



## Housing Authority Models

MODEL TWO: INDEPENDENT HOUSING AUTHORITY  
WITH BOARD

Assembly of First Nations  
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## **MODEL TWO: INDEPENDENT HOUSING AUTHORITY WITH BOARD**

### **GOVERNANCE**

#### **RESPONSIBILITIES**

In this model, governance of the First Nations housing portfolio is the responsibility of an independent Housing Authority created by Chief in Council with a corporate mandate to administer community housing. In this instance governance roles and responsibilities are for the most part clear-cut, with the Chief in Council maintaining responsibility for policy-making subject to the will of the community and the Housing Authority taking on the role of administrator subject to the will of the Council and corporate accountability legislation governing operating and reporting requirements.

#### ***Chief in Council***

The Chief in Council, as political representative for the First Nation, is responsible for creating the policies and procedures to govern the operations of the Housing Authority with the best interests of the community in mind. In order to ensure this, it is recommended that a “Community Circle” be established to advise and provide recommendations to the Housing Authority and Chief in Council. The Community Circle would consist of a socially representative mix of community members interested in serving as volunteer community representatives. It is important to note that the capacity of the Circle is purely advisory – they would have no decision-making authority. In order for this model of governance to work optimally, Chief in Council and the Housing Authority would have to establish a positive cooperative rapport with the Circle.

#### ***Housing Authority***

The Housing Authority in this model is the body charged with administering the day-to-day operations of the First Nation’s housing portfolio. Its corporate mandate necessitates a particular governance structure composed of a Board of Directors responsible for: reviewing and approving budgets and plans; reviewing and approving financial reports; and finding program financial resources. The Board may choose to establish committees and sub-committees to take on specific administrative functions. For example, a Housing Authority may have a resident/tenant selection committee, a maintenance committee, a financing committee, a Community Circle relations committee, and so on. As an arm of Council, it is generally the case that members of the Housing Authority’s Board of Directors will be political appointees or political representatives, which has both positive and negative implications. On the one hand, political representation may heighten community accountability through traditional democratic processes – i.e. if the political representatives on the Board of the Housing Committee do not perform their duties to the satisfaction of the community, then they may not be asked to return to their positions once their initial term is complete. On the other hand, having a Housing Authority that is so closely intertwined with local political institutions may mean that housing programs are dictated by political will rather than genuine community need – i.e. if the government’s voter-base is identified as primarily

consisting of middle-income families they may focus their activities on providing homeownership financing options for these families while ignoring, say, low- or fixed-income elderly individuals in the community who are in need of supportive rental housing programs.

As mentioned, the duties of the Housing Authority will be dictated by the mandate provided by the Chief in Council and thus will vary community to community, but generally speaking duties might include:

- (1) Identifying community need and determining the social portfolio of the community by assessing living and housing conditions and investigating the means and methods of improving these conditions;
- (2) Developing, implementing, and monitoring long-term planning for the community housing portfolio;
- (3) Depending upon how much authority is transferred from Chief in Council to the Housing Authority, the Housing Authority may be responsible not only for implementing and monitoring housing policies and procedures but also developing policies and procedures;
- (4) Overseeing and enabling the operation and maintenance of Band-owned housing projects and programs, including fulfilling all administrative duties traditionally associated with the development and management of social housing programs;
- (5) Providing for the construction, improvement, and / or repair of new and existing Band-owned housing;
- (6) Facilitating the construction of privately-owned housing where desired;
- (7) Proposing financing and funding options to Chief in Council which will further the Housing Authority's mandate of providing safe, healthy, and cost-efficient housing for all community members; and
- (8) Reporting to the Chief in Council, the Community Circle and the community at large on all aspects of the Housing Authority's operations in order to ensure political, financial, and public accountability and operational transparency.

## **OPERATIONS**

### **RESIDENT RELATIONS**

#### ***Tenant / Member Eligibility Policies***

Depending upon what level of authority is vested in the Housing Authority by the Chief in Council, either the Housing Authority, the Chief in Council, or the two in partnership will establish a clear and defensible membership eligibility policy. The policy must be consistently applied to all applicants and must be in keeping with the goals and objectives of the Housing Authority's mandate in addition to complying with provincial tenancy and human rights legislation. Separate policies must be developed for each individual project or program administered by the Housing Authority in order to reflect differences in project goals.

