



Housing Authority Models

- MODEL THREE -
BAND-OWNED HOUSING COOPERATIVE

Assembly of First Nations
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GOVERNANCE

RESPONSIBILITIES

This model of governance is different from the previous two models in that it removes the responsibility for the operation, administration, and maintenance of Band-owned housing from the Band and transfers it to community members seeking to take active control of housing for themselves. Chief in Council provides community members with the opportunity of entering into a cooperative agreement amongst themselves to take care of their own housing needs, and there is the possibility for Council representation on the co-op Board of Directors.

Chief in Council

Chief in Council provides community members with the mandate to govern their own housing developments via cooperative agreement.

Cooperative – Board of Directors

Of all the community governance models, the cooperative model is the most purely democratic in structure, with all cooperative tenants being cooperative members and thus sharing in the responsibility for creating and developing the policies and procedures that will be administered on their behalf by the cooperative Board of Directors, who are co-op members elected to their posts by the membership. The Board of Directors of a cooperative are all unpaid, elected volunteers. Precisely what powers the Board will exercise depends entirely upon the powers granted the Board in the co-op's Memorandum and Rules, but generally speaking Board members are responsible for reviewing and approving budgets, plans, and financial reports and finding program financial resources in addition to fulfilling the following governance functions:

Decision Making

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

Advisory

- Ensuring members and staff of the co-op are up-to-date on changes to laws that govern the co-op's operations;
- Advising on problems that affect the co-op and providing possible solutions to those problems;
- Educating co-op 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 cooperative.

Trustee

- Responsible for representing the cooperative 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 cooperatives Rules 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 cooperative;
- 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 co-op;
- Achieving goals through reason and discussion; and
- Acting as a role model for other members.

CONSTATING DOCUMENTS

Cooperative organizations 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 co-ops to exercise self-determination through democratic decision-making. Essentially, it is the members themselves who decide the terms and goals of their membership and define how exactly governance of their cooperative will operate through the creation of a Memorandum and Rules.

Cooperative Memorandum and Rules

Under provincial legislation governing cooperative organizations, all co-ops are required to develop a Memorandum and Rules outlining the goals of the organization and committing co-op members to specific operational guidelines. Rules govern:

- (i) members' voting rights;
- (ii) how and when directors are chosen and removed;

- (iii) the purchase, redemption and transfer of membership shares;
- (iv) the conducting of general meetings;
- (v) the duties and powers of directors;
- (vi) dispute resolution mechanisms; and
- (vii) financial management.

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 cooperative organizations not only for the obvious reasons that (i) conflicts of interest lead to an appearance of dishonesty and thus could cause distrust among members, and (ii) the very nature of co-operatives denies the possibility of Board members profiting from their volunteer duties, but also because subsidy funds are generally public funds and must be shown to be managed and spent without bias or impropriety. 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 cooperative. 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 cooperative legislation. Importantly, it is not considered a conflict of interest for a Director or Officer to be or become a resident of the cooperative development, even though they as residents could technically be seen to benefit from decisions made by them in their role as Board member. In fact, in housing cooperatives it is generally required that at least 80% of Board Directors or Officers also be members and residents of the development, and many cooperatives require that fully 100% of Board members also be residents.

MEETINGS AND DECISION-MAKING

Because of the democratic organization of cooperatives, Board and member meetings are highly important to the decision-making processes of the organization. How meetings are structured to ensure greatest productivity, how often they will occur, what percentage of Board members are required to attend meetings, and the requirements for calling a special meeting are all defined in a co-op's Memorandum and Rules, and thus vary co-op to co-op. Member participation and inclusiveness should always be fostered and actively supported by those presiding over meetings in order to ensure that all sides of an issue are heard and given proper weight. Decision-making processes can take many forms and members will be required to decide which structures best suit their organization.

EVALUATIONS

In order to ensure that the organization continues to function optimally throughout the duration of its mandate, it is important that all aspects of the cooperative's governance be evaluated regularly. This includes, but is not limited to: evaluation of the objectives and goals of the organization to ensure that they (i) remain relevant, and if not are appropriately dealt with, and (ii) are being met; evaluation of plans developed by the organization to ensure that they are realistic and are being properly acted upon; evaluation of staff hiring, training, and performance evaluation procedures; evaluation of

consultation procedures; and evaluations of the Board itself, including evaluations of Board priorities to ensure that they are in step with the organization's priorities and are receiving due attention.

HUMAN RESOURCES

Staff and Volunteers

It is the responsibility of the Board to determine which jobs in the development will be performed by staff, volunteers or organization members, and contractors, and to budget and plan accordingly. This necessitates clearly outlined and detailed hiring, training, and evaluation policies and procedures being in place to ensure that all members of the organization know what their responsibilities are so that the housing co-op will function optimally. It is also the Board's responsibility in its role as employer to ensure that all employment, wage, and safety standards are met in accordance with provincial employment standards and workplace safety legislation, and to ensure that the rights of employees are respected and duties to accommodate enforced as outlined in relevant sections of the provincial human rights code. It is recommended that in larger organizations managers and supervisors be hired to take on the responsibilities associated with hiring, training, and performance-evaluation of staff and volunteers. Evaluations of the managers and supervisors themselves will be performed by the Board.

