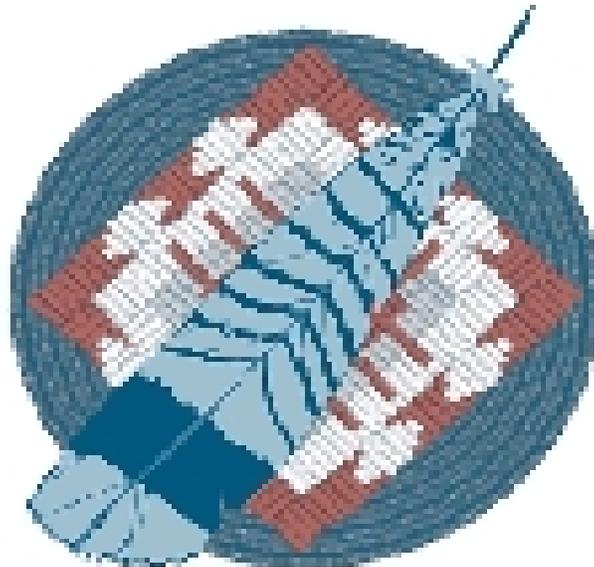




Shared Visions

Guide to Creating a Nonprofit Homeownership Entity



May, 2000

**U.S. Department of Housing and Urban Development
Office of Native American Programs**

Table of Contents

| | Page |
|--|-----------|
| 1.0 Executive Summary..... | 1 |
| 2.0 Planning Process..... | 7 |
| 2.1 Introduction | 7 |
| 2.2 Identification of Partners | 7 |
| 2.3 Homeownership Needs Analysis..... | 8 |
| 2.4 Land Analysis and Inventory | 9 |
| 2.5 Legal Assessment of Tribal Laws and Ordinances | 10 |
| 2.6 Determination of Response to Need..... | 13 |
| 2.7 Organizational Options | 16 |
| 2.8 Fundraising and Finance ¹ | 22 |
| 3.0 First Steps to Creating a Nonprofit Organization..... | 29 |
| 3.1 Introduction and Overview of Steps to Establishing a Nonprofit | 29 |
| 3.2 Articles of Incorporation | 29 |
| 3.3 Bylaws | 31 |
| 4.0 Applying to the IRS for 501(c)(3) Recognition..... | 33 |
| 5.0 Development of a Nonprofit Organization..... | 41 |
| 5.1 The Board | 41 |
| 5.2 Strategic Plan..... | 49 |
| 5.3 Business Plan..... | 51 |
| 5.4 Organization Structure..... | 55 |
| 5.5 Budget and Financial Procedures | 55 |
| 5.6 Personnel Policies and Procedures | 60 |
| 5.7 Staffing..... | 61 |
| 6.0 Program and Organizational Operations..... | 65 |
| 6.1 Introduction | 65 |
| 6.2 Housing Development..... | 65 |
| 6.3 Housing Counseling | 79 |
| 6.4 Resource Referral Services | 81 |
| 6.5 Marketing..... | 82 |
| 6.6 Fund-raising | 84 |
| 6.7 Monitoring and Evaluation..... | 85 |
| 7.0 Pine Ridge Case Study..... | 89 |

Guide to Creating a Nonprofit Homeownership Entity



| | |
|---|-----|
| End-Notes..... | 103 |
| Appendix 3.2 – Sample Articles of Incorporation..... | 105 |
| Appendix 3.3 – Sample Bylaws | 112 |
| Appendix 5.0 - Job Description for President/Chairperson..... | 123 |
| Appendix 6.0 – Sample Notice..... | 125 |

Shared Visions

1.0 Executive Summary

In response to the austere housing and economic conditions confronted by many Native Americans, particularly those living on tribal lands, Secretary Andrew Cuomo of the United States Department of Housing and Urban Development (HUD) has launched the Shared Visions Initiative. Consultation with tribal leaders across the country confirmed the need for a new approach to the housing crisis. This initiative is designed to increase the number of affordable, quality homes and simplify the homeownership process for Native Americans.

One component of the Shared Visions Initiative is the creation of a tribal nonprofit entity that promotes homeownership opportunities by establishing links with financial intermediaries, providing homeownership counseling, and serving as a resource referral center. In January 1999, The Oglala Sioux Tribe created the Shared Visions pilot nonprofit, the Oglala Sioux Tribe Partnership for Housing, Inc. (OSTPH). The Oglala Lakota name for the nonprofit is Tatanka Woihanble Otipi: Buffalo Dreams, Gathering Homes. The OSTPH opened its doors with a HUD grant to provide financial assistance, homeownership counseling, and other services to potential homebuyers.

As the pilot nonprofit organization, OSTPH is serving as the model for the creation of this Shared Visions guide, which is intended as a resource guide in creating similar nonprofits in other tribal communities. The long-term goal of Shared Visions is to help lessen the housing shortage on American Indian reservations across the country by finding ways to build affordable, quality homes and encourage individual homeownership and private sector investment. A secondary goal is to stimulate Indian-owned housing construction companies and trades so that housing development activities become part of tribal economic development.

The Shared Visions Initiative activates the intent of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) by fostering new opportunities for tribal family homeownership. One of the primary objectives of NAHASDA was “to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members.”

Benefits of a Nonprofit Homeownership Model

Important opportunities for affordable housing in Indian Country have been created by NAHASDA, Section 184 loan guarantee, and other new programs. In addition, mortgage lenders, nonprofits, and the secondary mortgage market are increasingly interested in working with tribes.

Guide to Creating a Nonprofit Homeownership Entity

However, in order to take full advantage of these opportunities, tribes need legal, technical, and program design infrastructure.

Significant and sustainable benefits will arise from the nonprofit homeownership model:

- A one-stop nonprofit homeownership model provides tribal households financial assistance or advice in owning their home apart from tribally-funded housing stock.
- Homeownership opportunities will provide tribal households a way to accrue wealth through increasing equity investment in their own homes.
- Tax-exempt nonprofits can take advantage of donations from foundations, individuals and others; thereby reducing dependence on limited public sector funding.
- As tribal households move into their homes, housing capacity provided by tribally designated housing entities will increase for very low-income tribal families.
- Nonprofits will assist tribes in developing the regulatory jurisdiction over financial and commercial transactions that will provide predictability to both borrowers and lenders – thereby stimulating both homeownership and economic development opportunities.
- Nonprofit approach promotes greater tribal control and accountability since the entity's Board of Directors usually consists of tribal members with expertise in housing, economic development, and tribal governance.

The guide should serve as a reference tool for a working group interested in launching a nonprofit with the mission of developing affordable housing and promoting homeownership opportunities. The guide walks the working group through the planning stages, the legal creation of an entity, the application process for Internal Revenue Service (IRS) 501(c)(3) status, the development of the organization, and the program operations. It concludes with a case study on the Oglala Sioux Tribe Partnership for Housing, Inc.

Before launching a nonprofit organization, it is crucial for the tribe to engage in extensive housing research and planning to determine if this is the best response to identified needs. A working group of committed community leaders and housing industry practitioners should come

Guide to Creating a Nonprofit

Planning Process

First Steps to Creating a Nonprofit Organization

together to provide leadership and conduct or commission the necessary research. Specifically, it should conduct a homeownership needs analysis to gauge the tribe's demand and capacity for homeownership, a land analysis to assess what land is available for development of new homes, and a legal assessment to identify what relevant tribal codes and ordinances are in effect.

The working group should examine the organizational options and decide how best to structure the new initiative or entity. It should also evaluate existing organizations and entities that may be able to launch an initiative without the creation of a new organization. The working group should identify partners and funding sources for the initiative.

The creation of a nonprofit organization is a multi-step process involving many decisions, documents, and players.

Once the working group has determined that it should form a nonprofit, it should generate a strategic plan, a vision statement, and a business plan. Next, the group should prepare and adopt Articles of Incorporation, file them with the tribal government and/or have the tribal government charter the organization, file them with the state Secretary of State (if necessary), and draft and approve organizational bylaws. Details on all of these steps are included in this document.

Board of Directors

The Board of Directors is the body that governs the nonprofit organization. It makes decisions, sets policies, and plans in order to ensure the organization's success. Further information on the Board's roles, responsibilities, and structure is included in this document.

Program and Organizational Operations

After an organization has worked through the land, legal, tax, and financial packaging issues confronted in the planning stages, and has organized itself legally as a nonprofit, it is ready to embark on its program operations. Section 6 details a preliminary sketch of what the program operations may include.

As soon as possible, the nonprofit should begin working with prospective homebuyers. The entity would market and reach out to find families interested in homeownership and provide group and individual pre- and post-purchase and credit counseling. It is from these efforts that the organization identifies and nurtures its future homebuyers.

One component of the organization's operations is housing development. The entity may be involved in site selection, deciding on the appropriate form of housing delivery, type of home and building

Guide to Creating a Nonprofit Homeownership Entity

materials, securing construction gap financing, leveraging with financial intermediaries, procuring services, and closing on a property.

In addition, the organization should provide resource and referral services. As a one-stop resource referral center, the organization would be a single source where interested parties could obtain information on the process of buying a home, as well as information on credit counseling, mortgage lenders, real estate brokers, builders and contractors, and local housing options and programs.

HUD's Office of Native American Programs (ONAP) proposed to the Oglala Sioux Tribal President that a nonprofit entity – separate and independent from the tribal governance structure – could serve as a national pilot project in developing affordable housing and designing homeownership opportunities. In response, the tribal council created the Oglala Sioux Tribe Partnership for Housing, Inc. (OSTPH), to serve as the pilot for the Initiative. As a nonprofit organization, OSTPH would:

- Promote the concept of homeownership among tribal members and identify interested homebuyers
- Create a housing development and financing plan that reflects the preferences and circumstances of the homebuyers
- Assess homebuyer readiness
- Deliver personal financial management and housing counseling services
- Serve as a conduit between lending institutions and the homebuyers
- Market-shop and negotiate for the best lending packages for tribal members
- Maintain funding sources to close the gap on down-payment and monthly mortgage costs
- Seek out and secure other sources of gap financing
- Develop sources of housing and housing-related products
- Serve as a resource and referral center for tribal members interested in homeownership

Pine Ridge Case Study

In essence, the nonprofit homeownership entity will bridge the gap between Pine Ridge borrowers and the private market that provides the services needed to facilitate on-reservation homeownership.

OSTPH is a tax-exempt, 501(c)(3) nonprofit organization governed by an eight-member Board of Directors and managed by a full-time Executive Director.

OSTPH is engaged in a Building Summit to develop and build homes on the Pine Ridge reservation. Staff assessed homebuyer readiness and established a pool of applicants and are providing housing counseling on an ongoing basis. Norwest Mortgage, Inc. is the main private partner, providing mortgages to qualifying families. OSTPH has also leveraged financial resources from federal and private partners to help make homeownership affordable to tribal members.

Homebuyers may choose a stick-built modular home or a manufactured home. OSTPH is managing the site preparation and infrastructure development for the manufactured homes, and all aspects of the construction of the modular homes at the Kyle modular home facility on the Pine Ridge reservation.

The creation and mission of OSTPH represent an achievement of the Oglala Sioux Tribe in creating a new opportunity for tribal families to finance and obtain affordable housing. OSTPH's success at attracting housing development funding from numerous public, private, and nonprofit sources and its ability to implement a variety of housing initiatives help reduce tribal dependency on unpredictable and limited public funding. For the first time in its history, the Tribe is able to build new housing and provide wider housing choice to homebuyers and renters; especially those with lower incomes and physical disabilities.

2.0 Planning Process

2.1 Introduction

The Shared Visions Initiative encourages tribes to create nonprofit organizations to promote housing development and affordable homeownership opportunities in Indian Country. This approach may not be appropriate for each tribe, in all situations. This is why it is crucial to engage in extensive research and planning to determine if launching a new organization is the best course of action for its members.

Specifically, the tribe should conduct a homeownership needs analysis to gauge the tribe's demand and capacity for homeownership, a land analysis to assess what land is available for development of new homes, and a legal assessment to identify what relevant tribal codes and ordinances are in effect. This section discusses each of these assessments and explains how to proceed once this information has been gathered.

2.2 Identification of Partners

To determine whether or not a tribe should launch a housing development and homeownership program and charter an organization to undertake this initiative, a working group should be formed to conduct the necessary research, analysis, and planning. Such a working group should be comprised of committed individuals who represent different interests in the community and/or who bring a variety of expertise and resources. The role they will play includes brainstorming, visioning, and conducting or commissioning surveys and analysis on homeownership needs, land issues, and legal issues. Ultimately, this group of people will determine whether there is sufficient need and capacity to launch a housing development and homeownership program. The working group will also choose what type of organization will operate such a program. Some members of the working group may go on to serve as members of the organization's Board of Directors.

It is helpful if at least some of the working group members have a background in housing, construction and development, law, land issues, and/or finance. These individuals can provide professional expertise to the group at no cost, saving the initiative considerable costs. Working group members may or may not be required to be tribal members to participate – this is to be determined by the group. It may be helpful to involve, as members or associate members, local staff of HUD's Office of Native American Programs (ONAP), the Bureau of Indian Affairs (BIA), Indian Health Services (IHS), state housing officials, tribally elected

Guide to Creating a Nonprofit Homeownership Entity

officials, and representatives of mortgage lenders and secondary market participants. These individuals will have contributions to make at different points in the planning and development processes.

