

I wrote this document years ago to help people understand how to produce a legal agreement for their community, but since then I've realized how useful it is for any community in formation as its about helping to understand what your common vision is, and more importantly the details that will make or break a community.

Intentional Communities Agreements - a plain English guide

These agreements cover the following areas.

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Translations

- [Polish](#)

Latest version is at: www.mitra.biz/communities_plain.htm

last updated by [Mitra](#) <mitra@mitra.biz> on 21 November, 2012

Disclaimer: This is a draft, and I'm not a lawyer, so I can't give you legal advice!

How to use this document

I wrote this document years ago to help people understand how to produce a legal agreement for their community, but since then I've realized how useful it is for any community in formation as its about helping to understand what your common vision is, and more importantly the details that will make or break a community.

Why

I produced this after reading legal documents for several communities and noticing recurring problems.

For new communities

1. People starting communities often think they have a shared vision, when in reality there are gaping unspoken holes.

For existing (and new) communities

1. Many people on existing communities don't understand the legal agreements they have, or think they are different from what they really are.
2. The legal agreements often don't match what the community would like them to be.
3. People feel disempowered from working with agreements they don't understand.
4. Communities without clear, understood agreements, had much bigger fights, because they couldn't refer to a common agreement. Attempting to put together an agreement AFTER things had broken down, inevitably failed.
5. That while legal documents, and choices for structure, differed widely, the topics agreements covered, or needed to cover, were common.

Process for new communities or those without agreements

My basic premise is that, producing community legal agreements that everyone is committed to, should follow something like this process:

1. Figure out what your common vision for the community is - there are lots of ways of doing this, and I do not cover them here, other than some pointers.
2. Figure out what you are Sharing – see the notes below for a fun way of doing this. If you can agree on this ...
3. Work through these questions, figure out answers you can all agree with, figure out what other questions you need answering.
4. Write up these answers clearly, in PLAIN ENGLISH
5. Take the result to a lawyer who understands community law (most do not!), ask them to put a collection of documents together that follow your plain English draft, make sure they tell you - and don't leave it to you to figure out - anywhere that your plain English draft

doesn't match what they have produced. The lawyer should advise you of the appropriate legal structure, some notes on the choices are at the bottom.

6. Make sure that everyone who joins the community reads the Plain English agreements, and gets independent advice that the Plain English version matches the legal one. Typically the way this works is that after the first person has asked a lawyer to do the review, that others can use the same lawyer much cheaper.

Process for communities with agreements

Communities that already have legal agreements should follow a slightly different process.

1. Someone familiar with legal docs, should work through the legal documents, take each clause, and put a note into this framework of what the document says (in Plain English) and a reference number. (I can send you a couple of examples if you email me).

2. Work through the plain English version with the rest of the community, and check if its what you really want.

3. If it isn't, then go back to your lawyer and ask them how to change your agreements to match what you really want.

Vision

Establishing a common vision for the community is crucial, there are many techniques that are great for this, but this document is not the place to go into them. The vision should cover the Objectives for the community - for example, "To live simply in harmony with the earth", or "To live the principles of xxx (spiritual practice)". Its really good to get a simple statement of these into one of the documents everyone signs so that there can be no question that everyone is on board to the basic vision.

Sharing

Then I suggest figuring out what it is you want to share, again there are ways and techniques form boring surveys, to brainstorm, to a fabulous line-exercise that Robin Clayfield taught me.

In Robin's game you imagine a line across the room from "Totally Shared" to "Totally personal" and as the facilitator calls out different words you move to the point in the room that relates to how much you want to share that activity. Its interesting to see if you always end up with the same people, or if everyone wants to share some things and not others. Seeing the diversity helps understand how to create social or physical structures that support that diversity of needs.

Useful sharing concepts to discuss include:

- Food growing; cooking; buying; eating;
- Children: parenting; schooling; playing; childcare;
- Land: Caring; projects; regeneration
- Political action; Spirituality; Celebration; Music & Dance; Sexuality

What common facilities we have, and how they are organized.

The next set of questions cover common facilities, define what things are to be owned commonly, and how decisions are made about those common assets. For example this might include a common house, laundry, water and electricity supply etc

- Also think about items that are shared between just some of the members, for example a shared water tank or sewage disposal system.

How expenses and work is shared around.

