

Directive

Directive: Conflicts of Interest

Issue Date: September 26 , 2017

Directive No.: DIR2017-06

Revision Date:

Revision No.:

Applicable Policy: N/A

Type: Legislative/Operational

The policies and procedures in this Directive are to be implemented by Housing Providers/Cooperatives funded by the Municipality under the following programs.

Provincial Non-Profit Housing Providers

- | | |
|---|--|
| <input checked="" type="checkbox"/> Ganoque Family Housing | <input checked="" type="checkbox"/> Ganoque Housing Inc. |
| <input checked="" type="checkbox"/> Legion Village 96 Seniors Residence | <input checked="" type="checkbox"/> Twp. of Bastard & South Burgess Housing Corp. |
| <input checked="" type="checkbox"/> Brockville Municipal Non-Profit Housing Corp. | <input checked="" type="checkbox"/> South Crosby Non-Profit Housing Corp. – Pineview |

Federal Non-Profit Housing Providers

- | | |
|---|---|
| <input type="checkbox"/> Athens & District Non-Profit Housing Providers | <input type="checkbox"/> Marguerita Residence Corp. |
| <input type="checkbox"/> Ganoque Housing Inc. | <input type="checkbox"/> South Crosby Non-Profit Housing Corp. – Rideau Lakes |

Federal/Provincial Cooperative Housing

- Shepherds Green Cooperative Homes Inc.

Affordable Housing Providers

- | | |
|--|---|
| <input type="checkbox"/> Elgin Seniors Housing Development | <input type="checkbox"/> 2049515 Ontario Inc. |
| <input type="checkbox"/> Housing Department | |

Housing Providers

- | | |
|---|--|
| <input type="checkbox"/> UCLG Social Housing Provider | <input type="checkbox"/> Rent Supplement Program |
|---|--|

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BACKGROUND

In accordance with the *Housing Services Act, 2011* s. 75, a housing provider shall operate a Part VII housing project in accordance with prescribed provincial requirements and local standards made by the service manager. O. Reg. 367/11 s. 100 prescribes conflicts of interest of directors, employees and agents of a housing provider as one of the matters for which a service manager may make a local standard. A local standard does not apply to the extent that it conflicts with a provincial requirement, unless the provincial requirement provides otherwise.

PURPOSE

To inform housing providers of the local standard related to Conflict of Interest established by the service manager under the *Housing Services Act, 2011*, to help in understanding what a conflict of interest means and how to protect the corporation from conflicts of interest.

ACTION TO BE TAKEN

The following definitions of terms apply in this directive:

A **conflict of interest** means any situation where the personal or business interests of a director, officer, agent, or employee of a housing provider are in conflict with the best interests of the housing provider, or a personal gain, benefit, advantage or privilege is directly or indirectly given to or received by a director, officer, agent or employee of the housing provider or a person related to him/her as the result of a decision by the housing provider.

Agent means any person acting on behalf of the Board of Directors or the housing provider.

Employee means any person performing work for the housing provider for a wage, salary, fee or payment.

Director means a member of the Board of Directors of the housing provider.

Officer means the President, Chair, Vice-President, Secretary, Treasurer, Administrator or Property Manager and anyone else designated as an officer in the housing provider's by-laws.

A **person related** to a director, officer, agent, or employee of the housing provider includes a parent, spouse, same-sex partner, child, household member, sibling, uncle, aunt, niece, nephew, father-in-law, mother-in-law, brother-in-law, sister-in-law, or grandparent or a person with whom the director, officer, agent or employee has a business relationship.

Service Manager means the United Counties of Leeds and Grenville as established in the *Housing Services Act, 2011* and O. Reg. 367/11.

This directive communicates the local standard established by the Service Manager, and housing providers must ensure that the following requirements are met in the day to day

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ACTION TO BE TAKEN

operations of their housing project(s).