2.3 Homeownership Needs Analysis

For many tribes, most of the information required to create a housing development and homeownership program will be contained in their Indian Housing Plan. However, it is preferable to pull this information together in a three to four page document describing the program. Such a write-up would likely include six sections:

1. Market description (target homebuyers)
2. Construction/rehabilitation standards and design guidelines
3. Financing (pre-development, construction and permanent financing, and financing sources) and pro-forma project statements
4. Homebuyer outreach and counseling
5. Internal staffing and systems required
6. Timeline

Unlike rental housing, homeownership requires a long-term commitment from the homebuyer and, if the working group intends to utilize bank financing, an ability to be underwritten by conventional banking practices. Since this will be a new venture for many tribes, a short written program description will help funders to understand the market. It will also assist the tribe and tribal council to understand the program's goals, and it will enable the organization's future staff to understand the process and their role.

The first level of analysis is to research potential homebuyers. These are people who would be interested in becoming homeowners and have sufficient income to pay a mortgage. The research required typically includes:

- Household income
- Household size
- Debt and credit history
- Current housing expenses
- Housing preferences (single family, multi-family, townhouse, manufactured, modular, etc.)

Know the Market

- Accessibility requirements for the elderly and persons with disabilities

Income information, household size, and current housing expenses are available through Census data and BIA. Since the Census is conducted only once every 10 years and generally undercounts Native American households, some tribes carry out surveys to gather more current and reliable information. Incorporating the surveys into the Indian Housing Plan also promotes the tribal participation that HUD seeks for these Plans.

Based on this information the working group can begin to analyze the market for homeownership that will guide all the rest of the project – the financing, design, development costs, purchase prices, and counseling required by the homebuyers.

2.4 Land Analysis and Inventory

Along with the homeownership needs analysis, it is important to consult or conduct a land inventory of the tribe's existing land base. This inventory will identify the tribal land available for the development of homeownership units. In some cases, there may be an existing land inventory that may need to be updated. This exercise can also highlight any issues or problems that may exist with tribal lands.

A land inventory will categorize all the land of the tribe by type, including trust lands, allotted lands, and lands held in fee simple. BIA will most likely play a key role in this inventory, as the BIA issues Title Status Reports (TSRs) on all tribal trust land.

The term "fee land," "fee title" or "fee simple title" generally denotes an estate in land that is absolute and unrestricted. The owner is entitled to dispose of the entire property or various interests in the property during his or her lifetime without hindrance. Upon his or her death, the land or his or her remaining interest passes to his or her heirs, or those to whom he or she has given it by will. The homeownership nonprofit entity can work easily with fee simple land to develop and build homes. Tribes sometimes own land in fee within the boundaries of the reservation or off the reservation, and they may be willing to lease or assign such land to tribal members for homeownership. In addition, tribal members may own their own undeveloped land in fee simple, and the homeownership organization could assist such tribal members in building and financing their own homes on their land.

Guide to Creating a Nonprofit Homeownership Entity

Trust land is land or any interest therein held in trust by the United States of America for the benefit of a tribe or individual Native American. A tribe may distribute such land to its tribal members either by land assignment or lease. A lease requires the approval of BIA and must comply with certain federal regulations. A land assignment, which is an action by tribal government, is another means for the tribal government to distribute land for the use of tribal members. BIA approval is not needed for a land assignment. However, tribes may choose to have their land assignments approved by BIA or recorded in one of BIA's title offices. This choice might be attractive if the tribe does not have a title office.

In some cases, the tribe may be willing to set aside some of its trust lands for affordable homeownership opportunities. The working group should contact the tribal council to inquire about such a possibility. A land analysis should also include a review of the forms of lease or assignment that the tribe uses to convey land, along with any applicable restrictions on the land.

During the 1800s, the U.S. government gave individual allotments to individual Indians. The allotment is land held in trust by the United States for the benefit of an individual Indian. These allotted lands have passed down through the generations. A consequence of the inheritance feature of allotments is the fractionalization of a parcel of land. In some instances, the parcel may have multiple heirs holding an interest in it. This is a problem because it is not clear who owns what part of the land, and it is difficult to build a home on such land. Depending on the size of the allotment, the options available to tribal members include some sort of division or consolidation of the allotment, or an assignment by the other heirs of their rights to the land to a single owner. To date, there has been no comprehensive means to deal with the fractionalization issue. These parcels may be the most bothersome and challenging trust lands to deal with under a nonprofit entity's homeownership initiative.

2.5 Legal Assessment of Tribal Laws and Ordinances

As tribes consider launching a housing development and homeownership program and establishing a nonprofit organization to operate the initiative, they should be careful to consider the legal and tax implications on the nonprofit and the future homeowners. The working group should conduct an assessment of the existing tribal codes, ordinances, and/or laws in the following areas: housing, zoning, land distribution and use, corporations, leasehold mortgage, landlord/tenant, and taxes. This assessment will assist the nonprofit to identify the legal benefits and legal challenges resulting from the proposed activities on

Trust Lands

Allotted and Fractionalized Lands

and off the reservation. A legal assessment will also identify in what areas tribal law is lacking, contradictory, or raises issues for the proposed activities.

Legal and tax implications exist on multiple levels, including the tribe, state, and federal government bodies. Normally state law does not apply to a tribe, its activities or its tribal lands. However, the nonprofit organization may make decisions that would fall under the jurisdiction of state law by choice for tax advantages or governance advantages. Normally, the implications of the legal and tax consequences vary by tribe and by state. The implications also differ from the perspective of the homebuyer and the nonprofit organization.

To begin, the working group should consider the kind of governmental, legal, and tax codes needed so the nonprofit can accomplish its goals in a cost-efficient manner. Understanding tribal law and what it requires is essential to the nonprofit organization. An awareness of the legal relationship with the federal government is also important as federal laws regulate tribal land.

The working group needs to consider the impact of the tribal laws on the homeowner, for example, what happens if the buyer must sell, default, or vacate the premises for a period of time. For example, some tribal constitutions have provisions that result in the loss of a lease on land or land assignments if the occupant vacates the property for more than two years.

Tribal Government

The tribal constitution is a fundamental organizing instrument. The specificity and complexity of tribal laws vary by tribe. Tribes have either Indian Reorganization Act constitutions adopted in the 1930s or more recent constitutions. Tribal constitutions usually include provisions about land use and the distribution of land to tribal members. The bylaws that accompany a tribal constitution govern the activities of a tribal council and tribal government divisions, departments, and committees. The documents are instruments of the tribal laws and federal law depending on whether the tribe uses a land assignment or a lease.

The working group must identify all tribal ordinances, codes, or laws that will have an impact on the nonprofit entity and any requirements the tribal council and its departments may have on the organization. For example, some tribes may impose certain reporting requirements on the nonprofit. Identifying, understanding, and explaining tribal laws, codes, and ordinances facilitate relationships with lenders and others and provide them with a comfort level to deal with the tribe and tribal members. The working group should also consider whether existing

Guide to Creating a Nonprofit Homeownership Entity

tribal laws, codes, and ordinances would violate any of the requirements that exist among a lending institution's requirements or those of federal mortgage loan programs. Under these circumstances, the working group may wish to consider a recommendation to the tribal council that the ordinances be amended so that tribal members can take advantage of the programs.

The following types of tribal laws, codes, or ordinance can facilitate the nonprofit's ability to promote homeownership:

- Leasehold Mortgage Foreclosure Code - outlines the rights of a mortgagor and mortgagee on tribal lands. Tribal adoption of foreclosure rights and responsibilities is required by mortgage lenders if foreclosure proceedings are subject to tribal courts.
- Corporation Code - outlines the process to create a for-profit and nonprofit corporation, any ongoing reporting responsibilities, minimal provisions of Articles of Incorporation, responsibilities of Board of Directors and liabilities, as well as provisions for the dissolution of a corporation.
- Housing Code or Land Code - outlines the relationships between landlords and tenants, and the distribution process for land either through land assignments or leases.
- Environmental/Land Use Code - outlines the restrictions on land use activities that impact the natural environment and utilities such as water and sewer options.

The working group should become familiar with federal, state, and tribal tax laws. In some cases, the tribe may have entered into a special tax agreement with the state that is relevant to the organization. The implications of relevant tax laws on future homebuyers should also be identified and shared with homebuyers.

In some cases, certain tax structures may create additional costs or benefits to the organization and its mission and goals. For example, most tribes have a tribal employment rights office (TERO), which requires those who do business on the reservation to show Indian preference in hiring. TERO imposes fees to subsidize the cost of regulating the tribal employment rights ordinances. Sometimes exemptions are available from the state and may be available from the tribe.

Tax Laws

Build the Case for Homeownership

Synthesizing Analyses

2.6 Determination of Response to Need

The working group should take into account the cultural context and tribal attitudes regarding housing and homeownership. There may be resistance, ambivalence, or a lack of interest in homeownership among tribal members. Tribal members may not be interested in paying more to own their own home.

The working group must develop ways to communicate the value of individual homeownership choice above the existing model of housing owned and managed by the tribe or the tribally designated housing entity (TDHE). As articulated earlier, homeownership provides the key benefit of wealth accretion, and is a vehicle for investment and saving.

The Homeownership Needs Analysis, the Land Analysis and Inventory, and the Legal Assessment of Tribal Laws and Ordinances should provide the necessary data to the working group to reach a decision regarding the formation of a nonprofit or the launch of a housing development and homeownership initiative.

Exhibit 2.1 illustrates the homeownership process path for deciding what kind of housing and homeownership products are most feasible for the tribe. The illustration incorporates the major points presented thus far and shows the sequencing of tasks required for launching a homeownership program.

Exhibit 2.1 Homeownership Process Path Page 1

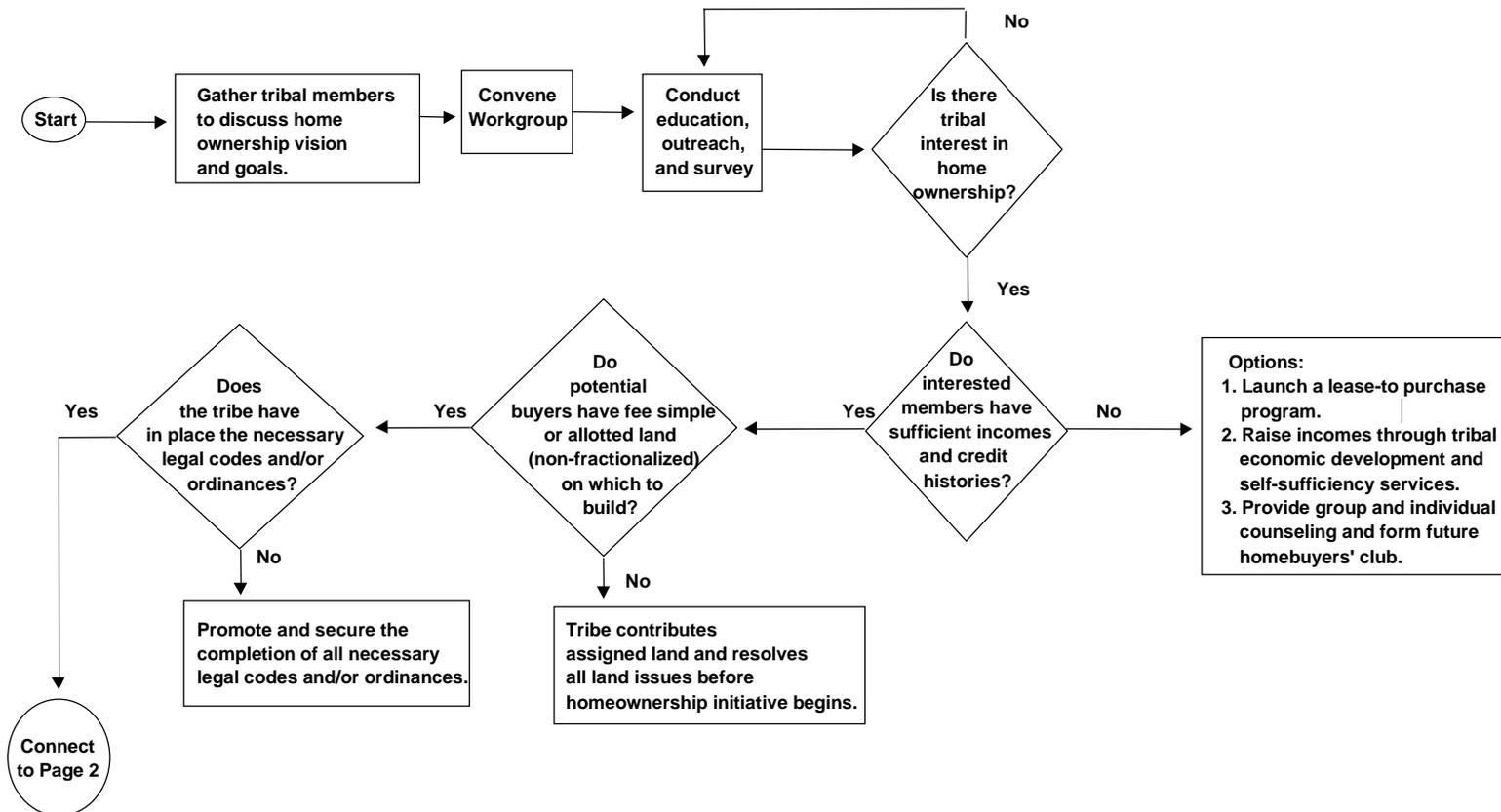
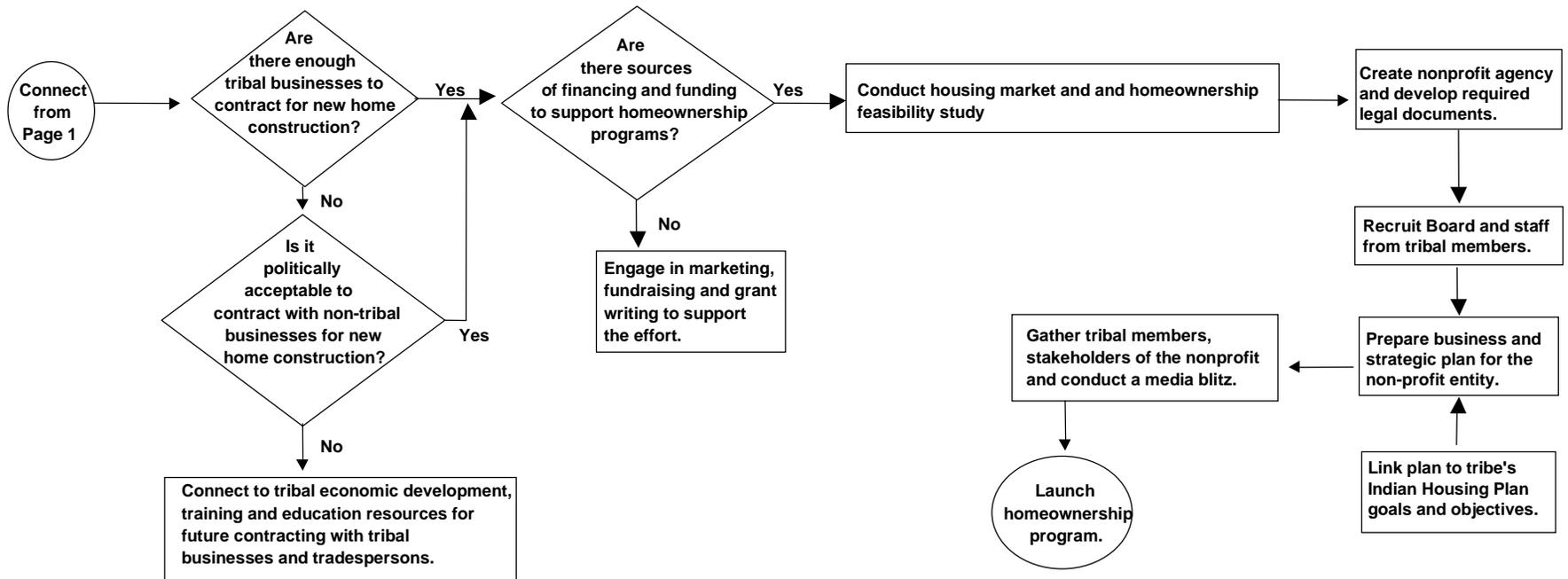


