MEETING THE LEGAL NEEDS OF COMMUNITY-BASED DEVELOPMENT ORGANIZATIONS:

THE ROLE OF THE PRIVATE BAR

by

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Meeting the Legal Needs of Community-Based Development Organizations: The Role of the Private Bar

Washington, DC

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Set in ITC Bookman Light/Demi type and produced on Ventura Desktop Publisher Professional Extension 2.0 by Carrie C. Coleman.
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ACKNOWLEDGEMENTS

The author would like to express his gratitude to the many people who generously cooperated in the preparation of this monograph. In particular, he would like to thank the following individuals and organizations: the editors, Penelope S. Ferreira of the American Bar Association Public Services Division and Patricia M. Hanrahan of the American Bar Association Commission on Homelessness and Poverty; Avis Vidal and the Community Development Research Center at the New School for Social Research; David Abromowitz of the law firm of Goulston & Storrs; the staff of the Community Information Exchange; and the staff of the National Economic Development Law Center.
The American Bar Association’s Division for Public Services was established to give greater voice and focus to the Association’s public interest efforts, with the mission of applying the knowledge and experience of the legal profession to the public good. The Division addresses issues of broad public concern, including bioethics, election law, energy law, environmental law, international peace and human rights; access to justice, including dispute resolution; mental and physical disability law and legal problems of special populations such as older Americans. In addition, the Division engages in joint ABA efforts in other public interest law areas, and has addressed court costs and delay, presidential war powers, and regulatory reform.

In 1987, the Division embarked on an outreach and communication initiative. This effort has several goals: to make more visible the many Association efforts in public interest law; to promote thoughtful research in the substantive areas that the Division addresses; to encourage law students to consider the practice of public interest law and to focus their attention on public interest legal issues while in law school; and to encourage excellence in legal research and writing.

One aspect of this effort is a special ABA Public Service Internship program, open by competition to first and second-year law students. Stressing excellence in legal research and writing, the internship permits a student to design his or her own summer-long legal writing project on a subject of significance to the Division and the profession. This monograph is the result of the second year of this program and constitutes part of a series of annual study monographs on public service law and policy issues.
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The editors are employees of the American Bar Association. As Director of the ABA’s Public Services Division and general editor of this series, Elissa C. Lichtenstein developed the communication and outreach program of which this monograph is one project. She also directs the Division’s staff efforts in environmental law, and oversees the operation of six other Division entities addressing bioethics, election law, energy law, mental and physical disability law, legal issues facing older Americans, dispute resolution, and international peace and human rights. With the ABA for twelve years, she served previously with the Environmental Protection Agency. Ms. Lichtenstein holds a J.D. from the George Washington University National Law Center, where she concentrated in environmental law, and a B.A. with honors from Smith College.

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I. INTRODUCTION

Self-help, one of America's proudest traditions, is revealing itself in a surprising setting — in inner-city neighborhoods and poor rural areas suffering from years of neglect and stagnant economies. To fight homelessness, lack of jobs, drug abuse, violence, splintered families, and racial discord, residents in poor neighborhoods are forming self-help organizations called community-based development organizations (CBDO's). CBDOs exist in virtually every major city across the United States and in many rural areas.¹

The term "community-based development organization," for purposes of this monograph, means a private not-for-profit organization that is:

- serving a low-income community;
- governed by a community-based board; and
- engaged in housing development, commercial facilities development and/or business venture development.²

What most distinguishes CBDOs as a tool for assisting low-income people is their emphasis on self-help and community control. Their goal is to "empower poor people to work for their own economic and social betterment."³ CBDOs create home ownership opportunities and develop rental housing. They create jobs by financing and operating shopping centers, industrial parks, retail franchises, and other small businesses. Needed social services such as job training, credit unions, health care and day-care are also provided through CBDOs. Finally, they act as advocates to communicate the needs of low-income citizens to the greater community.

Access to legal services is essential for CBDOs to accomplish their objectives. Without legal assistance, CBDOs are drastically limited in their ability to create and maintain the structures needed to achieve community development. The purpose of this monograph is to identify the major legal needs of CBDOs and to illustrate ways in which private attorneys can address those needs.

A. Brief History and Achievements of CBDOs

The origins of the community development movement are diverse. The emergence of CBDOs as a tool for social development can be traced to the efforts of neighborhood religious and civic leaders as well as national lawmakers in the 1960s.⁴ Many CBDOs grew to become large organizations, stimulated by foundation support and the federal Office of Economic Opportunity.⁵ By the end of the 1970s the number of community development
organizations had grown to almost one thousand as hundreds of smaller groups were formed. Many of these new CBDOs organized to protest redlining by banks or to protect vulnerable urban neighborhoods from proposed freeways or university expansions. Others were formed to serve the increasing number of Asian and Hispanic immigrants, or in response to factory closings or the farm crisis.

During the 1980s, the federal government cut back sharply on assistance to depressed urban and rural America. At the same time, the number of CBDOs increased rapidly. More than one thousand new groups have emerged since 1981, and today approximately two thousand organizations are located throughout the country.6

The accomplishments of these groups continue to grow. A study released in March 1989, Against All Odds7 suggests the measure of their achievements. Surveying 834 CBDOs (less than half the number operating today), the study reported that these groups had:

- produced nearly 125,000 units of housing;
- developed 16.4 million square feet of retail space, offices, and industrial parks in economically distressed communities;
- made loans to more than 2,000 enterprises and equity investments in over 200 ventures, and acted as owner-operators of over 400 businesses; and
- created or retained close to 90,000 jobs in the past five years.8

The report documented that CBDOs are engaged in "soft" development as well, providing such services as health care, drug and alcohol abuse programs, elder care, home ownership counseling, and child care.9

B. Community Economic Development

At the heart of the community-based development movement is a strategy called Community Economic Development (CED). CED is a self-help approach which concentrates on the development of local community institutions that allow low-income groups to pool their resources and talents and, with the help of limited outside assistance, create housing, jobs, and social services for themselves. The CED strategy is explained by Linda Gardner in Community Economic Development Strategies: Creating Successful Businesses10:

CED is founded on the idea that the basic problem of poor communities is not that they lack food, health care, or housing, although these are real problems. The basic problem of poverty communities is that they are poor. Poor not only because little money enters the
community, but also because the money coming in flows out very quickly, leaving the community with few resources.

For example, a study found that in one of the poorest inner-city neighborhoods of Chicago, savings accounts held over $16 million. However, ninety-five cents of each dollar saved by the poor was lent to home buyers in wealthier suburban communities. Similar leakages exist through rent payments, medical expenditures, food and clothing purchases and so on. The lack of institutions based in and responsive to poor communities causes a systematic drain of money from them.

One of the primary goals of a CED strategy is the development of local community institutions that can effectively act as advocates for the poor and that can pinpoint critical economic leaks in the community and create community-controlled economic institutions to stop the leaks. Stopping the drain of money from the community benefits everyone in it, not only low-income residents, by building a healthier local economy that supports existing businesses and strengthens the local tax base.\(^\text{11}\)

As one commentator describes it, community economic development seeks to help low-income persons become "producers, not just consumers, providers, not just users, and owners, not just employees."\(^\text{12}\)

C. Methodology and Organization

In order to identify the major legal needs of CBDO's several community organizations\(^\text{13}\) and private attorneys working in the community development field were interviewed.\(^\text{14}\)

This monograph is organized in three parts: Part II examines five established CBDOs; Part III highlights the major legal issues confronted by CBDOs; and Part IV examines the efforts that attorneys have made to assist CBDOs and provides some guidelines for forming a CBDO pro bono project.
II. COMMUNITY-BASED DEVELOPMENT ORGANIZATIONS IN OPERATION

Below are descriptions of five highly successful CBDOs. Crucial to the success of each was the provision of competent legal counsel.

A. Banana Kelly Community Improvement Association
(South Bronx, New York)

In 1978, thirty South Bronx residents prevented the demolition of three abandoned buildings on their Kelly Street block. Organizing a "sweat equity" project in which the residents themselves rebuilt the abandoned shells, neighbors transformed the three gutted buildings into a housing cooperative for twenty-one families. From the rubble-strewn vacant lots surrounding their buildings, they created a park, a playground, and a large urban garden.

From this initial self-help success emerged Banana Kelly (BK). The group took its name from the curved banana-shaped block of Kelly Street. Today Banana Kelly is a major developer in the Longwood and Hunts Point sections of the South Bronx. It manages buildings containing more than seven hundred apartments and has supervised the reconstruction of eight large abandoned apartment buildings and several smaller ones. In addition, it has overseen the moderate renovation of twenty occupied but rundown buildings taken over by the city after landlords defaulted on their property taxes.

Banana Kelly has used its success in housing to create jobs. BK has trained, placed, and hired teenagers and adults from the community for jobs in construction, maintenance, and weatherization. Hundreds of residents have been involved in BK's job training programs in coordination with prison work-release and vocational high school programs. One two-year program provides youth training in conjunction with the renovation of a cooperative designed for low-income and homeless families. Over seventy-five percent of the graduates from the first class of this program were placed in unsubsidized employment. The program is considered to be one of the finest in New York City and a model for national replication.

BK provides social services in conjunction with its housing efforts. A nineteen-unit permanent "Housing for the Homeless" project will use a significant portion of the equity contribution ($175,200) to provide social services to families over a five-year period. The program is a pilot project designed to promote self-sufficiency and prepare formerly homeless
families to live in a healthy urban community and eventually obtain sustained employment.

To ensure community involvement and control, the majority of BK's board members are from the community they serve. In addition, BK actively works in the community to generate grass roots leadership and support. Its community organizing units provide technical assistance to tenant/block associations and cooperatives.

The legal assistance needed to structure and guide BK has come from several private attorneys working on a pro bono or reduced fee basis, and by the Community Development Legal Assistance Center (CDLAC), a project of the Council of New York Law Associates. CDLAC has a full-time staff of four community development lawyers and maintains a roster of volunteer lawyers at more than one hundred of New York City's major law firms. CDLAC has represented BK directly and through pro bono efforts by the law firm of Shearman and Sterling.\textsuperscript{16} Other private attorneys who have served BK include George Kaufman of Arnold and Porter and Barry Mallin, the founder of CDLAC, who is now representing CBDOs in private practice.

Legal assistance provided to BK by these attorneys covers a range of matters, including: 1) drafting articles of incorporation and bylaws, 2) filing for tax-exempt status, 3) acquisition of property, 4) structuring financing, 5) negotiating contracts, and 6) setting up cooperatives. A few examples provide a representative sample: CDLAC attended to the legal requirements associated with the rehabilitation of city-owned buildings sold to low-income residents pursuant to a sweat equity homesteading program;\textsuperscript{17} George Kaufman has helped BK to acquire several foreclosed properties from the city;\textsuperscript{18} and both Barry Mallin and the firm of Shearman and Sterling assisted BK in setting up low-income housing tax credit syndication projects, and establishing limited partnerships with corporate investors.\textsuperscript{19} Structuring the complex limited partnership agreements, as well as multi-layered financing from city, state, and private lenders, would have been virtually impossible without this legal assistance.

B. Bethel New Life (Chicago)\textsuperscript{20}

In the 1960s, Chicago's West Garfield Park was a thriving community. By 1979, however, the neighborhood had been devastated. Five thousand housing units had disappeared, victims of tenant abuse and landlord neglect. The deteriorated Madison Avenue commercial strip was filled with cheap retail stores and bars.
In 1979, Bethel New Life was formed, a CBDO sparked by the concern of the local Bethel Lutheran Church. While Bethel’s initial focus was housing, its efforts have expanded into holistic community development including jobs, health and education. Bethel has used sweat equity cooperatives and other innovations to create over 400 units of affordable housing. Hundreds of additional units are in process. Jobs are created through a variety of social service ventures, a cleaning franchise, and a recycling center. Bethel’s employment center places approximately 500 people a year in full-time employment. In addition, its federal food supplement program helps three thousand women per month, and its health center serves over one thousand patients a month. Over 350 frail elderly are cared for through in-home chore and homemaker services, and an adult day care center. These ventures provide over 230 skilled jobs for senior-service employees.

The law firm of Rudnick and Wolf adopted Bethel New Life as a client during Bethel’s early years and since that time has carefully nurtured it through the provision of extensive pro bono and reduced fee legal services. The firm has acted as general counsel and provided assistance on a multitude of ventures including: 1) acquiring and developing an abandoned hospital for use as a health center, 2) structuring complex financing agreements for a major housing rehabilitation project, 3) corporate structuring of various operations to protect their financial integrity, and 4) negotiating with the city and state as well as a variety of religious institutions (including twenty different churches) to form the Westside Isaiah Plan — a project designed to provide housing for over one thousand families on the West Side of Chicago.

C. Tacolcy Economic Development Corporation (Miami)

Tacolcy Economic Development Corporation (TEDC) sprang from Miami’s lacerating Liberty City riot in 1981. With the help of the Local Initiatives Support Corporation (LISC), Otis Pitts, a native of Liberty City with a varied background as a military policeman, railroad cook, Miami cop, and youth counselor, formed TEDC to rebuild a looted shopping center on a pivotal corner within the community.

The project took off when TEDC persuaded Winn-Dixie Stores to come in as anchor tenant after the original tenant refused to return. Today, the Edison Plaza shopping center has added a dry-cleaning shop, pharmacy, beauty parlor, and shoe store. The Edison Plaza employs over 132 people and has acted as a fulcrum for a number of other TEDC initiatives. TEDC is improving and beautifying the area in order to retain and expand existing business and to attract new industry. It develops ventures and provides management and financial services to increase the sales and financial
stability of the area merchants. TEDC has developed over 1600 units of housing and has raised more than $5 million in investor equity.

The law firm of Valdes-Fauli, Cobb, Petrey, and Bischoff provided the pro bono assistance needed to organize TEDC. After helping TEDC obtain corporate and tax-exempt status, the firm guided TEDC in acquiring the land of the burned-out grocery store. Working with the city, the federal government, LISC, and the Ford Foundation, the firm structured the financing needed to remodel the food store. In addition, it negotiated the architectural and building contracts and resolved a number of zoning issues. When rebuilding of the grocery store was completed, the firm assisted TEDC in negotiating a lease with Winn-Dixie as well as a lease for a barber shop, drug store, and music store.

The firm has also provided the legal work needed for three of TEDC's housing projects. The attorneys structured syndications, with a TEDC subsidiary acting as general partner, taking advantage of federal low-income housing tax credits. According to partner Roderick Petry, representing a CBDO is not much different from representing a conventional developer, but it can be more challenging due to the number of investors and lenders and the nature of the builder/borrower.26

D. Coastal Enterprises (Maine)27

While Maine may be best known for its rugged natural beauty, it is also a state with serious economic and social problems. Maine has lost thousands of traditional manufacturing jobs since 1980; one out of every five residents lives at below 125 percent of the poverty level.28

In response to these problems, Coastal Enterprises Incorporated (CEI) was established in 1977. CEI directs financial and technical resources to economic and housing development in the Wiscasset area. Its focus is on the development of natural resource industries, job-generating manufacturers, small enterprises, the self-employed, and child care services.

Since 1979, CEI has raised over $12 million in technical, program, and development capital support from more than fifty public and private funding sources, and has leveraged an additional $45 million in bank, equity and other funds. These efforts have directly helped sustain and create income and employment opportunities.

CEI makes loans and equity investments in a number of industries and has designed an innovative social investment strategy linking economic development and employment training. In addition, CEI provides
entrepreneurship training and offers counseling to more than five hundred small-business owners. Its Enterprise Development Fund makes loans and loan guarantees ranging from $500 to $50,000 for small enterprises. CEI has made loans totaling over $750,000 to thirty-four family- and center-based child care operators under a two-year Child Care Development Project. In 1989, with a planning grant from the Lilly Endowment, CEI launched a Housing Initiative Project to support development of low-income housing in partnership with religious institutions.

Private attorney Bruce Thompkins has guided CEI through its wide range of economic activities, assisting CEI on a pro bono and reduced fee basis for close to ten years. His work includes designing and reviewing the loan and equity investment documents used to generate and stimulate small business, and helping CEI design and implement its social investment strategy. This plan links economic development and employment training by requiring as a condition for receiving financial help that businesses hire and train people on public assistance. Bruce Thompkins has also ensured that CEI maintains its tax-exempt status while engaging in its numerous economic activities, and has assisted CEI in setting up needed affiliate corporations.

E. Cabrillo Economic Development Corporation (Ventura County, California)

Cabrillo Economic Development Corporation (CEDC), formerly Cabrillo Improvement Association, is in its fifteenth year of existence. It has evolved from a grower-owned labor camp to a county-wide economic development corporation. In the process, it has developed housing, business ventures and social services for low-income residents in Ventura County, California.

The impetus for forming CEDC occurred in October 1975 when ninety farmworker families living in the Cabrillo Village labor camp received eviction notices. The State of California had condemned the camp’s thirty-eight year-old wooden houses for health and safety code violations, and the owner, Saticoy Lemon Association, decided to raze the houses rather than upgrade them. The residents refused to move, and prevented bulldozers from demolishing the houses by forming a human chain around them.

After staving off this first assault on their housing the farmworkers organized an effort to purchase the property, with the help of several groups. To raise the $8,000 needed for the down payment, families sold cars, borrowed from friends, and scraped together savings. They formed a not-for-profit corporation, the Cabrillo Improvement Association, to administer
development of the property and to hold it for the community while a limited-equity housing cooperative was formed. Closing was on May 5, 1976 (Cinco de Mayo, Mexican Independence Day), and the farmworkers became the legal owners of Cabrillo Village.\textsuperscript{34}

Since that first success, CEDC has used self-help techniques to develop hundreds of affordable units. The Villa Campesina Housing Project provides an example. In this project, sixty-two low-income families working in cooperative teams assist one another to build their homes. Each family is taught basic construction skills and works under a licensed construction superintendent. The families agree to work forty hours a week per family over a ten-month construction period.

While CEDC’s primary focus is on housing, it has engaged in a variety of other development efforts as well. Business ventures started by CEDC include a cabinet shop, a Mexican tile factory and a cooperative store.\textsuperscript{35} CEDC is also in the planning phase of developing a child-care project and a community resource center in the city of Oxnard.

