

## What is an RTO?

A Right to Occupy (RTO) community is one of the models used when an individual or usually a group, decides that there is a need for accommodation for a specific sector of society, for example, seniors or snowbirds, or Christian seniors or Christian snowbirds. The individual or group doing this is often called, the “Sponsoring Organization” (SO).

The SO will often form a not-for-profit corporation in which to conduct the activities of the SO. This corporation will have no assets when it is formed and will have members who have the responsibility of operating it without the possibility of financial gain for themselves. It will not have shareholders who are looking to make money for themselves as is the case with for-profit corporations.

The method of choosing the first as well as subsequent members and directors is usually detailed in the Articles of Incorporation when the corporation is formed. Further details may be specified in the Bylaws.

### **The funds for all expenses are provided by those who purchase the right to occupy the units.**

The Occupants are responsible to provide all funds necessary for the operation of the community, such as the costs of administration, property taxes for their unit and the common areas of the community, insurance, maintenance and repair, and contributions to a reserve fund for future expenses such as renovation of units, repairs or replacement of water, sewer and power services, (unless provided by the utility), roads, etc.

The SO is responsible to manage the community, including planning and construction of the site and the units, sale of the RTOs, management of the community during construction, occupancy and thereafter. The SO is also responsible to set an annual budget for the next year, set the amount that each Occupant will pay to meet his portion of the budget, collect and manage the funds, review the actual to budget at the end of the year and collect any shortfall or refund any surplus, and make or amend such rules as may be needed for the operation of the community.

When an Occupant is no longer able or does not wish to occupy the unit, the Occupant informs the SO who then finds another party who wishes to purchase an RTO unit, ensuring that the prospective Occupant is in compliance with the stated purpose of the community, such as senior, Christian, desire to be involved in the community and activities provided including attending the Church services in the SB Center, etc.

The RTO model provides that the SO retain ownership of the property and enables the SO to ensure that future occupants fit the profile established by the founders of the community, thereby helping to ensure the longevity of the community. Free-hold property ownership does not provide that since the owner of a free-hold property can sell to anyone willing to purchase, without regard to whether they fit the original purpose of the community.

## **Application to Sunnybreeze**

How does this apply to the RTO units at Sunnybreeze? Sunnybreeze Christian Fellowship Inc. decided some years ago, in addition to all of its other functions, to be a sponsoring organization (SO) by making available some units for accommodation for those persons wanting to be a part of the Sunnybreeze Snowbird Community. Some units were purchased, and some were constructed over several years.

### **Responsibility of the Sunnybreeze Corporation (Owner)**

1. Continue to hold ownership and title to the land and buildings on which the RTO units are located as well as the common areas used by the Occupants.
2. Sell the right to occupy the units to the first Occupants of the units and subsequently when a Notice of Termination is received from an Occupant, ensuring that all Occupants fit the profile established by the Corporation. E.g. Christian, snowbird, wanting to be involved in the Sunnybreeze community including attendance at the Church services in the SB Center, etc.
3. Upon resale of the right to occupy a unit, pay the previous Occupant or his or her estate, according to Schedule "B" of the Right to Occupancy Agreement.
4. Manage the rental of any units when the Occupant is unable to use it and requests that the unit be rented. Ensure that all renters fit the profile established by the Corporation. Collect all rent due, arrange any cleaning and repairs needed, deducting the costs of same from the rent collected, and paying a portion of the rent, according to the established policy, to the Occupant.
5. Manage all aspects of the RTO units by setting budgets, collecting fees, ensuring that all necessary work is completed and paid for to keep the units in good repair as well as ensuring that all other expenses related to the units are paid. All expenses are to be paid from funds provided by the Occupants as detailed in Paragraph 3 of the RTO Agreement, "This annual operating expense is to cover the Owner's costs of operating the RTO Complex, including grounds care, property taxes, costs of services, repairs, **exterior** insurance, reserve fund and all other charges connected with operation of the RTO Complex only."
6. Ensure that the activities and amenities provided by the Sunnybreeze Corporation, such as shuffleboard, pickle ball, swimming pool, church, etc. are available to all supporters of the community including the RTO Occupants.
7. Ensure that all funds that are collected from the RTO Occupants are kept separate from the Corporation's funds and are used only for expenses related to the RTO units and their common area.
8. Ensure that no funds of the Corporation are used in any manner to pay any expenses related to the RTO units, since doing so would be viewed as providing a benefit to a person or a group of persons from funds of a charitable organization which would put the charitable status of Sunnybreeze in jeopardy and would be reason for revoking it.
9. Establish such rules and regulations which it may amend, change or alter whenever it deems necessary for the operation of the RTO units and the enjoyment of them by the Occupants.