Exhibit 2.1 Homeownership Process Path

Page 2



Guide to Creating a Nonprofit Homeownership Entity

2.7 Organizational Options

The Shared Visions Initiative encourages tribes to establish independent nonprofit organizations with the specific mandate of promoting housing development and homeownership. There are several advantages to this independent nonprofit organizational model.

Forming a separate organization dedicated to housing development and homeownership can support the delivery of other housing services by the TDHE. Unlike the tribal government and TDHE, a new entity will have a singular and focused mission to develop housing and promote homeownership. This will enable the TDHE to channel more of its resources into other areas. A new organization can step in and help when a TDHE is “spread too thin.”

With a separate identity, the nonprofit organization will operate independently from the tribal government and TDHE. This will provide the organization with flexibility in its governance and operations. It also gives tribal members, prospective homebuyers, funders, and others the perception that the organization is separate and apart from tribal government. In some cases, this can be an important benefit. It is possible to incorporate the organization under the tribal laws, so the organization would still be part of the tribe in the sense that it is subject to tribal laws and regulation, but not with any sovereign immunity.

There are several benefits to incorporating as a nonprofit organization, as outlined in Exhibit 2.2.

Why a Nonprofit?

Exhibit 2.2: Benefits to Incorporating as a Nonprofit Organization

- Corporations provide more legal liability protection for those involved in the organization, including officers, directors, and volunteers. Individuals generally will not be personally liable if the entity is sued. Further, nonprofit corporations can obtain reasonably priced insurance to protect members of the Board of Directors.
- Nonprofit corporations can apply to become exempt from federal and state income taxes. If tax-exempt status is granted, the entity will not have to pay taxes on income earned from the organization's activities (e.g., development of properties).
- A tax-exempt nonprofit corporation can receive tax-deductible contributions. This serves as a great incentive for charitable giving. In fact, many large corporate donors will not make a gift without receiving a tax deduction.
- Most public and private grant money is only available to nonprofit organizations; many funders limit eligibility to those nonprofits that have been recognized as tax-exempt by the IRS.
- Nonprofit housing corporations do not include profit in their total development costs and this can lead to lower purchase prices and greater affordability.
- Going through the process of incorporation can strengthen an organization. It requires careful planning about the entity's purpose and how this purpose will be accomplished.
- Incorporation establishes minimum accountability and standard operating procedures for management.
- Incorporation helps to formalize decision-making and ownership among those involved.
- Incorporation can give the group a greater sense of purpose and legitimacy, to both external and internal stakeholders.
- Incorporation can give the entity greater independence from other organizations and governmental units.

Guide to Creating a Nonprofit Homeownership Entity

There are two main ways to form a nonprofit organization in Indian Country: under tribal law or under state law.

Tribal governments have the power to establish subordinate entities under tribal law, including government instrumentalities and corporations. While it is less common for tribes to establish nonprofit corporations than business corporations or government instrumentalities, there is no reason why tribes could not provide for the establishment of nonprofit entities under tribal law.

If a tribe has a corporation code of general applicability, or a Uniform Commercial Code with a section on corporations, it should be relatively simple to establish a nonprofit organization under tribal law. If such codes do not exist, it is still possible to set up a nonprofit through an ad hoc chartering ordinance specific to the entity being created. In the case of an ad hoc chartering, it is important that the organization's incorporating documents (Charter and Articles of Incorporation) include certain language. These necessary elements are discussed in further detail in Section 3.

By incorporating the entity under the tribal laws, the corporation would be subject to tribal laws and regulation. Depending on individual tribal law, the organization would most likely not share in the tribe's sovereign immunity. This means that the entity would be able to sue and be sued.

The corporation would also have the option of filing with the state as a foreign corporation and as a charity. This step, while not always required, may provide several key advantages:

It enables the organization to avoid any argument that it has ventured off the reservation and is engaged in business without properly filing or qualifying. This could mean avoiding fines.

- It ensures that the desired name of the organization is available and permitted (some states do not permit the use of names similar to those of already established nonprofits).
- It may be necessary if the nonprofit plans to engage in fundraising efforts off the reservation.
- The nonprofit may be able to obtain a state sales tax exemption certificate, to avoid sales tax on purchases made off the reservation.

This would create an organization that could apply to the Internal Revenue Service for tax-exempt status as a 501(c)(3) organization.

Organizational Options

Nonprofit Corporation Formed under Tribal Law

Nonprofit Corporation Formed under State Law

The tribe could form the nonprofit organization under state law rather than tribal law. In this case, the entity would not be part of the tribe, but would operate on tribal land; it would be considered a “foreign corporation” on the reservation, but a regular corporation off the reservation. The working group may opt for this route if it desires the greatest amount of independence, distance, and autonomy from tribal government. In cases where the tribe lacks a Uniform Commercial Code and/or corporation code, this option provides the advantage of clearer protections for the nonprofit.

An organization created under this option would also be able to apply to the Internal Revenue Service for tax-exempt status as a 501(c)(3) organization.

Other Organizational Options

The Shared Visions model encourages tribes to use the approach of incorporating as a nonprofit organization, whether under tribal or state laws, because this organizational option provides several key benefits, as outlined earlier. In some circumstances, a different organizational option will be more desirable due to local conditions and needs. These may include:

- Unincorporated instrumentality of the tribe
- Corporation chartered under Section 17 of the Indian Reorganization Act
- Homeownership initiative under the Housing Authority/TDHE
- Each of these options is described in greater detail below.

Unincorporated Instrumentality of the Tribe

The tribe may form an unincorporated instrumentality to address housing development and homeownership issues. Depending on tribal laws and requirements, such an entity may not have to draft Articles of Incorporation or apply to the state or IRS for tax-exempt status. As an instrumentality of the tribe, it would still be able to receive tax-exempt contributions, and it would share in the tribe’s sovereign immunity. Setting up an entity under this option is less time-consuming and complex than creating a nonprofit organization.

The key disadvantage of this option is a lessened sense of independence (both actual and perceived) from the Tribal Council, the Housing Authority/TDHE, and other entities. This lack of independence could undermine the entity’s credibility and may impede financing, fundraising and popular support.

Guide to Creating a Nonprofit Homeownership Entity

Under Section 17 of the Indian Reorganization Act of 1934 (the IRA) (25 U.S.C. 477), a tribe may obtain a charter from the Secretary of the Interior incorporating a federal corporation. Many Section 17 corporations exist, but most have been inactive since creation. This is the result of the use, in the early years after passage of the IRA, of standard form corporate charters promulgated by BIA. These charters were quite restrictive in what a Section 17 corporation could do and quite expansive in the oversight and approval powers granted to the Secretary of the Interior. The restrictive nature of the BIA-generated charters is not required by the statute, and some tribes have adopted new charters for their Section 17 corporations that are designed to make those entities useful tools for tribal business activity.

Section 17 corporations are creatures of federal law, but the law governing their nature, powers and authorities is quite thin. The early analysis of the nature of Section 17 corporations was that they were corporate alter-egos of the tribes themselves; that the Section 17 charter “cloned” the tribe resulting in two parallel entities: a governmental entity (the federally recognized Indian tribe) and a corporate entity (the Tribe, Inc.). More recent Section 17 charters describe a corporation established under federal law but owned by the tribe, more in the nature of a subordinate entity owned by the tribe rather than an entity on a par with the tribe. Examples of such charters include:

- Umpqua Indian Development Corporation, whose charter was issued to the Cow Creek Band of Umpqua Tribe of Indians in Oregon.
- Coushatta Empire, Inc., whose charter was issued to the Coushatta Tribe of Louisiana.
- Laguna Construction Company, Inc., whose charter was issued to the Pueblo of Laguna (New Mexico).

Because there is no general law addressing the structure, powers and activities of Section 17 corporations, those issues are generally dealt with in the charter itself. The Section 17 charter spells out the authorized purposes of the Section 17 corporation, its ability to borrow money, to encumber its assets, to sue and be sued and to waive its sovereign immunity, and how autonomous it is from tribal governmental control or, conversely, which of its actions require approval of the tribal government—or the Secretary of the Interior—before they can be undertaken.

Corporation Chartered Under Section 17 of the Indian Reorganization Act

Homeownership Initiative Under the Housing Authority/TDHE

Summary

A final option is to forego creating a brand-new entity and promote a housing development and homeownership initiative under the auspices of existing entities, such as the Housing Authority/TDHE, or tribal government (e.g., tribal council housing committee or subcommittee). The clear advantage to this alternative is that the considerable time, resources, and effort required to set up a new organization are avoided. The working group can simply partner with an existing entity to launch a housing development and homeownership initiative. The most obvious disadvantage of this option is limited independence from other entities. Further, the working group should study the existing tribal organizations to determine which one, if any, is an appropriate partner. The partner organization should have sufficient capacity, or be able to expand its capacity to take on the housing development and homeownership initiative.

These organizational options have many implications. Exhibit 2.3 presents the implications for tax liability, application of state law, and jurisdictions for dispute resolution. Exhibit 2.4 shows the effect on tax-exempt contributions, grant eligibility, organizational independence, and sovereign immunity.

**Exhibit 2.3
Overview of Tax and Legal Implications**

| | Federal Income Taxes | State Income, Sales and Use Taxes | Tribal Taxes | Application of State Law | Court Jurisdiction |
|--|----------------------|-----------------------------------|---------------------------------|---|--------------------|
| Nonprofit organization chartered under tribal law, with 501(c)(3) status | Exempt | Possibly exempt; varies by state | Depends on tribe | No | Tribal or federal |
| Nonprofit organization chartered under state law with 501(c)(3) status | Exempt | Possibly exempt; varies by state | Depends on tribe | Depends on state | State court |
| Unincorporated instrumentality of the tribe | Exempt | Depends on state-tribe agreement | May not apply, depends on tribe | Probably not | Tribal or federal |
| Section 17 corporation | Exempt | Depends on state-tribe agreement | May not apply, depends on tribe | Only with respect to activities off reservation | Tribal or federal |
| HA/TDHE | Probably exempt | Possibly exempt; varies by state | Depends on tribe | Probably not | Tribal or federal |

Guide to Creating a Nonprofit Homeownership Entity

Exhibit 2.4 Overview of Funding, Independence & Sovereign Immunity Implications

| | Tax-Exempt Contributions | Grant Application Eligibility | Independence from Tribal Government, TDHE | Sovereign Immunity |
|--|------------------------------------|---|---|-----------------------------|
| Nonprofit organization chartered under tribal law, with 501(c)(3) status | Yes | High | High | No |
| Nonprofit organization chartered under state law with 501(c)(3) status | Yes | High | High | No |
| Unincorporated instrumentality of the tribe | Probably not | Low; higher for Indian Country-specific funds | Low | Probably yes |
| Section 17 corporation | If obtains private letter from IRS | Depends on charter | Depends on charter | Yes, if included in charter |
| TDHE/HA | Probably not | Low; higher for TDHE-specific funds | None | Depends on tribe |

2.8 Fundraising and Finance¹

In the development process for any real estate project, planning is critical. Determining the type of financing to be used for the project is an essential piece of the planning process. Housing developers and lenders often are presented with unique and complex financing structures that are required to bring most projects to completion. On the other hand, nonprofits must be knowledgeable of development practices to provide financial assistance and advice to tribal families that desire to build their own home.

