

Ontario Life Lease Residents' Association

PO Box 20015 ST CATHARINES RPO GRANTHAM, ON L2M 7W7

Website: ollra.ca

Email: info@ollra.ca

ONTARIO LIFE LEASE RESIDENTS' ASSOCIATION (OLLRA)

AND

BILL 141, AN ACT RESPECTING LIFE LEASES

A perspective

May, 2024

OLLRA

Ontario Life Lease Residents Association

Presented by the
OLLRA Executive Committee:

Janet Epp, Treasurer
Ron Leamen, Chair, Government Affairs Committee
Lois Marsh Duggan, Chair, Membership Committee
Kathy Walker, Co-chair, Executive Committee
David Wellock, Co-chair, Executive Committee

OLLRA

Ontario Life Lease Residents Association

OLLRA Contacts

David Wellock	dgwellock@gmail.com	Tel. 289-868-8837
Ron Leamen	rleamen@aol.com	Tel. 613-879-2868

Definitions

Administrators	Operators of not-for-profit life lease facilities (Boards of Directors and managers/staff)
The Bill	Bill 141, An Act Respecting Life Leases
NFP	Not-for-profit corporation
OLLRA	Ontario Life Lease Residents' Association
ONCA	Ontario Not-For-Profit Corporations Act
Resident(s)	A life lease resident
Standing Committee	Standing Committee on Heritage, Infrastructure and Cultural Policy

Executive Summary

The purpose of this document is for OLLRA (Ontario Life Lease Residents' Association) to provide the reader with a clear picture of Ontario's life lease communities from a physical, managerial, and human perspective. Additionally, we wish to inform government and others why Bill 141 is so important to this province's life lease residents.

Ironically, life lease is the only form of housing lacking legislative protection, thus setting it apart from rental housing, condominiums, assisted living and long-term care housing. This omission leaves Ontario's thousands of life lease residents vulnerable to potential mismanagement of their facilities, abuse, fear of eviction and financial jeopardy. While some administrators operate responsibly, others do not. Lacking provincial oversight, life lease administrators enjoy a 'wild west' environment. OLLRA believes it is time to remove the spurs from the cowboy boots.

Bill 141, sponsored by Conservative MPP Matthew Rae, is the third attempt by an MPP to correct this legislative loophole. It is a bi-partisan issue as the same document—formerly Bill 155—was presented by a Liberal MPP, Ann Hoggarth, in 2017 and, more recently, by MPP Andrea Khanjin as Bill 125.

Other voices have promoted legislation for the life lease community. In 2007, the Advocacy Centre for the Elderly presented a submission to the Ministry of Municipal Affairs and Housing concerning *Life Lease Housing in Ontario*. (Item 2 dealt with The Importance of Regulation and referred to life leases as operating "outside of the law"). Another document, *Life Lease Residential Housing: Is it Time for Legislation?* was provided in 2009 by John T. Clark of Clarks Barristers & Solicitors, Windsor, Ontario.

As a form of residency, life lease's popularity results from the many benefits it provides Ontario's seniors. It also offers a viable opportunity to deliver an economical path for those struggling to enter today's housing market. Bill 141 is required to ensure this housing opportunity enjoys its potential.

OLLRA: Who are we?

The Ontario Life Lease Residents Association (OLLRA) is an association of people living in life lease housing or those interested in the concept. The initial members of OLLRA are residents of life lease properties in the Niagara Region. Some live in very new buildings, others in “villages” built quite a few years ago.

We began the association in 2023 because we love the life lease model but were frustrated with our administrators’ abuse of their authority. We **want government regulation to protect us financially and to require transparency in governance** from the not-for-profit corporations that control our homes.

Today, we are nearing 300 members in five cities and are growing rapidly. Our objective is to become a province-wide association.

<><>

What is life lease housing?

Ontario (<https://www.ontario.ca/document/life-lease-housing>) describes it as:

In life lease housing, the buyer purchases an interest in that property—which gives the buyer the right to occupy a unit for a long period of time, often for their lifetime. Like condo owners, the buyer pays a lump-sum purchase price, and then continues to pay:

- *property taxes*
- *monthly fees for maintenance*

Life leases are usually priced lower than similarly sized condominiums in the area. This could be due to the lack of availability of conventional mortgages and the exemption from land transfer taxes.

Life lease housing is usually developed and operated by nonprofit or charitable organizations called “sponsors.”

Life lease buyers are often seniors looking to move into smaller homes.

While true, this explanation is somewhat simplistic. There are several models of life lease in Ontario. The variances are likely attributable to the fact that, when life lease housing first appeared in the province, there were, and remain, no legislative guidelines in place. As someone observed, if you’ve seen one life lease facility, you’ve seen one life lease facility. A simplified overview of life lease provides three basic categories:

1: **Market-value** facilities. In market-value life lease organizations, subject to the lease, the departing resident will either sell their ‘right’ to a buyer they have themselves sourced or sell it back to the corporation for a mutually agreed upon price. In both cases a qualified realty appraisal is likely involved to establish the current market value.