In this section we define the rules about how expenses and work are shared, some questions to answer are:

- Is work and expenses split per-share, per-shareholder or per-person on the land, or as a percentage of income?
- What about members who are absent, are they responsible for example for there

tenants to do community work, or to pay a levy instead.

- Are expenses covered by some form of income, for example many communities have a guest business that covers most community expenses. If there is a surplus of income over expenditure is it distributed, or held for the next year.

- What expenses are split, and what the responsibilities of the members individually

- How is this decided on an ongoing basis, e.g. what percentage of members have to approve an expenditure.

- Any practical stuff relating to making budgets, keeping accounts, and having them audited

- Can the community charge a member for tasks that are their responsibility but that they don't carry out (e.g. mowing a lawn).

- Think also about the expectations that each member can have over the group, for example there might be a requirement on the community to maintain the common land to a certain standard, in which case any member might be able to require that common funds were spent to mow the lawn, or remove a fire-hazard.

What we can and cannot do on the land, and what needs permission.

The issue of what can and cannot be done, and what requires permission is going to be an ongoing discussion in most communities, but it is important to have a baseline, a clearly understood set of guidelines which are subject to change from time to time, its also important for people to understand how they go about getting a "variance", i.e. permission to break the rules in a particular situation. Its also important to distinguish between what is permissible in one's own house or land, and what is permissible on common land/buildings.

There are some things that are probably going to be common to all communities and that its just good to have clearly stated in writing so that action can be taken when someone breaks the guidelines, specific examples are:

- No physical violence or sexual abuse
- No disposal of toxic substances
- No guns

But other topics are likely to cause debate - some things to make sure to cover are:

- Animals - probably distinguishing between: Pets that are disturbing to wildlife (cats, dogs); other pets (e.g. birds); animals raised for slaughter (beef etc); other animals (chickens

etc);

- Noise - are there quiet days, is it absolute or only when someone complains;
- Some communities say that an individual cannot object to any noisy activity (e.g. a party) that is approved by the community.
- Some communities say Sundays are a quiet day where any noise that is objected to must be stopped.
- Think about how this applies to kids.
 - Kids - what restrictions are placed on them?
 - Fences - many communities don't allow people to fence in their personal land, with or without fences how much of the land is private to a member, and over what parts is their a right of use and/or access over. For example, does one member have a right to walk past another's house to take a shortcut to theirs, or have a picnic in another's orchard etc.
 - Chemical usage - is the place purely organic, or just discouraging toxic use.
 - Car usage - can people drive to their own units, or must they park in a common area, or for example can drive to the unit but then must return the car to a common parking area?
- Typically this section should also cover rights that go with shares, e.g. for an individual to build at a specified location, and occupy that space with their family.
- Using the common land for commercial or non-commercial activity, e.g. establishing orchards,
- Fires - what precautions / notification is required before lighting fires.
- Diet
 - is the community vegetarian, vegan, does this apply only to the common land/buildings or to people's personal lots, what about smoke from barbecues on personal lots etc.
- Drugs - a key area of disagreement within communities. Consider personal occasional use v. regular use v. abuse; Use on private land/buildings v. common land/buildings. Remember that one person's recreational substance is another's dangerous drug. Think of the spectrum Coffee; Sugar; Alcohol; Marijuana; Ecstasy; Mushrooms; Assorted other white powders. Where do you draw the line? For example a middle-ground position might be to say no usage of any illegal substances on common land, recreational usage on people's own land/buildings is people's own responsibility, abuse is a community issue.
- Renting one's space - is this allowed short-term and/or long-term. Does the community have to agree up-front, or does it have the power of veto over a guest. Does this power of veto extend to lovers, kids, parents. Is there a short-term/long-term limit on the population of any personal land. What about extra dwelling units on a land (e.g. caravans, tents)
- Is illegal activity of a member something the community gets involved with, or is it the member's own responsibility.
- How much say does the community have over an individuals construction of their dwelling? Colors, size, style, energy saving, etc
- Think about rights that individuals have over common land, for example the right to gather firewood balanced against the need for wild areas.
- Consider cases of necessary utilities, specific items that may need including would be:

- whether a member can build their sewage or grey water disposal area on common land,
 - whether they can sling cables across the land or need to put them underground.
 - whether they can put an access road / path across common land to their own land.
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- Think about leasing issues regarding common land, for example members might be allowed to use common lands for commercial activities, with a lease where some money goes back to the community.
 - Consider fire management, both of the common land and individual areas.