Property Management Companies

Many housing cooperatives hire property management companies to work with the Board to manage the day-to-day operations associated with the maintenance of a housing development, including performing general superintendent duties, landscaping, and so on. It is important, when choosing a management company, to ensure that the company understands and is comfortable with the particular operating structure of the cooperative, and understands the organization's expectations concerning resident involvement and responding to any residents' "special" needs. It is also important to establish guidelines concerning what decisions may be made by the company without going to the Board first for approval, and what decision must be passed by the Board, in order to ensure that the democratic functioning of the co-op is not jeopardized.

Contractors

The term 'contractor' encompasses all tradespeople (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 changes 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.

CONFLICT RESOLUTION

In all cooperative communities, no matter how much attention is paid to community relations and fostering respect, conflicts will arise that will need to be resolved. It is important that the Board establish conflict resolution mechanisms that are in keeping with the values of the organization in order to appropriately respond to conflicts as they arise,

and to have a process in place through which to determine which method of conflict resolution is appropriate to the case at hand.

OPERATIONS

RESIDENT / MEMBER RELATIONS

Membership Eligibility Policy

It is essential that the cooperative's Board of Directors establish a clear and defensible membership eligibility policy, outlining in detail the co-op's membership selection criteria. The policy must be in accordance with the cooperative's operating agreement requirements, and should be: entirely objective, defensible, and clearly documented; non-discriminatory and meet all legal requirements found in the provincial tenancy and cooperative association acts and the provincial human rights code; applied consistently to all applicants; and all policies should be targeted towards meeting local housing needs.

Discrimination

The operating agreements for all subsidized housing programs contain anti-discrimination clauses outlining prohibited grounds of discrimination. These grounds will vary province to province depending upon what grounds have been written or read into the provincial human rights code, but unacceptable grounds of discrimination generally include religion, place of origin, race, gender, marital status, ancestry, and so on. It is acceptable, however, to develop membership criteria designed to target a specific group of people the assistance of whom is the stated purpose of the organization.

Calculating Rent Contributions

Rent calculating is the process whereby cooperative housing organizations determine how much rent each household will be required to pay each month, and is meant to ensure that all cooperative members 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.

AGREEMENTS

When establishing cooperative housing programs, it is important to ensure that all agreements concerning the co-op are clearly documented and easily accessible to those affected by the agreements. This includes the organization's operating agreement(s), occupancy agreements between residents and the cooperative as landlord, and the organization's land trust / land lease agreement(s) (where applicable).

Operating Agreement(s)

Cooperative housing organizations are required to establish operating agreements with their subsidizing partner, if applicable (either CMHC, provincial / territorial or municipal subsidizing agency, or the First Nation's Band Council), and First Nations housing cooperatives established through Chief in Council mandate who rely on subsidizing agencies external to the Band may be required to establish a second operating agreement between themselves and the Band Council. The following should be included in operating agreements:

- (i) Roles and responsibilities of the cooperative organization and of the agency providing funding;
- (ii) Budget and financial reporting requirements;
- (iii) Eligibility criteria for selecting residents, for calculating rent contributions and performing rent reviews;
- (iv) Amount of rent subsidy payments, and how and when these will be transferred from the subsidizing agency to the cooperative;
- (v) Operational review processes;
- (vi) Record-keeping requirements;
- (vii) Dispute resolution, intervention and arbitration procedures; and
- (viii) Minimum insurance and liability coverage.

Occupancy Agreements

Under provincial cooperative association 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. These agreements document the terms and conditions associated with particular tenancies, including: length of tenancy; amount of rent, when rent is due, and the consequences of late or non-payment of rent; how a tenancy can be terminated by either party; responsibility for unit maintenance; and so on. It is the responsibility of the Board as landlord to ensure that all parts of occupancy agreements are in keeping with the occupancy requirements laid out in provincial cooperative association legislation and tenancy acts.

Land Trust 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. Because of these new powers, some First Nations are in a position to enter into Land Trust or Land Lease agreements with housing provider organizations, including cooperative housing organizations. Where an organization 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 First Nation) by which the organization acquires the right to occupy and develop the land not owned by them. The

organization 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.

RECORDS MANAGEMENT

Administrative policies and procedures governing records-keeping for housing cooperatives are much the same as for other organizations and corporations, and detailed descriptions of requirements are found in provincial cooperative association legislation and the organization'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 cooperative association legislation requires that cooperatives maintain up-to-date and comprehensive corporate records, including: co-op Memorandum and Rules, operation 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 cooperative.