2: **Non-market-value** life lease corporations usually require the departing resident to sell their 'right' back to the corporation for a price pre-determined by the lease.

3: **Campus life lease.** Campus life lease operators provide a mixture of services which can involve life lease housing, assisted living and/or long-term care housing, and sometimes other services. The life lease style can be either market-value or non-market-value. Of the two campuses the writer is aware of, both initially commenced operation solely as life lease residential properties and became mixed-use (campus) properties over the course of several years.

Life lease housing usually commences with the support of a sponsor. Sponsors include: municipalities, churches, service clubs, cultural/ethnic organizations and others.

<><>

Human structure of a life lease not-for-profit operation.

Typically, there are three elements common to all forms of life lease. Look at it as a triangle.

1: One junction of the triangle is home to the **board of directors**. The directors are typically unpaid volunteers with no direct ownership interest in the not-for-profit corporation. The directors are governed by the corporation's by-laws; their role is to provide guidance to the management team. Some boards allow residents to sit as directors; unfortunately, many do not. As there is no provincial legislation governing life lease operations, directors and their managers, as previously noted, enjoy an unregulated environment with little or no oversight.

2: A second junction of our triangle covers the **management team**. For our purposes here, management includes everyone from a CEO to maintenance staff, organized in a traditional top-down fashion. They are responsible for the day-to-day operation of the corporation.

3: The third junction of the triangle is reserved for the **residents**. Residents have purchased an interest in the corporation and have acquired a 'right to occupy' their assigned property and typically pay all of the corporation's expenses (campus-style corporations excepted as other revenue streams are involved).

<><>

Are life lease residents tenants or owners?

This is an area of confusion as even Bill 141 erroneously refers to 'landlords' and 'tenants'. It is OLLRA's position that neither term is accurate when applied to not-for-profit life lease communities.

Landlord definitions: Penguin dictionary: *a person who owns land, buildings or accommodation for lease or rent. A person who keeps a guesthouse, lodging house or pub.*
Merriam-Webster definition: *the owner of property (such as land, houses, or apartments) that is leased or rented to another. 2.: the master of an inn or lodging house.*

Note that in a NFP life lease, neither the directors (unless they are also residents) or management can be called ‘owners’ as they own nothing. Residents, on the other hand, as noted by the province, own an interest in the property and a ‘right to occupy’. (*In life lease housing, the buyer purchases an interest in that property—which gives the buyer the right to occupy a unit for a long period of time, often for their lifetime.*)

Tenant definition: Penguin dictionary: *an occupant of land or property belonging to someone else, specifically somebody who rents or leases a house or flat from a landlord.*
Merriam-Webster definition: *one who has the occupation or temporary possession of lands or tenements of another, specifically: one who rents or leases a dwelling (such as a house) from a landlord.*

Neither definition identifies a tenant as someone who has purchased or otherwise obtained an ownership interest in a property, as is the case in life lease. While a tenant renting a property has acquired a ‘right to occupy’, upon termination of the lease a tenant vacates the property, their ‘right to occupy’ having expired. They have no additional claim on the property.

A life lease resident, on the other hand, has purchased both an interest in the property and a ‘right to occupy’ and—unlike a tenant—that right is a valuable asset which, like other properties, can be—and is—bought and sold. While an intangible asset, it is an asset nonetheless.

Consider a condominium property where a buyer purchases two things: ownership of a tangible unit and an intangible share of the common areas of the property such as the roof, lobby, hallways, etc. There are many intangible assets accepted as valuable commodities. Familiar examples include: brands and trademarks, internet domain names, goodwill, and licensing agreements. Rights granted in contracts such as life leases are another.

Because residents have purchased a ‘right to occupy’, and can sell that right to another party (be it the corporation or future resident), residents can claim to ‘own’ that right, or, as the Ontario definition above states, *the buyer purchases an interest in that property*. If they purchase it, they own it.

To summarize, in typical NFP life lease corporations, nobody owns the corporation. Not the directors, not the managers and not the residents. However, unlike the first two entities, the residents have, in fact, purchased an interest in the corporation, thereby incurring a large financial commitment (in the hundreds of thousands of dollars). In return, they obtained a saleable asset in the form of a ‘right to occupy’.

Residents are, in fact, investors in their corporation, and in that regard, differ little from the shareholders of a for-profit corporation. In spite of that, unlike shareholders, residents too frequently have no say in the operation or decision-making, and no recourse to protect themselves other than in common law, a tedious and costly undertaking which usually proves far too onerous for seniors to contemplate. We are, as someone noted, stakeholders without a stake.

As an example of resident vulnerability, a board of directors could borrow \$10 million dollars from a bank for some purpose and not have to consult with or inform the residents of the loan...yet the residents (not the directors) will be responsible for repaying the loan. That is not how things should work.

