement for consideration of neighborhood planning? (access to transportation, access to urban core, employment, healthcare) | | |
| C. Maintenance and Operation Systems | | |
| Are social housing NGO responsible for the management and maintenance of social housing properties? | | |
| If yes, are there minimum management systems required? (repair and inspection system/ local authority to monitor and conduct compliance) | | |
| Are there measures to cover service charges and repair costs? | | |
| 3. NGOS AND BENEFICIARIES RELATIONSHIP | | |
| A. Beneficiaries' Criteria | | |
| Is the beneficiary criterion based on identity and/ residency? | | |
| Is the beneficiary criterion based on income and/ asset eligibility? | | |
| Does the beneficiary criteria consider family status (e.g., widowed, divorced, single/ multi-family homes)? | | |

| | | |
|--|--|--|
| Does the beneficiary criterion consider individual circumstances such as (long term medical and health condition/ disability/ retirement age/ long term unemployment)? | | |
| B. Housing Tenure Options | | |
| Are there provisions for social housing ownership? (e.g., freehold/mortgage/shared equity scheme) | | |
| Are there requirements for leasehold ownership? (rent privately funded/ rent subsidized/ rent with the option to purchase) | | |
| Are there provisions for social housing ownership through the usufruct contract? | | |
| C. Rights and Duties | | |
| Does the social housing tenant have access to repairs and regular property inspection? | | |
| Does the social housing tenant have the right to buy / sell the allocated unit? | | |
| Are there inheritance and succession rights? | | |
| Do beneficiaries/tenants have the right to participate in provision (construction) and/ or maintenance of social housing? | | |
| D. Community Participation | | |
| Is there a Tenant Apex Body (Associations/ Co-operatives/ League) to safeguard the interests and rights of social housing tenants? | | |
| Are there opportunities for tenant engagement? (e.g., forums, committees, on-site employment opportunities) | | |
| Is there a formal/informal complaints process (e.g., Internal complaints procedure with the landlord/ Public Housing Ombudsman) | | |
| Are there volunteer opportunities/on-site staff support? | | |

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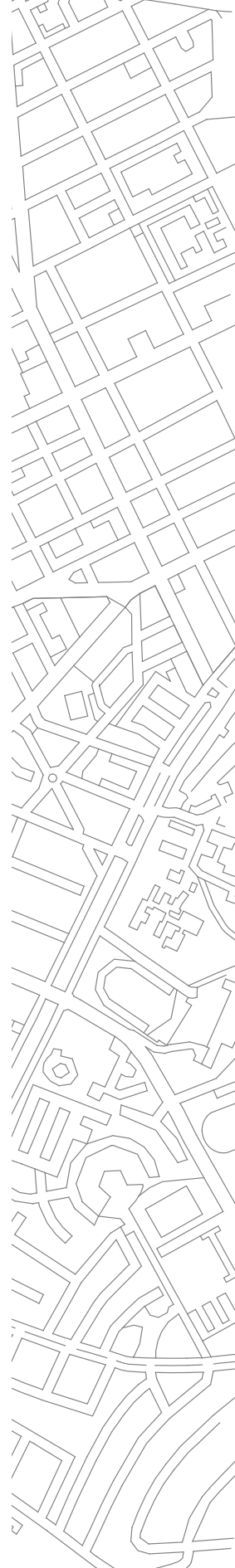
COMPARATIVE ANALYSIS OF NON-PROFIT HOUSING LEGAL FRAMEWORKS IN FIVE COUNTRIES: AUSTRIA, BRAZIL, ENGLAND, NETHERLANDS, AND SOUTH AFRICA

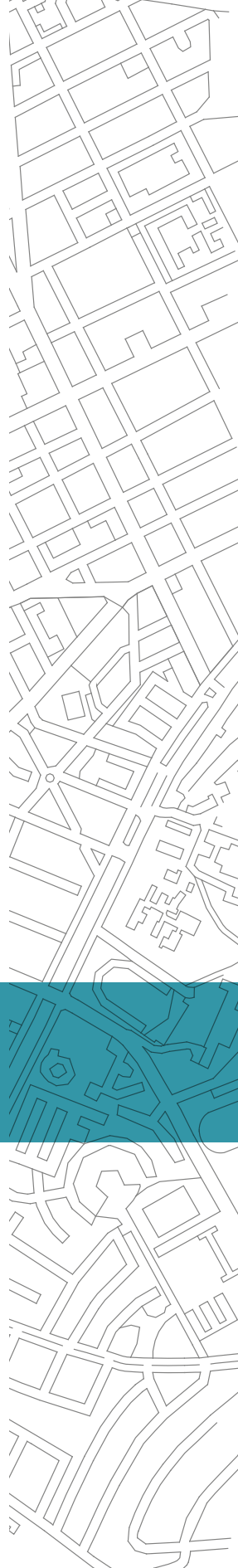
URBAN LEGAL CASE STUDIES | VOLUME 12

More than 1.8 billion people worldwide lack adequate housing and the number of people living in informal settlements has passed a billion. Housing is a fundamental human right and UN-Habitat recognises its catalyst role in the sustainable development agenda. 'Housing at the centre', a global approach set out by UN-Habitat in 2015, puts people and human rights at the foreground of sustainable urban development policies to leave no one and no place behind. A more coherent and comprehensive framework of affordable housing is necessary to ensure broad access to this necessity of life, one which facilitates cooperation across socio-economic backgrounds and creates shared interests in a safe community, a strong economy, and a vibrant social scene to harness the framework's transformative potential.

The affordable housing solutions generated by the non-profit housing sector provide a novel framework for reforming affordable housing policy and legal frameworks. UN-Habitat has conducted a comparative analysis of the non-profit housing sector in five countries (**Austria, Brazil, England, Netherlands, and South Africa**), which serve as best practice legal frameworks for a robust and sustainable social housing sector. Through this assessment, UN-Habitat seeks to promote the participation of the non-profit sector in the provision of social housing to meet the demand for urban housing needs and to bridge the housing affordability gap. This document is intended to not only help countries create or strengthen their legal frameworks to support the participation of non-profit organizations in the housing sector, but also proposes new governance frameworks to facilitate this.

The primary purpose of this analysis is to provide a framework for the successful development, support, and sustenance of a non-profit housing sector in any country that seeks to adopt this approach to diversifying the housing stock. Naturally, its application depends on development priorities. To capitalize on the best practice available, a country checklist has been provided that will assist countries to conduct an internal assessment on its housing needs, existing policy and legal framework, and financial means which will provide systematic guidance for legislative, policy and institutional reform.





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