The National Economic Development & Law Center, a national legal services resource center specializing in CBDOs, and a local private attorney, Robert Garcia, have provided the legal work needed to make CEDC a success. The Law Center and Garcia (working on a reduced fee basis) have provided legal assistance to CEDC in developing low-income housing throughout the county.\textsuperscript{36} They have also helped CEDC create a subsidiary for-profit corporation to conduct its business ventures, and have advised CEDC on such issues as the copyright protection of tile designs and the use of foundation grants to finance equipment used in their subsidiary.\textsuperscript{37} In addition, the Law Center and Mr. Garcia have trained CEDC management and board of directors, on their legal duties and responsibilities through Spanish-language sessions.

Summary

For every Bethel New Life or Cabrillo Economic Development Corporation there are hundreds of CBDOs struggling for survival. Many are in the initial stages of formation and urgently need help in effectively structuring their organization. Others are contemplating their first or second housing or economic development project and attempting to evaluate the various structural, financing, and other concerns. Others are in serious legal tangles over action taken or decisions made without the assistance of counsel. In all these cases, access to lawyers skilled in the transactional work of corporate, real estate, tax and commercial law will often make the crucial difference between success and failure.
III. THE LEGAL NEEDS OF CBDOs

The CBDO's complex legal affairs stem from the multiplicity of their goals (that is, economic development, community self-sufficiency and control, and the provision of needed social services), and the partnerships they must create with private and government entities to achieve those goals. This section highlights the main areas in which CBDOs need legal assistance, and illustrates some innovative ways in which attorneys have helped them achieve their objectives.

A. GENERAL ORGANIZATIONAL AND OPERATIONAL ASSISTANCE

Assisting a CBDO during its initial formation and ongoing general operations is typically straightforward from a strictly legal standpoint. The challenges of representing CBDOs exist primarily because CBDO organizers and operators often lack business experience, and may need a more comprehensive and detailed explanation of organizational structure and operations than would normally be necessary.

1. Initial Formation and Organization

The vast majority of CBDOs are organized as not-for-profit tax-exempt corporations. Thus, at the initial stage of representation, the attorney's primary tasks include preparing and filing articles of incorporation, drafting by-laws, and filing for tax-exempt status. The CBDO must also be led through its initial board meeting and instructed on maintaining formal operating requirements imposed by federal and state laws.

The not-for-profit form is the most advantageous for a number of reasons. First, it allows the CBDO to balance its economic and social objectives, responding to the community rather than to investor interests. For example, to ensure community control and participation, articles and by-laws can be drafted with provisions stipulating substantial community representation on both the board of directors and within the general membership.

Second, the not-for-profit form provides considerable tax advantages, chief of which is the ability to obtain tax-exempt status as a Section 501(c)(3) organization under the federal tax laws. Tax-exempt status allows the CBDO to avoid federal income and unemployment taxes and, in some jurisdictions, avoid many state and local taxes as well. More important, tax-exempt status qualifies the CBDO for charitable contributions and foundation grants and may qualify it for certain federal and state grant and loan programs limited to tax-exempt organizations. With these tax advantages
come several restrictions including detailed reporting requirements and limitations on political activity.

2. Obtaining Financing

In order to obtain financing for their formation and operations, CBDOs must be able to identify and secure funding from a combination of both public and private sources. Attorneys can play a key role in this crucial task.

a. Public Sources of Financing

1) Federal Government

During the 1980s federal funding for community development was substantially reduced, but today there is renewed interest at the federal level. Perhaps most indicative of that new interest is the Cranston-Gonzalez National Affordable Housing Act of 1990. The Act reserves millions of dollars for community-based development housing projects. In recent years, some federal dollars have also been available through community development block grants.

Federal support is also provided through the Department of Health and Human Services' Office of Community Service and the Farmers Home Administration. Service delivery contracts with various federal agencies and departments, including Health and Human Services, the Small Business Administration, and the Department of Labor, have been another source of CBDO funding. Finally, federal assistance for community development is available through tax incentives via the low-income housing tax credit and tax-exempt bond financing.

2) State Government

The number of states providing support for CBDOs is increasing. States providing financial and technical assistance to CBDOs include Ohio, Michigan, Florida, California, Pennsylvania, Connecticut, Minnesota, Indiana, Wisconsin, North Carolina, and Massachusetts.

The Massachusetts program is considered to be among the most effective in the country. The program has three components. The first, the Community Development Finance Corporation, supplies loans and venture capital for housing and other projects. The second, the Community Economic Development and Assistance Corporation, offers technical assistance and small, interest-free loans to help community groups start projects. The third is a
competitive grants program providing core operating expenses for CBDOs, and funded at approximately $750,000 for 1991-92.

In Michigan a "Neighborhood Builders Alliance" provides competitive grants ranging from $5,000 to $200,000 to community groups engaged in housing, crime fighting, social services, and neighborhood improvement projects. The program includes $25 million in state loans for apartment building renovations, comprehensive pre-school education for at-risk four-year-olds, and a workfare program for eighteen to twenty-year-olds who are put to work making physical improvements within the community.

3) City Government

City programs to help CBDOs include providing core operating grants, assisting in the acquisition of property, and providing project financing.

For example, Pittsburgh operates three separate funds which together offer core operating assistance to both well-established and fledgling CBDOs. Philadelphia holds tax-delinquent and abandoned properties until CBDOs can implement restoration programs. Seattle has designated CBDOs as public development authorities, giving them priority for abandoned buildings and authorizing them to issue bonds. New York City has pledged to deliver approximately five thousand vacant city-owned buildings to not-for-profit and for-profit developers for gut rehabilitation. Some cities are helping CBDOs finance specific projects by providing second mortgage loans that lower the carrying costs on projects, enabling the CBDO to charge lower rents. Local governments have also implemented "linkage" programs to raise money for community development through the private real estate market.

b. Private Sources of Financing

1) Foundations

From the beginning of the community development movement, foundations have played a leading role in financing CBDOs. Support for community development includes grants and program-related investments (PRIs) for housing, economic development, organizing, and advocacy. PRIs, unlike traditional grants, generally take the form of below-market interest rate loans or equity investments to support community-based housing and economic development initiatives. One example of the use of PRIs is the Ford Foundation's $925,000 loan to Kentucky's Mountain Association for Community Economic Development. The loan helped stimulate the participation of twenty-seven banks in the establishment of a $30 million
mortgage consortium fund serving twenty depressed eastern Kentucky counties.  

In 1991, seven private foundations and the Prudential Insurance Company formed the National Community Development Initiative, a partnership designed to accelerate the growth of CBDOs nationwide. The NCDI partners together committed $62.5 million, the largest commitment of private money ever made for neighborhood renewal. NCDI operates in twenty cities and has the following primary objectives: 1) to broaden the scale and effectiveness of revitalization efforts undertaken by CBDOs; 2) to increase the availability of financing for low-income rental housing; and 3) to increase national and local support for community development. Of the $62.5 million, two-thirds consists of PRIs and one-third consists of grants. This financial commitment is expected to leverage millions more in community development investments over the next three years from banks, government agencies, investors and local foundations.

2) Banks

The banking community represents a major source of external debt capital for community development. In the past, bank lending to CBDOs was limited at best, but today banks are increasing investments in CBDO projects.

One of the primary catalysts behind the upsurge of bank interest has been the Community Reinvestment Act (CRA), adopted by Congress to stop redlining, discrimination, and disinvestment by financial institutions. The act addresses discrimination against neighborhoods, with the intent of meeting the credit needs of the entire community, including low and moderate income residents. Four federal regulatory agencies monitor financial institutions' compliance with the requirements of the CRA regarding the credit needs of the community. Evaluation of CRA performance typically occurs every twelve to eighteen months during the regular review of the financial institution. The CRA compliance record of a financial institution may also be considered when it submits an application for approval of mergers, acquisitions, or establishment of additional branches.

Attorneys have played a vital role in ensuring that CBDOs have access to conventional financing by negotiating CRA agreements with local banks. In Chicago, working through a neighborhood alliance, CBDOs negotiated CRA agreements with four banks for a total of $173 million. Initially the alliance received a neighborhood lending commitment from First National Bank of Chicago. That success stimulated Harris Trust and Savings Bank to offer $35 million, and the Northern Trust extended $18 million in credit.
Similar victories have occurred in Philadelphia, Miami and a host of other cities.  

3) Private Corporations

Corporation support of CBDOs comes through philanthropic giving programs and increasingly through social investments. Two common forms of social investment are joint ventures and equity investments in syndications. Business and community group joint ventures include, for example, a number of supermarket and shopping center developments such as the one between Winn-Dixie and Tacolcy Economic Development Corporation. Equity investments in syndications sponsored by or for CBDOs have been another way corporations have provided community development financing. Using the low-income housing tax credit, CBDOs and their intermediaries have brought in corporations in numerous syndications, often providing the corporate investor with a return ranging from fifteen to eighteen percent.

4) Religious Institutions

Religious congregations have been an integral part of the community development movement since its inception. Many CBDOs literally began in church basements. Today, religious institutions may be the most rapidly expanding source of financing for community projects. Religious support is broad-based, derived from such sources as the Catholic Church’s Campaign for Human Development, the Jewish Fund for Justice and World Vision, and includes direct grants, loans, and equity investments. Assistance comes from national religious councils as well as from thousands of local congregations that have contributed staff services, volunteers, and meeting space.

In 1989 the Lilly Endowment launched the Religious Institutions as Partners in Community-Based Development Program to stimulate further church involvement in community development. Under the program, grants and technical assistance are provided to CBDOs and religious organizations for community development projects, resulting in the creation of twenty-five viable development projects and the leveraging of millions of dollars of investment capital.

5) Community Loan Funds

Community loan funds (CLFs) are capital pools established by socially-concious investors at the regional and local level for investment in community development projects. Under the community loan fund, depositors are
usually paid a return at rates slightly below conventional savings bank or money market instruments. These funds are then loaned at attractive rates to CBDOs. As the loans are repaid, the principal and interest are recycled into other community development projects.

The CLF concept was pioneered by the Institute for Community Economics starting in 1979. Today, CLFs nationwide have over $100 million in loans outstanding. According to the National Association of Community Development Loan Funds, established in 1986, member funds have a remarkable loan loss rate of less than one percent.

c. Intermediaries

Many of the funds derived from both public and private sources are channeled to CBDOs through intermediaries at both the national and local levels. These groups, most of which emerged in the 1980s, provide funding streams, technical assistance, and a means of coordinating community development activities. The three most prominent national intermediaries are the Local Initiative Support Corporation (LISC), Neighborhood Housing Services, and the Enterprise Foundation.

LISC. Founded in 1979 by the Ford Foundation, LISC offers loans, grants, equity investments, and technical assistance to CBDOs. With $420 million raised from over seven hundred corporations and foundations, LISC has leveraged over $1.4 billion in direct investment in CBDO projects. Included in that total are funds raised through two LISC affiliates: the National Equity Fund and the Local Initiatives Managed Assets Corporation.

The National Equity Fund syndicates corporate investments in low-income housing using the federal low-income housing tax credit. Acting as a national secondary market, the Local Initiatives Managed Assets Corporation offers traditional investors a low-risk opportunity to purchase outstanding loans made to community groups.

As of 1990, LISC's efforts have led to the creation of over 26,000 units of affordable housing and six million square feet of commercial and industrial development.

Neighborhood Housing Services. Congress chartered the Neighborhood Reinvestment Corporation (NRC) in 1978. With funding of about $19 million a year, the NRC provides technical assistance and seed grants to local CBDOs, called Neighborhood Housing Services (NHS). NHSs generated over $800 million in distressed and declining neighborhoods in 1988. More than three thousand local governments, corporations, and foundations have
contributed to the partnerships. NRC operates two secondary market instruments through its affiliate, the Neighborhood Housing Services of America (NHSA). One instrument recycles NHS loans, while the other recycles low-interest mortgages made by local government agencies.

The Enterprise Foundation. Formed in 1982 by the developer James W. Rouse, the Enterprise Foundation supplies grants, loans, and technical assistance to CBDOs. The Foundation is currently working with over 190 groups in ninety cities throughout the country. The Foundation also supports over sixteen job placement centers in a host of cities. A Foundation division, the Rehabilitation Work Group, produces a 500-page manual providing assistance and tips on cutting renovation costs, and distributes a computer software package for rehabilitation specifications. The Group has also pioneered a system for warehousing bulk purchases and private builders' donated goods for use by not-for-profit organizations. In addition, the Enterprise Social Investment Corporation, a wholly-owned subsidiary of the Enterprise Foundation, develops sources of financing for low-income housing, including syndicating federal low-income housing tax credits. The Enterprise network had led to the creation of over 9,600 housing units.

In addition to these national intermediaries, state, local and regional intermediaries are rapidly emerging in many parts of the country. These organizations, like their national counterparts, provide a capital mobilization system as well as technical assistance. They include such groups as Community Builders in New England, Neighborhood Progress Incorporated in Cleveland, the Boston Housing Partnership, the Indianapolis Neighborhood Housing Partnership, the Chicago Housing Partnership, and the Wisconsin Partnership for Housing Development.

3. Operational Matters

All CBDOs require legal assistance and counsel with regard to general operational matters, such as the powers and responsibilities of board members, personnel policies and practices, and reporting requirements for not-for-profit tax-exempt corporations under federal, state and local laws. Most CBDOs will also need advice concerning the rules and regulations governing the administration of government grants and loans.

A common method of counseling CBDO boards about their powers and responsibilities is through training sessions for board members. Sessions can include an explanation of the directors' fiduciary duties to the corporation; management responsibilities and procedures for taking action; and indemnification, insurance, and other protective measures for board mem-

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The session might also include a discussion of the comparative roles of the board and staff.

CBDOs will also need legal assistance in developing personnel policies and practices to ensure compliance with applicable employment laws and regulations. In general, the not-for-profit CBDO will be subject to the same legal requirements as a for-profit corporation. Thus, the CBDO must comply with minimum wage, overtime, and other laws governing employment, including laws prohibiting discrimination. In addition, compliance with income tax withholding rules, worker compensation requirements, and similar obligations must be ensured.

As a not-for-profit tax-exempt corporation the CBDO will have certain periodic reporting obligations under federal, state, and perhaps local laws. The CBDO must file annual information tax returns such as IRS Form 990 and corresponding state tax forms. Periodic or annual registration reports may have to be filed with the Secretary of State listing the CBDO's principal place of business and its directors and officers. A similar filing with the County Recorder may also be required.

Most CBDOs will also need advice concerning the reporting requirements of public and private grants and the use of grant funds. Foundation grants may require the collection of certain data and periodic status reports. Some types of government funding require that the CBDO make available specific corporate records for public inspection. The use to which grant monies are put may be restricted. Recipients of federal grant monies, for example, must comply with Office of Management and Budget Circulars A-110 and A-122.

One effective method for ensuring that a CBDO is complying with all the applicable legal and operational requirements is through an annual "legal audit" or review of articles of incorporation, bylaws, minutes of meetings, tax-exemption applications, financial reports, tax filings, contracts, agreements and grant documents. Such a review may disclose a number of potential legal problems or matters for which additional documentation is advisable or organizational changes are required.

B. PROJECT-RELATED ASSISTANCE

Many of the most challenging legal issues confronting CBDOs arise as they engage in developing their communities through specific projects. Aside from litigation, these legal issues fall into two broad categories: organizational and transactional. The first concerns legal structure, that is, whether the project is to be managed by the parent organization, a for-profit sub-
sidiary, or not-for-profit affiliate, and whether to enter into any joint venture. The second concerns legal questions arising from transactions carried out within the legal structure chosen, that is, questions regarding the contracts, agreements and approvals that must be obtained as the CBDO engages in its various activities. Below is an overview of the major organizational and transactional areas in which legal assistance is needed in three areas of CBDO activity: housing and commercial real estate development, and business venture development.

1. Housing and Commercial Real Estate Development

Legal issues generated by the development of real property are the most common among those faced by CBDOs. Eighty-seven percent of the respondents in Against All Odds were involved in housing production and approximately thirty percent were active in commercial development. Perhaps the greatest legal need for CBDOs in this area is assistance in securing and structuring financing. More often than not, the viability of CBDO real estate projects is dependent upon the structuring of multiple layers of financing from a number of both private and public sources.

a. Organizational Issues

CBDO real estate development activities range from rehabilitating single family homes to building multi-unit rental units or developing industrial parks or shopping centers. Depending on the nature of the project, the CBDO may best be served by developing the real estate through a not-for-profit affiliate, a for-profit subsidiary, joint venture or partnership, or by facilitating cooperative ownership. Attorneys can help CBDOs weigh the ramifications of these options in terms of tax issues, liability, financing, and capacity and goals.

1) Choice of Corporate Structure

Critical to considering whether the parent organization itself should undertake real estate development directly, or should do so through an affiliate or subsidiary, is the effect that the project will have on its tax status. The first concern is a potential loss of tax-exempt status resulting from participation in the project, which will usually depend on the extent to which the activity furthers the organization’s charitable purposes. Real estate development activities that are "related" to these charitable purposes will not jeopardize the organization’s tax status.

In general, related charitable purposes include low- and moderate-income housing, either for sale or rental, and rental to commercial or industrial
tenants belonging to a charitable class, such as low-income or minority business owners who could not otherwise have rented space in the community.\textsuperscript{103}

Another concern for the CBDO is whether its real estate activities create a risk of reclassification as a private foundation rather than a public charity.\textsuperscript{104} Public charity status is preferable since private foundations are ineligible for certain grants, are subject to greater administrative requirements, are taxed on net investment income, and are subject to stringent self-dealing, business holding and other rules.\textsuperscript{105}

Even when the CBDO’s tax status is not jeopardized, the organization may prefer to undertake the project through an affiliate or subsidiary to secure protection against liability\textsuperscript{106} or to have access to otherwise unavailable funding. For example, when the parent CBDO acts as a multi-purpose social service agency, it may have difficulty attracting financing for real estate development. In some cases, the institution providing funding for low-income housing may expressly require that a separate corporation be formed to carry out the development. For projects where the CBDO is engaged in a partnership or joint venture with another party, tax and other laws may dictate the formation of a separate entity. Finally, the parent CBDO may lack the staff and expertise to manage and monitor a new development activity itself, and may therefore establish a separate entity which might more easily attract new expertise and staff.