### ***Calculating Rent / Housing Payments***

Depending upon the types of housing programs being offered, the Chief in Council will be required to establish procedures for the Housing Authority to follow in calculating rental and housing payments for tenants and homeowners in need of rent-geared-to-income (RGI) housing or subsidized homeownership. The calculations must be followed consistently for all tenants / homeowners. While there is latitude here for First Nations to decide for themselves how income, employment, and so on will be defined and determined, as a general rule the Canadian government has determined that for housing to be considered “affordable” individuals / families must not be required to pay more than 30% of their gross monthly income toward shelter.

### ***Appeals Process***

Band members are eligible to appeal any decision made by the Housing Authority regarding the selection process for rental allocation and loans, and it is recommended that they also be able to appeal decisions regarding calculations of financial assistance amounts. Appeals must be made within 10 days of receipt of selection or calculation decisions, and delivered in writing to the Housing Authority. An appeal will be held at the next Housing Authority meeting if one is scheduled within the next 2 weeks, and if not then the Chair of the Board is responsible, as President of the Authority, for calling a special meeting. The Appellant will be given the opportunity to present his/her case at the meeting, and then the Housing Authority will be left to deliberate in private and review the case. If the subject of the appeal falls within the purview of the Authority’s powers, the decision they come to on the matter will be considered final. If, however, the subject of the appeal falls outside the sphere of the Authority’s powers the Housing Authority will issue a recommendation to the Chief in Council regarding the case, and the Chief in Council will be responsible for making a final decision regarding the appeal within 2 weeks of receipt of the Housing Authority’s recommendation.

### ***Income Mixing***

In order to ensure the financial viability of social housing developments, it is generally recommended that specific percentages of housing units be reserved for tenants requiring subsidy assistance and those not requiring subsidy assistance, or RGI and non-RGI tenants. Mixed income developments ensure a steady source of income for developers by reserving a portion of available units for those able to cover the entire cost of monthly housing payments without assistance in order to offset “losses” or minimize repayments on loans that accrue as a result of subsidizing housing costs for those partially (i.e. people who are seasonally employed or under-employed and can thus cover part of their shelter costs) or heavily (i.e. those who are severely under-employed or unemployed and unable to make substantial shelter payments) reliant on subsidy or assistance programs.

## **ADMINISTRATION**

### ***Operating Agreements***

It is recommended that the Chief in Council in partnership with the Housing Authority develop an operating agreement for each Housing Authority-administered program in order to clearly outline the scope of the Housing Authority’s powers and provide

guidance for the administration of the First Nation's housing portfolio. The operating agreement should include, but not be limited to, the following:

- (1) Description of the division of powers between the Chief in Council and the Housing Authority, including the roles and responsibilities of each;
- (2) Budgeting, financial, operational and administrative reporting requirements (including independent auditing requirements, when and how audits are to be conducted, etc.);
- (3) Criteria for selecting tenants / members;
- (4) Procedure for calculating tenant / homeowner rental or housing payments; and
- (5) Dispute resolution / appeals procedures.

### ***Tenancy Agreements***

When any individual or group engages in housing provider activities they automatically acquire all the rights and responsibilities traditionally associated with being a landlord. Thus the Band Council, via delegated authority to the housing committee for the operation and management of the Band's housing portfolio, is landlord to all individuals and families residing in Band-owned housing units, and must fulfill the responsibilities of a landlord in their dealings with tenants. One of these responsibilities is the requirement, found in all provincial tenancy Acts, that landlords maintain tenancy or "lease" agreements with all tenants in all housing developments, detailing the terms and conditions of tenancy (e.g. length of occupancy, amount of rental payments and when payments are due, responsibility for payment for utilities and services, guidelines for termination of tenancy by either party to the agreement, etc.) as well as detailing the responsibilities of the landlord and those of the tenant (e.g. maintenance responsibilities, etc.). All tenancy agreements must comply with provincial tenancy Acts, human rights legislation, and relevant goals/principles of the council as identified in its operating agreement. Any tenancy agreement provisions that violate applicable tenancy or human rights legislation are void. The Council as landlord and tenants have recourse to the same provincial dispute resolution mechanisms (generally tenancy tribunals established by provincial Act) if they have reason to believe that the terms of their tenancy agreement or provisions found in provincial tenancy Acts have been violated.

