



Notice

Number: 09-12b

APPLICABLE TO:**DATE: November 3, 2009**

<input type="checkbox"/>	Municipal & Private Non Profit
<input type="checkbox"/>	Co-operatives
<input checked="" type="checkbox"/>	Federal Non Profits
<input type="checkbox"/>	OCHAP/CSHP
<input type="checkbox"/>	Rent Supplement

<input checked="" type="checkbox"/>	Mandatory
<input type="checkbox"/>	For Information

SUBJECT: Conflict of Interest**BACKGROUND**

Most federal housing providers have some form of a Conflict of Interest By-Law/Policy in place. In some cases, however, their bylaw/policy may need to be revised to comply with local policy and the requirements of this Notice.

CONFLICT OF INTEREST

Housing providers must avoid situations where an actual or potential Conflict of Interest may arise. A Conflict of Interest involves an actual or potential conflict situation, where the Board of Directors and/or NRH have confirmed that a pecuniary interest or conflict does exist. In all cases of conflict, a plan for the resolution of the Conflict of Interest should be developed by the housing provider and sent to NRH. It should be noted that even the perception of a Conflict of Interest must be avoided and, in some cases, it may be necessary to declare and resolve a perceived Conflict of Interest.

An effective Conflict of Interest policy should include the following activities/procedures:

1. Conflict of Interest should be a standing agenda item at every board meeting, general members meeting and/or annual general meeting, to provide everyone with the opportunity to declare an actual or potential Conflict of Interest.
2. All Board members, officers, employees and agents of the housing provider should be made aware of the provider's Conflict of Interest Policy/By-Law when they join the organization and must sign an acknowledgement form confirming they have received, read and understand the Conflict of Interest Policy\By-Law and this Notice.
3. The Board of Directors should deal with all declarations of a potential, perceived or actual Conflict of Interest in the manner indicated in the provider's approved Conflict of Interest Policy\By-Law.

4. Where a Conflict of Interest is on-going or not easily resolved, the provider is required to have clear and concise written procedures detailing how an on-going Conflict of Interest is declared, isolated and resolved, which must be approved by both the Board and NRH.
5. The housing provider's Purchasing Policy\By-Law must provide clear standards for how goods and services are to be acquired. The policy/by-law should require a clause in all contracts and purchase orders of \$14,999.99 or more, that permits the provider to terminate the contract if a Conflict of Interest is determined to exist by the provider or NRH.
6. Housing providers are required to maintain a separate **Conflict of Interest File**, which includes:
 - a. a copy of the revised Conflict of Interest Policy\By-Law,
 - b. a copy of all signed Conflict of Interest acknowledgement forms,
 - c. all declarations of an actual or potential Conflict of Interest, along with the process undertaken by the provider and NRH to resolve the declared or actual Conflict of Interest, and,
 - d. other appropriate documentation.
7. All Board members, officers, employees and agents are required to sign a *Conflict of Interest Acknowledgement Form (Schedule C of sample bylaw attached)* confirming that they have received, read and understand the Conflict of Interest Policy\By-Law.

Note: A revision to the housing provider's By-Law #1 may be necessary to adopt the sample bylaw attached (if conflict policies are embedded in the provider's By-Law #1). Housing providers may wish to consult with their solicitors prior to undertaking the process of revising Bylaw #1. It may be necessary to repeal all of Bylaw #1 and replace it with a new Bylaw #1 which will include the revised Conflict of Interest sections.