1. Directors, officers, agents and employees of the housing provider shall not engage in any arrangements, contracts, agreements and relationships that may result in a conflict of interest or a perceived conflict of interest. All arrangements, contracts, agreements and relationships must be closely monitored. The board of directors, individually and collectively, shall comply with this requirement.
2. To determine whether or not conflict of interest or a perceived conflict of interest exists, the following question should be asked:

“Would an informed person, having thought the situation through, think it possible that a director, officer, agent or employee of the housing provider might be adversely influenced in the performance of his or her duties for the housing provider by his or her other interests?”
3. A Conflict of Interest Declaration (Appendix A) must be signed by every director, officer, agent and employee of the housing provider indicating they have:
 - i. Read and understand the housing provider’s Conflict of Interest by-law or policy and acknowledge that the housing provider is obligated to comply with it.
 - ii. Acknowledge their responsibility to disclose any conflict of interest to the Board.
 - iii. Acknowledge their responsibility to disclose in writing to the housing provider, on an ongoing basis, any actual or perceived conflict of interest which may arise during their relationship with the housing provider.

The housing provider shall maintain a Conflict of Interest file that contains all signed declarations, reports and minutes pertaining to actual, potential or perceived Conflicts of Interest.

4. Conflict of Interest shall be a regular agenda item at the beginning of each meeting of the Board of 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.
5. When a potential conflict of interest is declared before or during a board meeting:
 - a) The person declaring the actual/potential conflict of interest must leave the meeting; and
 - b) The Board shall decide if there is a Conflict of Interest.
 - c) If the Board determines there is a Conflict of Interest, the person declaring the

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conflict cannot be involved in any meetings or decisions related to the conflict.

- d) Consideration of the conflict of interest declaration shall be recorded in the minutes of the meeting.
6. Directors, officers, agents and employees of the housing provider shall complete Parts 1 and 2 of the Declaration of Actual, Perceived or Potential Conflict of Interest and Record of Resolution (Appendix B) and submit to the Chair of the Board of Directors not later than the first Board meeting 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 an actual or potential conflict of interest.
 7. The Board of Directors shall consider the declaration given under paragraph 6 not later than the second meeting of the Board after the declaration is given. Consideration of the declaration must be certified in the Declaration of Actual, Perceived or Potential Conflict of Interest and Record of Resolution (Appendix B) and reflected in the minutes of the meeting. Upon becoming aware that a conflict of interest exists, the housing provider must determine if it is a prohibited conflict of interest (i.e. one which the Service Manager will not sanction). To assist in this determination, a list of prohibited conflicts of interest (Appendix C) is included.
 8. If any Conflict of Interest declared in accordance with paragraphs 5 or 6 is unresolved, the Chair of the Board shall notify the Service Manager in writing within 10 business days following the second meeting of the Board after the declaration of conflict is given consideration. Complete and submit the Declaration of Actual, Perceived or Potential Conflict of Interest and Record of Resolution (Appendix B) to the Service Manager.
 9. The housing provider shall act in accordance with any instructions issued by the Service Manager regarding an alternative to an unresolved conflict of the Board under paragraph 8.
 10. A director, officer, agent or employee or a person related to him/her may directly or indirectly receive a gain, benefit, advantage, privilege or remuneration from the housing provider if **all** of the following conditions are satisfied:
 - i. A declaration of the conflict of interest or potential conflict of interest is given in writing in accordance with paragraphs 5 or 6; and
 - ii. The Service Manager agrees that there is no reasonable alternative for the housing provider other than entering into the agreement, arrangement or situation that results in or may result in the conflict of interest.

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ACTION TO BE TAKEN

11. If 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.
12. Housing providers shall review their conflict of interest by-law or policy as approved by the Board of Directors to ensure consistency with this Directive. If such a by-law or policy does not currently exist, the housing provider shall promptly implement such by-law or policy that is consistent with this Directive. In the event of any contradiction between a housing provider's by-law or policy and this Directive, this Directive shall be the defining authority.