### **Responsibilities of the RTO Occupants (Occupant)**

1. Purchase the right to occupy an RTO unit when available. Enjoy occupying the unit each year during the winter season, participate in the activities provided by the Sunnybreeze community and utilize the amenities provided by the Corporation as you desire.
2. Clean the unit as required.
3. Inform the Sunnybreeze Corporation when you will not be able to use your unit and would like it rented.
4. Provide a Notice of Termination when you no longer wish to or are able to use the unit.
5. Maintain Contents and Liability Insurance on your unit at all times.
6. Pay the water, sewer and power costs for your unit directly to the supplier.
7. Pay the invoiced amount to the Sunnybreeze Corporation to cover the portion allocated to your unit of all of the expenses for operating the RTO units, such as property taxes, building and liability insurance, maintenance and repair, community support fee, administration and the Replacement Reserve Fund.
8. Pay funds (As mentioned above) for a Replacement Reserve Fund to provide funds when they are needed to replace items like windows, doors, roofs, kitchens, bathrooms, flooring, light fixtures, appliances and AC units, when the useful life of those items has been reached. All of the funds received from the Occupants are kept separate from the funds of the Sunnybreeze Corporation and are used only to pay expenses related to the RTO units and their common areas.
9. Follow the rules and regulations established by the Sunnybreeze Corporation for the RTO units and Occupants.
10. Because Sunnybreeze Christian Fellowship, Inc. is a not-for-profit charitable corporation, no person may personally benefit financially from the Corporation. As a result, upon resale of the right to occupy a unit, the previous Occupant cannot receive more funds than they have put into the unit (the price paid plus any upgrades approved by the Owner), no matter what the resale price is.
11. A number of years ago we asked a Public Accounting Firm to advise us regarding this matter. The response we received was, "Tax exempt entities risk losing their tax-exempt status if any funds inure to the benefit of the members. The proposed arrangement for the life leases provides that a member who wishes to move out of their condo will receive 90% of the price they paid for it for the lease plus half of the profit from the resale. This could easily give a member more than they originally paid for their life lease and jeopardize the tax-exempt status of the church. I have advised them that they should limit the amount a selling member receives from the resale proceeds to the amount said member originally paid for their life lease." Hackley Manley & Company, Arcadia, Florida.
12. Purchase of the right to occupy a unit should never be viewed as an investment; it is an opportunity for the purchaser to have exclusive use of accommodation to come and participate in the activities and Christian fellowship year after year for a capital amount that is usually significantly less than the cost of a free-hold house. Annual costs are also usually about the same or a little less than the costs of maintaining a free-hold house.

## **Benefits of an RTO**

### **1. Care-free Lifestyle**

An RTO is an easy way to enjoy a carefree lifestyle without the responsibilities of owning a free-hold property. There is no need for you to arrange someone to mow the lawns, fix a broken appliance, install a new AC unit, or arrange building insurance. If a hurricane comes, you do not need to call the insurance company, get repair quotes, or arrange or manage repairs. You do not need to arrange house checks while you are away from the unit. When you want to leave, you just empty the refrigerator of perishable items, set the thermostat of the AC, lock the doors, leave, and forget about the unit until you arrive next season.

### **2. Quantity Discounts**

Because some of the things for the RTOs are purchased for a number of units at one time, bulk purchasing can provide lower prices, such as lawn mowing, building and liability insurance, and sometimes appliances and AC units.

### **3. Hassle Free Selling**

When you no longer want or are able to use the unit, there is no need to choose and call a Real Estate agent. You just complete and submit a Termination Notice to the Owner and everything is taken care of. You do not need to arrange showings or consider offers. If it is your estate looking after your affairs it is much easier for them. Instead of your executor, maybe one of your children, needing to come to Florida (or try to do it over the phone) to locate and choose a real estate agent, agreeing on a price, fielding offers over the phone and finally signing the Sales Agreement and later the deed to transfer the property, a Termination Notice is submitted and the Owner handles all that is necessary to find a buyer and complete the sale of the right to occupy the unit to the next Occupant. Upon completion of the transaction, your refund is paid to you or your estate.

### **4. Less expensive Selling**

Because the RTO is not real property, probate of your will in Florida is not required for the termination of your RTO Agreement and repayment of the refund. Before a free-hold property can be sold in Florida by an estate, it is usually required that the estate obtain Probate in Florida, which can take up to two years and cost \$10,000 to \$15,000. Closing costs on the sale of a free-hold property can be quite significant with legal fees, deed preparation, registration fees, and document stamp fees (\$700 per \$100,000 of sale price).

### **5. Peace of Mind for Spouses**

It is comforting for couples to know that no matter who goes first, the one left behind does not have to deal with payment of taxes, insurance and maintenance on a property in Florida, while they are grieving. If the one remaining chooses to return to Florida,

they do not need to do anything until they arrive at Sunnybreeze. If they choose not to return, they need only to submit a Termination Notice and the whole matter will be looked after for them. This is particularly helpful if the one left was not the one who looked after those details.