When the decision is made to form a separate corporation, legal assistance will be needed to ensure that the parent CBDO retains adequate control and that corporate formal requirements are met, and that advice on transferability of funds between the separate entities is readily available.\textsuperscript{107}

2) Joint Ventures and Partnerships

With greater frequency CBDOs are forming general partnerships, limited partnerships, or jointly owned for-profit corporations to accomplish their development goals.\textsuperscript{108}

A joint venture with a CBDO may be attractive to a private partner for several reasons. First, the CBDO has access to special kinds of funding and financing. Second, the CBDO can provide job screening, renting, marketing, and sales at the neighborhood level. The CBDO also brings community support to the project and thus can help with the political and public approval process. In return, the private partner may provide a track record and credibility with the financial community, making financing easier to obtain. Moreover, the CBDO may lack sufficient pre-development and seed
capital to get the project started, whereas the private partner can provide cash and other assets as well as ongoing management skills and experience.

Many CBDOs have used real estate syndications to attract equity investments in their projects through use of the federal low-income housing tax credit.¹⁰⁹ These ventures are typically structured as two-tier partnerships.¹¹⁰ Corporations invest in a fund such as LISC’s National Equity Fund. Each CBDO project establishes its own limited partnership, with the fund or its affiliate often acting as both a co-general partner and the sole limited partner.¹¹¹ Some private placements are also made using a one-tiered method, with individuals making direct investments as limited partners in single low-income tax credit projects.¹¹²

An example of the use of the federal low-income tax credit to syndicate a housing project is the Hewitt House Associates Limited Partnership in Brooklyn, New York.¹¹³ The project has created sixty-nine housing units for homeless and other low-income families in the Crown Heights section of Brooklyn. Working with the Enterprise Foundation and several local organizations, a CBDO formed a wholly-owned subsidiary to act as the general partner responsible for developing and managing the project. The Federal National Mortgage Association (Fannie Mae), acting as limited partner, invested over $2.5 million in the project, and the city and state put in over $5.4 million in debt financing.

Legal counsel is essential in these situations to help choose the proper structure of the syndication, provide advice on tax and securities aspects of the transaction, and to prepare and review the legal documents involved.¹¹⁴

3) Facilitating Cooperative Ownership

When the goal of the project is to transfer ownership to residents, or when special funding and financing for tenant cooperative ownership is available, CBDOs can facilitate cooperative ownership. The cooperative form fits well with the CBDO goal of maintaining community control since cooperatives are democratic institutions controlled by resident members.¹¹⁵

Attorney assistance in designing the structure of the cooperative and educating members on how it should operate is essential. The risk of misunderstandings or disagreements among the members is substantial, and legal advice in explaining the structure and operation of a cooperative may be critical to achieving the goals of the CBDO. Attorneys can also help ensure that the cooperative retains its affordability through the use of such techniques as limited equity ownership.¹¹⁶
b. Transactional Issues

1) Property Acquisition

Apart from conventional transactions, an attorney can help CBDOs apply their tax-exempt status and social goals to acquire properties in a number of creative ways.

One example is a strategy called adaptive reuse — the physical and functional conversion of a building from outdated to new and more productive uses. The adaptive reuse method can be used to convert school buildings, train stations, hospitals, and other public buildings into residential or commercial properties which will benefit the community. Local governments are often willing to give or sell these properties at below market value. Bethel New Life, for example, bought an abandoned public school building from the City of Chicago and converted it into a combination 26-unit low-income housing cooperative and school. Legal work to accomplish the adaptive reuse includes determining legal encumbrances and interpreting zoning and building code technicalities.

Another device used by CBDOs to acquire property is the bargain sale or land donation. Under federal tax law, donations of land or buildings to a tax-exempt organization qualify as a charitable contribution, thus reducing the donor's tax liability. In a bargain sale, the owner sells property at below market value, in effect donating the difference in the value. The donor can then take a charitable deduction. Combining cash down payments and tax benefits usually leaves the donor with as much after-tax income as he would have gained had the property been sold at full market value. An attorney can explain the beneficial tax consequences, negotiate the terms of the donation or sale, and prepare the correct legal documentation.

In some jurisdictions a CBDO may acquire property through operation of receivership laws. Under many state receivership laws, the city or tenants may bring a lawsuit against a property owner for creating a public nuisance through violation of health or building codes. If the owner does not respond and deal with the problem, the court may intervene to preserve the property and appoint a receiver, in this case the CBDO, to manage or repair the property. The receiver will hold liens against the property for the management and repair expenses it incurs, and if not reimbursed for the expenses, may foreclose on those liens and obtain title to the property. The receiver may also obtain title through a city tax sale if the owner does not act to redeem his interest.

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The savings and loan bank crisis has also created an opportunity for CBDOs to acquire properties for development. Under the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), real estate properties and other assets owned by insolvent savings and loan banks are turned over to the Resolution Trust Corporation (RTC). The act requires the RTC to give CBDOs and other groups the right of first refusal on properties in its inventory designated as "affordable housing properties." The RTC's Affordable Housing Disposition Program gives not-for-profit organizations, public agencies, and low-to moderate-income individuals a ninety-day period in which to bid on affordable housing properties, starting on the date that the for-sale notices are sent to designated clearinghouses. There are also opportunities for commercial and industrial real estate development through RTC. An attorney can help CBDOs understand FIRREA requirements and develop a plan for identifying, inspecting, financing and acquiring properties. As of March 1990, the RTC had over 35,000 properties in its portfolio, very few of which had actually gone to poor people or their advocates.

Attorneys have also assisted CBDOs in acquiring properties through other federal agencies such as the U.S. Department of Housing and Urban Development (HUD), the Veterans Administration (VA), and the Farmers Home Administration (FmHA). When the owner defaults on the mortgage, the agencies are given title to the properties and must dispose of them. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) also acquire and dispose of foreclosed properties.

Housing subject to expiring HUD subsidies may provide another source of acquisition for CBDOs. As federally-assisted mortgages are prepaid and Section 8 contracts expire, nearly one million units of HUD-subsidized housing may be converted to market-rate rentals and condominiums. In contrast to conventional public housing, which is owned and operated by local public housing authorities, the projects now at risk were built and are owned by private individuals or partnerships under a variety of HUD and FmHA programs in the 1960s and 1970s. Housing programs such as these frequently contain provisions allowing the private owners the option of terminating federal assistance and attendant low-income use restrictions at a specified future date by pre-paying their HUD-financed mortgages. To guard against this potential reduction in low-income housing stock, the Low-Income Housing Preservation and Resident Homeownership Act of 1990 establishes a qualified mandatory preservation program. The Act gives "priority purchasers," which include CBDOs, right of first refusal for a twelve-month period to purchase prepayment-eligible projects. Most of the conversions are expected to take place in the early 1990s, so CBDOs
will have to respond quickly to ensure that these properties are retained as low-income housing.

2) Securing Financing

Securing financing for real estate projects presents perhaps the greatest challenge to attorneys representing CBDOs. However admirable a CBDO’s goals, no project will succeed unless the projected revenues (rental income or selling price) cover the costs. Project viability may well turn on the attorney’s ability to gather funding from a number of sources, conventional and unconventional. CBDO projects invariably operate on a tight budget and can involve multiple layers of financing complicated by unforeseen contingencies, government regulations, and other obstacles.

Predevelopment financing or seed capital is the most difficult for a CBDO to raise, since pre-development costs must be incurred before any lender will consider a loan secured by the project. A grant or a community fundraising effort may be required to meet seed capital needs unless the CBDO can mortgage existing property or has surplus funds available. Additionally, a CBDO may consider a joint venture with another organization with access to funds.

Construction and permanent financing may be obtained from a combination of conventional lenders, government agencies, and non-traditional private sources such as foundations, corporations, religious institutions and community loan funds. Conventional lenders may be encouraged to invest in CBDO projects through the Community Reinvestment Act. Letters of credit and loan guarantees from foundations and corporations may be used to support a credit application. Foundations can give direct assistance in the form of a grant or program-related investment. State and local support may come in the form of a straight loan, a participation loan with a conventional lender or through tax-exempt bond financing.

The process of layering funding from different sources can create a number of difficulties. CBDOs seeking multiple funding commitments may find that a major effort is required simply to keep initial commitments in place while waiting for others that are still outstanding. Each potential grantor or lender may operate on a different timetable with different funding cycles and response times. Problems may arise due to terms and conditions imposed by the lenders and funders, requiring negotiation and renegotiation as the final package is pieced together. Funders may vary as to the costs they will cover, their definition of low- and moderate-income housing, and standards of affordability. Conceivably, a project could have as many different pro formas as it has funding sources.
Bethel New Life's Hamlin Street Leasing Co-op project illustrates the innovative financing sometimes required to carry out development projects in distressed areas. The thirty-one unit project was redeveloped as a leasing cooperative in which the units are rented, with management controlled by the building's tenants. The project was funded by 1) a thirty-year conventional mortgage from major Chicago banks, 2) a low-interest mortgage loan from the City of Chicago Department of Housing (this loan in turn was funded by grants provided by HUD), and 3) a low-income tax credit syndication sponsored by the Chicago Equity Fund, which marketed the partnership interest to corporations. The transaction was further complicated by the fact that the equity of the investor partnership was to be phased in over a six-year period under investor notes executed by each partner. Interim financing was provided by loans from the Local Initiatives Support Corporation and a local bank both of which were secured by the investor notes. While not all CBDO projects involve this degree of complexity, the example illustrates the vital role that attorneys can play in helping CBDOs design and negotiate well-developed, convincingly presented, and viable packages.

Mixed-use projects involving housing and commercial real estate can provide additional avenues and challenges for financing. One example is the Community Development Legal Assistance Center's (CDLAC) work with a CBDO on a New York City neighborhood project, the 40th Street Complex ("Complex"). The Complex includes nine units of commercial space and forty-four units of low-income housing. Abandoned and ignored by prior owners and government agencies, the buildings were deteriorating despite the efforts of residents and merchants. The city foreclosed on the property but agreed to sell it to a tenant-controlled corporation if the corporation could raise rehabilitation funds to match the funding already allocated by the city and state.

CDLAC devised an innovative financing plan to accomplish that objective. Under the plan, the merchants agreed to assume a substantial portion of the rehabilitation costs and to subsidize the ongoing operating costs of the residential units in return for long-term leases. Under this so-called net lease structure the commercial units are rented to a not-for-profit corporation controlled by the merchants. The corporation, in turn, leases individual commercial units to its members. As part of the arrangement, the merchants agreed to contribute a portion of any profits if they sell their business.

3) Sale, Lease, and Rental of Property

Upon completion of the real estate development project, the CBDO may either retain or sell the property. In either case, the organization's attorney
can help ensure that the project benefits the community by properly structuring the terms of the sale, lease, or rental agreements. In the case of housing, this may mean setting up mechanisms to ensure that the units continue to be affordable to low-income people. Where commercial real estate is involved, it may be necessary to include a provision in the deed or lease requiring the employment of low-income community residents.

(a) Preserving Affordable Housing

Some CBDOs are devising methods to preserve low-income housing through limited-equity home ownership. Limited-equity ownership programs attempt to alleviate the problem of the growing shortage of affordable housing by limiting the purchase price charged not only to the first buyer but to all subsequent buyers as well. By instituting proper legal restrictions at the beginning of the program the first recipient of subsidized housing receives a place to live at a price substantially below current market value, and similar price savings can be passed on to future occupants, creating a permanent source of affordable housing.

The rationale for limited equity home ownership is explained by David Abromowitz:¹³⁶

"If no restrictions are placed upon the resale of the housing, nothing prevents the lucky first occupants from simply reselling to anyone who can pay a high market price and pocketing the difference. In that event, the public programs devoted to creating the housing would merely give a windfall profit to a select few, with no real benefit to the public at large. The same risk is possible if there are restrictions binding on only the initial recipients of the housing but not on subsequent owners. Then the second or third owner could reap such a windfall. Therefore, preserving for long-term public benefit the initial low cost of the housing should be considered a fair and essential part of responsible housing initiatives."

Several legal tools have been developed to preserve affordability, including limited-equity and leasehold cooperatives, land trusts, and mutual housing associations.

Limited-equity housing cooperatives are resident-owned buildings with resale restrictions limiting the value of each member's share included in the deed or other governing documents.¹³⁷ To prevent new members from being priced out of the building, these resale restrictions limit the potential appreciation of each member's share and provide the cooperative with an option to purchase and resell the share of a departing member at the
limited-equity value. A similar device, the leasehold cooperative, also places a ceiling on the resale value but under this model the cooperative association leases the building rather than owns it. The leasehold cooperative, while retaining title to the land, sells the building to a developer, retaining control of the cooperative through a long-term lease. The developer, in turn, syndicates the building, selling limited partnership interests to wealthy individuals or corporations who can realize long-term tax benefits.

Under the Community Land Trust (CLT) model, the CBDO acquires and holds property in permanent stewardship, making it available to individuals, organizations, and businesses through long-term ground leases. The CLT model allows the CBDO to balance the interest of the community in preserving long-term affordability with the individual’s desire for ownership and control through separation of the ownership of land and buildings. The details of this relationship are defined by the ground lease, which may run for as long as ninety-nine years.

While the leaseholder of the land trust property does not own the land, he may own buildings and other improvements on the land and may sell or remove these buildings and improvements upon moving. The CBDO typically retains a first option to buy the improvements at a limited-equity resale cost. To finance the purchase or rehabilitation of property on the land the lessee typically will retain a loan secured by a lien on the building and the borrower’s interest in the ground lease.

As a device to preserve long-term affordability, a ground lease appears to be superior to the deed restrictions used in limited-equity cooperatives. In general, a ground lease may be enforceable by the courts in a greater number of situations and for a longer time. In addition, limited-equity cooperatives ensure affordability only as long as the residents (members) support that goal. Under the CLT model, by contrast, the decision regarding long-term affordability is retained by the community through the CBDO membership.

Mutual Housing Associations (MHAs) are another structure used to preserve affordability. MHAs are community organizations that develop housing cooperatives or tenant-managed rental projects, and provide them with management, training services, and loan funds. Under the MHA model, the property is typically owned by a tax-exempt not-for-profit corporation. Membership in the MHA may include both actual and prospective tenants. In the usual case, the MHA board will delegate responsibility for management and control of the units to a committee of residents. Alternatively, the MHA may rent the property to a tenant-controlled organization similar to a limited-equity cooperative.
(b) Ensuring Jobs for Low-Income Residents

One goal of commercial real estate development is to create jobs for low-income citizens by leasing or selling property to businesses willing to relocate or startup in the low-income community. In order to ensure that at least a portion of the jobs created actually go to low-income community residents, hiring requirements may be incorporated into the deed or lease. Lessees and purchasers obtain the developed units at below-market prices, and in exchange are required to hire and train a certain number of community residents.

Eastside Community Investments (ECI) in Indianapolis provides an example of how a CBDO can encourage local hiring through an effectively drafted agreement. ECI has developed a 25-acre industrial park selling individual parcels to companies wishing to set up business there. Many of the deeds contain specific performance provisions requiring the hiring of a certain percentage of local residents. Some twenty-six companies have located in the park, ranging from American Cablevision to a McDonald’s franchise. They have created nearly one thousand new jobs for residents of the Eastside community and neighboring areas.

Some public financing arrangements may be conditioned on the hiring of community residents. One example is the Linwood Shopping Center, the first shopping center built in the Kansas City inner-city in over fifty years. The Community Development Corporation of Kansas City (CDC of KC) developed the project, which was funded by several public sources, including the Office of Community Service of the U.S. Department of Health and Human Services and an Urban Development Action Grant from the U.S. Department of Housing and Urban Development. As a condition of funding, the development was obligated to create jobs for low-income community members. By this means, a large number of jobs were created. Of the subcontractors hired for construction of the center, 48 percent were local minority-group members, and 70 percent of the stores in the center are minority-owned. The completed shopping center created over 150 jobs, a majority targeted to low-income minority youth. Every shop in the center is operating profitably, and gross revenues, originally projected to be $17 million, are now estimated at $35 million.

2. Business Venture Development

CBDO venture strategies in community economic development (CED) combine community needs for jobs and social services with business organization, planning and goals. Over one third of the respondents in the National Congress for Community Economic Development study Against All Odds
were active in some form of venture development. Depending on the needs and opportunities in the community, the enterprise may be in the retail, industrial, or service sector.

Business venture activities of CBDOs generally fall into two categories. First, the CBDO may act primarily as a stimulator of other business activity in the community. For example, a CBDO may provide technical assistance, loans or loan guarantees, or equity investments to new or existing businesses. Second, the CBDO may act as an owner and operator of a business enterprise such as a light manufacturing company, a restaurant franchise, or a health-care agency for the elderly. The legal counsel needed will vary according to the nature of the activity, chosen and may include such assistance as obtaining required permits and licences, interpreting the effect of complex grant rules on operations, setting up an affiliate or subsidiary, structuring a joint venture agreement, or putting together financing from several sources to purchase capital equipment.

a. Organizational Matters

1) Choice of Corporate Structure

There are a number of different organizational structures from which a CBDO may choose. Business enterprises may be developed and conducted through the not-for-profit parent organization itself, through not-for-profit affiliates, or through for-profit subsidiaries, joint ventures, and franchises. Combinations of these forms are also possible, such as a joint-venture franchise. Factors that will determine which is the most appropriate structure include the CBDO’s economic development goals, the amount of control it requires over the venture, its internal management and staff capacity, its potential liability, its image in the community, its ability to obtain outside sources of public and private capital, and applicable tax, securities, and business law requirements.

When the CBDO acts as a stimulator of other business activity by providing technical assistance and/or loans and equity investments, it will probably be able to engage in business activities directly through the parent organization. As pointed out in Section III.B.1. of this study, it is legally permissible for a not-for-profit tax-exempt corporation such as a CBDO to engage in business activities.