The complexity of the financing structure is primarily determined by the type of project that the developer undertakes and what resources are available in the community to develop the project. In many circumstances, housing developments, whether homeownership or rental, require specific funding programs that lower the costs associated with the development and ongoing operation of the property. The nonprofit developer must be creative and knowledgeable of all resources that are available for a specific project, and the restrictions those resources may have.

Because of its tax status, the nonprofit developer has a toolkit of development resources and capital that are not typically available to a traditional real estate developer. These types of capital can include loans

Loans and Lenders

from private and public resources, grants from the public and private sector, and equity in various forms, often through the Low Income Housing Tax Credit (LIHTC). As most of these financing sources vary from state to state and within specific communities, it is extremely important that the developer, sponsor or consultant understand housing development practices particular to the community or state before contemplating the development of a property or site.

The nonprofit organization should investigate the types of lenders that may be available to provide financing to individual homebuyers. These lenders can include public lenders, private for-profit lenders, and private nonprofit lenders. The goal of the nonprofit is to match these lenders in the best possible combination for the project.

Public lenders include tribal, state and local governments (cities, counties and municipalities) as well as the federal government. Many state and local programs are the direct result of allocations passed at the federal and state level to the tribal government. Public lender participation in the development of affordable housing is critical as these resources can provide attractive lending terms to the nonprofit developer. Local jurisdictions can often provide longer term financing than is available in the conventional market (up to 50 years), below market interest rate or no interest loans, disappearing (no-pay) second mortgages on property, and higher loan-to-value ratios than the conventional market. More specific examples and programs are listed below and described very generally:

- **Indian Community Development Block Grant Program (ICDBG):** ICDBG funds may be used to support nonprofit operating expenses and housing development costs. ICDBG funds can be in the form of loans, grants, and loan guarantees. Activities funded by ICDBG funds include planning, acquisition of real property, rehabilitation of residential and nonresidential property, provision of public facilities and improvements, and assistance to for-profit businesses to help with economic development activities. Many ICDBG communities use these funds to provide low-or no-interest property acquisition, construction and/or permanent financing for affordable housing development and/or homeownership. Sponsors must check with their tribe or TDHE to determine the availability of ICDBG funds for nonprofit housing development and homeownership.
- **HOME Program:** HOME was designed to stimulate the formation of creative local, state and federal partnerships for the purpose of meeting community development housing needs, targeting resources toward community-based nonprofit developers. HOME provides

Guide to Creating a Nonprofit Homeownership Entity

resources to communities so that tenants and other low-income families can purchase public housing, troubled federally-subsidized rental housing, and single family government housing.

HOME also provides federal grant funds to the states and various sectors of local government to implement local housing strategies that are targeted toward increasing homeownership and affordable housing opportunities for low- and very low-income residents. HOME funds can be utilized in a broad array of strategies to meet the needs of the local community including loans, grants, interest rate subsidies, and equity.

Additionally, HOME funds can be used for property acquisition, site development work, demolition, rehabilitation, new construction, relocation of housing, and other necessary and reasonable activities related to the development of HOME-eligible housing including tenant-based rental assistance and assistance for first-time home buyers. HOME funds are restricted to specific income levels depending upon the type of property developed with these funds and have matching requirements. Depending upon location, matching requirements may vary.

HOME funds are available for projects that meet a need identified in the state's or region's *Consolidated Plan*. Consolidated Plans are prepared every five years and since most were prepared when Indian Home was still in existence, many states do not permit HOME funds on tribal land. It is important for tribes and TDHEs to be involved in the next Consolidated Planning process to encourage the state to invest HOME funds on tribal land.

- **Bonds** issued by state and local governments can provide valuable resources to the nonprofit developer of affordable housing. Bonds typically provide the permanent financing for the project. Bonds also can be used to cover the construction/ rehabilitation period on a project, if these activities are clearly defined within the financing documents.

The issuance costs for bonds can be substantial. The nonprofit will need to thoroughly consider these issues when looking at the overall cost of developing the project. The credit enhancement of the bond, provided by a commercial lending institution or governmental entity, will also be an additional cost to the project.

Bond issues will be specific to local and state guidelines. Affordable housing developments can be financed by various types of bond issues, including taxable and tax-exempt entities, mortgage revenue,

general obligation and private activity bond issues. Bond structures can be inordinately complex and the developer should be adequately represented by knowledgeable professionals when looking into these types of financing structures.

- **Other Federal Programs** available to the non-profit housing developer include: Section 202 (supportive housing for the elderly), Section 811 (supportive housing for people with disabilities), Homeless SuperNOFA, Rural Housing Development, and other sources.
- **Housing Trust Funds:** Over 100 states, cities, and counties have Housing Trust Funds which are dedicated sources of funds for affordable housing development. These funds typically are governmentally created and have on-going revenue from a source (often fees related to real estate transactions) that does not require annual approval. Funds are typically distributed by a governmental agency with input from a broad-based Advisory Board.

Commercial Banks typically provide shorter-term market rate loans to the nonprofit organization. These loans would include acquisition, site development and construction loans. Commercial banks are also mini-permanent (“mini-perm”) lenders typically structuring three to five year term loans, with longer amortization periods (15 to 30 years).

Savings and Loans (S&L) and Thrifts historically have been the primary providers of permanent financing for homeowners. Another product unique to S&Ls is their ability to access funds from the Federal Home Loan Bank system to establish affordable housing programs. The Community Investment Program (CIP) is a non-competitive program that allows any member of the FHLB system to borrow funds on a permanent basis at below market rates.

Additionally, the Affordable Housing Program (AHP) provides resources to developers in a competitive round program, with priority given to nonprofit and tribal developers. These resources can be used to “buy down” the interest rates or act as a direct grant to the project to make it affordable to very low-income households.

Private Nonprofit Lenders would include such organizations as the following:

- **The Enterprise Foundation** is a nonprofit intermediary organization whose mission is to see that all people have access to decent and affordable housing and can move up and out of poverty. The

Guide to Creating a Nonprofit Homeownership Entity

Foundation provides resources to communities through its loan fund, providing primarily predevelopment and acquisition loans, as well as technical assistance to address organizational needs, physical development issues, and community services. The Foundation's subsidiary organizations include: The Enterprise Social Investment Corporation (ESIC), a syndicator of the Low Income Housing Tax Credit; Enterprise Mortgage Investments (EMI), Enterprise Senior Ventures; and other developing organizations established to assist the nonprofit organization in the revitalization of its community. The Foundation currently has offices in 16 cities across the country, an office for Native American projects in Albuquerque, New Mexico and a network of over 700 nonprofit organizations.

- **Local Initiative Support Corporation (LISC)** works with Community Development Corporations (CDC's) to help local people rebuild and revitalize deteriorated neighborhoods across America by providing loans, grants, and technical assistance to groups. LISC currently has programs in 30 cities.
- **National Community Development Initiative (NCDI)** works through a consortium of funders that include large national commercial banks, private foundations, and corporations. NCDI provides resources to CDC's through the Enterprise Foundation and LISC to approximately 23 cities across the country. This consortium has made available approximately \$90 million available to CDC's since its inception in 1991. NCDI was designed to increase and support the role of CDC's nationwide.
- **The McAuley Institute** provides financial assistance and technical assistance to affordable housing projects across the country through its revolving loan fund. The Institute makes interim short-term loans with a maximum length of five years not to exceed \$200,000. Loans must be fully collateralized by real estate, loan-to-value ratios can not exceed 80% and debt service ratios must be at least 1.2/1.0
- **The Low Income Housing Fund (LIHF)** provides an array of programs to nonprofit housing developers to serve low income residents. These include direct lending, providing direct loans, packaging loans, and providing interest rate subsidies. LIHF provides working capital loans, lines of credit on a limited basis, and non-housing loans for nonprofit facilities.
- **National Association of Community Development Loan Funds (NACDLF)** was established in 1986 to serve as a financial intermediary. NACDLF works through its member organizations to

Grants

pool resources and provide loans for community development and low-income housing. NACDLF provides loans up to \$350,000 to nonprofit housing organizations.

- **Other resources** which should be investigated by the nonprofit developer include Community Development Financial Institutions, local community land trusts, national nonprofit foundations, and other local community foundations.

Each of these organizations can be contacted individually to gain a better understanding of the types of products they offer the nonprofit developer. Please refer to the Appendices for contact information.

Federal Grant programs that promote development of affordable housing include:

- Hope for Youth: Youthbuild
- Enterprise Zone Homeownership Opportunity grants
- Low-Income Housing Preservation and Resident Homeownership (LIPRHA)
- Supportive Housing for the Elderly: Section 202
- Housing for Persons with Disabilities: Section 811
- Rural Housing Service Single Family Housing Program and Rural Rental Housing
- Developing Emergency Shelters for the Homeless
- Supportive Housing Demonstration Program-Traditional Housing Component
- Developing Permanent Housing for the Homeless

Each of these programs requires the nonprofit to understand the regulatory requirements to participate in these very specific grant programs.

Private Nonprofit Foundations, both on a local and national basis can be an excellent source of grant funding for the nonprofit housing developer. Local community foundations are typically more targeted toward improving a specific community or area. The Foundation Center publishes *The Foundation Directory* that lists foundations with assets over \$2 million or annual contributions in excess of \$200,000. The directory identifies which foundations are community foundations.

Equity

In 1986, Congress established the **Low Income Housing Tax Credit (LIHTC)**. Tax credits are specifically defined as tax benefits, granted to organizations for engaging in qualifying low income or historic preservation projects. Organizations can purchase tax credits on behalf

Guide to Creating a Nonprofit Homeownership Entity

of a project and receive a dollar-for-dollar tax benefit while the funds are used as equity for the project.

Through the 1986 Tax Reform Act, the LIHTC acts to reduce the tax liability of the taxpayer dollar-for-dollar. As opposed to a tax deduction, which reduces the net taxable income of the taxpayer, the tax credit is applied directly to the tax liability. This vehicle has been directly responsible for bringing significant corporate investors and wealthy individuals into the investment arena for the development of affordable housing through their purchase of these credits. These investments typically act as source of equity in the development process. Calculating the value of individual credits related to a particular project must be fully understood by the nonprofit that ventures into the tax credit arena. Additionally, the project itself will have certain requirements and standards that will need to be met on a LIHTC property. These include low-income usage, rent restrictions on low-income units, and a specified compliance period for the property (typically 15 years). The LIHTC can be used to develop a range of properties, including rental housing, single-room occupancy housing, and certain homeless housing developments.

Once a nonprofit developer reaches the point that the tax credits are awarded to the site, they can negotiate how the equity will flow into the property with its partners and investors in the transaction. Many nonprofits will utilize this equity in their project to leverage other resources necessary to keep the project moving forward.

3.0 First Steps to Creating a Nonprofit Organization

3.1 Introduction and Overview of Steps to Establishing a Nonprofit

The creation of a nonprofit organization is a multi-step process involving many decisions, documents, and players. This section outlines the initial steps to incorporating as a nonprofit entity, either under tribal or state law.

Once the working group has determined that it should form a nonprofit and has generated a vision statement, strategic plan, and business plan, the group should:

- Prepare Articles of Incorporation
- Adopt Articles of Incorporation
- File Articles of Incorporation with tribal government and/or have tribal government charter organization
- File Articles of Incorporation with the state's Secretary of State (if necessary/warranted)
- Draft and approve organizational bylaws

Each of these steps is described below.

3.2 Articles of Incorporation

The purpose of the organizational charter or Articles of Incorporation is to establish the name and purpose of the nonprofit organization, as well as any limitations on its activities.

A sample Articles of Incorporation is included in Appendix 3.2. The document should include the following elements:

- Names and addresses of incorporators – The incorporators are individuals who sign the Articles of Incorporation. Being an incorporator has no particular legal significance, but generally they are individuals involved in the creation of the nonprofit entity. The number of incorporators required varies by state law.

Purpose

Guide to Creating a Nonprofit Homeownership Entity

- Name and address of registered agent – The registered agent is the person who receives formal communications (e.g., notices from the Internal Revenue Service) on behalf of the corporation.
- Statement of exempt purpose – Nonprofit organizations must have an “exempt” purpose, establishing that they are organized and operated exclusively for charitable, religious, scientific, literary (and a few other) purposes. In most cases, a nonprofit that promotes affordable housing and homeownership is organized for charitable purposes.
- Statement prohibiting private inurement – Nonprofit organizations cannot engage in "private inurement," i.e., distribute assets or profits to individuals for personal purposes.
- Statement prohibiting lobbying – The IRS will not exempt from taxes any organization that engages in substantial political lobbying.
- Duration – The duration of most nonprofits is perpetual.
- Statement of indemnification of directors and officers – If a director is indemnified, and if he or she is sued for something he or she did on behalf of the organization, then the organization pays the director's associated expenses (e.g., legal fees and judgments). Usually, indemnification only protects a director if the organization has the money needed to pay the director's expenses.
- Distribution of assets upon dissolution – In the event that the entity is dissolved, outline the procedure for distribution of organization's assets.