<><>

Who pays the bills?

Excluding campus life lease administrators (who may have various revenue streams), a typical NFP life lease operation, similar to a condominium, relies solely on revenue from their residents, usually in the form of their initial investment and monthly maintenance fees. As the Ontario description noted, residents continue to pay property taxes and monthly maintenance fees (often called common area fees). These monthly maintenance fees can cover everything from groundskeeping, insurance, capital reserve funds, operational costs, taxes, management salaries and staff wages. Everything.

<><>

The life lease living advantage

For many seniors, life lease offers important and attractive advantages for consideration:

Low-cost entry level: Typically, the cost of buying into a life lease facility is significantly more favorable than similar housing, notably condominiums. This is important to retirees.

Affordable monthly costs: As the monthly common fees are based on actual or projected actual costs, the monthly fee remains manageable for residents. As most residents are seniors on fixed incomes, onerous financial surprises are unwelcome.

Community: This is an oft-overlooked aspect of living in a life lease facility. Typically, life leases are marketed for seniors, with some available for people in their mid-50s although that age demographic is poorly represented as most residents are older.

As all of their fellow residents are also seniors, residents enjoy shared common life experiences, understand one another, respect each other, empathize with health issues and support each other during difficult times. The social element is equally important, with residents organizing events such as potluck dinners, card parties, outings to malls and restaurants, themed events such as New Year's Eve and St. Patrick's Day parties, and much, much more. All while retaining that all-important sense of independence.

While residents may have issues with management policies and practices, most are unwilling to relocate as it would mean leaving a community that has become important, and in some cases, essential to them in their senior years.

<><>

Bill 141 and life lease residents

Life lease residents have concerns about various forms of abuse from those operating their facilities. Common complaints involve bullying, intimidation, limited access to information, lack of consultation, and more. OLLRA was formed in 2023 as a result of such concerns, and a realization that, unlike those living in rental housing, condominiums, long-term care and assisted living, life lease lacks any form of provincial regulations, an important point not mentioned in the sales pitch. Residents with grievances can acquire protection only through the arduous path of common law, an option most seniors would be unwilling or unable to pursue. There is no legislation that specifically regulates life lease housing or protects the legal rights of residents and their financial investment.

To repeat, it is notable that Bill 141, An Act Respecting Life Leases, is the third time such a bill has been presented to the Ontario government. We hope the ‘third time will prove to be the charm’.

The Bill goes a long way toward providing clarification and protection for life lease residents while not impinging upon the abilities of facility administrators to do their jobs. However, as administrators have enjoyed an unregulated and unrestrained environment for decades, with little or no oversight, it’s past time for them to receive firm guidelines both in regards to their methods of operation and their manners. Under present circumstances, even those operating responsibly enjoy the freedom to flex their muscles in a negative manner now and then. And who’s to prevent them from doing so as they hold all of the cards.

During the Standing Committee’s February 6, 2024 meeting in Stouffville, MPPs mused about which Ministry would be home to the Bill should it be passed. Suggestions included parking the Bill under the Tenancy Act which, OLLRA believes, would prove detrimental to the province’s thousands of life lease seniors. We are owners, not tenants.

However, OLLRA recognizes government’s concern regarding the addition of yet another department to oversee life lease, along with the sizeable costs associated with operating that department. We believe there is a viable path forward.

FOR CONSIDERATION: OLLRA suggests pairing life lease with the Condominium Act. Condo residents are members of their corporations, elect their own boards of directors, hire their own managers/staff, and, by and large, are self-governing, requiring little in the way of government oversight or intervention...or taxpayer funding.

As life lease is a first cousin to condominiums, a similar approach makes sense. Government needs only make one important change: **life lease residents must be recognized by their corporations as ‘members’ of their corporations** (similar to condo residents).

And why not? Ontario states, “*In life lease housing, the buyer purchases an interest in that property—which gives the buyer the right to occupy a unit for a long period of time, often for their lifetime.*” In both life lease and condominiums, the residents have purchased an interest in their corporation and a ‘right to occupy’. Allowing life lease residents the status of ‘member’ provides the residents a measure of control over their lives and futures that is sorely missing today, and may provide them additional protection under ONCA.

Conclusion

- OLLRA members support Bill 141 and urge the government to pass it into law to protect the province’s thousands of life lease seniors.
- Enacted, Bill 141 should be paired with the Condominium Act as both share much in common.
- The life lease model can be an asset in alleviating the province’s housing shortage. To be effective, Bill 141 will be necessary in order to provide a level playing field for all parties (sponsors, administrators and residents).
- Currently, life lease administrators operate without guidelines or oversight as there is no legislation which specifically regulates life lease housing and protects the legal rights of life lease residents or their financial investment.
- Life lease residents are not tenants. Life lease residents own an interest in their corporation and a saleable asset in the form of a ‘right to occupy’.
- *Life lease residents should and must become members of their corporations.*