If the business is or will become a significant activity for the CBDO, however, it must be substantially related to the CBDOs charitable purposes to avoid endangering the CBDO’s tax-exempt status. Certain activities, such as providing job training to low-income residents, or loans and technical
assistance to businesses in low-income areas, are usually considered legitimate tax-exempt economic development activities. For example, Coastal Enterprises Incorporated (CEI) in Maine (described in Section II. D. above) provides technical assistance and financing through several different programs, amounting to nearly $9 million in funds for loan and/or equity investments. Often the terms are market rate, although some lower-rate financing is available. Since the programs require recipient businesses to operate in low-income areas, they have been able to safely house their innovative programs within the parent CBDO without losing tax-exempt status.

Even when the business activities clearly qualify as charitable for tax purposes, other factors such as capacity, liability or risk of classification as a private foundation may compel the CBDO to operate through a not-for-profit affiliate. For example, Saint Nicholas Neighborhood Preservation Corporation, in Brooklyn, New York, has created a not-for-profit affiliate, East Williamsburg Valley Industrial Development Corporation (EWVIDCO), to engage in business development in the East Williamsburg section of Brooklyn. EWVIDCO has engaged in numerous business retention and expansion enterprises, including an employment service, infrastructure development, operation of a security patrol, and a marketing program to attract new firms to the area. By setting up a separate corporation to carry out these enterprises, the parent corporation’s assets are protected, and a separate staff can concentrate exclusively on the business.

When a CBDO is acting as owner and operator of businesses it is even more likely to set up a separate entity. Bronx Venture Corporation (BVC), a CBDO in New York City, has established several for-profit subsidiaries. Developing enterprises in spray painting and metal fabricating, BVC has created three for-profit subsidiaries that together have provided over 150 jobs and generated large profits.

Several CBDOs have established not-for-profit affiliate corporations to start owner/operator social service ventures such as home-chore and home-health programs for the elderly. In addition to providing quality health care, this approach has the advantage of keeping employment and funds generated through Medicaid, Medicare and similar programs within the community. Saint Nicholas Restoration Corporation, for example, set up not-for-profit affiliates to serve the elderly, and created over six hundred skilled jobs. Bethel New Life in Chicago (described in Section II. B. above) is in the process of establishing a not-for-profit affiliate for its Program for All-Inclusive Care for Elderly (PACE), which will offer total care for infirm elderly under a contract with the State of Illinois.
Once the proper organizational form for the CBDO venture is chosen, the assistance of counsel is needed to establish the new entity and to ensure maintenance of proper corporate formalities and compliance with securities laws and regulations. An attorney may also need to instruct the board of directors about the legal relationship between any new entity and the parent CBDO. Since one of the purposes of forming a subsidiary is to generate a profit that can be used by the CBDO to carry out its charitable purposes, the board may need to be advised about how to transfer profits to the parent organization, including whether transfers should be in the in the form of dividends, contributions, or other means.\textsuperscript{165}

In rare instances, CBDOs have even found it advantageous to set up a holding company between the parent and its subsidiaries and affiliates.\textsuperscript{166} A holding company can help limit the CBDO's legal liability, facilitate the administration of its subsidiaries, increase the CBDO's borrowing abilities, and give the CBDO and its subsidiaries certain tax advantages.

2) Special Organizational Forms

Some organizational structures have proved particularly beneficial to CBDOs engaged in business venture development, and thus deserve special attention.

(a) Community Development Credit Unions

In order to counter the disinvestment in poor communities caused by redlining and other actions of local banks, some CBDOs have created Community Development Credit Unions (CDCU). These cooperative not-for-profit organizations, incorporated under state or federal law, have effectively promoted community development lending for small businesses, cooperatives, affordable housing, and social service initiatives.\textsuperscript{167}

Today, more banks are recognizing their responsibilities concerning economic development in poor communities. One example is Chemical Bank in New York City, which created an interest-free $250,000 deposit pool for a credit union established by the Mid-Bronx Desperados, a CBDO in the South Bronx.\textsuperscript{168} Similarly, upon closing a branch bank on Manhattan’s lower East Side, Manufacturers Hanover Trust provided $100,000 in an interest-free loan as start-up funding for the People’s Federal Credit Union, located in the same area.\textsuperscript{169} An attorney can assist a CBDO in establishing a credit union, as well as instruct the members on their rights and duties.
(b) Franchises and Turnkey Arrangements

One way for a CBDO to increase the prospects for success in its own enterprises is to develop a close working relationship with another established business. Through a franchise a CBDO can take advantage of experienced management and financial assistance, established marketing and promotional planning, the franchise's established reputation, and bulk purchasing and other economies of scale.\(^{170}\) Two possible disadvantages of franchising are a potential loss of community control, and a diversion of some of the income and profits from the community to the franchisor.\(^{171}\)

An attorney can help negotiate and structure a franchise agreement. Since the revenue generated by a franchise can adversely affect the tax-exempt status of the CBDO, and because the franchise's liabilities may endanger the CBDO's other assets, some CBDOs have established for-profit corporations to own the franchise.\(^ {172}\) The CBDO can own and control the subsidiary franchise through stock and the partial overlap of board and staff. Grants and loans raised by the parent CBDO can be invested in or loaned to the subsidiary. For example, Black People's Unity Market (BPUM), a CBDO in Camden, New Jersey, is the sole stockholder of a for-profit corporation that owns and operates two Burger King restaurants and one Chicken George outlet.\(^ {173}\) Through franchising, CBDOs like BPUM can create an asset base, generate income for further business development, and develop the capacity and track record which allows them to take on other, larger projects.

A handful of corporations have engaged in "turnkey" arrangements with CBDOs, establishing manufacturing plants in low-income areas. The private partner may train the CBDO to take over the business and later transfer control of the business to the CBDO.\(^ {174}\) For example, Dineh Cooperatives, Inc., a Navaho CBDO, formed a joint venture with General Motors to manufacture electronics components. The venture, Tooh Dineh Industries, is now a wholly-owned subsidiary of Dineh Cooperatives with five divisions, and it has a customer base that includes several other companies in addition to General Motors.\(^ {175}\)

Joint ventures such as these are not simply a product of corporate charitable and social welfare considerations. A CBDO can combine its unique assets to create business opportunities that are attractive to private corporations looking for market rate investments. A CBDO can use its special knowledge of the community, not-for-profit status, and hands-on management and monitoring abilities with the capital, experience and business skills of private company to create a viable business venture shared by both organizations.\(^ {176}\)
(c) Worker Cooperatives

To accomplish the dual objective of creating local jobs and maintaining local control of capital, some CBDOs have assisted in the creation of worker cooperatives. Under the worker cooperative model, every permanent worker is a member of the company, making an equity contribution and receiving a single membership share in exchange. This allows community resident workers to have a direct stake in the success of the business. Each worker/member has a voice in the governance of the enterprise and receives a proportional share of the profits. The policy-making body of the enterprise, the board of directors, is elected by the members, each of whom has an equal vote. The board establishes policies on membership requirements, hiring and firing of workers/members, wage levels, hiring and supervising the general manager, approving the business plan, and major financial decisions.

Sierra Designs Company, in Oakland, California, is an example of how a worker cooperative can help retain jobs and community control. When the management of Sierra Designs, a fifteen-year-old garment manufacturing company, told its seventy-five workers of its decision to close, the employees launched a successful drive to purchase the plant through the newly-formed Rainbow Workers Cooperative. Under the terms of the purchase agreement, Sierra Designs agreed to give a substantial amount of its work to the cooperative, thus preserving a local business and numerous jobs.

b. Transactional Issues

1) The CBDO as Advisor/Lender/Equity Investor

To stimulate business development CBDOs use a combination of technical assistance, lending programs, and equity investments. Assistance in preparing the necessary legal documents like investment instruments and technical service contracts can help ensure that the goals of the CBDO are met. For example, provisions may be included in a loan agreement requiring the borrower to reserve a certain percentage of available jobs for disadvantaged people, or to develop an employee training plan. An equity investment agreement may prohibit removal of the business from the community without prior approval of the CBDO. Where the recipient of the funds is a "microenterprise" or very small business started by a local entrepreneur with few securable assets and a limited credit history, flexible terms may be needed. The risk to the CBDO can be minimized to a certain degree by making payment conditional on the recipient’s participation in technical assistance and training programs.
Most CBDOs channel their lending activities through some type of a revolving loan fund (RLF) or through a community development credit union. RLFS are capitalized from a variety of sources, including churches, pension funds, foundations, and state and federal programs. The RLF administered by Coastal Enterprises Incorporated (CEI) in Maine (see Section II. D. above), is capitalized by the Farmers Home Administration, the Small Business Administration, and the Financial Authority of Maine, in addition to several private sources. Thus, legal assistance is needed to ensure that the instruments used are in compliance with state and federal regulations governing these programs, and also with any requirements imposed by private investors.

Coastal Enterprises' innovative development finance programs illustrate how loan and equity investment agreements can be tailored to meet a CBDO's community development goals. CEI's Small Business Finance and Employment Training Project links CEI's economic development and job creation strategies with targeted employment opportunities. CEI requires, as a condition for a loan or equity investment, that the business "meet CEI's financial criteria, reserve one-third to one-half of jobs created for disadvantaged people, cooperate with CEI in developing an Employment Training Plan and enter into an Employment Training Agreement with job training services for low-income people and people with disabilities."

Microenterprise development is a variation on the revolving loan fund employed by some CBDOs to create jobs in their communities. A microenterprise is a very small business that may be part of a cooperative or located in a home or on a commercial strip. Microenterprises typically employ fewer than five people and have been particularly successful in areas where there are few formal job opportunities or options for residents lacking formal education and training. Microenterprises are often capitalized with less than $5,000 and tend to offer services in retail or construction activities.

Microenterprise lending usually follows one of two models, individual or peer group lending. In the latter, small groups of microentrepreneurs form themselves into a "borrower's circle." One or two members of the group receive the initial loans. Since other members of the group cannot receive loans unless the first borrowers make regular payments on their loans, an environment of accountability and mutual support is created. Individual lending, by comparison, operates like a standard revolving loan fund, but on a smaller scale. In both models the borrower typically receives technical assistance in conjunction with the loan.

Eastside Community Investments (ECI) in Indianapolis has used both the individual and peer group model in its development activities. ECI has
recently launched its first "borrowers circle" through the use of an RLF. It provides individual investments through its Day Care Homes "Cooperative" that trains residents who want to establish home day-care centers in business skills and child development. The cooperative in addition to creating entrepreneurial opportunities, enables low-income parents and other child-care providers in the community to enter the work force.\textsuperscript{184}

Another strategy employed by CBDOs to stimulate business development is to act as a business incubator.\textsuperscript{185} This links a CBDO's commercial real estate development with technical assistance. The CBDO provides a building for businesses that require only a small amount of space each and which cannot afford the usual rental rates of area properties. The CBDO may provide secretarial, telephone, bookkeeping, and other services for which each new venture can contract on the scale necessary to satisfy its needs. Technical advice may also be available in such areas as marketing, financial controls, and personnel. In Boston, for example, the Chinese Economic Development Council runs a business incubator for fifty small businesses.\textsuperscript{186} The Council provides on-site assistance and subsidizes rents for these small firms.

2) The CBDO as Owner/Operator

CBDO's legal needs are similar to those of any other commercial business. The CBDO may need legal help in acquiring capital equipment, securing financing, drafting contracts and leases, structuring credit, and complying with federal, state, and local business laws and regulations. Given, however, that a CBDO operates as a not-for-profit entity in an area weak in capital and human resources, its attorney may need to devise innovative approaches to help the CBDO obtain equity and working capital. Advice in interpreting and implementing the requirements of public and private funding sources will also be essential.

While CBDOs have not been very successful at owner/operator ventures in the manufacturing sector, there are exceptions. Bronx Venture Corporation has generated jobs and profits through its spray paint and metal fabrication businesses.\textsuperscript{187} Hough Area Development Corporation, a CBDO in Cleveland, has developed a rubber injection molding venture, Community Products, Inc., which employs former welfare mothers who turn out specialized parts for automobiles and major home appliances.\textsuperscript{188} And Focus Hope, a CBDO in Detroit, has created two firms that together provide over one hundred jobs in automotive related manufacturing.\textsuperscript{189}

The majority of CBDO owner/operator ventures have been in the service sector.\textsuperscript{190} Franchise systems, with the technical and marketing support they
provide have offered unique business development opportunities for CBDOs. CBDOs have financed franchise development in several ways. One method has been to finance costs through foundation and corporate grants and loans. Since a franchise that fails will be resold to another franchisee and continue to operate, funders have some security of continued repayments and value in the project. A CBDO may also be able to finance franchise development through borrowing on existing assets such as land or buildings it owns. Finally, some CBDOs have secured community development block grants (CBDG), city redevelopment funds, or industrial redevelopment bond (IRB) monies.

One field in which CBDOs may establish owner/operated ventures is health-care and health-related social service. Many CBDOs have emerged from social service programs themselves and can build on their experience. Within this field, long-term care is the most viable since the elderly are the fastest-growing minority group in the country and receive one-fourth of the nation's health-care expenditures. Ventures such as home-chore, home-health, adult day-care, and board-and-care, in addition to providing a humane and effective continuum of care that allows the elderly to remain at home, are excellent ventures for CBDOs. They are relatively easy to establish and operate, with low start-up costs and minimal staff training and education requirements, and can address in a flexible manner the unique needs of each community. Moreover, such services are less vulnerable than other health and health-related social services to federal and state budget cuts because they are the kind of medical services that form the most traditional part of health-care delivery.

The economic advantages of community-owned health-care delivery service operations are widespread, resulting in the creation of jobs both within the service organization itself and in spin-off businesses established to provide necessary support services, such as meals, transportation, and equipment repair.

An attorney can be invaluable to a CBDO entering or operating in the health-care field. In addition to identifying and explaining the various grant and third party reimbursement programs and their corresponding regulations, attorneys can also negotiate service contracts with state and local governments. Increasingly, governments, in an attempt to reduce the cost of public services, are forming practical partnerships with CBDOs. Service contracts with local private businesses for providing such services as the operation of alcohol or drug abuse programs for employees may also be options.
IV. PROVIDING LEGAL ASSISTANCE TO CBDOs

As the community development movement continues to expand, so does the need for competent legal assistance. Attorneys have responded to that need through organized efforts at the national, state, and local level. At the national level, a number of organizations offer advocacy, training and technical assistance to CBDOs, including the National Economic Development Law Center, the National Housing Law Project, and the American Bar Association. At the state and local level, several bar associations, law schools, legal services attorneys and individual private attorneys are assuming the bulk of the actual legal work, much of it on a pro bono or reduced fee basis. Part A of this section describes some of the organizations actively assisting CBDOs, and Part B suggests guidelines for designing a state- or city-wide community-based development law project.

A. LEGAL ORGANIZATIONS ASSISTING CBDOs

1. National Organizations

   a. National Economic Development and Law Center

Established in 1969, the Law Center is the most prominent legal organization for CBDOs. The Law Center offers legal, management, planning, training, and business assistance to CBDOs through legal services and private attorneys. Through a systematic and coordinated delivery of services, the Law Center coordinates teams of attorneys, planners, and business developers to help CBDOs identify and achieve local economic goals. The Center operates with a professional staff of eight and an annual budget of more than $1 million.

The Law Center assists CBDOs through publications, technical advice, and training. Publications offered through the Center include two periodicals, the Economic Development and Law Center Report and the CED Exchange, as well as numerous manuals for attorneys assisting CBDOs. Technical assistance is delivered through telephone consultations and, where funding permits, on-site visits. Training occurs through several methods, including private bar involvement projects. For example, in Chicago the Law Center worked with the local bar association and the Chicago Legal Assistance Foundation to form the Community Economic Development Law Project, a pro bono project for CBDOs.
b. National Housing Law Project

Like the National Economic Development and Law Center, the National Housing Law Project (NHLP) is a national legal services back-up center. While there are similarities in function between the two organizations, they serve different purposes. The Law Center focuses on all aspects of community economic development, tends to work more directly with CBDOs, and has the more long-term objective of developing and building the capacity of CBDOs. In contrast, the NHLP's focus is on publicly-assisted and privately-owned housing serving very low-income people. Given this concentrated focus, NHLP's expertise regarding housing programs is unmatched in the community development field. The NHLP works primarily through legal services attorneys but also assists private attorneys working on housing issues.

In some cases the NHLP will work directly with CBDOs. Currently, under a Ford Foundation grant, NHLP is providing technical and legal assistance to CBDOs and their attorneys to identify, and where possible purchase, housing projects subsidized by the U.S. Department of Housing and Urban Development and Farmers Home Administration, and which contain expiring low-income use restrictions. NHLP provides advice by telephone and in writing on matters such as identifying target projects, evaluating the feasibility of acquiring them, evaluating the ownership and management capability of the CBDO, formulating an acquisition plan, and negotiating the transaction. More extensive assistance, including on-site visits, is available on a limited basis.

c. American Bar Association

The American Bar Association is providing legal assistance to CBDOs through a number of programs established and organized by ABA sections, divisions or committees. Following is a description of three of the many ABA entities active in the field.

The Commission on Homelessness and Poverty was founded in 1986 to encourage and support bar members in establishing legal programs serving homeless people. The Commission encourages attorneys to help the homeless, both through individual case representation, and through the development of low-income housing. For example, in December 1989 the Commission sponsored a teleconference seminar entitled *Lawyering to House the Homeless: Creative Tools*. The four hour videotaped seminar brought together a distinguished panel of experts in the low-income housing field to teach lawyers how to perform the legal work needed to assist CBDOs and other not-for-profit developers dealing with housing issues. An accompany-
ing 650-page manual provides outlines and sample documents on issues such as incorporation, tax exempt status, financing sources, and preservation of affordability.

Many other ABA entities are actively working on issues of community development law. One of the committees that has been particularly active in this field is the Special Committee on Affordable Housing of the Section on Real Property, Probate and Trust Law. The Section established the Committee to support the work of lawyers providing *pro bono* or reduced fee representation to not-for-profit housing projects in an effort to alleviate the severe shortage of affordable housing. The Committee works with other ABA entities to promote *pro bono* work, increase awareness of affordable housing issues in the legal profession, and coordinate efforts to address the housing problem within the ABA and trade and professional organizations serving not-for-profit housing developers. Projects being developed include a nationwide network of *pro bono* counsel to serve not-for-profit housing developers, publications highlighting the need for *pro bono* representation and avenues for lawyers' involvement in the field, and a comprehensive handbook on the applicable tax, finance, real estate and federal subsidy issues.