A sample Conflict of Interest by-law is attached (Appendix D). This sample is general in nature and is to be used as a reference document only. It may need to be revised to address specific requirements under corporate legislation (i.e. the *Corporations Act*, or the *Co-Operative Corporations Act*). Housing providers should review the corporate legislation that applies to their non-profit or co-operative.
13. This Directive shall be reviewed by the Board of Directors at the earliest opportunity and each Director shall sign an Acknowledgement of Conflict of Interest (Appendix A).

REFERENCE (Appendices)

- A.....Acknowledgement of Review of Conflict of Interest
- B.....Declaration of Actual, Perceived or Potential Conflict of Interest and Record of Resolution
- C.....Prohibited Conflicts of Interest
- D.....Sample Conflict of Interest By-Law

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If you have any questions, please contact the following:

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**C. Morrison, Manager
Housing Department**

Sept 26/17
Date

Acknowledgement of Review of Conflict of Interest

Part 1: Non-Profit/Co-operative Information:

Contact Person:

Address:

Phone:

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

Name:

Position:

I hereby acknowledge and confirm that I have read and understand the Conflict of Interest Directive issued by the United Counties of Leeds and Grenville and the Conflict of Interest By-Law established by the insert legal name of housing provider. I further acknowledge my responsibility to disclose to insert legal name of housing provider all actual, perceived or potential conflicts of interest which may exist while acting as insert role. I further acknowledge my responsibility to disclose to the housing provider in writing, on an ongoing basis, any actual, perceived or potential conflicts of interest which arise during my relationship with the housing provider. These actual, perceived or potential conflicts of interest must immediately be disclosed in writing using the Declaration of Actual, Perceived or Potential Conflict of Interest and Record of Resolution.

Signature

Date

NOTE: This declaration must 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 Conflict of Interest Directive is reviewed. A copy of the declaration must be retained on the housing provider's Conflict of Interest file.

Declaration of Actual, Perceived or Potential Conflict of Interest and Record of Resolution

Part 1: Name of Non-Profit/Cooperative:
Contact Person:
Address:

Part 2: To be completed by the director, officer, agent or employee with the conflict:
Name:
Address:
Briefly describe the actual, potential or perceived conflict (add any relevant supporting documentation):

Signature

Date

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

Date Declaration was Received:

Date of Meeting at which the Conflict was reviewed:

Did the Board decide a Conflict of Interest described in Part 2 above exists(ed)?

No – go to (a) below

Yes – go to part (b)

(a) If no, complete the following declaration:

"I certify that the Board of Directors has reviewed and considered the Conflict of Interest declared and described in Part 2 above. The Directors have decided that no Conflict of Interest exists. "

Signature

Date

(b) Was the conflict resolved in accordance with the housing provider's By-Laws and the Service Manager's directive?

Complete only one of the two boxes following

Yes - Resolved

Briefly describe the resolution of the conflict::

"I certify this is a true record of the Conflict of Interest and its resolution."

Signature

Date

No - Unresolved

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 Board of Directors was unable to resolve the conflict. I hereby request instruction regarding resolution of this conflict of interest from the United Counties of Leeds and Grenville."

Signature

Date

Part 4: Service Manager's Response/Direction:

Signature of Service Manager

Date

PROHIBITED CONFLICTS OF INTEREST

The following are relationships, arrangements, contracts and agreements which are prohibited by the Service Manager.