### ***Records Management***

It is recommended that the Housing Authority be required to maintain records of its operations separately from the Band Council's records, in which case it is the Housing Authority's Board of Directors' responsibility to ensure that accurate, detailed, and up-to-date records are maintained for the various administrative aspects of the Authority's housing-related activities. Reporting requirements will be clearly defined in the housing agreement and in provincial legislation governing incorporation, but generally speaking it is considered a good governance practice for housing providers to maintain the following types of records: Corporate Records (including membership information, records of meetings, copies of job descriptions of Board members, etc.), Operational Records (including program information, day-to-day operational information, building records, and minutes of meetings), Administrative Records (including copies of reports and agreements, insurance information, financial reports and information, personnel and

membership information, etc.), and Applicant and Tenant Records (including copies of tenancy agreements, correspondences between the Housing Authority and tenants, and all personal and financial information concerning applicants and tenants compiled during the course of application and / or tenancy).

## **FINANCIAL MANAGEMENT**

### **POLICIES AND PROCEDURES**

It is imperative that the Chief in Council develop detailed record-keeping policies and procedures to be followed by the Housing Authority which are in keeping with generally accepted accounting practices and good governance principles (i.e. financial audits should be performed at least once annually by a registered independent accountant, and audit findings should be made available to the community, etc.) and provincial legislation governing corporate record-keeping. Policies and procedural guidelines must also be established to govern spending authority (e.g. when can the housing committee authorize expenditures and when must expenditures be approved by Chief in Council), purchasing of goods and services (provincial legislation should be consulted to determine when projects must be tendered and how, or if a simple contract is sufficient), annual budgeting, and, as previously discussed, guidelines for calculating rent/ housing payments. This is important not only to ensure accountability of the Housing Authority to the Chief in Council, but also to ensure accountability of the Chief in Council and Housing Authority to the community which they serve.

#### ***Housing Authority***

The Housing Authority will be responsible for delegating the day-to-day financial operations of the First Nation's housing portfolio to the Housing Coordinator of Manager, who will be responsible for completing quarterly financial audits and reports to be submitted to the Board of Directors and Chief in Council.

#### ***Board of Directors***

The Board of Directors is responsible for:

- (1) Monitoring the operations of the Housing Authority;
- (2) Making decisions concerning financial administrative matters that fall within their mandate and budget as defined and allocated by the Chief in Council;
- (3) Making recommendations to the Chief in Council on means of accessing funding and financing; and
- (4) Making budgeting decisions from budget provided by the Chief in Council.

#### ***Chief in Council***

Responsible for:

- (1) Creating an annual budget for the Housing Authority's operations;
- (2) Accessing funding and financing for housing programs and projects;
- (3) Ensuring annual housing program audits are complete and available to Band members; and

- (4) Making final financial decisions when necessary, as outlined in the operating agreement with the Housing Authority.

### **REPLACEMENT RESERVE FUNDS**

It is highly recommended that First Nations administering rental housing programs maintain replacement reserve funds in order to ensure that essential items can be replaced as needed. Replacement reserve funds are used to replace items such as floor coverings, appliances, window coverings, and so on, once they have exceeded their useful life, and would be administered by the Housing Authority using funds provided by the Council. A separate bank account should be maintained solely for the reserve fund, and it is generally accepted that if reserve funds are to be invested they are only to be invested in “secure” ventures such as savings and checking accounts, term deposits, government bonds, and so on. It is a good idea for any housing developer with limited resources or insecure funding to maintain a replacement reserve fund as a mechanism for ensuring the sustainability of the development.

#### ***Calculating Replacement Reserve Funds***

The amount of reserve funding required will vary development by development, and should be calculated within the first year of operation and deposits made into the fund account either on a monthly or annual basis. The method for calculating required replacement reserve funds is as follows:

(cost of item  $\times$  number of items)  $\div$  estimated / average useful life of item

This calculation must be completed for all replaceable items, and then the figures added together. The resulting figure represents the total amount of money that must be deposited into the replacement reserve fund annually in order to cover necessary expenditures over the life of the development.

### **PRIVATE HOMEOWNERSHIP FINANCING PROGRAMS**

There are numerous options available to First Nations seeking to assist community members in pursuing private homeownership depending upon whether First Nations prefer to engage in direct financing or financial facilitation of homeownership initiatives, the three most common being: (1) acting as a loan guarantor, (2) the administration of a revolving loan / mortgage fund, and (3) the administration of a rent-to-own program.