REPORTING CONFLICTS TO NIAGARA REGIONAL HOUSING

The Chair/President of the Board of Directors is required to notify NRH in writing of every declared actual or potential Conflict of Interest. Example of conflict situations include:

- a) The Board is awarding a contract for landscaping. One of the bidders is related to a board member. The board member declares a conflict, leaves the meeting room and does not participate in any subsequent vote. The declaration of a conflict and action of the director is clearly recorded in the board minutes and a copy of the approved minutes is filed in the provider's **Conflict of Interest File**. A report is sent to NRH (see *Schedule B of sample bylaw attached*).
- b) The Board is awarding a contract for landscaping. One of the bidders is related to a board member. The board member does not declare a conflict and participates in the discussion and award of the contract. Subsequent to the award, it is brought to the attention of the board that a conflict existed. The board must address the conflict and document the actions taken by the board. A report is sent to NRH (see *Schedule B of sample bylaw attached*). In some cases, it may be necessary for NRH to consult with the provider and, if necessary, propose further action required by the provider to resolve the conflict. The final decision will be provided in writing to the Chair/President of the Board of Directors. All documents related to the conflict must be filed in the provider's **Conflict of Interest File**.

A copy of every Conflict of Interest must be kept in the provider's **Conflict of Interest File**.

Housing Provider's Role

Housing providers are required to:

1. Ensure that their Conflict of Interest By-Law/Policy complies with this Notice;
2. Report all Conflicts of Interest to NRH in accordance with this Notice and in the format provided; and,
3. Forward a copy of their Bylaw/Policy to NRH by January 31, 2010.

A sample Conflict of Interest Bylaw/Policy is provided and attached as Appendix A.

Niagara Regional Housing's Role

Niagara Regional Housing will monitor compliance with this Notice through the operational review process and will review and approve (*as required*) actions taken by the board regarding all Conflicts of Interest.

Housing providers who wish to attend a workshop on the Conflict of Interest Rules and Requirements are requested to contact their Housing Administrator. If there is sufficient interest expressed, NRH will develop a workshop.

If you have any other questions regarding this Notice, please contact your Housing Administrator.

Lora Beckwith, General Manager

Attachments:

Appendix A – Sample Conflict of Interest Bylaw Policy, and
Schedule A - Summary of Obligations
Schedule B - Notification of a Potential, Perceived or Actual Conflict of Interest
Schedule C - Acknowledgement of Receipt/Review of the Conflict of Interest
By-Law

Appendix A
BY-LAW/POLICY No. XX (Sample)
OF
(Legal Name of Non-Profit Housing Provider)
CONFLICT OF INTEREST BY-LAW/POLICY

BE IT ENACTED as a By-Law of the non-profit to repeal and replace By-Law No. _____, Conflict of Interest as follows:

1. BACKGROUND

- a) The housing provider recognizes it is good business practice to avoid Conflicts of Interest.
- b) The Province of Ontario, pursuant to the *Social Housing Reform Act, 2000*, has issued Ontario Regulation 339/01, which includes the Government's rules relating to Conflict of Interest and other business practices (*refer to Schedule "A" for a summary of these rules*). Niagara Regional Housing, acting as Service Manager for Niagara Region, has issued NRH Notice #09-12b which includes the local requirements relating to Conflict of Interest and other business practices.
- c) This By-Law sets out how the housing provider addresses Conflicts of Interest including implementing the requirements of NRH.

2. DEFINITIONS – In This By-Law:

2.1 **"Conflict of Interest"** means a situation where:

- i) the personal or business interests of a director, officer, agent, or employee of a housing provider are in conflict with the interests of the housing provider; or
- ii) a personal gain, benefit, advantage or privilege is directly or indirectly given to or received by a director, officer, agent or employee or a person related to any one of them as a result of a decision by the housing provider; and includes
 - a) the housing provider giving a direct or indirect gain, benefit, advantage or privilege to a director, officer, agent or employee or a person related to any one of them;
 - b) a director, officer, agent or employee or a person related to any one of them receiving a direct gain, benefit, advantage or privilege from the housing provider as a result of the person's position within the housing provider;

c) the housing provider, in offering housing accommodation or in setting rents or occupancy charges, giving any advantage or privilege to directors who are tenants that is not available to tenants who are not directors.