The American Bar Association has also recently created a Forum Committee on Affordable Housing and Community Development Law. The purposes of the Forum Committee include coordinating training within the ABA for lawyers practicing community development law, and acting as a clearinghouse for information and programs in that field. Interdisciplinary in scope, the work of the Forum Committee is intended to cover the entire range of community development issues. The Forum sponsors annual housing institutes, publishes a journal on new developments and work in affordable housing and community development, and produces a directory of housing attorneys.

2. Community-Based Development Law Projects

Many corporate and business lawyers, while sympathetic to the need for *pro bono* legal services for the poor, may be reluctant to participate in a traditional *pro bono* effort focusing on areas of the law far removed from their specialization. For those attorneys, participation in an existing project addressing the legal needs of CBDOs may be a realistic and attractive option. As shown in sections II and III above, a *pro bono* attorney experienced in corporations, taxation, finance, business and securities law can play an invaluable role in enabling poor people to reach new levels of self-sufficiency. The following section describes eight community-based development
legal projects established to address some of the pressing legal needs of CBDOs.

a. **Community Economic Development Law Project**

The Community Economic Development Law Project (CEDLP) provides *pro bono* legal representation to CBDOs undertaking community economic development activities in Chicago. The Law Project, founded in 1985 by the Chicago Lawyers’ Committee for Civil Rights, the Legal Assistance Foundation of Chicago, and the Young Lawyers Section of the Chicago Bar Association, recruits lawyers, law firms and corporate legal departments to provide *pro bono* legal assistance to CBDOs. In addition, the CEDLP sponsors seminars on legal issues pertaining to community development for both volunteer attorneys and community groups. CEDLP provides legal assistance at all levels of the development process, from initial formation to more complex issues like dealing with business development and real estate syndications.

An example of CEDLP’s work is The Moreland Hotel Project. As a result of rapid growth and development in the neighborhood, many low-income residents, including the tenants of the Moreland Hotel, found themselves unable to afford their housing. The hotel owner had disregarded his financial and maintenance obligations for the property, leaving the tenants with the possibility of gas and electricity cutoffs and ultimately loss of their rentals. In order to prevent this and preserve the housing, Lakefront Single Room Occupancy Corporation ("Lakefront") a local CBDO, enlisted CEDLP’s help to set up a not-for-profit corporation to purchase the hotel. Volunteer attorneys working through CEDLP assumed *pro bono* legal responsibility for this project, which was complicated by a number of liens attached to the property. A team of three volunteers negotiated the purchase contract for Lakefront and worked with the organization through the closing of the transaction. Since Lakefront was a new organization and without resources, it is unlikely that it would have been able to preserve the hotel housing without the assistance of CEDLP.

Over two hundred volunteer attorneys are currently working on economic development through CEDLP. In 1991 alone, it provided 4,000 hours of direct legal assistance to local CBDOs.

b. **Lawyers Clearinghouse on Affordable Housing and Homelessness**

The Lawyers Clearinghouse on Affordable Housing and Homelessness was formed in January 1988 to facilitate the delivery of *pro bono* assistance to
CBDOS developing affordable housing in Massachusetts. The program, a joint initiative of the Boston and Massachusetts Bar Associations, connects community groups with pro bono real estate, corporate and tax attorneys. Volunteer attorneys have been drawn from large and small firms, solo practitioners, and in-house counsel throughout the state.

The program has three functions. First, the Clearinghouse offers pro bono referral services to CBDOS (as well as tenant groups and shelters) engaged in low-income housing development and the provision of shelter. Second, it sponsors and directs educational seminars for lawyers on legal issues specific to the development of affordable housing, and shelters and coordinates legally oriented seminars for CBDOS and shelter providers. Third, committees organized by the Clearinghouse work on such issues as loan simplification, legislative advocacy, and coordinating with other pro bono projects.

The Clearinghouse refers a wide variety of legal matters to volunteer attorneys, including incorporations of not-for-profit organizations, applications for tax-exempt status, structuring financing, real estate closings, and litigation for tenant groups and shelter providers. In addition, it conducts seminars for attorneys on such topics as: lawyers working with CBDOS, formation of limited-equity cooperatives, the legal rights of shelter guests and shelter providers, representing shelters for the homeless, overviews of state and city affordable housing programs, and review of the Community Reinvestment Act (CRA). Its seminars for community groups explain the basics of negotiating a purchase and sales agreement and other issues.

The Lawyers Clearinghouse estimates that through March 1991 it helped create or preserve more than 2900 units of affordable housing throughout the state. It has referred over four hundred cases to 127 lawyers from 57 law firms or solo practices, who have provided pro bono services exceeding $1 million in value.

c. Community Development Legal Assistance Center of the Lawyers Alliance for New York

The Community Development Legal Assistance Center (CDLAC) is the most experienced law project interviewed, operating with an in-house staff of four full-time attorneys experienced in community development law and a large panel of volunteer lawyers. Established in 1980 as a project of the Lawyers Alliance for New York (formerly Council for New York Law Associates), CDLAC offers a full range of corporate, real estate, and taxation legal services to CBDOS, and works closely with its sister division, the Nonprofit Law Project, which has specialized expertise in legal issues.
peculiar to not-for-profit organizations. CDLAC maintains a roster of volunteer lawyers in over one hundred New York City law firms who assist CBDOs on a pro bono basis. CDLAC’s access to the legal expertise and extensive resources of New York’s largest firms enables it to utilize its community development expertise to maximum effect.

For work done in-house, CDLAC generally charges its clients on a sliding scale based on their ability to pay, although there is funding available for the provision of certain services at no charge. CDLAC’s in-house attorneys do not litigate but they do occasionally seek out pro bono litigation representation for the CBDO’s they work with. The Center also supports community development law through conferences, legal writing and policy work.

The legal services provided through CDLAC range from structuring complex real estate projects to representing community-based businesses. The Center’s current work on seven different mutual housing associations and community land trust projects in New York City will, when completed, provide thousands of units of low-income housing in the city. During the past ten years CDLAC has helped over four hundred tenant groups and contributed to the creation of over ten thousand cooperatively-owned housing units.

CDLAC also represents CBDOs creating housing for populations with special needs, such as the chronic homeless and the mentally and physically disabled. In addition, it has acted as co-counsel in the creation and representation of New York’s first commercial bank specializing in community development lending, the Community Capital Bank. CDLAC also works with CBDOs in the formation and operation of revolving loan funds and community development credit unions to finance various types of community development projects.

d. Community Law Center/The Lawyers Clearinghouse

Two Baltimore organizations offer legal assistance to CBDOs -- the Community Law Center and The Lawyers Clearinghouse. The Community Law Center, founded in 1987 and currently staffed by two attorneys, assists with incorporation, tax-exempt status, housing development, board training and advising, and the myriad legal issues affecting Baltimore City neighborhoods. The Lawyers Clearinghouse, founded in 1988 along the lines of the Massachusetts program, acts as a lawyer referral service. Baltimore City-based organizations are referred to the Community Law Center, unless case load or the type of case type requires referral to The Lawyers Clearinghouse.
Requests for assistance from organizations based outside Baltimore City are handled exclusively by The Lawyers Clearinghouse.

Together, the Community Law Center and The Lawyers Clearinghouse have aided a wide range of CBDOs and other not-for-profit organizations. They have worked with church groups to develop permanent housing for homeless people, and have helped CBDOs obtain commercial properties for operating a food cooperative. They have helped create limited-equity housing cooperatives and condominiums. The Community Law Center has also launched a Nuisance Law Suit Project to address vacant and abandoned properties. Here Center staff along with volunteer attorneys sue for property owners for specific performance of the necessary repairs and damages for personal injury, or for appointment of a receiver to bring the property into compliance with the law.

The Community Law Center and the Lawyers Clearinghouse have provided the equivalent of over a quarter of a million dollars in pro bono legal assistance. Approximately sixty attorneys are currently involved. In addition, with funding from the Maryland Bar Association, The Lawyers Clearinghouse recently conducted a needs assessment study of not-for-profit organizations serving the poor in the State of Maryland, and plans to expand its program statewide.

e. Community and Charitable Organizations Project 211

The Community and Charitable Organizations Representations Project (CORP) in Los Angeles, California, founded in 1985 by Public Counsel, offers legal assistance in tax and corporations law to qualifying community-based not-for-profit organizations. 212 CORP operates as an internal division of Public Counsel and is co-sponsored by the Los Angeles Bar Association’s Sections of Taxation, Business and Corporations Law, and Corporate Law Departments. Until recently the legal work done by CORP primarily related to the formation and organization of not-for-profit groups, including incorporation and obtaining tax-exempt status.

In 1990 CORP hired a full-time attorney director to expand its efforts into the more complex transactional areas of affordable housing and community development. CORP volunteers have already taken on several projects in this area and CORP is presently conducting a legal needs assessment of CBDOs and other not-for-profit organizations developing affordable housing to facilitate further expansion into this area. To prepare its volunteer attorneys for such expansion, CORP has conducted several training seminars on issues such as a basic overview of affordable housing issues, a case
study of an 110-unit affordable housing project, and acquiring and developing HUD-financed expired-use properties. 213

f. Lawyers for Affordable Housing 214

Lawyers for Affordable Housing (LAH) is a joint project of the Dallas Bar Association, Legal Services of North Texas and the Center for Housing Resources, an advocacy and technical support organization for affordable housing developers. LAH’s innovative program provides real estate legal services not only to CBDOs and other not-for-profit housing developers but also to low-income families with real property-related legal problems.

Under this two-pronged approach, LAH acts as a clearinghouse to match volunteer attorneys with individuals and nonprofit groups. Families and individuals are given help with title searches, contracts, deeds, foreclosure, and consumer fraud. Organizations receive assistance with incorporation, taxes, zoning variances, financing and other development issues. LAH also organizes educational seminars for lawyers and housing developers.

LAH began operation in October 1991. Since that time the program has recruited over one hundred and fifty attorneys who have assisted more than twenty-five housing development companies and one hundred individuals, and contributed to the development of over twenty-five housing units.

g. San Francisco Lawyers’ Committee for Urban Affairs 215

The San Francisco Lawyers’ Committee for Urban Affairs refers volunteer attorneys willing to provide legal assistance and advocacy to the poor, minorities and other under-represented individuals and groups in a number of areas. In 1989, the Committee’s pro bono program involved 860 volunteer attorneys and 125 volunteer legal assistants, part of whose work was directed towards assisting CBDOs in developing affordable housing.

Attorneys provided technical and legal assistance to CBDOs and city officials in a series of projects to preserve and increase San Francisco’s stock of low-cost housing. Examples include the construction of an 114-unit housing complex on the site of an old high school, the establishment of a new $10 million affordable housing fund by the city, and the adoption of a city-wide affordable housing plan.

h. Arizona Affordable Housing Project 216

The Arizona Affordable Housing Program (AAHP) was established recently with a grant from the Arizona Bar Foundation. AAHP’s mission is to provide
legal assistance to CBDOs and other not-for-profit developers. Designed along the lines of Massachusetts' Lawyers Clearinghouse on Affordable Housing and Homelessness, AAHP recruits lawyers, law firms, and corporate legal departments to provide pro bono representation to CBDOs engaged in affordable housing and shelter-related activities.

The Arizona Bar has also helped CBDOs and other not-for-profit groups through its Arizona Community Service Legal Assistance Foundation (ACSLAF). In contrast to the Affordable Housing Projects, which recruit lawyers to undertake the more complex transactions associated with real estate development, ACSLAF volunteer attorneys handle threshold issues of incorporation and application for tax-exempt status.

3. Law School Clinics

Several law schools have formed clinics to assist CBDOs.

Syracuse University College of Law's Housing and Finance Clinic offers law students an opportunity to provide legal assistance to community developers of low-income housing. The Clinic has helped several local groups acquire property for low-income housing development and form a not-for-profit corporation. The Clinic has also created CEDAR, Ltd., a referral center for local groups as well as for private attorneys who would like to represent CBDOs on a pro bono basis. The University of Buffalo and the University of Michigan have similar programs. Yale University Law School's Workshop on Shelter for the Homeless, designed to create transitional and permanent housing for the homeless, has set-up three related corporations to develop, sell and manage the properties. At the Cardozo School of Law, Community Development Legal Assistance Center attorneys (see Section 2.c. above) teach an affordable housing development clinic. In addition, CDLAC refers cases to Columbia Law School's Community Development Clinic. Staff from the National Economic Development and Law Center (see Section 1. a. above) teach a community development law course at Hastings College of Law.

4. Legal Services Programs

Many legal services offices have been actively assisting CBDOs for years. Included in this group are such organizations as North Carolina Legal Services, Greater Miami Legal Services, Central Florida Legal Services, Legal Services Organization of Indiana, Evergreen Legal Services in Seattle and Texas Rural Legal Aid.
North Carolina Legal Services employs a community economic development specialist in its state support unit. This full-time employee coordinates a statewide CED task force, training staff and CBDOs and assisting local staff with CED projects. Central Florida Legal Services and Greater Miami Legal Services have also been active in assisting CBDOs in a wide variety of projects.

Through its Community Development Project (CDP), the Legal Services Organization of Indiana employs one part-time attorney director, several part-time staff attorneys and one paralegal to provide legal services to CBDOs throughout central and southern Indiana. CDP has assisted CBDOs with incorporation, tax-exempt status applications, Community Reinvestment Act negotiations, acquisition of Resolution Trust Corporation properties, and dealing with HUD prepayment and inventory properties.

Staff attorneys of Evergreen Legal Services (ELS) in Seattle have assisted CBDOs with housing developments and business ventures, including a multi-faceted health services venture. ELS works with the local private bar and serves as co-counsel with private attorneys on many of its CBDO projects. Some projects, such as low-income housing tax syndications and litigation, are turned over directly to a private firm which then assumes primary responsibility.

Texas Rural Legal Aid (TRLA) provides an example of how legal services attorneys can mount an organized effort to involve the private bar in assisting CBDOs. In 1989, Texas Rural Legal Aid received an IOLTA grant to increase the supply of affordable housing available for low-income citizens in that state. With this funding, TRLA has begun to lay the groundwork for providing regular legal assistance to CBDOs from private attorneys on a pro bono basis, and has strengthened the capacity of CBDOs to provide affordable housing.

B. DESIGNING A COMMUNITY-BASED DEVELOPMENT LAW PROJECT

This section further examines the law projects surveyed above, and highlights aspects of their work that could be effectively replicated.

1. Scope of Program

The nature of the services provided by a program, and the extent of the geographic area covered, will depend on such factors as the number of CBDOs within the region, their degree of expertise, and the level of city, state and other support available. The work of the Community Economic
Development Law Project (described in section 2. a. above), for example, covers CBDO development in the entire city of Chicago. Given the high concentration of community organizations in the city, and the government’s support of housing and economic development by CBDOs, a city-wide project addressing all facets of CBDO activities is warranted. By contrast, the Lawyers Clearinghouse for Affordable Housing and Homelessness in Massachusetts (described in section 2.b. above), while state-wide in scope, focuses only on housing development and shelter needs since public and political support for CBDOs has been predominantly in the area of housing. However, since local banks have recently indicated an interest in supporting small and minority businesses, the Lawyer’s Clearinghouse is considering expanding its work into economic development.

Services covered by the program may include a combination of organizational and transactional work, litigation, and law reform. Section III above describes the services encompassed under the first two headings, but in addition, several of the law projects have effectively incorporated litigation and law reform components. In Baltimore, for instance, the Community Law Center has combined transaction and litigation strategies through its Lawyers for Housing/Nuisance Law Suit Project. The Project, which is supported by the city administration, the state attorney-general, and local neighborhoods is bringing civil and criminal law suits against the owners of derelict buildings in violation of building and safety codes to compel them either to carry out necessary repairs or to sell them to CBDOs.

Several law projects are engaged in legislative advocacy and real estate practice reform. The Loan Simplification and Interlender Sub-Committee of the Lawyers Clearinghouse in Boston is developing a package of model closing documents for model closing documents for model housing projects to help reduce their complexity and cost. The Community Economic Development Law Project in Chicago (CEDLP), working with the City’s Neighborhood Capital Budget Group, is actively promoting increased neighborhood participation in the city budget decision-making process relating to infrastructure planning and projects.

2. Organizational and Management Structure

The projects surveyed were formed either as separate not-for-profit corporations or as programs within an existing not-for-profit corporation. Most of the projects operating within an existing entity are governed by an advisory or oversight committee created at the time the program was formed.

A governing or advisory board is composed of participating attorneys or attorneys acting together with local community development leaders. For
example, CEDLP's Advisory Committee consists of representatives of the Chicago Lawyers Committee for Civil Rights, the Chicago Bar Association, the Legal Assistance Foundation of Chicago, the Chicago Workshop on Economic Development, and the Chicago Association of Neighborhood Development Organizations. By comparison, the Steering Committee of the Lawyers Clearinghouse in Massachusetts consists solely of attorneys. The Committee has eighteen members, six each appointed by the presidents of the Boston Bar Association and the Massachusetts Bar Association, and up to six appointed by the Steering Committee itself upon the recommendation of the presidents of any county or specialty bar association in the Commonwealth. While there is no direct board involvement from the CBDO community in Massachusetts, initial input and support for the project was achieved through a series of meetings with CBDOs, shelter providers, tenant groups, and various municipal officials.

Boards or advisory committees are responsible for establishing and overseeing pro bono referral policies and the organization's progress. In the Community Economic Development Law Project in Chicago, the director is responsible for referrals to volunteer lawyers, acting on defined eligibility criteria. Cases falling outside the criteria must be submitted to the Oversight Committee for approval. A similar procedure is followed at the Massachusetts Lawyers Clearinghouse, where the director can exercise her own judgment within certain "Standards for Pro Bono Representation" issued by the board, but must obtain approval in borderline cases. Massachusetts Steering Committee members are active in the various subcommittees set up to support the project's operation, such as the Education Working Group, the Loan Simplification and Interlender SubCommittee, the Government Issues Committee, the Administrative Committee, and the Individual Representation Committee. In conjunction with their executive director, board members evaluate and oversee the project, including the work of the past quarter, achievements in terms of units developed or preserved and jobs created, and the total number of groups benefiting from the development activities.

