



Housing Authority Models

MODEL FIVE – HOUSING AUTHORITY AS INDEPENDENT
THIRD PARTY NON-PROFIT CORPORATE ENTITY

Assembly of First Nations
May 2012

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- MODEL FIVE -
HOUSING AUTHORITY AS INDEPENDENT THIRD PARTY
NON-PROFIT CORPORATE ENTITY

GOVERNANCE

RESPONSIBILITIES

In this model of governance, the administration of the First Nation's housing portfolio in its entirety is the responsibility of an independently owned, governed, and administered third party non-profit corporation. Thus the corporation acts as both property developer and property manager, removing responsibility for the housing portfolio entirely from the hands of the Council. Structurally speaking this model of administration could exist on a number of scales with different organizational structures. For example: a corporation could be responsible for the housing portfolio of only one First Nation, with agreements made at the local level between the independent corporation and the First Nation and policies and procedures for administration of the housing portfolio being entirely Band-specific; or, corporations could be structured as "umbrella corporations" at the provincial/territorial/regional levels to administer housing throughout the region with First Nations signing on individually, providing unifying guiding principles and criteria for the provision of housing in the region as a whole while at the same time allowing for autonomy of administration on a Nation-to-Nation level in order to account for differences in community situations and needs.

Chief in Council

Chief in Council is responsible for providing an independent corporation with the authority to administer housing for the First Nation.

Housing Authority - Independent Corporation

As mentioned, under this model of governance the responsibilities of housing authority for the First Nation are fulfilled by an entirely independent third-party corporation with a mandate to meet all of the First Nation's housing needs. Whatever the organizational structure or scale of this model of governance, the governance structure of the corporation itself will of necessity resemble the typical governance structure of a non-profit corporation with a few special requirements to reflect the importance of community input and involvement. Community involvement will be achieved via a community circle (or numerous Circles, should the aggregate model of corporate organization be implemented) and representation on the corporation's Board of Directors.

Community Circle

A Community Circle composed of representatives of the community will be formed in order to advise the housing authority corporation on matters specific to the community, including housing need (e.g. new home building versus improvement and modernization, rental housing versus homeownership programs, etc.), special program needs (e.g. Supportive Independent Living Programs or Supportive Seniors' Programs), cultural appropriateness, and so on. The Circle will have no governance authority, however it is essential to the optimal administration of the Nation's housing portfolio that community

members be provided with an avenue by which to air concerns and it is advisable that the Authority take advantage of this valuable information source in setting policy and conducting its affairs.

Board of Directors

The Board of Directors of the corporation will be composed of a mix of community representatives and industry representatives from both inside and outside the community who will be elected or appointed to their positions, and will serve as volunteers. There will be no political (Band Council) representation on the Board of Directors. The Board of Directors is responsible for developing the society's Constitution and Bylaws and outlining the society's goals and general, in addition to reporting annually to Chief in Council and the community on all aspects of the company's operations. The Board is also responsible for: establishing standards of conduct for members that are in keeping with the goals and principles of the society; ensuring that all legal and financial responsibilities are met; and developing procedures for the implementation of policies in order to meet the goals of the society. The specific powers exercised by the Board will depend upon the powers granted the Board in the society's Constitution and Bylaws, but the Board of a non-profit corporation is generally responsible for fulfilling the following five functions:

Decision Making

- Making decisions to guide the welfare and operation of the corporation; and
- Delegating daily management activities to staff, volunteers and/or society members.

Advisory

- Ensuring members and staff of the society are up-to-date on changes to laws that govern the society's operations;
- Advising on problems that affect the society and providing possible solutions to those problems;
- Educating society members and staff regarding the structure of the organization and informing them of how they may participate; and
- Explaining to members and staff why policies and recommendations are adopted and how they affect the society.

Trustee

- Responsible for representing the corporation in all legal areas;
- Ensuring the organization does not exceed its legal authority while at the same time meeting its legal obligations;
- Ensuring that the society's Bylaws are enforced or amended as required;
- Ensuring effective financial management; and
- Evaluating committee and staff performance.

Sustainability

- Ensuring members are provided with current information affecting the society;
- Conducting long-range planning;

- Developing and implementing an evaluation system members can use to provide feedback;
- Hiring and supporting competent staff;
- Setting up education and training programs to develop and train a pool of potential Board and committee members, volunteers, and staff;
- Establishing election procedures to guide members in selecting effective directors; and
- Establishing appropriate limits to terms served on the Board.