Early on, the working group should have identified which tribal laws, codes, and/or ordinances might impact the creation and operation of nonprofit organizations on the reservation. When forming a nonprofit it is important to be aware of all the laws that may impact a new entity. In many cases, however, the tribe will not have a comprehensive governing law on corporations. In this case, it is important to include specific language in the Articles of Incorporation, as outlined in Exhibit 3.1 below:

Language

Figure 3.1
Language for Articles of Incorporation

| Language for Articles of Incorporation | Needed even if tribal corporation code exists | Needed if no tribal corporation code exists |
|---|---|---|
| Name and duration of corporation | ✓ | |
| Corporation is organized and operated exclusively for charitable and educational purposes permitted by Section 170(c)(2) and 501(c)(3) of IRS Code | ✓ | |
| Detailed purposes of corporation, including general business procedures (e.g., "enter into contracts, partnerships, joint ventures," "solicit, hold, use, invest, and dispose of money, personal property," "incur debt obligations") | | ✓ |
| No private inurement | ✓ | |
| Registered agent, incorporator(s) | ✓ | |
| Provision for Bylaws | ✓ | ✓ |
| Provision for governing Board of Directors | ✓ | ✓ |
| Description of the procedures for voluntary and involuntary dissolution of the organization | | ✓ |
| Distribution of assets after dissolution | ✓ | |
| Indemnification of directors, officers, employees, and agents | | ✓ |
| Amendments to Articles of Incorporation and Bylaws | | ✓ |

3.3 Bylaws

Bylaws are the organization's primary governing document. They establish the rules by which the nonprofit will conduct business. They outline details such as how officers and directors will be elected or appointed, how board meetings will be conducted, and what responsibilities officers will have.

Bylaws are usually adopted at the first meeting of the Board of Directors, which is held after filing the Articles of Incorporation. Usually, states do not require filing of Bylaws to form a corporation; the IRS requires bylaws to be included in the application for tax-exempt status only if they exist.

A sample bylaws document is in Appendix 3.2. Elements of the bylaws include:

- The name of the organization
- The mission of the organization
- The geographic area served by the organization

Guide to Creating a Nonprofit Homeownership Entity

- Membership, if any (responsibilities, dues, quorum, voting procedure)
- Board of Directors (duties, officers, meetings)
- Committees
- Rules of order
- Fiscal year of operation
- Procedures for amending the bylaws

4.0 Applying to the IRS for 501(c)(3) Recognition

Once the organization has conducted its needs analysis and has been incorporated, the next step is to apply for tax-exempt status from the Internal Revenue Service (IRS). This chapter will give an overview of the 501(c)(3) application process, including an explanation of what 501(c)(3) means, advantages and disadvantages, who qualifies, and tips on how to complete the application packet. Please note that this chapter will not provide everything needed to apply to the IRS for 501(c)(3) status; the organization will need to become familiar with the IRS materials on tax exemption. The process of applying for tax exempt status is a legal process, and it is highly advisable to obtain legal counsel to assist the organization. This chapter does not present itself as legal advice.

What it Means

An organization with a 501(c)(3) tax exemption from the Internal Revenue Service is exempt from payment of federal taxes. The term “501(c)(3)” refers to the section of the IRS Tax Code that governs these organizations.

Advantages

There are many advantages to having this tax-exempt status:

Exemption from taxes. Organizations that are exempt from payment of corporate income tax can save substantial amounts, particularly since federal corporate tax rates are 15 percent on the first \$50,000 of taxable income, 25 percent on the next \$25,000 and 34 percent and higher on income over \$75,000.

Grant eligibility. Most grant funds that are available from foundations and charities are only open to IRS 501(c)(3) nonprofit corporations.

Tax-deductible contributions. Donations made to organizations with a 501(c)(3) tax exemption are tax-deductible to the donor. This makes giving more attractive to potential donors, particularly when they have several charitable organizations to choose from, most of which will have the 501(c)(3) tax exemption.

Discounts. 501(c)(3) organizations also qualify for many discounts, such as:

- Lower postal rates on bulk mailings
- Cheaper Internet access or space from Internet service providers
- Lower classified rates from newspapers and other publications

Guide to Creating a Nonprofit Homeownership Entity

- Lower membership fees for wholesale stores (such as Price Club)
- Access to free radio and television public service announcements

There are also drawbacks to being a 501(c)(3) organization.

Resources required for application process. It takes time and money to incorporate and apply to the IRS for 501(c)(3) status. Many documents must be prepared, and it is advisable to have an attorney review these. The application cost for 501(c)(3) is \$500.

Subject to rules. After incorporation, the organization is subject to tribal and/or state rules, depending under which authority it has incorporated. Once the corporation files for federal tax-exemption, it is subject to federal government rules.

Annual filing requirements. After incorporation, the organization must file annual tax returns and perform the other record-keeping and reporting chores associated with ongoing corporate activities, such as double-entry accounting and payroll tax withholding and reporting.

Knowledge. The process requires a minimum knowledge of laws related to charitable organizations, at the tribal, state and federal level. If the organization does not have this knowledge, it is highly advisable to involve people who do, such as attorneys and accountants.

There are certain requirements for qualifying for this tax exemption. In order to qualify for exemption from federal income tax, an organization must be operated exclusively for an exempt purpose, which includes: charitable, religious, scientific, literary, testing for public safety, fostering national or international amateur sports competition, or the prevention of cruelty to children or animals. In the case of a nonprofit promoting housing development and homeownership, the exempt purpose would be charitable.

As used in Section 501(c)(3) of the tax code, charitable is broadly defined as “providing services beneficial to the public interest.” Examples of charitable activities and purposes from IRS regulations include lessening the burdens of government, combating community deterioration, providing assistance to low income families.

There are a couple of ways that housing organizations can qualify as charitable as defined in Section 501(c)(3). The IRS has released a revenue procedure that sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable because they relieve the poor and distressed. However, this

Disadvantages

Who Qualifies

Qualifying as Charitable

Charitable Housing Organizations

clause has many income restrictions in terms of the population served. For example:

- At least 75 percent of the organization's housing units must be occupied by residents that qualify as low-income, **and**
- Either (1) at least 20 percent of the units must be occupied by residents that also meet the very low-income limit for the area or (2) 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit.

These restrictions limit the activities of the organization and may prove onerous, particularly in the promotion of homeownership. To qualify for a mortgage, the homebuyer must have a particular level of income, which may exceed the limits set forth above. This would severely restrict the nonprofit's ability to engage in homeownership programs.

A less restrictive way for housing organizations to qualify as charitable is to make the case for another exempt purpose, including:

- Combating community deterioration. According to the IRS, an organization that combats community deterioration must operate in an area with actual or potential deterioration, and directly prevent or relieve that deterioration. Constructing or rehabilitating housing has the potential to combat community deterioration.

Most reservations are subject to deterioration, either actual or potential. The development of new housing for homeownership or the rehabilitation of existing housing stock would qualify as an exempt and charitable purpose, thus making the nonprofit engaging in these activities eligible for 501(c)(3) status.

- Lessening the burdens of government. An organization lessens the burdens of government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be the government's burdens, and the organization actually lessens the government's burdens.

Since the majority of housing on Indian reservations is provided by the federal government, the promotion of homeownership and the provision or rehabilitation of housing clearly lessens the burdens of government. One of the main components of the homeownership program laid out in this guide is to leverage private dollars from the mortgage industry, using a small amount of public funds. By

Guide to Creating a Nonprofit Homeownership Entity

involving the private sector in the provision of housing on reservations, such a program would lessen the burdens of government.

The IRS considers all 501(c)(3) nonprofit corporations as private foundations unless it is notified that the corporation is in fact a public charity. It is much more desirable to be considered a public charity than a private charity due to the greater flexibility and benefits associated with this status. To qualify as a public charity, the organization must prove that it is publicly supported, by passing the *one-third support test* or the *facts and circumstances test*.

Under the one-third support test, an organization is considered publicly supported if it normally receives one-third of its total support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources.

If an organization fails the one-third support test, it may qualify under the facts and circumstances test. One way is if the total amount of governmental and public support normally received is at least 10 percent of the total support normally received. Another way is if the organization is organized and operated in a manner to attract new and additional public or governmental support on a continuous basis.

If the organization desires to seek 501(c)(3) status, it is ready to begin preparing the IRS application:

- Have Articles of Incorporation been prepared?
- Is the organization incorporated under tribal or state law?
- Have bylaws been adopted, if applicable?
- Does the organization have a clear sense of the proposed activities?
- Does the organization have a clear sense of its finances, including budget projections for the next three years?

If the IRS application is filed within 15 months of the incorporation date, the organization's tax-exempt status becomes effective as of the date of incorporation. If the organization applies after operating for more than 15 months, the exemption applies as of the date that the IRS received the application.

Also note that if the organization has been in operation for less than 8 months, it will request an "advance ruling" from the IRS. This advance ruling is good for five years, during which period the organization will be treated as a public charity. After five years, the organization must submit financial data to the IRS to show that it is indeed a public charity.

Public Charity

Preparing the Application

Choose Name

Preparing the 501(c)(3) application:

- Obtain necessary IRS forms
- Write description of organization's activities
- Write organization's fund-raising plan
- Prepare Balance Sheet and Statement of Revenue and Expenses
- Complete IRS Form 1023 – Application for Recognition of Tax-Exemption under Section 501(c)(3) of the Internal Revenue Code

Before the organization is chartered, think carefully about its name. To avoid confusion, it is advisable to choose a name that is not too similar to a pre-existing organization. It is also helpful to avoid use of certain words; for example, the term “partnership” used in the name of an organization can be interpreted as a legal term, signaling that you are a limited liability partnership rather than a nonprofit corporation.

Prepare Articles of Incorporation

See Chapter 3. The IRS wants a “conformed copy” of the Articles, meaning a version that reflects the original language plus all amendments.

Incorporate Organization

The organization must be incorporated or chartered. Take care that the organization is incorporated under tribal law. The IRS issued a general information letter to the First Nations Development Institute stating that a corporation organized under tribal law could qualify for tax exemption as an organization described under section 501(c)(3). To qualify, the organization must be regarded as separate from the tribal government. According to the IRS, a “corporation” is “a business entity created under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic.”

Adopt Bylaws

See Chapter 3. Bylaws are not required to create or charter a corporation, but you desire to choose at the outset to write bylaws to govern the organization.

Obtain IRS Forms

The organization will need to obtain:

- Publication 557 (Tax-Exempt Information)
- IRS Form 1023 and Instructions (Application)
- Form 8718 (User Fee)
- Form 872-C (Advance Ruling)
- Form 2848, Power of Attorney (optional)

Guide to Creating a Nonprofit Homeownership Entity

These may be obtained at a post office, by mail, or on the Internet at www.irs.ustreas.gov. If the organization does not have an employer identification number (EIN), it will also need Form SS-4, *Application for Employer Identification Number*. One quick way to obtain this number is to apply by telephone, calling the number given in the form's instructions. After completing the form, call and wait for the organization's number. Then simply mail the original form within 24 hours.

Publication 557 provides extensive information on tax-exemption; **IRS Form 1023-Application for Recognition of Tax Exemption under Section 501(c)(3) of the Internal Revenue Code** is the actual form that the organization must complete. Before beginning to compile information or attempt to complete Form 1023, read the form and its instructions thoroughly, in addition to Publication 557. This will give a good sense of what to expect. To apply for 501(c)(3) status, the organization must also file a user fee of \$500. Send a check along with **Form 8718**.

If the organization has been in operation for less than 8 months, it will need to request an advance ruling through **Form 872-C**. As noted earlier, if the IRS grants an advance ruling, the organization will be treated like a public charity for five years. At the end of this period, the organization will submit financial data to the IRS to show that it is indeed a public charity.

The organization has the option of delegating power of attorney to another party. The IRS examiner who handles the organization's case will contact this person directly with questions or requests for further information. This may be especially helpful if the case has particular legal details that the organization is not completely clear on. It may also prove helpful if the IRS examiner assigned to the case is unfamiliar with nonprofit corporations chartered by Indian tribes.

If the organization elects to do this, it will need to complete and submit **Form 2848, Power of Attorney and Declaration of Representative**. In any case, whether the organization delegates power of attorney or not, it is a good idea to have legal counsel to advise you in the application process.

The first section of IRS Form 1023, Identification of Applicant, is fairly self-explanatory. Line 1c asks for a street address; some applicants on Indian reservations may not have a street address, and may use a P.O. Box, indicating no street address is available.

Complete Part I

Write Description of Activities

IRS Form 1023, Part II, Question 1 asks the organization to provide a detailed narrative description of all the organization's activities past, present, and planned. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity, indicating the percentage of time for each activity. The IRS asks that each description should include, as a minimum:

- a) A detailed description of the activity, including its purpose and how each activity furthers the organization's exempt purpose
- b) When the activity was or will be initiated
- c) Where and by whom the activity will be conducted

The purpose of this section is to enable the IRS to make a proper determination of the organization's exempt status. Therefore, it is important to explain thoroughly and clearly the organization's activities – proposed or actual. If there is insufficient space on the form, use extra sheets as attachments. Label these with the name of the organization, address, EIN, attachment number, and page number.

Complete Part II

Page 3, "Activities and Operational Information continued," asks for basic information on the organization's governing body. Line 4b asks for annual compensation of the officers, directors, or trustees. If the organization is providing its directors with a stipend or reimbursement for travel and related expenses, be sure that these are in line with local costs.

Line 4c asks if any of the organization's officers, directors, or trustees serve as members of the governing body by reason of being public officials or being appointed by public officials. An affirmative answer does not necessarily signal a conflict of interest; rather, it indicates public interest in and support for the organization, building the case for its exempt purpose.