#### ***Revolving Loan / Mortgage Programs***

One way in which First Nations can provide financing for potential homeowners is through what is known as a revolving loan or mortgage program. In this type of program, the Band provides a capital fund to be administered by the Housing Authority to eligible potential homeowners in the form of direct loans or mortgages which are paid back into the fund in monthly installments. When properly managed, revolving funds provide a sustainable funding source for community members in need of financial assistance while reducing community reliance on external financing bodies such as the CMHC and other financial institutions. If a First Nation under this model of governance chose to operate a revolving loan / mortgage program it is likely the fund would be administered on a trust

basis, with the Housing Authority having full administrative control of funds provided by Council subject to reporting and auditing requirements outlined in trust legislation.

**Example:** One successful example of a revolving mortgage fund can be found in the operations of Habitat for Humanity Affiliates, who are required to maintain a *Revolving Fund for Humanity* in order to provide long-term, interest-free mortgages to their member families. They are able to sustain this practice by carefully screening applicants to ensure they will in fact be able to make their mortgage payments, and by mortgaging all houses twice, in order to ensure that (1) families pay low mortgage rates, and (2) participating families don't directly profit in the short term from ownership of the house by selling-up early.

#### *First Mortgage*

The first mortgage is meant to pay for the costs of building the house, with the home's value being calculated as the actual combined costs of construction (including the value of donated materials and the cost of purchased materials, administration costs, and labour costs or value if donated) and site acquisition and development. Generally, mortgage terms are calculated to be approximately 25 years, and payments are calculated on a sort of mortgage-g geared-to-income basis, where families pay no more than 25%-30% of their gross monthly income toward mortgage payments, with adjustments being made to reflect increases or decreases in income.

#### *Second Mortgage*

The second mortgage is the one that is meant to ensure that homeowners don't take advantage of the generous terms of the first mortgage, which does not take into account the market value of the house. This mortgage is based upon the difference in value between the actual cost of the house (as represented by the first mortgage) and the fair market value of the house at the time of sale. This mortgage is forgiven either upon full payment of the first mortgage or at the end of the mortgage term, whichever is later. This means that if a homeowner pays off their first mortgage early and decides to sell their house in order to take advantage of a positive housing market, they are responsible for paying the second mortgage in full.

#### *Loan Guarantees*

First Nations wanting to assist community members in financing homeownership but unwilling or unable for whatever reason to administer a revolving loan fund may choose to act as guarantors for members with insufficient equity who are applying to receive loans / mortgages from external financial institutions. In these situations, "[t]he professionalism of the Housing Administration and strength of the First Nation's financial statements will be taken into account when negotiating with lenders. Loans guaranteed by the Band will be represented on the Band's Financial Statements as a Contingent Liability." [Federation of Saskatchewan Indian Nations, 2005 : 66] Essentially, the First Nation, in acting as guarantor, removes the necessity of community members having to rely on ministerial and CMHC loan guarantees via Section 10 in order to obtain financing to facilitate homeownership.

### ***Rent-to-Own***

Some First Nations communities in the United States administer rent-to-own programs on reserve, where certain homes are designated as rental properties with the option of full private ownership. In the rent-to-own program, Bands are responsible for funding and financing the construction of homes which are then rented to tenants with the understanding that the tenants may be eligible to purchase their homes once specific criteria have been met and satisfied. The length of time it will take the homebuyers to become homeowners is determined by the amount of time required by the homebuyer to pay the full calculated purchase price in calculated monthly occupancy payments.

The two most common formulas for determining purchase price are (1) setting purchase price at seventy per cent (70%) of total construction cost, or (2) charging a set amount for all units based upon square footage. If neither of these two formulas is used and the Band / Housing Authority chooses to calculate purchase price based on some other method, the following factors should be kept in mind during calculations: operating costs, total construction and development costs, house size and type, and so on. Once a homebuyer has fulfilled all obligations outlined in the homebuyer agreement, the home will be eligible for conveyance (transfer of ownership). Obligations generally include: full payment of purchase price, payment of taxes and insurance coverage for the first year, payment of settlement and closing costs, and any other costs that the Band / Housing Authority deems appropriate. The Band / Housing Authority must adopt a policy to determine a point at which the balance owing on a home allows for issuing a notice of impending pay-off in full of the balance owing. Once the balance owing has been paid off and all legal steps taken, the title to the home is conveyed (transferred) from the Band / Housing Authority to the homebuyer. Counseling is made available to first-time homeowners as they make the transition from homebuyer to homeowner to ensure that they are well aware of their rights, duties, and obligations as homeowners.