Leadership

- Creating an environment of respect for people's opinions;
- Providing recognition for individual abilities and contributions to the society;
- Achieving goals through reason and discussion; and
- Acting as a role model for other society members.

CONSTATING DOCUMENTS

Non-profit societies are in the position of being able to develop their own good governance policies and procedures to guide the operations of their organization. While there are necessary restrictions on their freedoms (for example, all policies must be in keeping with relevant legislation including employment and tenancy standards and human rights legislation, and financial record keeping must be in accordance with accepted accounting practices), there is enough latitude for societies to exercise self-determination through democratic decision-making. Essentially, it is the members themselves through their elected Board of Directors who decide the terms and goals of their membership and define how exactly governance of their society will be structured through the creation of a Constitution and Bylaws.

Non-Profit Corporation Constitution and Bylaws

Under provincial legislation governing the incorporation of non-profit societies, societies are required to develop a Constitution and Bylaws outlining the purpose of their society and clearly defining:

- (1) How directors are elected and appointed to, and removed from, the Board;
- (2) The duties and powers associated with directorship;
- (3) The period of the society's fiscal year, and thus when annual meetings and reporting will take place; and
- (4) The process for keeping corporate records (must be in keeping with directives identified in provincial non-profit incorporation legislation).

Conflict of Interest

As the body responsible for ensuring that legal and financial requirements are met and proper procedures followed, the Board is also responsible for ensuring that no conflicts of interest arise during the fulfillment of these duties. This is important in the context of non-profit societies because (i) conflicts of interest lead to an appearance of dishonesty and thus could cause distrust among members, and (ii) the very nature of non-profits denies the possibility of Board members profiting from their volunteer duties. A conflict of interest is said to occur when a Director's or Officer's business, family, or themselves

personally benefit as a direct result of their association with, or duties performed for, the society. Directors and Officers are not permitted to receive a salary or any other form of remuneration or compensation for performing their duties. Specific guidelines governing the reporting and resolving of conflicts of interest can be found in provincial society incorporation legislation.

MEETINGS

Because of the democratic organization of non-profit corporations, Board and member meetings are highly important to the decision-making processes of the company. How meetings are structured to ensure highest productivity, how often they will occur, and the requirements for calling a meeting will all be defined in a society's Constitution and Bylaws, and thus will vary company to company. Certain provinces have specific guidelines concerning non-profit society meetings and these will be outlined in the provincial legislation providing for non-profit incorporation. In Ontario, for example, societies are required to hold annual meetings, the first of which must be held no later than 18 months after incorporation and at least within every 15 months subsequently, and all meetings must be attended by a majority number of members of the Board unless the society makes special exceptions for this in its Bylaws.

EVALUATIONS

In order to ensure that a non-profit society continues to function optimally throughout the duration of its mandate, it is essential that all aspects of the governance of the society be evaluated regularly. The good governance practices of the company will dictate evaluation requirements, and these should be aimed at ensuring that the objectives and goals of the society evolve in order to remain relevant and that policies and procedures are being effectively administered in order to ensure that these objectives and goals are achieved. Evaluations should be conducted at least once annually by the Board of Directors, and the findings of these evaluations made available to the community and Chief in Council for review.

HUMAN RESOURCES

Staff and Volunteers

It is the responsibility of the society's Board of Directors to determine which jobs will be performed by staff, volunteers, and contractors and to budget and plan accordingly. This necessitates the development of clearly-defined and detailed hiring, training, and evaluation policies and procedures in order to ensure the smooth functioning of the society and its programs. It is also the Board's responsibility, as representative of the employing society, to ensure that all wage and safety standards and requirements are met in accordance with relevant provincial employment standards legislation, and that the rights of employees are respected and enforced as outlined in the relevant provincial human rights code.

Property Management Companies

Numerous non-profit housing developers hire property management companies to see to the day-to-day operations of their developments. In this case, it is likely that subcommittees within the corporation itself would take on responsibility for

managements duties, however should the company choose to contract-out management work it is important for the company clearly explain to the management company the special operational and governance structures of non-profit developments. The Board of Directors is responsible for overseeing the work of management companies to ensure that they are performing their duties in accordance with the goals and principles of the society.

Contractors

The term ‘contractor’ encompasses all trades-people (plumbers, electricians, dry-wallers, etc.) and consultants (financial and legal consultants and so on) hired by the organization on a contractual basis to complete specific tasks. Contracting legislation varies province to province, and it is thus important that the Board remain up-to-date on the relevant legislation to ensure that its dealings with contractors are undertaken with respect for transparency and fairness.