- 2.2 **“Declaration”** means a declaration in the form attached as Schedule “B” to this By-Law.
- 2.3 **“Director”** means a member of the board of Directors of the housing provider.
- 2.4 **“Officer”** means the president, chair, vice-president, secretary, treasurer, manager and anyone else designated as an officer in the By-Laws of the housing provider.
- 2.5 **“Person related to any one of them”** means a parent, spouse, same- sex partner, child, household member, sibling, uncle, aunt, nephew, niece, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparent of the director, officer, agent, employee, a person with whom the director, officer, agent, or employee has a business relationship.
- 2.6 **“Service Manager”** means Niagara Regional Housing as defined in Section 2 of the *Social Housing Reform Act, 2000*, and includes any person exercising the powers of the service manager under Section 16 of the *Social Housing Reform Act, 2000*.

3. AVOIDING CONFLICT OF INTEREST

- 3.1 Exceptions – The housing provider shall not enter into a relationship, arrangement, contract or agreement with any person in a way that creates a Conflict of Interest, except that:
- a) provided that a notice of potential; perceived or actual or Conflict of Interest has been delivered to NRH and NRH agrees there is no reasonable alternative, the housing provider may enter into a relationship, arrangement, contract or agreement that normally would be a Conflict of Interest, given specific conditions to limit the Conflict of Interest as set out by the housing provider and approved by NRH;
 - b) a Director who lives in a non-profit may be employed by the non-profit on a part-time basis to perform routine tasks such as administrative, maintenance or operational tasks with respect to the non-profit’s project/portfolio. However, as per the *Charitable Corporations Act*, a non-profit that is incorporated as a charity may not employ any of its Directors in any capacity.
 - c) a Director may be employed by the non-profit in a non-managerial or non-supervisory position, provided that where the board of Directors consists of not more than five Directors, there shall not be more than one Director so employed at any one time. If there are more than five Directors, the total number of Directors so employed may not exceed one-fifth of the board.

d) some or all of the Directors may also sit as Directors of an organization that supplies essential support services for special-needs clients residing in the non-profit's portfolio, where the portfolio exists specifically so that residents can live in the community with the support services provided.

3.2 Duty to Monitor and Avoid Conflict of Interest – The housing provider shall closely monitor its relationships, arrangements, contracts and agreements, and not engage in any that may result in a Conflict of Interest. The Directors, individually and collectively, shall ensure compliance with this requirement.

3.3 Termination – Subject to employment law in force in Ontario and any collective-bargaining agreements to which the housing provider is party, all relationships, arrangements, contracts or agreements of the housing provider should include a clause permitting the housing provider to terminate the relationship, arrangement, contract or agreement if the housing provider or NRH requires such termination in order to resolve a Conflict of Interest.

3.4 Directors Must Resign – Except as set out in subsection 3.1, a Director shall resign from her/his position before the housing provider's board of Directors deliberates, issues a tender, or votes on a contract or employment position for which the Director intends to compete.

3.5 Former Directors and Officer – Except in the circumstances set out in subsection 3.1, no former director or officer may apply for employment with the housing provider or seek to enter into a contract to supply services to the housing provider directly or indirectly for a period of one (1) year following the date she/he ceases to be a Director or Officer.

3.6 Purchase or Lease of Land – Where the housing provider purchases or leases land, it shall not purchase or lease such land from:

- a) an individual; or
- b) a corporation which has a shareholder, director or officer; who is a director, officer, agent, employee, development consultant/resource group, architect or other technical consultant, real estate agent, or environmental consultant of the housing provider or any persons related to one of them.

4. BOARD PROCEDURES

4.1 Conflict of Interest – The board shall have Conflict of Interest as a regular agenda item at the beginning of each meeting of the Directors, general members meeting or annual general meeting. Any director, officer, agent, member or employee who has a Conflict of Interest must submit their Declaration at that time.

4.2 Declaration of Conflict of Interest – Directors, officers, agents and employees of the (*insert housing provider name*) must notify the Chair of the board of directors of every potential, perceived or actual Conflict of Interest no later than the first meeting of the board after the situation, arrangement or agreement that results in or may result in a Conflict of Interest. The form of such declaration is attached as Schedule "B".