- a) A housing provider cannot give any advantage or privilege to anyone when offering them housing accommodation unless permitted under other Service Manager Directive or policy.
- b) A member of the Board of Directors may not be employed by the housing provider.
- c) A family member of a member of the Board of Directors may not be employed by the housing provider.
- d) A member of the Board of Directors may not have a direct or indirect interest in any business that provides advice, goods or services to the housing provider.
- e) A family member of a member of the Board of Directors may not have a direct or indirect interest in any business that provides advice, goods or services to the housing provider.
- f) None of the persons, firms or entities listed below:
 - i. A member of the Board of Directors of the housing provider,
 - ii. A family member of a member of the Board of Directors,
 - iii. The development consultant/resource group of the housing provider,
 - iv. The shareholders, directors or officers of the development consultant/resource group,
 - v. The family members of the shareholders, directors or officers of the development consultant/resource group,
 - vi. The architect or other technical consultant of the housing provider,
 - vii. The family members of the architect or other technical consultant,
 - viii. The real estate agent of the housing provider,
 - ix. The family members of the real estate agent,
 - x. The environmental consultant of the housing provider,
 - xi. The family members of the environmental consultant,

may

 1. sell or lease land to the housing provider; or
 2. have a direct or indirect interest (including without limitation, as a director, officer or shareholder) in any business entity that sells or leases land to the housing provider; or
 3. receive any direct or indirect gain or benefit from the sale or lease of land to the housing provider.
- g) The property manager, property management services firm or development consultant of the housing provider must not have a direct or indirect interest in any other business that provides advice, goods or services to the housing provider.

CONFLICT OF INTEREST BY-LAW (SAMPLE)

BE IT ENACTED as a By-Law of the Insert legal name of housing provider 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 *Housing Services Act, 2011*, and Ontario Regulation 367/11 s. 100 has prescribed conflicts of interest as one of the matters for which the Service Manager may establish local standards. The United Counties of Leeds and Grenville, as Service Manager has issued a Conflict of Interest Directive which outlines the local standard relating to Conflicts of Interest.
- c) This By-Law sets out how the housing provider implements the requirements of the Directive and addresses declared Conflicts of Interest.

2. **Definitions**

In this By-Law, the following definitions apply:

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 of the housing provider or a person related to him/her as the 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 with 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 or members that is not available to tenants or members who are not directors.

Declaration means a declaration in the form attached as Schedule "A" to this By-Law.

Director means a member of the Board of Directors of the housing provider.

Officer means the President, Chair, Vice-president, Secretary, Treasurer, Administrator or Property Manager and anyone else designated as an officer in the By-Laws of the housing provider.

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, or a person with whom the director, officer, agent, or employee has a business relationship.

Service Manager means the United Counties of Leeds and Grenville as defined in Section 2 of the *Housing Services Act, 2011*, and includes any person exercising the powers of the service manager under subsection 11 (1) of the *Housing Services Act, 2011*.

3. **Avoiding Conflicts 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 declaration of actual, perceived or potential Conflict of Interest has been delivered to the Chair of the Board of Directors and the Board of Directors has resolved the conflict, or if the conflict is unresolved, the Chair of the Board has notified the Service Manager in writing within 10 business days following the second meeting of the Board after the notice of conflict is given consideration, and the Service Manager 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 the Service Manager;
- b) a Director who lives in the housing provider's project may be employed by the housing provider on a part-time or temporary basis or if the Director does not reside in the housing provider's project and is employed to perform non-supervisory and non-managerial functions and no other director is employed to perform the same functions. 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. **Note: this clause does not apply to cooperatives.**
- c) some 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 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 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 the Service Manager requires such termination in order to resolve a Conflict of Interest.
- 3.4 Any Director employed subject to subsection 3.1, shall resign from her/his position before the housing provider's Board of Directors deliberates, issues a Request for Proposal, or votes on a contract or employment position for which the Director intends to compete.
- 3.5 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 If 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 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 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, 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 notification is attached as Schedule "B".
- 4.3 When a potential or perceived Conflict of Interest is raised before or during a Board meeting, then:
 - a) the person declaring the actual, potential or perceived conflict must leave the meeting; and,
 - b) the Board shall decide if there is a conflict of interest.