OPERATIONS

RESIDENT RELATIONS

Tenant Eligibility Policy

It is essential that the Board of Directors of the non-profit company establish clear tenant eligibility policies for each non-profit housing development, detailing the society’s tenant-selection criteria. The policies must be in keeping with the requirements of the society’s operating agreement as well as relevant legislation concerning tenancy and human rights, and should be designed to ensure that selection criteria are applied consistently and fairly to all applicants and are aimed at meeting local housing needs.

Discrimination

The operating agreements for all subsidized housing units will contain an anti-discrimination clause to ensure that public funds are not being administered / distributed in a discriminatory fashion. Unacceptable / prohibited grounds of discrimination vary province-to-province depending upon what grounds have been included in or read into the province’s human rights code, but generally include: race, religion, place of origin, gender, marital status, ancestry, etcetera. *However*, it is acceptable for a society to develop tenant eligibility criteria that are designed to target a specific group of people the assistance of whom is the stated purpose of the society. For example, a society that engages in housing development projects for the purpose of providing affordable housing to First Nations people can include in its tenant eligibility policies the requirement that individual applicants or applicant families be members of a First Nation without this constituting discrimination.

Calculating Rent / Housing Contributions

Rent / housing payment calculating is the process whereby non-profit affordable housing providers determine what quantity of rent/ housing payment each household will be required to pay each month, and is meant to ensure that all subsidized affordable housing residents in a development pay an equal portion of their monthly income toward shelter.

Methods for calculating rent contributions will vary depending upon what, if any, subsidizing partnerships are established by the Board, and generally change to reflect whether or not members are receiving income assistance. 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, be it rental or mortgage payments.

Appeals Process

Band members are eligible to appeal any decision made by the housing company 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 Board of Directors. An appeal will be held at the next Board meeting if one is scheduled within the next 2 weeks, and if not then the Chair of the Board is responsible for calling a special meeting. The Appellant will be given the opportunity to present his/her case at the meeting, and then the Board will be left to deliberate in private and review the case. Whatever decision the Board comes to on the matter will be considered final.

AGREEMENTS

When establishing non-profit housing programs, it is important to ensure that all agreements concerning the non-profit society are clearly documented and easily accessible to those affected by the agreements. This includes the society’s operating agreement(s), occupancy agreements between tenants and the company as landlord, and the company’s land trust / land lease agreement(s) (where applicable).

Operating Agreement(s)

Non-profit housing societies are generally required to establish operating agreements with their subsidizing / financing partner(s), if applicable (either CMHC, provincial / territorial or municipal subsidizing agency, or the First Nation’s Band Council). The following should be included in operating agreements:

- (i) Roles and responsibilities of the non-profit society and of the agency providing funding;
- (ii) Budget and financial reporting requirements;
- (iii) Eligibility criteria for selecting tenants, for calculating rent / housing contributions and performing rent / housing payment reviews;
- (iv) Amount of rent subsidy payments, and how and when these will be transferred from the subsidizing agency to the society (if applicable);
- (v) Operational review processes;
- (vi) Record-keeping requirements;
- (vii) Appeals policies and procedures; and
- (viii) Minimum insurance and liability coverage.

Occupancy Agreements

Under provincial non-profit society incorporation and tenancy legislation, all organizations that take on the role of housing provider also take on all the responsibilities

traditionally and legally ascribed to landlords in their dealings with tenants. This includes the requirement of establishing occupancy (or “lease”) agreements with residents where occupants are renters, and homeownership agreements where the authority is operating private homeownership or rent-to-own programs. These agreements document the terms and conditions associated with particular tenancies, including: length of tenancy; amount of rent or housing / mortgage payments, when rent / housing / mortgage payments are due, and the consequences of late or non-payment of rent / housing / mortgage payments; how a tenancy can be terminated by either party; responsibility for unit maintenance; and so on. It is the responsibility of the authority as landlord to ensure that all parts of occupancy agreements are in keeping with the occupancy requirements laid out in provincial non-profit incorporation legislation and tenancy acts.