### **SUBSIDIZED RENTAL HOUSING PROGRAMS**

Perhaps the most common option for communities seeking to provide affordable housing to members, subsidized rental housing programs are an effective mechanism for alleviating the burdens shouldered by low-income individuals and families who would otherwise be forced to pay market rents, and are adaptable to suit the varying, and sometimes special, needs of people both on- and off- reserve. Examples of specialized subsidized housing programs presently operating across Canada include: Supportive Seniors' Housing Programs, Urban Youth at Risk Programs, Low-Income Urban Singles Programs, various Supportive Independent Living Programs for people with mental and / or physical disabilities, and so on. These programs can either be funded independently by the Band Council and administered by the Band Housing Authority, or the Band may choose to take advantage of subsidizing partnerships with public or private subsidizing agencies, thus limiting their financial responsibilities but maintaining a high level of independence in designing and administering programs. Subsidizing programs vary province-to-province and sometimes, as is the case in Ontario, municipality-to-municipality, and thus it is important for the Chief in Council to be aware of the local requirements and particularities associated with engaging in subsidizing partnerships. In subsidized rental housing (or rent-geared-to-income) programs, tenants pay a maximum of 30% of their gross monthly income toward rent as their contribution toward the operating cost (or market rent, depending upon whether the program operates on a for-

profit or not-for-profit basis) of their unit, with the remaining difference between operating cost and tenant rent contribution being paid via subsidy transfers.

## **MAINTENANCE**

### **MAINTENANCE RESPONSIBILITIES**

The Housing Authority and Chief in Council, as both property developers and property managers, are responsible for ensuring that all new construction projects meet health and safety standards from planning stages through to completion, and that housing developments, once operational, are maintained in keeping with these same standards. The Housing Authority is responsible for ensuring that maintenance systems and procedures are in place that benefit, and ensure the proper functioning of, the development. This includes performing thorough inspections of buildings and sites at least once annually (with professional inspectors, when necessary) and recording all findings concerning work that needs to be done, any items that need to be replaced or repaired, and so on.

### **MAINTENANCE RECORDS**

The Housing Authority will be responsible for maintaining detailed and up-to-date building and maintenance records for all developments, including records of: site inspections, including work that needs to be done, work that has been done, estimated or actual cost of work, and names and contact information for individuals or companies responsible for performing maintenance / construction work; copies of all contracts; building and equipment maintenance manuals, and guarantees and warranties for equipment, labour, and appliances; building specifications and architectural renditions, including as-built drawings; and detailed inventories of equipment, supplies, appliances, and tools. It is also recommended that the Housing Authority maintain detailed records for each unit in a development documenting inspections, work done as a result of inspection and any work done by request of a tenant, information concerning appliances, and so on.

### **NEW DEVELOPMENTS**

When constructing a new housing development, the Housing Authority must work closely with contractors and architects at all stages of development to ensure that the interests of the committee are protected and that liability for any construction deficiencies is properly attached. The Authority is responsible for ensuring that proper inspections of the development and development site take place regularly. It is the responsibility of the contractor to provide the Housing Authority with proper documentation concerning: maintenance and instruction manuals and warranties for products, operating systems, and materials; specifications and as-built drawings for buildings; copies of Building and Occupancy Permits; a contact list for contractors and sub-contractors responsible for any work; and so on.

## **PURCHASES AND SERVICE CONTRACTS**

It is essential that Chief in Council and the Housing Authority cooperate to establish clear guidelines regarding purchasing and contracting in order to ensure that purchases and service contracts are undertaken with transparency and consistency, and that conflicts of interest are avoided. As previously discussed, it is helpful to clearly identify situations where Council approval for expenditures are necessitated and those where Housing Authority approval is sufficient. Requirements regarding tendering work and contracting vary province to province, and it is the responsibility of the Housing Authority to ensure that policies regarding contracting and tendering work are in keeping with relevant legislation.

## **MANAGEMENT PERFORMANCE**

### **OPERATIONAL REVIEW**

In order to ensure that operating standards as identified in the Housing Authority's operating agreement are met, it is recommended that a thorough review of the operation and management of each development is performed once annually. Inspections / reviews should be performed by the Housing Authority in the company of the Chief in Council and trained professionals (financial auditors, safety inspectors, and so on). The operation and management of the Authority and developments should be judged and evaluated based on the following categories:

- (1) Maintenance Management;
- (2) Resident Management;
- (3) Information and Records Management;
- (4) Human Resources Management; and
- (5) Financial Management.

In order to foster transparency, it is recommended that the findings of these evaluations and the Housing Authority and Council's responses to the findings be made available to the community and to development residents.