Applicant and Resident Files

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

FINANCIAL MANAGEMENT

POLICIES AND PROCEDURES

Housing cooperatives must ensure that they establish realistic financial policies and procedures that cover: rental payments and arrears, spending authority, financial record-keeping, and purchasing of goods and services.

Spending Authority

It is recommended that spending authority be limited to a small number of senior Board members (e.g. Chair, Vice-Chair, Treasurer and Secretary) and managers who are

accountable to the rest of the organization. It is common practice for there to be varying levels of spending authority, where for example managers may have the power to authorize expenditures of up to \$5,000, senior Board members having authority for expenditures of up to \$15,000, and any expenditures above \$15,000 being subject to general cooperative membership approval for authorization.

OPERATING BUDGET

Depending upon the terms of their operating agreements, housing cooperatives are generally required to submit operating budgets either annually or once every five years to their subsidizing partner. All financial information is reviewed at this time, and subsidies are calculated based upon the information provided. Included in a development's operating budget should be the following categories, which must be mirrored in its financial statements:

Revenues

- member rent revenue
- subsidy transfer payments
- special payments
- modernization and improvement payments
- interest revenue
- grants
- other revenue [e.g. laundry or parking fees collected from members, etc.]

Expenses

- property taxes and licenses
- land lease payments
- insurance
- utilities
- maintenance [e.g. maintenance salaries, service contracts, grounds maintenance, etc.]
- administration [e.g. administrative salaries, office overhead, etc.]
- replacement reserve
- mortgage payments
- extraordinary expenses

REPLACEMENT RESERVE FUNDS

It is highly recommended that cooperative housing organizations 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 co-op's subsidizing partner.

FUNDING / FINANCING

Generally speaking, housing cooperatives are financed through bank mortgages calculated at up to 75% of the value of the property, with equity being obtained either directly from the Band, from co-op members, or through various cooperative supportive funders. Financial support for low-income or affordable housing varies province to province and indeed in some cases, as in Ontario, from municipality to municipality, but generally the most common funding vehicles are rent-subsidy partnership programs, development support (e.g. CHMC development grants, training assistance), and direct grants. It is up to the Board of Directors of the cooperative to acquire funding and financing for the housing programs.

Subsidies

Subsidized cooperative housing providers receive monthly subsidy transfers from their subsidizing partners (either an external subsidizing agency or the First Nation itself) in order to cover the operational costs associated with administering affordable housing developments, including subsidies for rent-geared-to-income units, repayable assistance for non-rent-geared-to-income units, mortgage payments, building maintenance, and so on. The amount of subsidy required is calculated by subtracting the housing charges collected from members/occupants from the operating costs of the development as identified in the operating budget.

MAINTENANCE

MAINTENANCE RESPONSIBILITIES

In housing cooperatives, physical and financial responsibility for the maintenance of buildings and units is shared by residents and the Board of Directors and housing provider, and the responsibilities of each are clearly outlined in occupancy agreements and thus will change from development to development. There are, however, definite maintenance standards that must be met, and the division of responsibilities for ensuring that these standards are met generally takes the following form:

Board / Housing Provider Responsibilities

The Board of Directors is responsible for ensuring that maintenance systems and procedures are in place that benefit, and ensure the sustained and optimal functioning of, the development, subject to provincial cooperative association legislation. The Board is responsible for ensuring that the housing developments are safe and well-maintained and comply with all health and safety regulations, which in housing cooperatives may translate into organizing chore-sharing among residents to delegate responsibility for general maintenance duties such as painting and cleaning, and the hiring of professional maintenance staff and trades-people to take care of projects associated with construction, plumbing, or electrical maintenance. It is also the responsibility of the Board to ensure that the replacement reserve fund is adequately maintained to ensure that funds are available to replace capital items when needed.

Member / Resident Responsibilities

Members of cooperative housing developments are responsible for ensuring that their units are kept in good condition, and are liable for repairing any damage caused by themselves or their guests. As mentioned above, some cooperatives require that members share in responsibility for the general maintenance of the development, and if this is the case requirements will be clearly defined in occupancy agreements.

MAINTENANCE RECORDS

Organizations are responsible for maintaining detailed and up-to-date building records for all developments, including records of: building specifications and architectural renditions, including as-built drawings; site and suite inspections; contracts; guarantees and warranties for equipment, appliances, and labour; equipment and building maintenance manuals and operating instructions; and detailed inventories of appliances, supplies, tools, and equipments. It is recommended that detailed maintenance records also be maintained separately for each unit in a development.

NEW DEVELOPMENTS

When constructing a new housing development, the Board of Directors 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 Board 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 Board 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.

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.

PURCHASES AND SERVICE CONTRACTS

It is essential that the Board of Directors 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.

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.

MANAGEMENT PERFORMANCE

OPERATIONAL REVIEW

In order to ensure that operating standards as identified in the cooperative'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 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 cooperative 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 development residents.