- 4.3 Potential or Perceived Conflict of Interest – When a potential or perceived Conflict of Interest is raised before or during a board meeting, then:
- a) the party to the potential or perceived conflict must leave the meeting; and,
 - b) the board shall decide if there is a Conflict of Interest.
- 4.4 Consideration of Notice – The board of directors shall consider any declaration given under subsection 4.2 no later than the second meeting of the board after the notice is given. The consideration of the notice must be reflected in the minutes of the meeting.
- 4.5 Resolution of a Conflict of Interest – The board shall notify NRH of any declaration received under subsection 4.2. The notification to NRH shall include one of the following:
- a) if a person filed a declaration of a potential or perceived Conflict of Interest and the board decided there was in fact no such Conflict, a declaration to that effect and a request that NRH ratify this decision; or
 - b) if a Conflict of Interest exists which may be resolved in accordance with this By-Law, notification of how the housing provider has resolved the Conflict of Interest and a request that NRH ratify such resolution, or
 - c) if a Conflict of Interest exists which the board is unable to resolve in accordance with this By-Law, or the Conflict of Interest is of an “on-going” nature, a request that NRH issue instructions for resolving the Conflict of Interest. These requests are part of the attached Schedule “B”.
- 4.6 Conflict to be Resolved to NRH’s Satisfaction – If NRH issues instructions regarding an alternative to a decision made by the board under subsection 4.5 a) or b) or a resolution under subsection 4.5 c) the housing provider will act in accordance with NRH’s instructions.
- 4.7 On-Going Conflict of Interest – Where the Conflict of Interest is on-going or is not easily resolved, the housing provider is required to have clear, concise and written procedures detailing how an on-going Conflict of Interest is declared, isolated and resolved which is approved by the board and NRH.
- 4.8 Record-Keeping – The housing provider shall maintain a Conflict of Interest file containing all declarations, reports and minutes pertaining to Conflict of Interest and Potential or Perceived Conflict situations.
- 4.9 Requirement to Confirm Receipt and Knowledge of the Conflict of Interest By-Law -The housing provider is required to have all directors, officers, agent and employees sign a form acknowledging that the individual has been provided with a copy of the Conflict of Interest By-Law, has read it and fully understand their responsibility to declare a potential or actual Conflict of Interest in accordance with the By-Law. The declaration should be signed when a director, officer, agent or employee first takes a position with the housing provider or begins their employment with the housing provider or when the revised Conflict of Interest By-Law comes into force. A copy of the declaration must be retained on the Conflict of Interest file for the full period of the director, officer, agent or employee’s involvement or employment with the housing provider. A copy of the declaration is attached as Schedule “C”.

5. PROMOTING FAIR AND OBJECTIVE BUSINESS PRACTICES

- 5.1 Tenders – The housing provider shall invite as many contractors to bid on a job to ensure that at least three qualified bidders submit a bid, or publicly tender all contracts costing over \$14,999.99.
- 5.2 Considering Tenders – In considering tenders, the housing provider shall:
 - a) consider the quality of the goods and services to be provided; and
 - b) base its decision on written specifications outlining resources, timing, cost and fees.
- 5.3 Not Choosing Low Bid – Where the lowest bid is not chosen by the board of Directors (or by the person ordinarily responsible for making this decision), the housing provider shall ensure that the reasons are documented and approved by the board in the form of a board resolution.
- 5.4 Contracts Under \$15,000 – The housing provider shall obtain a minimum of three written quotes for any contract costing between \$2,000.00 and \$14,999.99 in any fiscal year, and adopt clear, fair and written procedures for the awarding of contracts under \$2,000.00. Contracts that are under \$2,000.00 should be awarded based on the best value for money.
- 5.5 Participation in Cooperative Purchasing Programs – Where the housing provider participates in a cooperative purchasing program, the procedures of the cooperative purchasing program shall replace the housing provider's internal procedures for competitive acquisition of goods and services for the duration of the housing provider's participation in the cooperative purchasing program.
- 5.6 Recommended Purchasing/Tendering Processes – A housing provider will follow the recommended Purchasing and Tendering processes as outlined in this By-Law, including:
 - a) For contracts with an estimated value of between \$2,000.00 and \$14,999.99 related to a specific project with a limited time-frame and which can be clearly defined, the housing provider shall seek an appropriate supplier by:
 - i) preparing terms of reference for the work,
 - ii) seeking three competitive bids with associated fixed-price quotations, and
 - iii) awarding the contracts based on an assessment of the qualifications of the supplier, the information provided in the proposal, and the price.
 - b) For contracts with an estimated value exceeding \$15,000.00 which require ongoing provision of professional advice or specified goods and services to the housing provider, requiring knowledge of matters specific to the housing provider (such as legal advice, audit services or specialized technical advice), the housing provider shall seek an appropriate supplier by:

- i) preparing terms of reference for the work,
 - ii) inviting offers of service by:
 - (1) giving notice by public advertisement of the requirement to engage the services (Public Tender)
 - (2) inviting submissions from those individuals or firms who appear best qualified to meet the requirement of the engagement or to pre-qualified firms (Invitational Tender)
 - iii) rating the offers of service against the terms of reference to identify the offer of service which represents the best value for money based on the qualifications of the supplier, the information provided in the proposal, and the price; and
 - iv) selecting the firm offering the best value for money.
 - c) The housing provider shall keep records of all contracts and tenders, the list of bidders, their submissions and fees, the decisions of the non-profit, and any other related materials in a Purchasing/Tender file.
- 5.7 Purchase of Professional Services – Where the housing provider is purchasing professional or consulting services the same monetary limitations identified under Section 5.1, 5.4 and 5.7 will apply to all professional fees for service contracts or consulting contracts.
- 5.8 Emergencies – Where an emergency prevents the housing provider from following other provisions of this By-Law, the housing provider shall:
- a) employ without a call for proposals the individual or firm in whom the housing provider has the greatest confidence in regard to a particular requirements of the housing provider in dealing with this emergency;
 - b) ensure the employment of the individual or firm lasts no longer than necessary to deal with the emergency; and
 - c) keep records of the appointment of the employment and remuneration of the individual or firm.
- 5.9 Employment Contracts – The housing provider shall implement documented, open and competitive practices for employment opportunities which are not inconsistent with:
- a) any collective bargaining agreement of the housing provider; and
 - b) other fair labour practices as set out in the Personnel Policy of the housing provider.
- 6.0 Management Contracts – The property manager/management or operational services company/development consultant of the housing provider shall not have a direct or indirect interest in any other business that provides advice, goods or services to the housing provider.
- 6.1 Housing provider Staff – Management and staff who are responsible to assign contracted work, approve contracted work, authorize payment for contracted work and who may also be a payment authority for the housing provider, should not use these same contractors for personal purposes or in any way engage the services of these same contractors for work of a personal nature. This includes any contractor on an approved standing list of contractors of regularly working for the housing provider. Housing provider staff must declare a potential, perceived or actual Conflict of Interest where this has occurred and the Conflict of Interest must be resolved to the satisfaction of the board of Directors and NRH.

PASSED by the Board of Directors and sealed with the corporate seal of the Corporation on the _____ day of _____, 20 .

CONFIRMED at a general meeting of the Members on the _____ day _____, 20 .

PRESIDENT

SECRETARY

**Schedule “A”
To
By-Law No. xx**

Summary of Obligations

This is a summary of the Conflict-of-Interest rules for *(Name of housing provider)*.