Staffing requirements, including the number and the degree of professional experience required, will vary. With the exception of the Community Development Legal Assistance Center in New York, all programs are staffed by one or two full-time professionals. Staff are responsible for general administration, including recruiting and evaluating volunteers, recruiting and screening CBDOs, matching volunteers to organizations, monitoring and evaluating the volunteer/client working relationship, promoting the project, and fund raising. They may also engage in legal representation of CBDOs, either alone or in conjunction with pro bono attorneys. At a minimum, qualifications required of project staff are familiarity with the
community development field, a general understanding of real estate and business law practice, and an ability to work with both attorneys and community groups.  

3. Financing and Attorney Recruitment

Annual operating budgets range from $50,000 for the Texas Rural Legal Aid project to over $600,000 for the multi-staffed Community Development Legal Assistance Center in New York (CDLAC). The mean operating budget is approximately $70,000. Funding derives from numerous sources, including membership dues, foundations, IOLTA funds, individual contributions, and legal fees charged to CBDOs. For example, CDLAC relies on foundation and corporation grants, membership dues, fee-for-service work, and contributions from individuals and law firms. The Massachusetts Lawyers Clearinghouse project is financed by the Boston and Massachusetts bar associations, IOLTA money and contributions from individuals and larger law firms. Several small foundation grants, individual donations, and some fee-for-service work provide the funding for the Community Law Center in Baltimore.

In recruiting attorneys, managers emphasized that it is important to involve senior partners in large law firms and members of legal aid as well as banking, business law and real property sections of bar associations. Recruiting from large firms is preferred, since a single CBDO project can require substantial time and several different types of legal expertise, but volunteer attorneys are drawn from firms of all sizes. Attorneys in corporate legal departments are also active participants. In the Community Economic Development Law Project in Chicago, for instance, the initial recruitment focused on existing pro bono panels, members of local bar associations, and corporate legal departments. CEDLP contacted the chairpersons and committees of local bar organizations and their members with a potential interest in the kind of work involved. Two articles in bar association publications also facilitated recruitment.

The Massachusetts Lawyers Clearinghouse wrote to attorneys directly to solicit their participation. In addition, its Education Working Group sponsored educational forums in which attendees were asked to participate in the Clearinghouse program. After the initial recruitment effort, program staff then arranged a series of meetings with larger firms to describe the work of the Clearinghouse, and to solicit new participants from among the firm’s attorneys. The Lawyers Clearinghouse recruits additional volunteers by word-of-mouth and through periodic mailings.
4. Building Awareness in the Community

Publicity is needed to build awareness among CBDOs of the availability of *pro bono* services. Several of the projects distribute pamphlets through CBDO coalition groups and other technical service providers, and use television news spots and newspaper articles as well. The Community Law Center publishes a periodic newsletter to inform CBDOs and promote the Center's activities, and the Community Organizations Representation Project publicizes its work and obtains information about potential projects through a questionnaire sent to CBDOs. Some projects sponsor seminars on legal issues affecting CBDOs.

5. Operations

a. Determining Eligibility

In general, the law projects determine the eligibility of a CBDO's request for *pro bono* assistance through a two-step inquiry. First, the overall structure and purposes of the CBDO are considered to ensure that its purposes are consistent with the mission of the project. Factors used in considering the CBDO generally include its mission and history; the background of its directors and officers; whether it is located in a low-income community; whether its membership is composed of community residents; and the size of its operating budget. Assuming this initial threshold inquiry is satisfied, the law projects then consider whether the specific request for assistance warrants *pro bono* treatment.

Factors used in determining the eligibility of a particular request include the potential developmental effect of the assistance on the community (i.e., where it is a request for assistance with a particular project, does the project have the potential to develop or preserve affordable housing, create or retain jobs, or provide needed social services?), the number of attorney hours required to complete the request, and the level of financial resources available to the CBDO. While for the most part the law projects apply these factors in a flexible manner, some projects have established some quantifiable standards. Under standards set by the Lawyers Clearinghouse in Massachusetts, for example, any affordable housing project of fifteen units or less or having a total development budget of $1.5 million or less will automatically qualify for *pro bono* assistance.
b. Pro Bono Versus Reduced Fee Services

Related to the issue of CBDO eligibility is the question of fees. Should CBDOs be charged or should all services be provided on a strictly pro bono basis?

One argument for a strictly pro bono fee policy is that by removing the "soft cost" of attorneys' fees, more affordable housing and jobs, etc., can be created. The fact that most community development projects will have to be subsidized in some fashion argues for cost reductions at every possible level. Development in low-income areas requires substantial amounts of legal work that, if not done free, will increase the cost of the projects and could eliminate or drastically reduce the viability of a community's self-help effort.

On the other hand, charging the CBDO a nominal fee might help prevent the abuse of scarce legal resources and facilitate a more professional relationship. Some of the projects have tried to balance these considerations by providing both pro bono and reduced fee services, basing their decision as to the proper fee level on ability to pay. The Community Development Legal Assistance Center in New York, for example, will provide services gratis to fledgling organizations that are trying to obtain tax-exempt status, but may set up a reduced fee arrangement with a more mature CBDO which has access to financial resources. By contrast, the Lawyers Clearinghouse in Massachusetts is strictly a pro bono organization, but maintains a list of attorneys and law firms that may be referred to should CBDOs fail to satisfy Clearinghouse eligibility requirements. The Clearinghouse has also issued fee guidelines for attorneys representing CBDO's on projects that do not quality for assistance under its eligibility standards. These guidelines encourage attorneys to take these larger projects on a reduced fee or at-risk basis.

c. Delivery of Services

In contrast to the cases handled through traditional pro bono projects which can usually be handled by a single attorney in a relatively short time, a CBDO project may require more than one attorney and could conceivably drag on for several months or even years. Consequently, the law project director must exercise care in selecting volunteer attorneys to ensure both adequate representation for the CBDO and a positive experience for the volunteer.

To make a good match, the director must understand the client CBDO's needs and the commitment and ability of the attorney. Accurate assessment of a client CBDO can be accomplished through a suitable intake system and a director who knows and understands the nature of the organizations in
the local area. To determine the abilities and commitment of the volunteer attorney, law projects have prepared registration forms designed to obtain information on the attorney's ability, areas of interest and experience, and degree of responsibility desired, ranging from simple consultation to acting as comprehensive general counsel.

In some cases innovative approaches to the task of matching attorneys need to be developed. In order to ensure continuity of legal services from the same group of attorneys to a particular CBDO, the Community Development Legal Assistance Center in New York encourages law firms to undertake a series of transactions for the organization. Having the project staff lawyers act as co-counsel with a private attorney is another approach to assure continuity should the project extend for several years. For highly complex projects a team approach, either among several firms or within one firm, may be useful. CDLAC has used both, working with several firms in the case of large mutual housing association projects, and a number of attorneys in a single firm on various real estate syndications.

Once a referral is made, the project director can track and control the project in several ways. Brief status reports from attorneys or follow-up questionnaires can monitor ongoing projects. The Lawyers Clearinghouse in Massachusetts has designed a computer database to follow projects. Where staffing allows, complex cases can be handled through a co-counsel arrangement between a staff attorney and the pro bono attorney. Whatever the control system, in order to be effective it must balance the need for monitoring against the risk of exasperating the volunteer attorney with needless reporting requirements.

d. Training

Regular training of both volunteers and CBDO staff can promote the efficient use of pro bono resources as well as a good working relationship between the CBDO and its counsel. Over half of the law projects surveyed provide some type of training program. The Community Law Center in Baltimore and the Community Economic Development Law Project in Chicago have each developed a number of self-help resources for CBDOs, such as workshops and manuals. The Lawyers Clearinghouse in Massachusetts arranges seminars for CBDOs and attorneys including one for banking lawyers on the Community Reinvestment Act. CDLAC's training efforts include in-house training sessions for firms that have agreed to take on a number of complex projects. Training can also take the form of providing model documents. Several bar projects have assembled document files that serve to teach volunteers and streamline the delivery of services.
V. CONCLUSION

The emerging success of community-based development organizations demonstrates the desire and ability of low-income citizens to achieve self-sufficiency and self-determination. Attorneys can play a vital role in this process by sharing their talents with these organizations on a pro bono or reduced fee basis. In doing so, attorneys can fulfill their professional obligation of public service while helping to make possible an individualized and neighborhood-based renewal for even the most economically disadvantaged.

2. In practice CBDOs are known by a variety of titles: many are called community development corporations (CDCs); some are called neighborhood development organizations (NDOs); others are members of the Neighborhood Housing Services (NHS) Network. Other names are also used.


6. NCCED, *Against All Odds*, supra note 1, at 3.

7. Id. The survey was directed by Renee Berger, president of Team Works Inc., sponsored by the National Congress for Community Economic Development and co-sponsored by the Community Information Exchange. Another study issued in 1989 by a team led by Avis Vidal for the Community Development Research Center entitled, *Community Economic Development Assessment: A National Study of Urban Community Development Corporations* (preliminary findings) (New York: New School For Social Research, 1989) [hereinafter CEDA], provides a comprehensive study of 130 CBDOs in 29 cities.

8. NCCED, *Against All Odds*, supra note 1, at 1-2.

9. Id. at 8. For example, *Against All Odds* demonstrated that CBDOs engage in a broad range of activities, in concert with their development projects. "Community organizing or advocacy is an activity for almost two-thirds of the survey's groups. Many are involved in tenant counseling (41%) housing for the homeless
(36%), home-owner counseling (31%) and emergency food assistance (23%). Other pursuits cited by at least 100 CBDOs were Community Reinvestment Act advocacy, child care, health care, arts and cultural activities, and arson and crime prevention." *Id.* In the CEDA study, thirty-five to forty percent of the CBDOs surveyed considered advocacy, job training, social service delivery, or promotion of community pride to be a major activity. CEDA, *supra* note 7, at IV-5.


11. *Id.* at 21. "Historically, economic development projects have usually been controlled by people from outside of the neighborhoods being developed. These projects often uprooted and destroyed communities. Community economic development, on the other hand, is directed from inside the community and is designed to improve the lives of its residents and meet their needs. CED is a strategy to involve low-income people in the growth and development of their local economy. By bringing in new resources and a more locally sensitive approach to economic development, CED benefits low-income people, and also businesses and local government. Since everyone in the community benefits from CED, the process brings together all sectors of a local community and focuses their efforts on the most effective methods of using local dollars and resources to retain and recycle income within the community." *Id.*


13. A total of twenty-six CBDOs were interviewed: Bethel New Life in Chicago; Union Miles Development Corporation in Cleveland; Common Ground Economic Development Corporation in Dallas; Hope Communities in Denver; Focus Hope in Detroit; Eastside Community Investments in Indianapolis; CDC of Kansas City in Missouri; Los Angeles Community Design Center and Pacific Asian Consortium for Employment in Los Angeles; Tacolcy Economic Development Corporation in Miami; New Community Corporation in Newark; Banana Kelly Community Improvement Association, Bedford-Stuyvesant Restoration Corporation and St.
Nicholas Neighborhood Preservation Corporation in New York; East Bay Asian Local Development Corporation in Oakland; Chicanos Por La Causa in Phoenix; Capitol Hill Housing Improvement Program in Seattle; Northriver Development Corporation in Toledo; Marshall Heights Community Development Organization and Manna, Inc. in Washington, D.C.; Coastal Enterprises in Wiscasset, Maine; Northeast South Dakota EDC in Sisseton, South Dakota; Cabrillo Economic Development Corporation in Saticoy, California; Dineh Cooperatives in Chinle, Arizona; Kentucky Highlands Investment Corporation in London, Kentucky; and Delta Foundation in Greenville, Mississippi.

14. Many of the attorneys interviewed represented CBDOs through what I have called community-based development law projects. For the purposes of this monograph, a community-based development law project is an organization designed specifically to meet the legal needs of CBDOs. This includes bar organization pro bono projects and other privately-funded public interest law projects. The following community-based development law projects were interviewed: The Community Economic Development Law Project in Chicago; The Lawyers Clearinghouse and the Community Law Center in Baltimore; The Lawyers Clearinghouse on Affordable Housing and Homelessness in Massachusetts; The Community Development and Legal Assistance Center of the Council for New York Law Associates in New York City; the Community and Charitable Organizations Project in Los Angeles; Lawyers for Affordable Housing in Dallas; the San Francisco Lawyer's Committee for Urban Affairs; and the Arizona Affordable Housing Project. Several private attorneys and legal services attorneys were also interviewed. Legal services organizations interviewed were: Phoenix Legal Services, Evergreen Legal Services in Seattle, Texas Rural Legal Aid, Greater Miami Legal Services, and North Carolina Legal Services in Raleigh.

15. Unless otherwise specified, Section II. A. is based on interviews with and information provided by Getz Obstfeld, Executive Director of Banana Kelly, during May-August 1990.

16. Telephone interview with Kerwin Tesdell, Director of Community Development Legal Assistance Center, May 1990.

17. Telephone interview with Jean C. Berman, Senior Attorney, Community Development Legal Assistance Center, July 1990.


20. Unless otherwise specified, Section II. B. is based on telephone interviews with and information provided by Mary Nelson, Executive Director of Bethel New Life, Inc., during May-August 1990.

21. The recycling center pays $9,000 a week to "alley entrepreneurs" for self-help efforts, and recycles over twenty-five tons of waste a week.


23. Unless otherwise specified, the description in Section II.C. is based on a telephone interview with and information provided by Lorenzo Simmons, Vice President of Tacoacy Economic Corporation, during May-August, 1990.


25. The store has become one of the most profitable supermarkets in the Winn-Dixie chain and employs a number of community residents. Annual sales of the shopping center are estimated at over $15 million.

26. Telephone interview with Roderick N. Petrey (May 1990). In 1986 Roderick N. Petrey was awarded the Tobias Simon *Pro Bono* Service Award, the Florida legal profession's highest honor for public interest service, for his work with TECD. "New Executive Director Installed at NED & LC," *CED Exchange* (Fall 1986): 2.

27. Unless otherwise specified, the description in Section II.D. is based on a telephone interview with and information provided by Ronald L. Phillips, President of Coastal Enterprises, Inc., during May-August 1990.


30. Unless otherwise specified, the description in Section II.E. is based on a telephone interview with and information provided by Rodney Fernandez, Executive Director of CEDC, during May-August 1990.


32. *Id.* The Growers Association had offered each family $500 for resettlement costs, but those who accepted found that this sum plus their farmworker wages would not cover the new rental cost of housing for their large families.


34. *Id.*

35. The cabinet shop and tile factory were used primarily to assist in housing development.


38. *See, infra*, Section III. A. 3.


40. As the CBDO matures it may choose to form separate for-profit subsidiaries, not-for-profit affiliates, or cooperatives. *See* sections III. B. 1. a and III. B. 2. a.

42. The New School study reported, for example, that "[C]ommunity representation on [CBDO] boards is substantial. On average 44 percent of board members are residents or clients. In addition, an average of 15 percent are members from other community organizations or are local religious leaders. Overall, community residents constitute a majority of the board in 45 percent of the groups [studied]." CEDA, supra note 7, at III-6 - III-8.


44. Id., at 643 - 655.

45. See, e.g., "New Lobbying Rules For electing Charities," in COCED, supra note 12, at 3-14a and "New Federal Administrative Requirements on Charitable Organizations," in COCED, at 3-14e. See generally, Hopkins, Tax-Exempt Organizations, supra note 42, Chapters 13 ("Legislative Activities") and 14 ("Political Activities").

46. Public Law 101-625.


48. According to the New School study, despite cutbacks on federal spending in the 1980s, federal expenditures are still the largest single source of funds for CBDOs, comprising an estimated thirty-three percent of total unearned income. The most common source of federal funding has been community development block grants. CEDA, supra note 7 at III-11. For an overview of the CDBG program regulations see, Jan Stokley, "CDBG Entitlement Regulations," CED Exchange (January 1989).
49. Through the Secretary's Discretionary Fund.


52. The low-income housing tax credit was enacted as Sec. 252 of the Tax Reform Act of 1986, P.L. 99-514. I.R.C. sec. 42. Bonds used to finance community development include private activity bonds, 501(c)(3) bonds, and essential purpose bonds.


56. Peirce and Steinbach, *Enterprising Communities*, supra note 3, at 43. The Pittsburgh Partnership for Neighborhood Development provides about $100,000 annually to half a dozen well-established community organizations. It is financed with $2 million from the Ford Foundation, the Howard Heinz Endowment, the city, and several local banks. Operating funds for less experienced and struggling CBDOs are provided through two funds financed with federal money. Id.


61. Linkage programs derive financial resources from private developers for community development activities. They are designed to balance the "inequities" created when a city subsidizes downtown development that benefits many of the city residents but harms low-income residents through the resulting higher cost of living including housing. The programs link approval for a development project with some form of benefit to the low-income community. "Linkage recognizes that developers actually receive public assistance, in forms that may range from infrastructure improvements, to land assemblage achieved by the city's use of eminent domain, to subsidies such as tax increment financing, Urban Development Action Grants, and revenue from tax- exempt financing. . . . [Linkage programs] set up a quid pro quo to transfer the benefits of economic growth to low-income communities to coax (or force) developers into doing good while doing well." Ellen Casale, Linking Development Benefits to Neighborhoods: A Manual of Community-Based Strategies, (Washington, D.C.: Community Information Exchange, 1989), 1. The most common form of linkage is a low-income housing trust fund. These programs may be mandatory or voluntary. For example, Jersey City operates a voluntary program based on suggested guidelines, not on ordinances or legislation. Any developer consistently ignoring the guidelines, however, can expect very little cooperation from the city on variances and other project clearances. Id. at 37, 38.