Land Trusts and Land Lease Agreements

Under the 1999 First Nations Land Management Act, many First Nations are beginning to take back ownership and management rights and responsibilities for reserve lands that had been, and for the majority of First Nations continue to be, held “in trust” for their use by the Crown. As managers of their own land, First Nations have the same rights and responsibilities as other community / municipal land owners, including the right to make decisions regarding zoning and land use, the right to profit from ownership of the land, etc. Under this model of governance, First Nations who find themselves in the position to take advantage of such an opportunity would cooperate with Indian and Northern Affairs Canada to transfer authority for the management of First Nations land to the incorporated non-profit housing company via a Land Trust agreement, whereby the company would be entrusted with ‘ownership’ of development lands on behalf of the community. The company would then be able to designate particular parcels of land for housing development (known as Land Trusts), lease the land to Band members via Land Lease agreements, and use ownership of the land as equity in order to guarantee loans for financial institutions providing financing to on-reserve homeowners. Where an organization / individual does not own the land upon which their development is located, or upon which they desire to develop, they enter into a legal agreement with the owner of the land (here, the company in trust for the community) by which the organization / individual acquires the right to occupy and develop the land not owned by them. The organization / individual leasing the land then becomes responsible for the payment of property taxes (where applicable) and other financial obligations including those associated with the maintenance and operation of the development and grounds, and also becomes the owner of any and all improvements made by them to the land during and for the duration of the lease. Where trust ownership of the land rested with the company, the company would be in a position to set long lease terms (up to 99 years) at low rates in order to facilitate affordable ownership options.

RECORDS MANAGEMENT

Administrative policies and procedures governing records-keeping for non-profit housing companies are much the same as for other organizations and corporations, and detailed descriptions of requirements are found in provincial non-profit incorporation legislation as well as the society’s operating agreements. Detailed and up-to-date records of all

corporate, administrative, operational, and tenancy-related matters must be maintained separately for each development, and are generally understood to include the following:

Corporate Records

Provincial non-profit incorporation legislation requires that societies maintain up-to-date and comprehensive corporate records, including: copies of the society's Constitution and Bylaws, operating agreements and copies of relevant legislation, and member lists.

Administrative Records

These records include: financial, personnel, and membership information; documentation of legal issues; copies of all reports and agreements; records of meetings; insurance information; and so on.

Operational Records

These records include: program information; building records (including architectural sketches and portfolios, equipments-related information, and safety inspection information); and other day-to-day operational records of the company.

Applicant and Resident Files

These records must contain all personal and financial information concerning all applicants and tenants gathered during the course of the application process and during tenancy. These records must also include copies of occupancy agreements, correspondences, and other pertinent information.

FINANCIAL MANAGEMENT

POLICIES AND PROCEDURES

It is essential that companies engaged in affordable housing development establish realistic financial policies and procedures to govern all aspects of the developments' financial operations. Day-to-day financial aspects of the operation of the company's housing programs will be delegated to the housing manager/coordinator, with the Board of Directors acting as the monitoring entity, and depending upon the conditions outlined in the society's Constitution and Bylaws, may be required to approve expenditures made by the manager in his/her daily operations. Required financial policy areas generally include: spending authority, rental / housing / mortgage payments (how monthly shelter payments are calculated and how they must be paid, etc.), financial reporting and record-keeping requirements, and purchase of goods and services.

SPENDING AUTHORITY

It is recommended that spending authority be limited to a small number of senior Board members who are accountable to the company as a whole. It is common practice for there to be varying levels of spending authority, where for example any senior Board member (Chair, Vice-Chair, Secretary, etc.) might authorize an expenditure of less than \$15,000 but expenditures of more than \$15,000 would be subject to a majority-vote by all members of the Board.

OPERATING BUDGET

It is a good governance practice for all housing providers to develop annual operating budgets to guide the financial administration of their operations throughout the fiscal year. Non-profit housing developers are required to submit operating budgets to their subsidizing partner(s) subject to the terms of their operating agreement(s) where applicable. Operating budgets should be completed annually and should contain the following categories of information which will later be mirrored in the company's financial statements:

Revenues

- Tenant rent revenue
- Housing / mortgage revenues
- Subsidies [including RGI subsidies and non-RGI repayable assistance]
- Grants
- Loans
- Special payments received from the subsidizing agent to fund special projects
- Modernization and improvement payments
- Interest revenue
- Land Lease revenue (where applicable)
- Other revenue [e.g. revenue from laundry facilities/services, commercial leasing, parking, etc.]
- Etc.

Expenses

- Property taxes and licenses
- Land lease payments (where applicable)
- Insurance payments
- Utilities
- Maintenance [includes maintenance staff salaries, grounds maintenance, service contracts, etc.]
- Administration [office overhead, administration salaries, accounting fees, etc.]
- Replacement reserve
- Mortgage payments
- Modernization and improvements
- Extraordinary expenses
- Etc.