This section should also cover people's responsibilities e.g.

- Maintaining liability insurance for their site (otherwise the community may be responsible for actions of an individual).
- Maintaining ones personal land - mowing grass, clearing weeds etc.
- Removing rubbish and junk,
- Screening laundry?

New and departing members

How new members get to join the community, and old ones leave.

It seems that the issue of people leaving communities and transferring their shares causes more controversy than almost anything else since the needs of the person leaving, to get their investment returned in a timely fashion, can be the opposite of the needs of those remaining - to have a neighbor who shares their vision. Achieving a balance between these two requirements is our goal.

Questions to answer include:

- What, if any, are the requirements for membership - does someone have to be on a particular spiritual path, be ecologically aware etc, is this an absolute requirement, or just a guideline that can be overridden by the membership process, think about what happens if for example one person meets the criteria, but their partner doesn't. Make sure to check with legal advice as to what you can and cannot say here, for example in some countries it might be illegal to require that members are from a particular religion.
- What is the process by which new members are chosen, for example this might include:
 - what percentage of the members have to approve of someone new, typically this might be from 75% or so at an MO to 100% at somewhere like Dharmananda
 - whether there is an integration period before a second vote, typically these range from

3 months (Mevlana, Gondwana, most MO's) to a year or more (Dharmananda)

- If there is an integration period, are there sponsors responsible for helping the newcomer integrate.

- Is the selection process open, or by secret ballot, can anyone vote or just members who are currently resident and not in the process of leaving?

- Money: When someone joins, how much money do they have to bring, when they leave how much do they get. Does money change hands between the person leaving and the person joining or with the community or both. Some example answers that I've seen:

- The amount is determined by the market (i.e. the seller fixes a price), essentially someone leaving sells their shares to the person coming in. This is typical of an MO

- Or ... the amount is determined by agreement - or failing that an appraiser, and the community sells the shares on behalf of the person leaving. This works where shares are equal, or easily, valued, for example a co-owned house.

- Or ... the amount is fixed, doesn't rise with inflation, this was often the case with Land Trusts (does anyone do these now?)

- Or ... there is a fixed buy-in, but you don't get anything back when you leave.

- What happens if someone dies, gets married, or goes bankrupt or otherwise passes on the rights to their shares.

- Most communities seem to choose that the person receiving the rights has to go through the same process of acceptance. If not accepted then the shares are usually treated as if the person had chosen to leave.

- Is it one share per member, or can someone own multiple shares, is there a minimum on dividing shares.

- Does a share for sale have to be offered to other members first.

- What are the timelines. This can often be the trickiest part, the community wants long timelines so they can choose someone new, the person leaving wants short timelines so that they can move on. Complicating matters is the undesirability of having someone at the community who would really rather have left.

How we make decisions, including how we change our agreements.

Ask yourself how you want to make decisions, some of the choices are:

- Do you want to have everyone involved in decision-making, or do you want to elect directors and have them make decisions. Having directors reduces the amount of time spent

in potentially boring meetings, but it tends to distance people from the decisions made. If you choose to have directors, what decisions can they make on their own, and which have to come back to the whole community.

- Do you want to vote, or use consensus, or strive for consensus with a voting fallback. Consensus will ensure people are more likely to support the decision made, but it has also been seen to lead to interminable meetings, and the opportunity for one stubborn person to block any decision, or for example to block any proposal made by someone they don't like. There has been much written on the pro's and con's of consensus, so read some more about this, and discuss it with people who've tried it in a community like yours before making your decision.

- One community I'm familiar with decides by consensus at a meeting, and if consensus cannot be reached pushes it back to the next meeting where a vote can be taken, this means that anyone who wants a quick decision needs to make sure it is acceptable to everyone.

- If you are voting, what percentage have to approve a decision? 51%, 80% ?

- Who gets to participate in decision making, members, long-term guests, partners, kids? If decisions are by votes, then is it one per person, or one per shareholding?

- What is the quorum, i.e. how many people / shares have to be at a meeting for it to be able to make decisions.

- Does formal notice have to be given before a meeting, or only for certain kinds of decisions.

- What is the meeting process - a talking stick going around, or something informal (with a chairperson), or what?

- How about absent members, can they vote by post (this has the disadvantage that the motion cannot be changed to try and achieve compromise) or via a proxy?