Write Fund-raising Plan

IRS Form 1023, Part II, Question 2 asks for a description of the organization's fundraising program, both actual and planned, and to explain to what extent it has been put into effect. Include details such as selective mailings, formation of fundraising committees, use of volunteers or professional fundraisers, etc. The IRS also asks that the organization attach representative copies of solicitations for financial support.

Guide to Creating a Nonprofit Homeownership Entity

IRS Form 1023, Part IV requires financial statements, including a balance sheet and a statement of revenue and expenses. If the organization has not been in operation long enough to have this type of financial data, the IRS requires the organization to include financial projections for two fiscal year accounting periods.

Before beginning to prepare these financial statements, read the accompanying instructions carefully, as they will not always correspond with the traditional way organizations record their revenues and expenses. For example, line 1 asks for “gifts, grants, contributions received” yet the instructions indicate that the organization should not include in contributions from the general public or a governmental unit for the performance of the organization’s exempt function. It is highly advisable to have an accountant or bookkeeper complete this form, or at least check the work.

Review the application packet for errors, inconsistencies or omissions. It is often helpful to ask a third party to review the materials, as this person may have “fresher eyes” than those who have been working on the application.

Be sure to make copies of the entire application for your records before it is mailed to the IRS. This includes all the forms, attachments, and the user fee check.

The IRS will acknowledge receipt of the application. An IRS examiner may contact the organization or its attorney with a request for further or clarifying information. It can take anywhere from several weeks to several months to obtain a ruling. The more complete and clear the application is, the fewer questions the IRS will have, increasing the likelihood of obtaining a timely approval.

Prepare Financials

Submitting the Application

5.0 Development of a Nonprofit Organization

5.1 The Board

The Board of Directors is the governing body of the nonprofit organization. It makes decisions, sets policies, and plans to ensure the organization's success. Members of the Board are often called Directors or Board members; these terms are synonymous.

Ten Key Duties of the Board¹

1. *Determine the Organization's Vision and Purpose:* The Board of Directors is responsible for developing the organization's vision or mission statement. This statement should articulate the organization's goals, means, and primary constituents served. Each individual Board member should fully understand and support it, and the Board should periodically review it for accuracy and validity.
2. *Select the Executive:* The Board must reach consensus on the chief executive's job description and undertake a careful search process to find the most qualified individual for the position.
3. *Support the Executive and Evaluate Performance:* The Board should ensure that the chief executive has the moral and professional support needed to further the goals of the organization. The chief executive, in partnership with the entire Board, should decide upon a periodic evaluation of the chief executive's performance.
4. *Ensure Effective Organizational Planning:* As stewards of an organization, the Board must actively participate with the staff in an overall planning process and assist in the implementation of the plan's stated goals.
5. *Ensure Adequate Resources:* One of the Board's most important responsibilities is to provide adequate resources for the organization to fulfill its vision. The Board should work in partnership with the chief executive and development staff, if any, to raise funds from all available sources.
6. *Manage Resources Effectively:* The Board, in order to remain accountable to its donors, tribal members, and to safeguard its tax-exempt status, must assist in developing the annual budget and ensuring that proper financial controls are in place. The Board also

Guide to Creating a Nonprofit Homeownership Entity

should review periodic (monthly) financial reports and provide guidance to the chief executive on project revenues and expenditures.

7. *Determine and Monitor the Organization's Programs and Services:* The Board should determine which programs are the most consistent with the organization's mission and monitor their effectiveness.
8. *Enhance the Organization's Public Image:* The Board is the organization's primary link to the community, including homebuyers, tribal members, the public, funding entities, and the media. The Board, as a body and as individuals, should be able to clearly articulate the organization's vision, accomplishments, and goals to the public and gain support from important members of the community.
9. *Serve as a Court of Appeal:* The Board must serve as a court of appeal in personnel matters. Solid personnel policies, grievance procedures, and a clear delegation to the chief executive of hiring and managing employees will reduce the risk of conflict.
10. *Assess its own Performance:* By evaluating its performance in fulfilling its responsibilities, the Board can recognize its achievements and reach consensus on which areas need to be improved.

There are three major responsibilities of Board members—duty of care, duty of loyalty, and duty of obedience.

Duty of Care²

Under the duty of care, a director must be familiar with the organization's finances and activities and participate regularly in its governance. In carrying out this duty, directors must act in "good faith" using the "degree of diligence, care, and skill" which prudent people would use in similar positions and under similar circumstances.

In exercising the duty of care, responsible Board members should, among other things, do the following:

- Attend Board meetings regularly and actively participate in discussions and decision-making. Board members should strive for cohesion and agreement in all deliberations.

Roles and Responsibilities

- Stay fully informed with changing conditions, needs and opportunities that exist in the community.
- Read the minutes of meetings and all reports, including financial reports. Also, read reports prepared by employees and outside professionals, and have a general knowledge of the information contained in those reports.
- Read any literature produced as part of the organization's programs.
- Make sure that the Board spends some of its time on “visioning” and strategic planning.
- Insure that the organization has proper financial controls and policies to safeguard, promote and protect the organization's funds and other assets.
- Engage in careful oversight of the organization's finances.
- Question any activity or transaction that is unclear or troubling.
- Encourage diversity among Board members. Diversity will help ensure a Board committed to serve the organization's vision with a range of appropriate perspectives, skills, and interests.
- Be involved in the selection and compensation of the organization'sThe Board also s and other key employees responsible for its the day-to-day activities. The Board is responsible for such individuals having the appropriate education, skills, and experience to assume a key position.
- Be familiar with all issues addressed by the Board. Ask for additional information if any issue is not clear.

Duty of Loyalty³

Directors must place the interest of the corporation above any private interests. This duty of loyalty requires that any conflict of interest, real or possible, be disclosed to the Board. Board members must avoid transactions in which they or their family members benefit personally to the detriment of the organization.

In order to exercise the duty of loyalty, the Board must be careful to examine all transactions that involve Board members or members of

Guide to Creating a Nonprofit Homeownership Entity

their families. The Board must not approve any transaction that serves a private interest at the expense of the interests of the corporation.

It is recommended that a Board have a written “conflicts of interest policy” so that all members are aware of the type of transactions that may prohibit them from joining a Board. Some such policies require that members of the Board disclose all possible conflicts and prohibit Board members from engaging in any transaction that may result in even the appearance of a conflict of interest.

Duty of Obedience⁴

The duty of obedience is an obligation to carry out the organization's vision and comply with the law. The Board has a duty of obedience to insure that the organization fulfills its purposes. These include the following:

- Dedicating the organization's resources to its vision statement.
- Ensuring that the corporation carries out its purposes and does not engage in unauthorized activities.

The Board also has a duty to comply with all appropriate laws, including:

- Reporting to tribal council or other tribal government entity, as required by tribal law.
- Registering with and reporting to the Attorney General or Secretary of States' Office or other relevant state office, as required by state law (if applicable).
- Paying all taxes such as payroll and unrelated business tax.
- Providing copies of its financial report to members of the public who request it.
- Maintaining complete and accurate records.
- Complying with registration and reporting laws and other applicable laws of all states in which it conducts activities and/or solicits contributions.

Compensation

- If a 501(c)(3), complying with all provisions of the IRS Code, including those that govern compensation and disclosure so as not to subject the organization to "intermediate sanctions."

By common definition, serving on a nonprofit Board is a volunteer commitment. Tying compensation with service may raise issues that should be studied carefully. There are circumstances when reasonable compensation is acceptable, but it is always critical that Board service neither leads to personal gain nor violates the public trust.

Generally speaking, compensation of Board members is rare. A survey of more than 1,000 nonprofit organizations conducted by the National Center for Nonprofit Boards found that only one percent of organizations paid Board members a fee or honorarium for Board service. For a majority of that one percent, the fees were nominal. However, in Indian Country, Board member compensation appears to be more common.

While rare, Board member compensation is not illegal. Reasonable fees for service are allowed if it is clearly stated in the bylaws or the majority of the Board has so determined. Compensation can make it possible for individuals of very limited financial means to participate in Board service.

According to the tenets of nonprofit law, directors and officers should not make any monetary profit from the organization; they should not benefit in any personal way. Paying a fee in specific circumstances can be defended, but fees that are out of scale with the market price of that good or service are always unacceptable. Unreasonable compensation can be a cause for a fine or for the organization to lose its tax-exempt status.

Conflict of Interest⁵

Board service in the nonprofit sector carries with it important ethical obligations. Nonprofits serve the broad public good, and when Board members fail to exercise reasonable care in their oversight of the organization they are not living up to their public trust. In addition, Board members have a legal responsibility to assure the prudent management of an organization's resources. In fact, they may be held liable for the organization's actions. A 1974 court decision known as the "Sibley Hospital Case" set a precedent by confirming that Board members can be held legally liable for conflict of interest because it constitutes a breach of their fiduciary responsibility.

Conflict of interest does not involve only financial accountability. It

Guide to Creating a Nonprofit Homeownership Entity

relates broadly to ethical behavior, which includes not just legal issues but considerations in every aspect of governance. A recent statement by Independent Sector, an organization dedicated to promoting philanthropy and volunteerism, describes three levels of ethical behavior:

- Obeying the law.
- Decisions where the right action is clear, but one is tempted to take a different course.
- Decisions that require a choice among competing options.

The third level of behavior can pose especially difficult ethical dilemmas for nonprofit Board members.

To prevent conflict of interest situations, the Board should institute self-monitoring. This should include a system of checks and balances to circumvent actual or potential conflict of interest, beginning with well-defined operating policies on all matters that might lead to conflict. Most important, the Board should create and approve a carefully written conflict of interest policy based on the needs and circumstances of the organization as illustrated in Exhibit 5.1. Each Board and staff member should agree in writing to uphold the policy. Finally, the conflict of interest policy should be reviewed regularly as part of Board self assessment.

Exhibit 5.1 Essential Elements of a Policy on Conflict of Interest

1. Full Disclosure

Board members and staff members in decision-making roles should make known their connections with groups doing business with the organization. This information should be provided annually.

2. Member Abstention from Discussion and Voting

Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group.

3. Staff Member Abstention from Decision-making

Staff members who have an actual or potential conflict should not be substantively involved in decision-making affecting such transactions.

A Word on Contracts

Attorneys, accountants, and other professionals can contribute valuable expertise to a Board. Due to the potential for conflict of interest, their contributions should be voluntary. At the very least, a Board member who is associated with a firm competing for a contract should abstain from discussion and voting in the selection process. If a competitive bidding process results in the selection of that Board member's firm, he or she should disclose the affiliation and abstain from voting on future Board actions connected with that firm's contract with the organization.

Individual Board Member Responsibilities

Individual members of the Board have the responsibility to:

- Attend all Board and committee meetings and functions, such as special events.
- Be informed about the organization's vision statement, services, policies, and programs.
- Review agenda and supporting materials prior to Board and committee meetings.
- Serve on committees and offer to take on special assignments.
- Make a personal financial contribution to the organization, if able.
- Inform others about the organization.
- Suggest possible nominees to the Board who can make significant contributions to the work of the Board and the organization.
- Keep up-to-date on developments in the organization's field.
- Follow conflict of interest and confidentiality policies.
- Refrain from making special requests of the staff.
- Assist the Board in carrying out its fiduciary responsibilities, such as reviewing the organization's annual financial statements.

Liability

As stated earlier, directors of a nonprofit organization generally will not be held personally liable for their actions on behalf of the organization, provided they are in good faith. Further, directors and officers of the organization can be covered by an officers' and directors' liability insurance policy purchased from an insurance company. (This type of insurance is in addition to any other liability insurance the organization may carry, such as car insurance or general liability insurance.)

Guide to Creating a Nonprofit Homeownership Entity

Insurance offers more protection because the insurance company's money will be used to pay any judgments and legal fees.

Board Structure⁶

A carefully laid out structure will encourage an effective Board. Thought should be given to matters such as member selection, Board size, length of members' terms, officers, and committees.

Member Selection: When selecting Board Members, look for a diversity of skills and experience in relevant areas, such as housing, construction and development, law, land, and/or finance. A professional such as an attorney or accountant serving on the Board can provide pro bono services to the entity, which will save the entity money and time. It is also important to have Directors who represent different areas and interests in the community.

Board Size: The organization's structure and needs are among the factors that determine Board size. In considering the size of the Board, it is helpful to keep these points in mind:

- Every Board needs a sufficient range of expertise to accomplish the organization's mission.
- If a Board is too small, its members may be overworked and unproductive.
- If a Board is too large, every member may not have the opportunity to participate actively.

Length of Board Members' Terms: There are no hard and fast rules for determining Board members' tenure. Many organizations do, however, limit members to two consecutive terms and require a hiatus of one year before a Board member may be re-appointed. Many organizations also stagger terms of service so that one half or one third of the Board is elected every one or two years for terms of two to four years. Such policies encourage institutional renewal because a Board can profit from the experience of veteran Board members while welcoming the fresh perspective that new members offer.

Officers: Typically, the Board of Directors is led by four officers: a President or Chairperson; a Vice-President or Vice-Chairperson; a Secretary; and a Treasurer. Job descriptions for each officer can be found in the Appendix 5.1.

Committees: Much of the work that a Board does is accomplished through its committees. With the exception of the Executive Committee, which acts on the Board's behalf, committees recommend action to the full Board for discussion and action. Committee structure usually parallels the administrative structure of the organization. Standing committees are established in the bylaws and often include the following:

- Executive Committee
- Nominating Committee
- Finance Committee
- Audit Committee
- Development Committee
- Strategic Planning Committee
- Personnel Committee

In the case of a homeownership nonprofit, it may be helpful to establish the following committees:

- Financial Intermediaries Committee
- Housing Counseling Committee
- Resource Referral Committee
- Construction and Development Committee

Resources on Boards: An excellent resource for further information is the National Center for Nonprofit Boards. They provide publications, advice, and seminars on nonprofit boards. Their website is www.ncnb.org.