62. See Peirce and Steinbach, Corrective Capitalism, supra note 56, at 61. The New School study reported that foundations were the second largest source of external funding for the CBDOs surveyed. CEDA, supra note 7, at III-11. Foundations that have provided strong support to CBDOs include the Ford Foundation, Northwest Area Foundation, Lilly Endowment, the MacArthur Foundation, Pew Charitable Trusts, Charles Stewart Mott Foundation, Boston Foundation, Howard Heinz Endowment, Amoco Foundation, and Cleveland Foundation. Peirce and Steinbach, Enterprising Communities, supra note 3, at 47.

64. Shabecoff, supra note 63, at 6.


66. Prudential Insurance Company of America ($15 million), Lilly Endowment ($15 million), The Rockefeller Foundation ($15 million), The William and Flora Hewlett Foundation ($6 million), Knight Foundation ($5 million), the Pew Charitable Trusts ($5 million), John D. and Catherine T. MacArthur Foundation ($1 million), and the Surdna Foundation ($500,000).

67. Atlanta, Baltimore, Boston, Chattanooga, Chicago, Cleveland, Columbus, Ohio, Indianapolis, Kansas City, Missouri, Los Angeles, Greater Miami, New York City, Newark, New Jersey, Philadelphia, Portland, Oregon, Oakland/San Francisco Bay Area, San Antonio, Seattle, St. Paul, and Washington, DC.

68. Shorebank Corporation in Chicago is a model of how a commercial bank can operate profitably in a low-income neighborhood and act as a catalyst for community development. Shorebank's founder, Ron Gryzwinski, acquired the South Shore Bank in 1973 when federal regulators refused to allow the previous owners to pull the bank out of the declining neighborhood. Numerous foundations, corporations, and church organizations provided funds to assist Gryzwinski in capitalizing the bank. By 1987 the banks assets had jumped from $40 million to $135 million with annual profits registering over $1,000,000. Through investments of over $140 million in the South Shore neighborhood the bank and its other operations have financed the rehabilitation of over 8,000 housing units. Peirce and Steinbach, Corrective Capitalism, supra note 57, at 68. See also, Shabecoff, supra note 63, at 14. For an in-depth look at the Shorebank Corporation, see, Richard Taub, Community Capitalism, (Boston: Harvard Business School Press, 1988).


72. Id. at 10.

73. Id. In addition to providing debt capital for CBDOs, financial institutions have made direct investments in disadvantaged communities by creating bank community development corporations (CDCs). These are organizations created by banks and bank holding companies to conduct community revitalization projects and programs in their target areas. The legal authority for national banks, bank holding companies, and state banks to form CDCs is derived from regulatory rulings made by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and state banking regulatory agencies. As of 1987, eighteen bank CDCs and twenty-three bank holding company CDCs were approved for operation across the country. United Way of America & Community Information Exchange, Raising The Roof: A Sampler of Community Partnerships for Affordable Housing, (Washington, D.C.: Community Information Exchange, 1988), 41-42 [hereinafter Raising the Roof].

74. Shabecoff, supra note 63, at 15.


76. Shabecoff, supra note 63, at 17.

77. Peirce & Steinbach, Corrective Capitalism, supra note 57, at 65.

78. Religious institutions' support for community development extends well beyond financing. Some congregations provide job training and placement programs, or have set up professional talent banks to assist CBDOs. Some have established mentor programs to match their congregants with poor families receiving assistance. Peirce and Steinbach, Enterprising Communities, supra note 3, at 57.

79. See David Scheie, J. Markham, S. Mayer, J. Sletton, T. Williams, Religious Institutions as Partners in Community-Based
Development: Findings From Year One of the Lilly Endowment Program (Minneapolis: Rainbow Research, 1990).

80. See Raising the Roof, supra note 73, at 51ff. See also Creative Tools, supra note 39, at 232ff.

81. In addition to developing the community loan fund concept, the Institute for Community Economics has pioneered the so-called community land trust model of housing development. See infra, notes 137-142 and accompanying text.


83. Both organizations were formed in 1987. The National Equity Fund, Inc. (NEF) is an Illinois not-for-profit corporation of which LISC is the sole member. Local Initiatives Managed Assets Corporation (LIMAC) is a New York not-for-profit corporation. LIMAC is governed by a nine-member board of directors, two of whom are appointed by LISC. Neither NEF nor LIMAC hold federal tax-exempt status. Local Initiatives Annual Report (1989).


86. Id.


88. Id.

89. Peirce and Steinbach, Enterprising Communities, supra note 3, at 30.

90. See Kirkpatrick, Dillon, & Bloch, supra, note 75.

91. Community Builders develops properties directly as well as acting as an intermediary. Its home office is based in Boston, with additional development offices in Springfield, Massachusetts; Providence, Rhode Island; and Philadelphia, Pennsylvania. Community Builders provides a wide array of assistance in such areas as residential development, property management, legal services and equity finance.
92. See COCED, supra note 12, at 7-55, for an outline training program for the board of directors of a not-for-profit organization.


94. During a training session it may also be useful to discuss the possibility of charges of "unfair competition." As a not-for-profit organization engaged in real estate and business venture development, a CBDO's activities may be challenged as "unfair competition." COCED, supra note 12, at 7-11. For a general discussion of the issue, see, B. Hopkins, Starting and Managing A Nonprofit Organization: A Legal Guide, (New York: John Wiley and Sons, 1989), 216-219 [hereinafter Hopkins, A Legal Guide]. The legal restrictions on CBDOs use of government funds to accomplish its goals are minor. Most courts have decided that government grantees that develop businesses can be held liable for using public funds to compete unfairly only if the public funding source used for development is restricted by statute from supporting competitive ventures. COCED, supra, note 12 at 7-15. The issue of unfair competition may arise in political as well as legal contexts, however. Other businesses or local unions may charge a CBDO-sponsored business with unfair competition even if the law is strictly adhered to, thus generating bad publicity for the organization. An attorney can help the CBDO by determining which groups or individuals may feel that the CBDO's competition is unfair, and preparing a plan of action to avoid or neutralize opposition before it arises. Id.

95. See, e.g., Hopkins, The Law of Tax-Exempt Organizations, supra note 43, at 643-655. Under federal law, tax-exempt organizations are required to file an annual information return with the IRS. (IRC section 6033(a)(1). Form 990). Form 990 as filed by charitable organizations must include the following: 1) gross income for the year; 2) expenses attributable to income; 3) disbursements; 4) a balance sheet showing assets, liabilities, and net worth as of the beginning of the year; 5) total contributions and gifts received and the names and addresses of substantial contributors; 6) the names and addresses of managers and highly compensated employees; 7) compensation and other payments
made during the year to each manager and highly compensated employee; 8) certain information concerning lobbying activities (if the organization has elected to come within the "safe haven" lobbying rules). Id. at 648 (citing IRC Section 6033(b); Reg. Section 1.6033-2). The CBDO may also have to file a tax return if it has generated unrelated business taxable income (Form 990-T, Id. at 651; Reg. Section 1.6012-2). Unrelated business income is discussed in relation to project related legal issues, see infra note 101 and accompanying text.


97. Under Circular A-122, for example, when the CBDO owns the building in which its grant activity takes place, interest expenses cannot be charged back against the grant as part of allowable rental costs. Thus, the federal government prohibits a CBDO from borrowing money to buy a building and recovering its interest payments from rental charges within the federal grant programs it operates. COCED, supra, note 12, at 7-31.

98. COCED, supra note 12, at 7-63. See also, Bruce Hopkins, "How to Perform a 'Legal Audit' for a Nonprofit Organization," The Practical Lawyer 31 (1985): 31-38.

99. NCCED, Against All Odds, supra note 1, at 6. By comparison, just over one-third of the respondents were active in business venture development, as lenders, equity investors or owner/operators. Id. at 7.

100. The New School study reported that CBDOs assume a variety of roles in real estate development, including that of developer, catalyst or community sponsor, investor, construction contractor, or any combination of the above. The most common role was that of developer or co-developer (86 percent of housing groups, 74 percent of commercial/industrial groups). The second most common role was that of property manager (over 50 percent). CEDA, supra, note 7, at IV-7. Advocate, catalyst or sponsor is the third most common role assumed by CBDOs (47 percent of housing groups, 41 percent of commercial/industrial groups). Id.

law, tax-exempt organizations are allowed to engage in a certain amount of income-producing activity that is unrelated to exempt purposes; however, net income derived from one or more unrelated business activities is subject to tax on that income. A CBDO risks loss of its exempt status if too many of its activities are not in furtherance of its exempt purposes. The purpose of the unrelated income tax is to prevent unfair competition between tax-exempt organizations and for-profit, commercial enterprises. The objective of the rules is to place the unrelated business activities of an exempt organization on the same tax level as the for-profit business with which it competes. Hopkins, *A Legal Guide, supra* note 94, at 145. For a thorough discussion of the unrelated business income tax rules see Hopkins, *Tax-Exempt Organizations, supra*, note 43, Part VI ("Feeder Organizations and Unrelated Income Taxation").


105. The special rules applicable to private foundations include: "[R]ules concerning "self-dealing," rules forcing a minimum payout (grant-making) amount, rules limiting the extent of holdings of businesses, rules pertaining to the nature of investments, rules concerning the nature and scope of programs, rules imposing a tax on net investment income, rules making it unlikely that one private foundation will make a grant to another foundation, rules forcing more detailed annual reporting, and rules making charitable giving to private foundations less attractive." Hopkins, *A Legal Guide, supra* note 94, at 139-140.


108. For a discussion of the legal issues concerning joint ventures and partnerships see, Brad Caftel & Jan Stokley, "Joint Venture Outline," in *COCED, supra* note 12, at 6-77.
109. Section 252 of the Tax Reform Act of 1986, Public Law 99-514. I.R.C. Sec 42. The tax credit rate is roughly four percent for acquisition costs and nine percent for rehabilitation and new construction costs, but only four percent if federal subsidies or tax-exempt financing are used. For a guide on how to use the tax credits for low income housing, see Joseph Guggenheim, Tax Credits for Low Income Housing, 5th ed., (Glen Echo, Maryland: Simon Publications, 1990). For a general description of the syndication process, see Perry Stewart, "Syndications: The Basics for CBOs," Econ. Dev. & Law Center Rep. (September/October 1983), reprinted in COCED, supra note 12, at 6-47.

110. Guggenheim, supra note 109, at 103.

111. Id.

112. Id.

113. This example is taken from Community Development Legal Assistance Center, Project Report (June 1, 1989 - May 31, 1990), 5.


115. A housing cooperative is consistent with the goal of community control and benefit since it is "democratically controlled by its resident members who are given full information about the operations of the housing, who are selected without discrimination, who participate to obtain a service rather than for an opportunity for speculative gain, who see the housing cooperative as part of a larger community interested in addressing more than just housing needs, and who carry over their spirit of cooperation to helping other groups." David Kirkpatrick, "Rural Housing Cooperatives: How to Decide Whether a Housing Cooperative Is What You Really Want," Econ. Dev. & Law Center Rep. (September/October 1980), reprinted in COCED, supra note 12, at 8-15.

116. See Section III.B.1.b.3)(a) Preserving Affordable Housing, infra, notes 136-149 and accompanying text.

117. See Raising the Roof, supra, note 73, at 1.

119. See generally, Center for Urban Policy Research, Rutgers University, Housing Receivership and Self-Help Neighborhood Revitalization (New Brunswick, New Jersey: Center for Urban Policy Research, 1985). Union Miles, a CBDO in Cleveland, has effectively used the Ohio receivership laws to acquire a number of properties. Telephone interview with Frank Ford, Executive Director of Union Miles Development Corporation, May 1990.


123. Id. at 1163.

124. Id. at 1165.


128. Housing programs under Section 236 and 221(d)(3) of the National Housing Act, and some state-assisted projects.

130. Subtitle A of Title VI (secs. 601-605) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. No. 101-625, 104 Stat. 4079 (Nov. 28, 1990)).

131. For a manual and assistance on preserving affordable housing under the Low Income Housing Preservation and Resident Homeownership Act of 1990, contact the National Housing Law Project.

132. See Creative Tools, supra note 39, at 295.


134. Rudnick and Wolf, supra note 22.

135. This example is taken from The Community Development Legal Assistance Center, Project Report (June 1, 1989 - May 31, 1990), 19-20.


138. Raising the Roof, supra note 73, at 104.

139. As an alternative, the leasehold cooperative may use a long-term cooperative lease and land lease to sell both the land and the building. Id.

140. This discussion of the Community Land Trust Model is based in large part on D. Abromowitz, "Legal Issues in Community Land Trust Development," in Creative Tools, supra note 39 at 547. See also, Institute For Community Economics, "Community Land Trust Model: Questions & Answers," in Creative Tools, supra, at 552.
"At first it may seem strange that physically connected land and buildings can be owned by two separate owners. However, the separation of land and buildings and the leasing of the land to the owner of the buildings is an old, established and widely-used real estate mechanism. Many substantial commercial buildings are on leased land; one of the most famous examples is Rockefeller Center in New York City. Downtown office buildings in various other cities . . . and housing . . . also follow a split ownership of land and buildings. . . . [T]he condominium form of ownership is useful as a more familiar analogy, in that a unit owner holds legal title to what is often described as 'a box suspended in space' within a building." *Creative Tools, supra* note 39, at 548.

"The lessee in the CLT situation retains most of the control over the bundle of rights associated with ownership of housing, and also a responsibility for most of the obligations of ownership. CLT control is generally limited to areas where the CLT has a strong long-term interest (such as preservation of long term affordability and the condition of the land and improvements) . . . . The ground lease addresses such issues in a manner which attempts to balance these CLT concerns with flexibility for the ground lessee as building owner." *Id.* at 549.

For example, the owner's original cost adjusted for inflation and depreciation.

The financing of improvements on CLT property raises a number of concerns for both the lender and the CBDO. The lender will want to ensure that the ground lease is valid and extends for a longer time than the loan. The CBDO, by comparison, will be concerned with the risk of losing affordable housing units due to foreclosure. For example, a mortgage provision requiring the lender to give notice of default to the CLT and time to cure the defect could be included. *Id.* at 551.

*Id.*

For example, speculation may create great internal pressures on members to change their rules to allow resale at market prices.


By including prospective tenants as members pressure is increased on the organization to develop additional units.
149. MHAs offer greater flexibility in developing housing than land trusts or limited equity cooperatives. While MHAs may be easier to finance (financiers may look at the property as akin to a typical not-for-profit rental project), the homeownership aspects are less apparent. In general, the need for training and education to create an environment of commitment and involvement by residents is greater. Creative Tools, supra note 39, at 609.

150. Interview with Dennis West, President of Eastside Community Investments, September 1990.


153. Id.

154. NCCED, Against All Odds, supra note 1, at 7.

155. The New School study reported that of CBDOs active in business venture development, the most common roles were that of trainer, technical assistance provider, or consultant (68 percent), catalyst, sponsor, or advocate (64 percent); and community liaison (62 percent). The groups surveyed indicated that the best role for CBDOs was administering loan funds, because loan funds entail low risk to the CBDO as they are often guaranteed by an outside source such as the federal government, and provide a source of income to the CBDO in the form of an administration fee. CEDA, supra note 7, at IV-8.


157. See supra note 101 and accompanying text. The primary purpose of CBDO business ventures is to alleviate poverty, which is clearly a charitable purpose. Exempt organizations may conduct charitable activities by means of a trade or business ("An activity that would be a business if carried on by a commercial organization may nevertheless, in some circumstances, be the necessary means of achieving exempt purposes," IRS Exempt

159. For Internal Revenue Service rulings requiring that loans be made at less than the commercial rate of interest or under circumstances in which no commercial institution would make the loan see Rev. Rul. 63-220, 1963-2 C.B. 208, and Rev. Rul. 61-87, 1961-1 C.B. 191. In a 1974 ruling the IRS stated that an organization maintaining a program of providing low-cost financing and other aid to improve economic conditions and opportunities in distressed areas can hold exempt status. Rev. Rul. 74-587, 1974-2 C.B. Cf. Rev. Rul. 77-111, 1977-1 C.B. 144.


161. Interview with Mike Rochford, Executive Director, Saint Nicholas Restoration Corporation, May 1990.

162. S. Perry, Communities On The Way: Rebuilding Local Economies in the United States and Canada (Albany: State University of New York Press, 1987), 110. The reasons for forming a for-profit subsidiary involve more than the threat of loss of Section 501(c)(3) status. Many CBDOs find that private lending institutions such as banks and savings and loans (who are accustomed to dealing with for-profit ventures) are reluctant to lend to them, not recognizing that a not-for-profit organization may have a sound business venture. In addition, a number of government agencies, such as the Small Business Administration, restrict most of their grants or loans to for-profit businesses. A CBDO may also establish a subsidiary to protect itself from legal claims made against the business activity (i.e., protection against bad debt claims by suppliers or lenders, or from suits brought by customers or former employees). Finally, in most cases, the law for for-profit corporations is clearer and more settled than for nonprofits. See, Stephanie Smith, "Do You Need a Subsidiary?," Econ. Dev. & Law Center Rep. (Spring 1983), reprinted in COCED, supra note 12, at 5-35.


167. See generally, Brad Caftel with Jack Anderson and Margaret Stone, Community Development Credit Unions: A Self-Help Manual (Berkeley: National Economic Development and Law Center, 1978). The success of CDCUs has demonstrated the potential for capital accumulation in poor communities. For example, a study conducted in thirty-eight poverty communities in Chicago during the 1970s found that savings accounts surpassed $1.8 billion. The problem was that these institutions were returning only $9 million (i.e., $.05 loaned for every $10 saved) to these communities, primarily in the form of home mortgages. Id. at 3-4.

168. Peirce & Steinbach, Enterprising Communities, supra note 3, at 37.

169. Id. In some cases CDCUs work together to provide financing. In New York, for example, the Lower East Side People's Federal Credit Union, the Self Help Works Federal Credit Union, the Northwest Bronx Coalition Federal Credit Union and the Union Settlement Federal Credit Union joined forces to make a participation mortgage loan to a CBDO in the South Bronx. The technique allows credit unions to participate in larger loans while diversifying their loan portfolios. Community Development Legal Assistance Center, Project Report (June 1, 1989 - May 31, 1990), 26-27.


171. Id.

173. *Id.* at 23.