- c) If the Board determines there is a conflict of interest, the person declaring the conflict cannot be involved in any meetings or decisions related to the conflict.
 - d) Consideration of the conflict of interest declaration shall be recorded in the minutes of the meeting.
- 4.4 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 certified in the Declaration of an Actual, Perceived or Potential Conflict of Interest and Record of Resolution (Schedule B) and reflected in the minutes of the meeting.
- 4.5 The board shall notify the Service Manager of any declaration received under subsection 4.2 that is unresolved within 10 business days following the second meeting of the Board after the declaration of a conflict of interest is given consideration. Complete the Declaration of an Actual, Perceived or Potential Conflict of Interest and Record of Resolution and submit to the Service Manager.
- 4.6 The housing provider will act in accordance with the Service Manager's instructions regarding an alternative to an unresolved conflict of the Board under subsection 4.5.
- 4.7 The housing provider shall maintain a Conflict of Interest file containing all declarations and reports pertaining to actual, potential or perceived Conflicts of Interest.
- 4.8 The housing provider is required to have all directors, officers, agent and employees sign an Acknowledgement of Review of Conflict of Interest (Schedule "A") acknowledging that he/she has been provided with a copy of the Conflict of Interest Directive, has read it and fully understand his/her responsibility to declare an actual, perceived or potential Conflict of Interest in accordance with the Directive. The declaration must be signed when a director, officer, agent or employee first takes a position or begins employment with the housing provider or when the Conflict of Interest Directive is reviewed. A copy of the declaration must be retained on the Conflict of Interest file.

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 of _____, 20 .

PRESIDENT
Insert legal name of housing provider

SECRETARY
Insert legal name of housing provider

SAMPLE

Schedule "A" to By-Law No. xx

Acknowledgement of Review of the Conflict of Interest By-Law

Part 1: Non-Profit/Co-operative Information:
Contact Person:
Address:
Phone:

Part 2: To be completed by the director, officer, agent, or employee
Name:
Position:
<p>I hereby acknowledge and confirm that I have read and understand the Conflict of Interest Directive issued by the United Counties of Leeds and Grenville and the Conflict of Interest By-Law established by Insert legal name of housing provider. I further acknowledge my responsibility to disclose to Insert legal name of housing provider all actual, perceived or potential conflicts of interest which may exist while acting as Insert role or title of person making the declaration. I further acknowledge my responsibility to disclose to the housing provider in writing, on an ongoing basis, any actual, perceived or potential conflicts of interest which arise during my relationship with the housing provider. These actual, perceived or potential conflicts of interest must immediately be disclosed in writing using the Declaration of Actual, Perceived or Potential Conflict of Interest.</p>
_____ Signature
_____ Date

NOTE: *This declaration must 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 Conflict of Interest Directive is reviewed. A copy of the declaration must be retained on the housing provider's Conflict of Interest file.*

Schedule "B" To By-Law No. xx

**Notice of Actual, Perceived or Potential Conflict of Interest and
Record of Resolution**

Part 1: Name of Non-Profit/Cooperative:
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 Declaration was Received:

Date of Meeting at which the Conflict was reviewed:

Did the Board decide a Conflict of Interest described in Part 2 above exists(ed)?

No – go to (a) below

Yes – go to part (b)

(a) If no, complete the following declaration:

"I certify that the Board of Directors has reviewed and considered the Conflict of Interest declared and described in Part 2 above. The Directors have decided that no Conflict of Interest exists. "

Signature

Date

(b) Was the conflict resolved in accordance with the housing providers By-Laws and the Counties' directive?

Complete only one of the two boxes following

Yes - Resolved

Briefly describe the resolution of the conflict:

"I certify this is a true record of the Conflict of Interest and its resolution."

Signature

Date

No - Unresolved

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 Board of Directors was unable to resolve the conflict. I hereby request instruction regarding resolution of this conflict of interest from the United Counties of Leeds and Grenville."

Signature

Date

Part 4: The United Counties of Leeds and Grenville Response/Direction:

Signature of Service Manager

Date