5.2 Strategic Plan⁷

The creation of a strategic plan is an important step in the development of an organization. It defines the organization and establishes goals. It provides an opportunity for the organization to:

- Examine the environment within which it will operate
- Explore the relevant factors that affect the way it will do business
- Frame strategic issues that must be addressed
- Develop specific goals and objectives based on the strategic issues
- Establish a realistic timeline for attaining the goals

The benefits of strategic planning include increased effectiveness, efficiency, improved understanding and better learning, better decision-

Guide to Creating a Nonprofit Homeownership Entity

making, enhanced organizational capabilities, improved communication and public relations, and increased political support.

Strategic planning enables an organization to think and act strategically. Throughout the strategic planning process there are three fundamental questions that an organization must ask itself: Who are we? What do we want to be? How do we get there? As the answers to these questions unfold, new answers to one question can be expected to change previous answers to another question. This is part of the natural course of planning.

There are ten basic steps to creating and implementing a strategic plan:

1. Initiate and agree on an inclusive, open and recurring strategic planning process.
2. Clarify the organizational mandates.
3. Identify and understand the organization's stakeholders; and develop and refine the vision and values of the organization. Successful nonprofits satisfy important stakeholders according to each stakeholder's criteria for satisfaction. Therefore, the vision and values of the nonprofit should be thought about in relation to those stakeholders.
4. Establish an effective organizational vision for the future.
5. Assess the environment to identify strengths, weaknesses, opportunities, and threats. Identify the entity's internal strengths and weaknesses and external opportunities and threats. This kind of analysis is known by the acronym SWOT, and is very useful in clarifying the conditions within which the organization operates. See Exhibit 5.2 for an example of a SWOT analysis.
6. Identify and frame the strategic issues. Strategic issues are fundamental challenges that affect an entity's mandates, vision, product, or service level and mix, clients or users, costs, financing, organization, or management.
7. Formulate strategies to manage the issues according to resource availability.
8. Review and adopt the strategic plan.
9. Develop an effective implementation process.

10. Establish and evaluate performance measures to document strengths and weaknesses.

11. Reassess strategies and the strategic planning process.

In managing the strategic planning process it is important to begin only when the organization is ready, has strong leadership and support from stakeholders, and has the resources necessary for a successful planning effort.

Exhibit 5.2 SWOT Analysis

| MAXIMIZE | OVERCOME |
|--|--|
| <p>Strengths</p> <p>Internal strengths are resources or capabilities that help an organization accomplish its mandates or vision.</p> | <p>Weaknesses</p> <p>Internal weaknesses are deficiencies in resources and capabilities that hinder an organization's ability to accomplish its mandates or vision.</p> |
| <p>Opportunities</p> <p>External opportunities are outside factors that can affect the organization in favorable ways.</p> | <p>Threats</p> <p>External threats are outside factors that can affect the organization in a negative way.</p> |

The strategic planning process first should focus on internal issues that can be controlled and second it should develop a course of action to influence and mitigate external threats.

5.3 Business Plan⁸

The business plan is a written summary of what the organization hopes to accomplish and how it intends to organize its resources to meet its goals. It is the road map for operations and for measuring progress along the way. The business plan identifies the funding or financing required and when it is needed. The business plan is often the first impression a donor, sponsor, or lender has of an organization. A well-organized plan is essential for donors, sponsors, or lenders to assess the organization. The business plan encourages realism and improves the Executive Director's ability to manage the organization.

Structure of the Plan

A business plan should include several key components, including an executive summary, business concept, description of the industry and business venture, business goals, marketing plan, production plan, organization structure, and more. Each element is detailed below.

Guide to Creating a Nonprofit Homeownership Entity

Executive Summary. The format should begin with an executive summary describing the highlights of the business plan. Although the organization is described in detail later in the report, a crisp, one or two page introduction helps to capture the immediate attention of the potential donor, sponsor, or lender. The introduction should include:

- Name of the organization (include address and phone number)
- Contact person (presenter's name and phone number)
- Paragraph about organization (nature of business and market area)
- Business loans sought (term loan, operating line of credit)
- Highlights of business plan (the project)

Table of Contents. A standard table of contents section titles and page numbers.

Business Concept. The business concept identifies the organization's market and the market need for the organization, and outlines the organization's action plan for the coming year.

Elements of the organization's strategic plan can be contained in this section, particularly the planned activities and funding sources and needs of the organization to complete the activities. This section also contains an assessment of business risks and a contingency plan.

Description of the Industry. This section will contain:

- Industry outlook and growth potential
- Markets and customers
- Similar organizations (serving the same purpose and market)
- Regional and economic trends (population shifts, relevant economic indicators)

Description of Business Venture. This section will contain:

- Products or services (pictures, drawings, characteristics, quality)
- Target market
- Business location and size
- Staff and equipment needed (overall requirement, capacity)
- Brief history (principals involved, development work done)

Business Goals. This section will contain specific goals for the current year and over the longer term.

Marketing Plan. This section will contain the fundraising strategy.

Production Plan. Depending on the kind of housing development the organization intends, this section may contain:

- Brief description of production process
- Suppliers (volume discounts, multiple sources)
- Raw materials (readily available, quality, sources)
- Personnel required (full-time, part-time, skill level, availability, training required)
- Costs (facilities, equipment, and materials, estimates and quotations)
- Capital estimates (one time start-up or expansion capital required)

Production Plan. Depending on the services to be provided by the organization, this section may contain:

- Purchasing plans (volume discounts, multiple sources, quality, price)
- Space requirements (office space, improvement required, expansion capability)
- Staff and equipment required (personnel by skill level, fixtures, office equipment)

Organization Structure. This section will contain:

- Legal form (proprietorship, partnership, corporation, nonprofit)
- List of contracts and agreements in force
- Directors and officers (names and addresses and role in company)
- Background of key management personnel (brief resumes of active owners and key employees)
- Contract professionals/consultants (possible outside assistance in specialized or deficient areas)
- Organization chart (identify reporting relationships)
- Duties and responsibilities of key personnel (brief job descriptions – who is responsible for what)

Guide to Creating a Nonprofit Homeownership Entity

Risk Assessment. This section will contain:

- Competitors' reaction
- What if... list of critical external factors
- What if... list of critical internal factors
- Dealing with risks (contingency plan to handle the most significant risks)

Action Plan. This section will contain:

- Steps to accomplish this year's goals (flow chart by month or by quarter of specific action to be taken and by whom)
- Checkpoints for measuring results (identify significant dates and decision points)

Financial Plan. The financial plan outlines the level of present financing and identifies the financing sought. It contains pro-forma financial forecasts. In carrying out the action plan of the organization, the operating forecasts are the organization's guide to business survival.

Financial Statements. This section will contain previous years' balance sheets and income statements (past two to three years if applicable).

Financial Forecasts. This section will contain:

- Opening balance sheet (for a new business only)
- Projected income statements (detailed operating forecast for next year of operation and less detailed forecast for following two years)
- Cash flow forecast (budget of cash inflow and outflow on a monthly basis for next year of operation)

References. This section will contain:

- Partnering organizations (contact name and phone number)
- Name of present lending institution (branch, type of accounts)
- Lawyer's name (include address and phone number)
- Accountant's name (include address and phone number)

Appendices. This section will contain:

- Letters of intent (potential home buyers)
- List of inventory (type, age, value)

- List of fixed assets (description, age, serial numbers)
- Description of insurance coverage (insurance policies, amount of coverage)
- Accounts receivable summary (include aging schedule)
- Accounts payable summary (include schedule of payments)
- Copies of legal agreements (contracts, leases, mortgage)
- Appraisals (property, equipment)

5.4 Organization Structure⁹

Nonprofit organizations are governed by a Board of Directors that represents the community served by the organization. Some Boards consist exclusively of community representatives while other Boards achieve a mix of community representatives and non-residents who bring valuable skills to the Board. Board members should be selected based on the reputation, expertise and experience they've gained in life. The members should share the organization's vision and be prepared to contribute their time, advice and skills to the organization.

Some nonprofit organizations augment their Board with an Advisory Committee which provides periodic expert advice on issues such as fund-raising and community-building. In these structures, the Board remains ultimately accountable for the performance of the organization.

The Board of Directors recruits and hires the chief executive who is responsible for hiring and firing the organization's staff and any consultants. The Board has direct control over the chief executive only and should have no authority to manage or direct the organization's staff.

5.5 Budget and Financial Procedures

Budget Procedures¹⁰

At least two or three months before the beginning of the organization's fiscal year, attention should focus on developing a budget for the next year. Staff and Board members should participate in each phase of the budgeting process so that the final product reflects the organization's priorities, capabilities and capacities.

The first phase in the budget process is a review of program and management achievements and fiscal performance for the year just ending. This includes, but is not limited to, reviewing objectives

Guide to Creating a Nonprofit Homeownership Entity

achieved, comparing budget to actual figures, and examining the number of people served.

Estimate the costs required to achieve the organization's objectives, including staff, supplies, and other resources. Make sure to take into account upcoming changes, especially in areas such as insurance, which are subject to significant fluctuations.

Estimate all possible sources of income, financing and funding which would advance the organization's objectives. Base these estimates on past experience or that of comparable organizations. Grants from governments, foundations and corporations can be difficult to predict; however, staff and Board members should be able to make a reasonable assessment of funding likelihood.

Compare revenue and expense projections. If revenues and expenses are not balanced, programs and management activities must be re-evaluated and adjusted. If expenses need to be reduced, determine which funding priorities are highest and make reductions in areas of lower priority or lower productivity. Once the revenues and expenses are in proper balance, the Board must approve the budget.

The chief executive and staff use the budget as a guide and submit monthly financial reports to the Board comparing actual revenues and expenses to the budget. Budgets and the budgeting process can be an important vehicle for better programmatic and financial management and can help the organization better achieve its vision and goals.

Financial Procedures¹¹

Financial procedures designed to promote and protect sound management practices, both general and financial. Adherence to financial procedures will significantly increase the likelihood that:

- Financial information is reliable, so that managers and the board can depend on accurate information to make programmatic and other decisions
- Assets and records of the organization are not stolen, misused, or accidentally destroyed
- The organization's policies are followed
- Government regulations are met

Developing an Internal Accounting Control System The first step in developing an effective internal accounting control system is to identify those areas where abuses or errors are likely to occur. Many accountants

can provide a checklist of areas and questions to consider when planning financial procedures. At a minimum, the following areas and objectives in developing an effective internal accounting control system should be addressed:

- **Cash receipts:** To ensure that all cash intended for the organization is received, promptly deposited, properly recorded, reconciled, and kept under adequate security.
- **Cash disbursements:** To ensure that cash is disbursed only upon proper authorization of management, for valid business purposes, and that all disbursements are recorded properly.
- **Petty cash:** To ensure that petty cash and other working funds are disbursed only for proper purposes, are adequately safeguarded, and recorded properly.
- **Payroll:** To ensure that payroll disbursements are made only upon proper authorization to bona fide employees, that payroll disbursements are properly recorded and that related legal requirements (such as payroll tax deposits) are complied with.
- **Grants, gifts, and bequests:** To ensure that all grants, gifts, and bequests are received and properly recorded, and that compliance with the terms of any related restrictions is monitored adequately.
- **Fixed assets:** To ensure that fixed assets are acquired and disposed of only upon proper authorization, are adequately safeguarded, and recorded properly.

Additional internal controls are required to ensure proper recording of donated materials, pledges and other revenues, accurate, timely financial reports and information returns, and compliance with other government regulations.

Achieving these objectives requires the organization to clearly state procedures for handling each area, including a system of checks and balances in which no financial transaction is handled by one person from beginning to end. This principle, called segregation of duties, is central to an effective internal controls system. Even in a small nonprofit, duties can be divided up between paid staff and volunteers to reduce the opportunity for error and wrongdoing. For example, in small organization, the chief executive might approve payment and sign checks prepared by the bookkeeper or office manager. The Board treasurer might then review disbursements with accompanying

Guide to Creating a Nonprofit Homeownership Entity

documentation each month, prepare the bank reconciliation, and review canceled checks.

The Board and chief executive share the responsibility for setting a tone and standard of accountability and conscientiousness regarding the organization's assets and responsibilities. The Board fulfills that responsibility in part by approving many aspects of the internal control accounting system. Common areas requiring Board attention include:

- **Check issuance:** The number of signatures on checks, dollar amounts which require Board approval or Board signature on the check, who authorizes payments and financial commitments, etc.
- **Deposits:** How many payments made in cash (for admissions, raffles, etc.) will be handled, etc.
- **Transfers:** If and when the general fund can borrow from restricted funds, etc.
- **Approval of plans and commitments before they are implemented:** These include the annual budget and periodic comparisons of financial statements with budgeted amounts, contracts, leases, loans and other major commitments.
- **Personnel policies:** These include salary levels, vacation, overtime, compensatory time, benefits, grievance procedures, severance pay, evaluation, and other personnel matters.

The Accounting Procedures Manual: The policies and procedures for handling financial transactions are best recorded in an Accounting Procedures Manual, describing the administrative task and who is responsible for each. The manual does not have to be a formal document, but rather a simple description of how functions such as paying bills, deposit cash, and transferring money between funds are handled. As you start to document these procedures, even in simple memo form, the memos themselves can be kept together to form a very basic Accounting Procedures Manual is a good opportunity to see whether adequate controls are in place. In addition, such a manual facilitates smooth turnover in financial staff.