- Often people who owe money to the community can't vote, often people who are not resident can't vote on new members, often people who have given notice of leaving can't vote on certain decisions (like approving new members).

- What agreements can be changed simply in a meeting, and what decisions require 100% (i.e. no objections), it is important to get this clear as it will effect what agreements end up in "Articles of Association" or things like that, and which are simply "By-Laws" or "Understandings".

- How flexible are you about making exceptions, i.e. case by case decisions that don't change the rules but wouldn't otherwise be allowed. Sometimes permanent – sometimes temporary.

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What rights does the community have over members who do not keep their side of agreements.

There is no point in having agreements, if there is not a clear understanding of the consequences of not keeping them. Sooner or later there will be somebody who decides they

can ignore the agreements because there is nothing the community can do about it. Having it clear will also make for less resentment if the consequences are carried out.

- Typically the main sanctions are financial. For example if someone doesn't maintain their area, then the community can do the work and bill the member. Or if someone doesn't participate in agreed shared work, then they could be billed.
- Typically if a member owed money then a high rate of interest is charged to encourage them not to treat the community as the easiest credit.
- What happens if someone is billed as a result, and then doesn't pay. The ultimate sanction on most communities where people have an investment is forfeiture of that investment. For example some communities have a Lien over the shares of a member for any money they owe, and in a case of a persistent default (with appropriate notices etc) can sell that members shares.
- In cases where there is no investment, it might be appropriate for the community to have the right to ask someone to leave. It is notoriously difficult to get a decision to expel someone, so be careful of what level of agreement you require to expel someone. Some communities say all but 2 members (presuming the one being expelled, and his or her partner), others say 2/3 or some number like that.
- Typically something in the agreements makes the individual responsible for any illegal action they take on their own land or common land.
- Often the community can ask non-members to leave with a much simpler process, thus making it easier to accept non-members to be on the land.
- Typically there should be a mediation clause, so that there is a way to push through a disagreement without resorting to courts, often there will also be an arbitration clause so that if it does end up going to court the process is quicker and cheaper.

What happens if the community closes

What happens if the community closes, typically the the company (or other legal structure) will be wound up, and whatever assets are left will be distributed in some way to be decided. Often communities make it clear that people (not the community) own their own buildings, and have the right to remove them, this means that in the case of bankruptcy a liquidator would have to negotiate with each member to purchase their houses.

Decide how a decision would be made to close the community, it could be forced - for example by bankruptcy - but otherwise it would typically take 100% of the members to make this decision.

Legal Structures.

There a number of legal structures, and planning instruments that can be chosen, a very brief overview is below, just so that you don't miss an option inadvertently. The basic idea is to take the answers to questions above and ask a lawyer what legal structure you should have. If a lawyer is reading this, and wants to disagree with my Pro's and Con's below I'd appreciate hearing from you! Most legal structures come with a base set of assumptions, and then ways that you can work around them with side-agreements etc to get what you really want.

Partnership:

The simplest structure.

Pro: Simple

Con: Hard to deal with almost any detail, like for example inheritance. No limited liability.

Tenants in Common

Pro: Commonly used especially for simple two-unit setups,

Con: but has notable disadvantages, in particular "66G" (a clause of some act that a lawyer should be familiar with) says that if one of the tenants can't obtain the price they want for selling their shares, then they can put the entire community on the market. Apparently this is really hard to get around.

Company

Pro: The biggest pro is flexibility, its possible to turn a company into almost any structure you want. For example our MO is a company, each member is a shareholder, the shares give the right to build and occupy a house, the directors have almost no power which devolves to the member's meeting. The common house etc are assets of the company. Company finances are totally separate from members.

Con: Its hard to get a mortgage on the individual shares/blocks.

Coop

Pro: the default is closer to what you probably want than a company

Con: its really hard to vary the default, for example to give different shares, different voting power based on investment.

Trust / Foundation

Pro: This is typically used usually to take the land out of the speculative real-estate market

Con: It makes it hard for a departing member to get a value out that allows them to buy into

somewhere else, creating a poverty trap where some people want to leave, but can't afford to.

Community Title

This is based on structures for Apartments.

Pro: You have freehold title to your own part of the community, which is usually mortgage-able.

Con: Its unclear whether a community can control who an individual sells to.

Some other Resources

- [NICA's list of resources includes many I haven't listed here.](#)