1. A Conflict of Interest is defined as a situation where:
 - i) the personal or business interests of a director, officer, agent or employee of a housing provider are in conflict with the interests of the housing provider; or
 - ii) a personal gain, benefit, advantage or privilege is directly or indirectly given to or received by a director, officer, agent, employee, or a person related to them as a result of a decision by the housing provider.
2. “A person related to a director, officer, agent, employee” includes a parent, spouse, child, household member, sibling, uncle, aunt, nephew, niece, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparent, a person with whom the director, officer, agent or employees has a business relationship.
3. A director, officer, agent or employee of the housing provider shall not enter into any situation, arrangement or agreement that results in a Conflict of Interest.
4. Directors, officers, agents and employees of the housing provider must notify the Chair of the board of Directors of the housing provider of every potential or actual Conflict of Interest no later than the first meeting of the board after the director, officer, agent or employee becomes aware that he or she has entered into a situation, arrangement or agreement that results in or may result in a Conflict of Interest.
5. The board of Directors shall consider any notice given under paragraph 4 no later than the second meeting of the board after the notice is given. The consideration of the notice must be reflected in the minutes of the meeting.
6. The Chair of the board of Directors shall notify Niagara Regional Housing (NRH) in writing of the receipt of every notice under paragraph 4, and the board of Directors shall resolve every Conflict of Interest or potential Conflict of Interest to the satisfaction of NRH.
7. Despite paragraph 3, a director, officer, agent, employee or a person related to one of them may directly or indirectly receive a gain, benefit, advantage, privilege or remuneration from the housing provider if both the following conditions are satisfied:
 - a) a notice of the Conflict of Interest or potential Conflict of Interest is given in accordance with paragraph 4; and
 - b) NRH agrees that there is no reasonable alternative for the housing provider other than entering into the situation, arrangement or agreement that results in or may result in the Conflict of Interest.

**Schedule “B”
To
By-Law No. xx**

Notification of a Potential, Perceived or Actual Conflict of Interest

Part 1: Name of Non-Profit

Contact Person:

Address:

Part 2: To be completed by the director, officer, agent, or employee with the conflict

Name:

Address:

Briefly describe the potential, perceived, or actual conflict (add any relevant supporting documentation)

Signature/Date

Part 3: To be completed by the Chair of the Board or Designate

Date of Receipt of Notice:

Date of Meeting at which the Conflict was considered:

Did the board decide a Conflict of Interest existed as set out in Part 2 above? (No – go to part (a), Yes – go to part (b))

(a) If no, complete the following declaration:

“I certify that the board of Directors described above decided that in fact no Conflict of Interest exists. I request ratification by Niagara Regional Housing of this decision of the housing provider”

Signature/Date

- (b) Was the conflict resolved in accordance with the housing provider’s By-Laws, and NRH’s local policy.

Complete only one of the two boxes below

- Yes**, briefly describe the resolution of the conflict (add any relevant supporting documentation)

“I certify this is a true record of the Conflict of Interest and its resolution. I request ratification by Niagara Regional Housing, of the decision of the housing provider”.

Signature/Date

- No**, briefly describe why the conflict could not be resolved (add any relevant supporting documentation)

“I certify this is a true record of the conflict of interest and that the housing provider was unable to bring about a resolution. I hereby request instruction from Niagara Regional Housing, regarding resolution of this conflict of interest.”

Signature/Date

Part 4: Niagara Regional Housing Response/Direction

Signature/Date

**Schedule “C”
To
By-Law No. xx**

Acknowledgement of Receipt/Review of the Conflict of Interest By-Law

Part 1: Non-Profit Information

Contact Person:

Address/Phone Number:

Part 2: To be completed by the director, officer, agent, or employee

Name:

Position:

This will acknowledge and confirm that I have received, read and understand the housing provider’s Conflict of Interest by-Law and acknowledge that as a director, officer, agent, employee, I am required to comply with all terms and conditions of the Conflict of Interest by-law.

I further acknowledge my responsibility to disclose to the housing provider and Niagara Regional Housing all potential or actual Conflicts of Interest, which, may arise or exist while acting in my role with the housing provider, in accordance with the approved Conflict of Interest by-law.

Signature/Date

NOTE: This declaration should be signed when a director, officer, agent or employee first takes a position with the housing provider or begins their employment with the housing provider or when the by-law comes into effect. A copy of the declaration must be retained on Conflict of Interest file for the full period of the director, officer, agent, employee’s involvement or employment with the housing provider.