REPLACEMENT RESERVE FUNDS

It is highly recommended that non-profit housing developers 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. 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 **X** 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. Generally, replacement reserves are funded via subsidy transfers from the society/company's subsidizing partner or directly by the housing company itself.

FUNDING / FINANCING

Under this model of governance, acquiring funding and financing for housing programs is the sole responsibility of the company's Board of Directors. As a capitalized corporate entity, the non-profit corporation is able to independently raise funds and acquire financing for housing projects and to act as guarantor for community members seeking financing from external sources. This model of governance has the added positive feature of removing financial liability for new housing developments from the Band's financial portfolio and moving it to the independent authority, thus minimizing the effects of risk to other Band financial ventures.

PRIVATE HOMEOWNERSHIP FINANCING PROGRAMS

There are numerous options available to non-profit corporate housing authorities seeking to assist community members in pursuing private homeownership depending upon whether the company prefers to engage in direct financing or financial facilitation of homeownership initiatives, the three most common methods 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 a non-profit incorporated authority can provide financing for potential homeowners is through what is known as a revolving loan or mortgage program. In this type of program, the Board would designate a capital fund to be administered by the housing manager/coordinator 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 and individual reliance on external financing bodies such as the CMHC and other financial institutions.

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

Companies wanting to assist community members in financing homeownership but unwilling or unable for whatever reason to administer a revolving loan fund may choose to go the more 'traditional' route and 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 [...] [its] financial statements will be taken into account when negotiating with lenders." [Federation of Saskatchewan Indian Nations, 2005 : 66] Loans guaranteed by the company will be represented in the company's financial statements as a Contingent Liability. Essentially, the company, 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, and removes from the Band the liability of having to guarantee loans itself on behalf of its members.

Rent-to-Own

Some First Nations communities in the United States administer affordable rent-to-own programs on reserve, where certain homes are designated as rental properties with the option of full private ownership. In the case of a rent-to-own program under this model of housing portfolio governance, the company would be responsible for funding and

financing the construction of homes which would then be 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 company 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 company deems appropriate and can justify. The society 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 company to the homebuyer. Counseling is made available by the company 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, and it is recommended that homeowner counseling be mandatory for all homebuyers.

SUBSIDIZED RENTAL HOUSING PROGRAMS

Perhaps the most common option for non-profit companies seeking to provide affordable housing to community 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 for housing, 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 company and administered by the housing manager, or the company 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 the design and administration of 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 Board of Directors to be aware of the local requirements and particularities associated with engaging in subsidizing partnerships. In subsidized (or rent-geared-to-income) rental housing 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

Non-profit companies, as previously mentioned, take on all the responsibilities and obligations of landlords when they partake in rental housing development programs, including the financial and physical responsibilities associated with the maintenance of the developments. It is the responsibility of the company's Board of Directors to familiarize itself with the legislation governing landlord-tenant relations in their province, and to clearly outline maintenance responsibilities of the society and of tenants in tenancy (lease) agreements. Societies may choose to employ property management companies to take on the duties associated with day-to-day maintenance of housing developments, but it remains the responsibility of the Board of Directors to ensure that any management companies hired by them perform their duties in keeping with governing legislation and standards. For example, under the Ontario *Tenant Protection Act* maintenance responsibilities for rental housing developments, including non-profit rental housing developments, are divided as follows:

Society / Board of Directors Responsibilities

Non-profit societies as landlords are responsible for ensuring that the building and units contained therein are maintained in a good state of repair in keeping with health and safety regulations found in provincial laws and municipal bylaws. This includes performing any repairs and replacing any items (i.e. appliances, window and floor coverings, etcetera) located in units or common areas that no longer perform their required functions due to normal wear-and-tear or other factors that can not be directly attributed to misuse by a tenant. Repairs / replacements must be performed promptly, and tenants must be given written notice for any foreseeable repair work that requires the landlord to enter their home.

Tenant Responsibilities

Tenants in non-profit rental units are entitled to expect the same quality of building maintenance as enjoyed by tenants in for-profit (market) rental housing, have the same rights to request necessary repair work be performed by their landlords, and have access to all recourse mechanisms outlined in the relevant tenancy act. In turn, tenants have certain responsibilities under tenancy legislation, including maintaining their units in an acceptable state of cleanliness (understood as being clean enough to ensure that pest infestations or mould growth is not promoted) and repairing any damage caused by themselves or their guests (not including normal wear-and-tear).