174. Turnkey operations may be created in several ways. For a few examples see the *Harvard Law Review* note, cited supra, note 5, at 1664-1666.

175. The venture has created over 230 jobs.

176. For example, Alger-Marquette Community Action Board (AMCAB), a CBDO in Michigan's Upper Peninsula, joined with three community action agencies and Aspenal, Inc., a wood pellet manufacturer in Minnesota, to establish a low-cost fuel business. The mutually beneficial arrangement brought approximately $30 million into the area and created jobs in a area with soaring unemployment. Gardner, *supra* note 156, at 24-26.


179. *Id.* at 3.


182. *Id.*


184. Interview with Dennis West, President, East Side Community Investments, September 1990.

*Id.* at 51. Another example is Mississippi Action for Community Education (MACE) in South Central Mississippi. MACE is using a former YMCA building in Greenville to assist start-up companies owned by women to help battle the growing poverty among female-headed households in its region. *Id.* at 54.

Perry, *supra* note 162, at 110.

*Id.* at 56.

Focus Hope Informational Brochure.

*Against All Odds* reported that 83% of the owner/operator ventures were in the service sector. NCCED, *Against All Odds, supra,* note 1, at 5.

Franchises may be in the fast-food area or in other service areas such as Bethel New Life's Servicemaster franchise, a venture set up to provide a cleaning service for its buildings.

See, Barrogan and Freeland, *supra,* note 172.

*Id.* A concern raised by franchises is the quality of jobs they provide. One solution is to have the parent CBDO set up a dual training program geared towards giving semi-skilled and unskilled employees both experience in the franchise and additional marketable job skills beyond fast-food restaurants. The franchise's for-profit parent could pay for it directly through the not-for-profit and consider it a deductible business expense. *Id.* at 7.


The first advantage [of social services ventures] is the creation of jobs within the community. This not only allows people to work in their community, but it also keeps salary income within that community instead of funneling it to "outsiders" . . . . There are further economic development implications of community owned and operated health service systems. The contacts and expertise developed in the nonprofit agency can be used to create spinoff
business ventures such as meals services, transportation services, or equipment repair. These local spinoffs would add to the economic foundation of the community by creating even more jobs and providing an expanded capital base for the community. Another advantage of community-based jobs is career ladder opportunities provided to people working in the health field. Many positions, such as nurse's aide, senior activities leader, or physical therapy assistant, require only a modest amount of training, often available in community colleges or local training programs. These positions provide entry points from which people can take advantage of in-service training programs to move up a health professions career ladder. Pomeranz, Duke, & Rosenberg, "How Community-Based Organizations Can Address the Health Needs of the Low-Income and Minority Elderly," Econ. Dev. & Law Center Rep. (October/December 1981): 6.


197. These three organizations, while perhaps the most active, are only a sampling of the many national organizations providing legal advice and assistance to CBDOs. The author apologizes to those organizations excluded due to space and time constraints.

198. The information provided in section IV.A.1.a. is based on telephone interviews with and information provided by the National Economic Development and Law Center during May-August 1990.

199. Their primary sources of support are the Legal Services Corporation and the Ford Foundation.

200. The information in section IV.A.1.b. is based on telephone interviews and information provided by the National Housing Law Project during May-August 1990.

201. The Project is funded by the Legal Services Corporation, the California Legal Services Trust Fund Program, and grants from private foundations, including the Ford Foundation.

202. While the NHLP gladly works with the private bar through telephone consultations, they do not have the resources to perform any large amount of legal research for private attorneys.
203. See supra notes 127-131 and accompanying text.

204. The information provided in section IV.A.2.a. is based on an telephone interview with and information provided by Tom Carlson, Acting Director of the Community Economic Development Law Project during May-August 1990.


206. Lakefront operated with volunteer labor.

207. The information provided in section IV.A.2.b. is based on telephone interviews with and information provided by William T. Boyle, Executive Director of Lawyers Clearinghouse On Affordable Housing and Homelessness, during May-August 1990.

208. The information provided in section IV.A.2.c. is based on telephone interviews with and information provided by Kerwin Tesdell, Director of the Community Development Legal Assistance Center, during May-August 1990.

209. A twenty-year-old not-for-profit public interest law center.

210. The information provided in section IV.A.2.d. is based on telephone interviews with and information provided by Anne Blumenberg, Executive Director of the Community Law Center and Susan B.H. Tannenbaum, Executive Director of the Lawyers Clearinghouse, during May-August 1990.

211. The information provided in section IV.A.2.e. is based on telephone interviews with and information provided by Ellen Isaacs, Director of Public Counsel's Community and Charitable Organizations Project, during May - August 1990.

212. Public Counsel is the oldest and largest bar sponsored public interest law office in the nation. Over 3,800 volunteer attorneys have provided free legal services to the poor through Public Counsel programs. Donated legal services by Public Counsel exceed 95,000 hours of attorney time, worth over $14.2 million. CORP is just one of several Public Counsel pro bono projects.

213. See supra notes 127-131 and accompanying text for a discussion of CBDO opportunities to acquire HUD financial expired-use properties.
214. The information provided in section IV.A.2.f. is based on telephone interviews with and information provided by Dolly Kyle, Executive Director of Lawyers for Affordable Housing, during July 1991.

215. The information provided in section IV.A.2.f. is based on telephone interviews with and information provided by Michael Harris, Staff Attorney, San Francisco Lawyer’s Committee for Urban Affairs, during May-August 1990.

216. The information provided in this section is based on telephone interviews with and information provided by David A. Williams, Legal Services Director of the Arizona Bar Foundation, during May-August 1990.


218. *Id.* at 30.


224. To determine the need for CBDO legal services in their respective areas, the law projects contacted CBDOs, city- and state-wide coalitions and trade organizations supporting CBDOs, and city
and state officials working on housing and economic development issues. A needs assessment was necessary both to assist in fund raising and to effectively tailor the program for maximum client benefit.

225. See "Litigation As A Tool in CED Activities," in COCED, supra note 12, at 1-18k.


227. Telephone interview with Tom Carlson, supra note 204.


229. By-laws of the Lawyers Clearinghouse on Affordable Housing and Homelessness.

230. This committee plans, organizes, and coordinates seminars and educational programs.

231. This subcommittee is working to create a set of universally acceptable closing documents to reduce costs and increase efficiency on low-income housing projects.

232. This subcommittee reviews and comments on federal, state and local laws, rules, and regulations related to affordable housing.

233. This committee works with the executive director in the capacity of an executive committee. Among other functions, it is responsible for setting standards for referral and reviewing individual projects.

234. This subcommittee coordinates the work of the Clearinghouse with the work of local legal service providers.

235. Actual legal representation was a function of many but not all of the projects interviewed. The primary responsibility of the staff in most instances is overall administration of the project.

236. The staff person need not necessarily be an expert in real estate or business law. At least two of the executive directors interviewed were from backgrounds other than real estate and business. One
had a criminal law background, the other had worked as a litigator and legal services attorney. One project was successfully operated by a non-lawyer with extensive experience in the community development field.

237. CEDLP has also published a manual on not-for-profit compliance with government tax and reporting requirements, *Compliance with Reporting Requirements and Responsibilities*. The Community Law Center publishes other manuals as well including *Manual for Organizations Providing Services for Homeless People* and *Liquor Licenses: All You Ever Wanted To Know* (with information on how community groups can use the liquor laws to protect their neighborhood from blight). It is currently working on a manual to help people locate the owners of vacant properties. The Community Law Center has also held workshops on such topics as how to use UDAG repayments and linkage development.
APPENDIX A

RESOURCE ORGANIZATIONS

Association of Community Organizations for Reform Now (ACORN)
522 8th Street, SE
Washington, DC 20003
202/547-9292

Center for Community Change
1000 Wisconsin Avenue, NW
Washington, DC 20007
202/342-0519

Christian Community Development Association
3848 W. Ogden Avenue
Chicago, IL 60623
312/762-6389

Community Development Research Center
Graduate School of Management and Urban Policy
New School for Social Research
66 Fifth Avenue, Room 812
New York, NY 10011
212/229-5415

Community Information Exchange
1029 Vermont Avenue, NW
Suite 710
Washington, DC 20005
202/628-2981

Cooperative Housing Foundation
2501 M Street, NW, Suite 450
Washington, DC 20037
202/887-0700

Council for Community-Based Development
1070 Thomas Jefferson St., NW
Washington, DC 20007
202/342-9262

Development Training Institute
4806 Seton Drive
Baltimore, MD 21215
301/764-0780

Enterprise Foundation
505 American City Building
Columbia, MD 21044
301/964-1230

Institute for Community Economics
151 Montague City Road
Greenfield, MA 01301
413/774-7956

Local Initiatives Support Corporation (LISC)
733 Third Avenue, Eighth Floor
New York, NY 10017
212/455-9800

National Association of Housing Cooperatives
1614 King Street
Alexandria, VA 22314
703/549-5201

National Congress for Community Economic Development
1612 K Street, NW, Suite 510
Washington, DC 20006
202/659-8411

National Economic Development and Law Center
2201 Broadway, Suite 815
Oakland, CA 94612
510/251-2600
National Housing Law Project  
1950 Addison Street  
Berkeley, CA 94704  
415/548-9400  

National Housing Trust  
1074 Thomas Jefferson St., NW  
Washington, DC 20007  
202/333-8931  

National Low Income Housing Coalition  
1012 14th Street, NW  
Suite 1500  
Washington, DC 20005  
202/662-1530  

National Neighborhood Coalition  
810 First Street, NE  
Washington, DC 20002  
202/289-1380  

Neighborhood Reinvestment Corporation  
1325 G Street, NW, Suite 800  
Washington, DC 20005  
202/376-2400  

New Hampshire College Community Economic Development Program  
2500 N. River Road  
Manchester, NH 03104  
603/644-3103  

Pratt Institute  
Steubin Hall, 2nd Floor  
379 Decalb Avenue  
Brooklyn, NY 11205  
718/636-3486
APPENDIX B
SAMPLE LEGAL ASSISTANCE QUESTIONNAIRE
(sample intake form)

Organization Information

1. Legal Name of Organization: ____________________________

   Address: _____________________________________________________________________________

   Telephone: ___________________________________________________________________________

2. Primary Contact Person: ________________________________

   Telephone: Business ___________ Home__________

3. Who else may be contacted for additional information:

   Name: ______________________________________________________________________________

   Telephone: Business ___________ Home__________

4. Purpose of Organization. What does your organization do in terms of 1) developing affordable housing or providing shelter; 2) creating or retaining jobs; and/or 3) providing needed social services? (Please attach brochures, reports or other documentation which describes your organization's activities.)

   ___________________________________________________________________________________

   ___________________________________________________________________________________

5. Number of staff persons: paid ____ volunteer ____

6. Are you affiliated with another organization? If so, please include:

   Name: _____________________________________________________________________________

   Address: ___________________________________________________________________________

   Telephone: _________________________________________________________________________

7. Date your group established/organized: ________________

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8. Constituency/Persons Served: __________________________

9. Community/Area of Service: __________________________

10. If membership organization, number of members: _________

11. Officers/Directors of the Organization: (Note - please attach a list of ALL Officers and Directors, including address and phone number.)

____________________________________________________

12. Are you: a: Incorporated as a state nonprofit corporation?  
   Yes_______  No_______

   b: Have you applied for 501(c)(3) federal tax exempt status?  Yes_______  No_______

   c: Have you obtained 501(c)(3) federal tax exempt status?  Yes_______  No_______

   IF YOU ARE INCORPORATED AND/OR HAVE RECEIVED YOUR 501(c)(3) TAX EXEMPT STATUS, PLEASE INCLUDE A COPY OF YOUR ARTICLES OF INCORPORATION, BYLAWS, AND IRS DETERMINATION LETTER.

13. What is your annual operating budget? _________________
   Please attach a copy of your budget or proposed budget for the current year including sources or potential sources of income.

   YOUR REQUEST FOR ASSISTANCE CANNOT BE PROCESSED WITHOUT BUDGET INFORMATION

Legal Services Needed

14. Please describe the type of legal assistance your group is seeking, e.g., general legal counsel for organization, legal services for a particular project or program, legal services for a specific need - such as acquisition of houses, or legal services for a particular subject - such as zoning. (NOTE: Be sure to send copies of all related documents and/or correspondence.)

__________________________________________________________________________

__________________________________________________________________________

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15. If you are requesting legal services for a particular project or effort, describe where you are in that process.

________________________________________________________________________

________________________________________________________________________

16. Are there any attorneys active in your organization who have provided legal assistance to your group? If so, please list their names(s) and the type of legal work provided:

________________________________________________________________________

________________________________________________________________________

17. Has the organization ever used the services of other attorneys in the past? If so, please answer the following:

Name: ___________________________________________________________________

Legal Service Provided: ____________________________________________

Name: ___________________________________________________________________

Legal Service Provided: ____________________________________________

18. Did you pay for the services described in Question 16 or 17? Yes______ No_____

19. Please include any other information you think would be helpful to us in evaluating your request for legal assistance.
SAMPLE RETAINER AGREEMENT
(sample pro bono retainer agreement)

______________________________ (hereinafter "community organization") requests and authorizes ____________________, an attorney volunteer referred through [pro bono project] (hereinafter "attorney") to represent this organization regarding the following matters:

______________________________

The community organization and the attorney agree that such representation will be according to the following terms and conditions:

1. The community organization shall appoint a single representative to communicate with the attorney, and the attorney will be entitled to assume that such representative is authorized to act on behalf of the community organization.

2. The community organization authorizes its attorney to obtain any information or documents needed for successful completion of such representation. The community organization shall assist and cooperate with its attorney, and other persons acting under the direct and immediate supervision of its attorney, as required for the successful completion of such representation.

3. The community organization shall promptly notify its attorney of any changes in its address or telephone number.

4. The community organization shall pay any fees, telephone charges, copying expenses or other out-of-pocket expenses for obtaining or filing
documents that are not waived, and inform the attorney of any change in the income or assets of the organization. *

5. The community organization understands that prompt, accurate, and complete responses to its attorney’s requests for information are necessary to expedite service and timely completion of its request for legal assistance. The attorney shall provide the organization with an estimate of the time necessary to complete the matter, and the organization understands that some delays may be beyond the attorney’s control.

6. The community organization understands that while its attorney has been referred through the [pro bono project] and may receive assistance from [pro bono project], all acts and conduct of either [pro bono project] or such attorney are acts of parties independent of each other and it is understood that the manner and method of performing legal services by the attorney for the community organization will be determined solely by the attorney and in no way controlled or supervised by [pro bono project]. The community organization understands that [pro bono project’s] relationship to the community organization and its attorney is solely as a referral service and that [pro bono project] does not guarantee, warrant or take responsibility in any way for the work performed by the attorney.

7. The community organization understands that it may discharge its attorney at any time. It also understands that under certain circumstances, which are discussed in the Rules of Professional Conduct, the attorney may end his or her representation of the community organization provided that certain steps, such as giving reasonable notice to the organization, have been taken to protect the organization’s interest.

*The attorney and the community organization should discuss the scope of such fees and other expenses at the outset of the representation.
Both the attorney and the community organization shall promptly inform [pro bono project] upon any such termination of representation. Continued [pro bono project] involvement upon termination of representation initiated by either party will be determined after consideration of all the circumstances as they exist at the time of termination.

The undersigned hereby certifies that he/she has been appointed as the representative of the community organization as set forth in paragraph 1. above and that all communications and authorizations made by him/her are duly authorized by the organization itself. The undersigned agrees that the attorney volunteer will represent the community organization on the terms set forth above.

Date:____________   ___________________________ On Behalf of the Community Organization

(Name and Title)

The undersigned attorney certifies that he/she agrees to provide legal representation to the above-named community organization on the matters and terms set forth above.

Date:____________   ___________________________

(Attorney Signature)
Consent to Disclose Request for Assistance

I, __________________________ on behalf of the __________________________ hereby give permission to the [pro bono project] to include the name of our organization on a list of groups seeking legal assistance through pro bono project. I understand that the name of the organization and the type of assistance requested will be included on such lists for purposes of fundraising, reporting to supporters and annual reports.

Signed____________________

Title ______________________

Date ______________________
ABOUT...

THE ABA DIVISION FOR PUBLIC SERVICES

Throughout its history, one of the goals of the American Bar Association has been to apply the knowledge and experience of the legal profession to promotion of the public good. This is the overriding mission of the ABA's Division for Public Services, one of the Association's program divisions providing staff support and expertise for the Association's many attorney-sponsored programs and activities. The Division for Public Services was established over two decades ago to lend greater focus, voice and visibility to the Association's public service activities.

Nine membership groups carry out the work of this Division:

- Coordinating Group on Bioethics and the Law
- Standing Committee on Dispute Resolution
- Commission on Legal Problems of the Elderly
- Standing Committee on Election Law
- Coordinating Group on Energy Law
- Standing Committee on Environmental Law
- Standing Committee on Facilities of the Law Library of Congress
- Commission on Mental & Physical Disability Law
- Standing Committee on World Order Under Law

Through these programs, the Association studies important legal and social issues and formulates remedial responses ranging from policy positions to demonstration projects, model legislation, technical assistance manuals, videotapes, clearinghouses, public education initiatives, working conferences, and numerous publications. These activities are advanced by a staff of twenty-five and an annual budget of about $3 million, much of which is derived from outside grants to the Association's Fund for Justice and Education. The members who direct these endeavors are primarily, but not exclusively, lawyer members of the ABA. They include distinguished legal scholars, legislators, judges, lawyers in the public interest community, private firm practitioners, corporate and government analysts, health and social work professionals, scientists, and economists.
INTERNERSHIP APPLICATION REQUEST

I am a first or second-year student at an ABA-accredited law school. Please send me an information packet concerning the "Public Services Internship" sponsored by the ABA's Division for Public Services.

Name__________________________________________

Address________________________________________

________________________________________________________________________

________________________________________________________________________

Date__________________________

Law School ____________________________

City/State ____________________________

________________________________________________________________________

Expected Date of Graduation __________


Please feel free to copy this form for interested colleagues.

MAIL TO:   American Bar Association
            Public Services Division, Internship
            1800 M Street, NW, S-200
            Washington, DC 20036