Homeowner Responsibilities

Homeowners are responsible for the physical and financial responsibilities associated with the maintenance and upkeep of their homes and grounds unless some other agreement has been reached with the housing authority. Homes must be kept in 'good repair' in accordance with relevant health and safety standards, and homeowners may be subject to annual inspections of their homes and property by the housing manager to ensure that standards are being met. Homeowners in need of financial assistance to perform necessary repair work to their homes may be eligible to receive grants directly through the company or through CMHC. Necessary repair work is defined as being any

work required to bring the dwelling unit to an acceptable standard of health and safety, and specific definitions regarding “necessary repairs” will be clearly outlined by the granting agency. The Board of Directors of the company will establish a point-scoring system in order to determine priority of funding, which will take into account (among other factors): overcrowding, living conditions, credit rating, structural deficiencies, health and safety hazards, and so on, and all approvals for funding are subject to requirements of provision of documentation (e.g. financial estimates, contract agreements, confirmation of ownership, etc.). Homeowners seeking to perform repair or modernization work on their homes that is not deemed “necessary” under the definitions provided may be eligible to receive loans directly from the housing authority or from external financial institutions via guarantee by the housing authority.

MAINTENANCE RECORDS

It is considered a good governance practice for non-profit companies to maintain comprehensive, detailed, and up-to-date building records for all developments owned and operated by the company, including records of: site and unit inspections, including any maintenance work identified as needing to be done as a result of these inspections, work that has been done, estimated or actual cost of work, and the names of individuals or companies responsible for the work; maintenance, renovation, and building contracts; warranties and guarantees for appliances, equipment, and labour; building specifications and architectural renditions; maintenance manuals and operating instructions; and detailed inventories of tools, supplies, appliances, and equipment. It is also recommended that maintenance records be maintained individually for each unit in a development.

NEW DEVELOPMENTS

Societies undertaking to construct new housing developments or convert existing properties into residential units must take an active role in ensuring that proper inspections of construction take place in order to ensure that (1) the best interests of the society are protected, and (2) liability for any construction deficiencies is properly attached. This involves the society forming an active partnership with design consultants, architects, and contractors so that all can work together to ensure that any construction or design deficiencies are identified and remedied promptly. It is the responsibility of the housing manager to oversee the work of the head contractor, and it is the responsibility of the head contractor to provide the society with accurate documentation of: building specifications and as-built drawings (important for making comparisons in order to identify discrepancies between plans and actual construction); a schedule for warranty inspections of all work; maintenance and operating instruction manuals for products, materials, and operating systems; copies of Building and Occupancy permits; and contact lists for all contractors and sub-contractors (e.g. electricians, plumbers, and so on) hired by the head contractor to perform work.

INSPECTIONS

Inspections of buildings and development grounds must be performed regularly to ensure that all municipal and provincial health and safety standards are being met, and also in order to identify potential problems that may arise in the future. Full inspections of all suites and sites should occur at least once annually, and should be performed by the

property manager in the company of the Board Chair and any professionals deemed appropriate (e.g. fire safety inspectors, representatives from the provincial health board, and so on). Reports resulting from annual inspections should be made available to development residents, community members, and Chief and Council.

PURCHASES AND SERVICE CONTRACTS

It is essential that the Board of Directors establish clear guidelines regarding purchasing and contracting to guide the housing authority in order to ensure that purchases and service contracts are undertaken with transparency and consistency, and that conflicts of interest are avoided. Requirements regarding tendering work and contracting vary province to province, and it is the responsibility of the Board to ensure that policies regarding contracting and tendering work are in keeping with relevant legislation. It is recommended that housing authorities adopt policies giving Band members who qualify as contractors or labourers priority when contracting work out.

MANAGEMENT PERFORMANCE

OPERATIONAL REVIEW

In order to ensure that operating standards as identified in the company's operating agreement(s) (where applicable) and Constitution and Bylaws 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 Board Chair in the company of any subsidizing partner(s), and trained professionals (financial auditors, safety inspectors, and so on). The operation and management of the Board and society developments should be judged and evaluated based on the following categories:

- (i) Maintenance Management;
- (ii) Resident Management;
- (iii) Information and Records Management;
- (iv) Human Resources Management; and
- (v) Financial Management.

In order to foster transparency, it is recommended that the findings of these evaluations and the Board's responses to the findings be made available to Chief in Council, community members, and development residents, in addition to subsidizing partners where required.