Maintaining Effective Controls: The chief executive is commonly responsible for overseeing the day-to-day implementation of these policies and procedures. Due to the number of detailed requirements involved if the organization receives government funding, there should be one person in the organization (possibly the grant administrator) with

the responsibility of understanding and monitoring those specific regulations and compliance factors.

The auditor's management's letter is an important indicator of the adequacy of the organization's internal accounting control structure, and the degree to which it is maintained. The management letter, which accompanies the audit and is addressed typically to the Board for the organization, cites significant weaknesses in the system or its execution. By reviewing the management letter with the chief executive, asking for responses to each internal control lapse or recommendation, and comparing management letters from year to year, the Board has a useful mechanism for monitoring its financial safeguards and adherence to financial policies.

As the organization changes and matures, and funding and programs change, the organization will need to periodically review the internal accounting control system and modify it to include new circumstances (bigger staff, more restricted funding, etc.) and regulations such as receiving federal awards with increased compliance demands.)

A-133 Audit: In 1990, the Office of Management and Budget (OMB) issued Circular A133, Audits of Institutions of Higher Education and Other Nonprofit Institutions, which defines audit requirements even if the federal money the organization receives is passed through another agency. For example, a housing authority may make a grant to a local nonprofit housing developer which contains HUD funding. The local housing developer is subject to A-133 audit requirements even though the grant was not directly from HUD.

Fortunately for smaller nonprofits, the federal guidelines permit to the agency to combine a regular audit of the whole agency with a program-specific A-133 audit of the program receiving federal funding. The amount of the combined federal funding will determine the type of audit the organization is required to have under A-133. Exhibit 5. 3 shows when an A-133 is not required, when a program-specific A-133 audit may be elected, and when an organization must have an agency-wide federal audit.

Guide to Creating a Nonprofit Homeownership Entity

Exhibit 5.3 Federal Audit Requirements

| Total Amount of Federal Awards | One Program | More than One Program |
|--------------------------------|---|--|
| \$0-- \$24,999 | No Audit | No Audit |
| \$25,000-- \$299,999 | Program Specific or A-133 Single Audit | Program Specific or A-133 Single Audit |
| \$300,000 or More | Program Specific or A-1333 Single Audit | A-133 Single Audit |

A-133 audits like non-federal audits, they test financial statement information. However, the A-133 audit looks more closely at tracking and classifying revenue from federal sources. In addition, the auditor looks for compliance with general and specific government audit requirements, which cover both financial and non-financial factors such as program effectiveness, client eligibility, efficiency with which resources are used, etc.

The auditor must also test internal control procedures more rigorously than in a standard audit, making sure that adequate systems are in place for complying with the requirements noted above. Because of the expanded procedure involved and increased reporting requirements for the auditor, the audit may cost substantially more than a traditional audit and involve more staff time. The organization should be allowed to build these additional audit costs into the grant.

5.6 Personnel Policies and Procedures

Whether the nonprofit organization has five or five hundred employees, properly written personnel policies and procedures can save considerable time and money. The primary goals of a personnel policy are to reduce litigation and promote good communication among staff. It provides both a means for new employees to orient themselves with their new working environment, and a policies and procedures refresher for others.

The essentials of a personnel policy include:

- A disclaimer, at the beginning and the end of the document, to ensure that it does not create nor imply a contract.
- An Equal Employer Opportunity statement.
- Employer rules, regulations, and procedures.
- Employer policies that are designed to help employees.
- Employee benefits.
- Guidelines for termination of employment and disciplinary actions.
- State, local and tribal requirements. (Family Medical Leave Act, workers compensation, harassment, etc.)
- An acknowledgement of receipt by the employee.

Keep it short and simple. A personnel policy should be easy to read and only as long as necessary to get the job done. Common pitfalls include:

- Overpromising
- Inconsistency
- Poor organization
- Inadequate disclaimers

If a personnel policy is not going to be followed or utilized, it might be better not to have one at all. However, there is even greater danger of lawsuits with government agencies when there is no written policy.

5.7 Staffing

Appropriate staffing is a key determinate of the success or failure of a nonprofit organization. Having the right number of staff who have the required skills and competencies and who can work collaboratively in a team environment is central to an organization's productivity, accountability and cost structure.

Organizations located in remote, sparsely populated areas may find that recruiting and hiring qualified staff can be a difficult process. These organizations have options including hiring highly motivated staff and providing them with the training and technical assistance they require to gain the competencies needed for the position. Another alternative is to rely on contracted consultants who work as temporary staff until the organization can hire and train permanent staff. In other instances, the organization may negotiate to borrow staff from another organization until permanent staff is hired and trained.

Guide to Creating a Nonprofit Homeownership Entity

Newly formed nonprofit organizations may not have the funds to hire many, if any, staff and could rely on a core of dedicated volunteers until funding is secured. Other organizations may elect to use volunteer staff as a way to minimize personnel expenses.

It is critical for an organization to use a staffing process that mirrors the organization's vision, programs and budget. A staffing process includes:

- Conduct a job analysis to define its purpose and requirements.
 - Evaluate the organization's need for the position.
 - Define the position's specific functions, duties, responsibilities, compensation and benefit package.
 - Define the characteristics a person needs to succeed.
- Create a list of applicant requirements.
 - Education
 - Experience
 - Skill sets
 - Knowledge and expertise
 - Personal behavior
- Recruit qualified applicants.
 - Word of mouth
 - Direct contact
 - Advertising
 - Employment agencies
 - Job fairs
 - Professional associations
 - Community organizations
- Screen and interview applicants.
 - Time-saver questions: Determine at the outset if an applicant meets very basic job requirements.
 - Behavior-based questions: Applicant describes past behavior in circumstances similar to the job.
 - Skill-based questions: Applicant demonstrates the basic skills needed for the job.
- Hire most qualified applicant(s)
 - Be objective and impartial.
 - Evaluate all applicants and select the most qualified based on demonstrated competencies, commitment and willingness to learn.
 - Negotiate the employment offer until both parties are satisfied. The new hire should sign a letter of hire as prepared by the chief executive.
 - Each new hire should receive and sign a copy of the organization's personnel policy.

The organization should provide each staff person with opportunities for receiving training and technical assistance to improve performance and develop new skills. The organization should foster a constructive and supportive working environment that encourages staff to “do their best” and promotes effective teamwork.

6.0 Program and Organizational Operations

6.1 Introduction

This section discusses the concepts and issues involved in housing development from the site selection to the actual closing on a new home. This section also provides a brief overview of the process involved in working with interested families and providing pre- and post-homeownership counseling. A third key function of the nonprofit, serving as a resource referral center, is briefly summarized as well. This section includes discussions on marketing and fundraising strategies and the monitoring and evaluation of the organization's performance.

Many factors are involved in the process of creating affordable housing and homeownership opportunities. In some instances, many of these factors must happen concurrently in the overall process to make for a successful program. For instance, as the nonprofit decides on the kind of housing approach to adopt and begins to move forward in the development of housing, it must also market and work with interested families to bring them through the mortgage application process successfully and in a timely fashion.

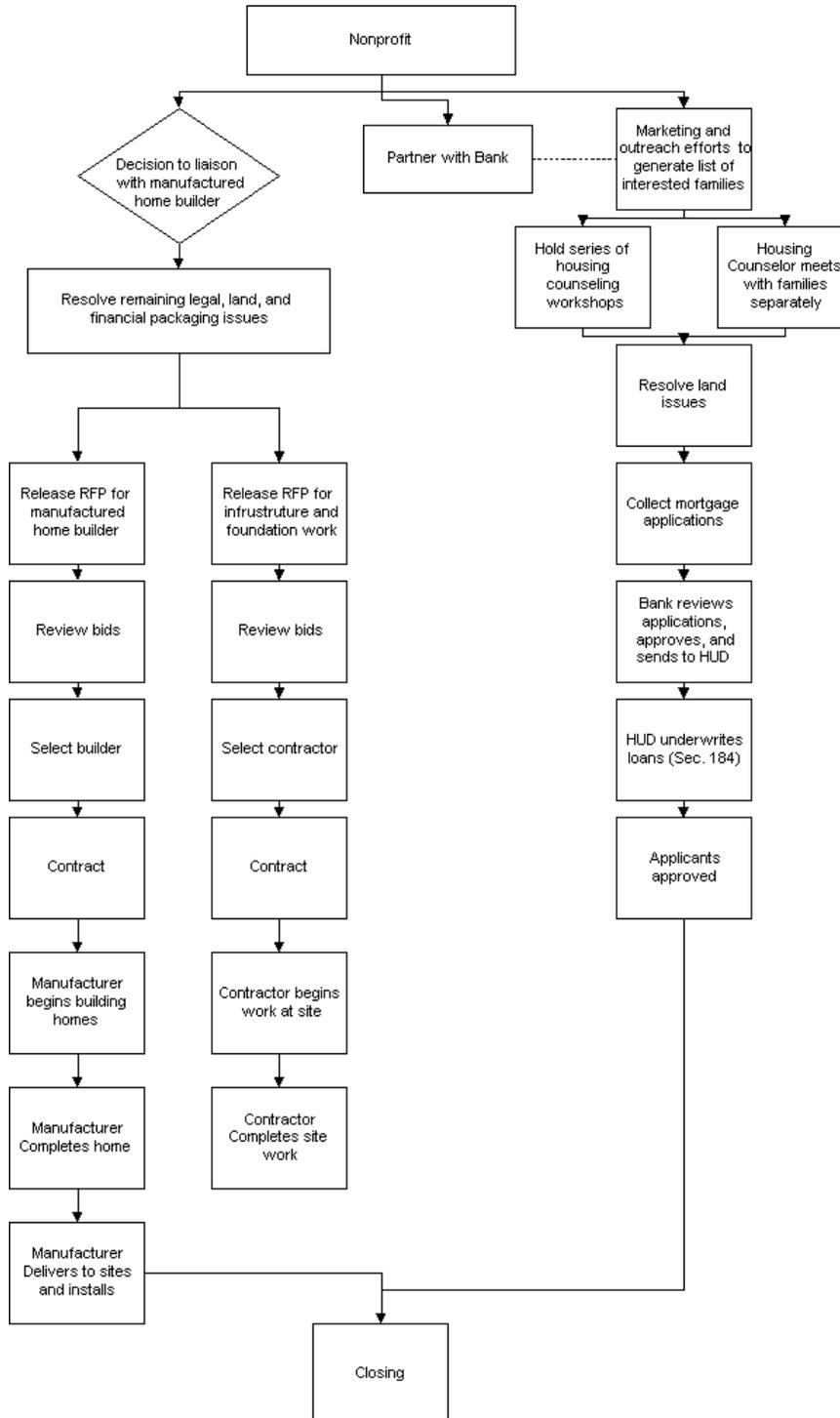
Exhibit 6.1 provides a simplified overview of the process and concurrent activities in the case of a nonprofit working with a manufactured home builder while simultaneously identifying and preparing qualified families to purchase the manufactured homes. The process in the diagram assumes that the nonprofit entity has already worked through most of the legal, land, and financial packaging issues required before embarking on a housing delivery program. All of these issues are detailed in earlier chapters.

6.2 Housing Development

It is important to begin the process of site selection early because obtaining the proper reviews and title clearance can be time-consuming. The process for environmental reviews and title searches will vary depending on the type of land, the kind of funding or financing used for construction, and form of tribal governing body involved. Generally, the tribe or HUD performs environmental reviews if NAHASDA or Section 184 funding is involved. Title searches are handled by either BIA for tribal trust or individual allotted lands for non-self-governing tribal bodies, by title companies that utilize records in the county court house for fee simple lands, or by self-governing tribal bodies.

Site Selection

Figure 6.1.A
Housing Delivery System: Liaison with
Manufactured Home Builder



Housing Delivery Systems

A variety of housing delivery systems are available to a nonprofit organization with the vision of expanding homeownership opportunities. The approaches vary from the tangible – actually building the housing, to the intangible – developing relationships with financial intermediaries. The examples highlighted below include coordinating a “Building Blitz,” facilitating a self-help housing construction model, serving as a developer, functioning as a liaison for the purchase and installation of manufactured homes, facilitating private mortgage networks, launching a lease-to-purchase program, and using tax credits.

The most appropriate approach for each entity will vary depending on the resources available to that organization as defined in the strategic plan and the business plan. Resources include not only financial streams, but also personnel with the applicable experience, available land, a supportive community, and committed government and private partners.

Facilitating Self-help Housing. Self-help housing is a term for new housing construction in which the future homeowners contribute a percentage of the labor costs through “sweat-equity.” The level of “sweat-equity” will depend on the health and skill of the families involved. When families assist in the construction of their homes labor costs are reduced and the home becomes more affordable. In addition, it provides an opportunity for participants to develop new skills in the construction industry.

Coordinating a “Building Blitz”. A Building Blitz, a term used by Habitat for Humanity, is an approach to housing development that depends on the efforts of volunteers and the homebuyers, through “sweat-equity,” for the construction of the homes. The coordination of the volunteer effort may be handled by the nonprofit or volunteers. Volunteers perform the bulk of the actual construction labor. Construction materials are funded through whatever means possible, with an emphasis on charitable in-kind donations or monetary contributions. Volunteer efforts can be an effective means to build new relationships and draw new resources into the community.

A number of logistical factors need to be considered when planning a volunteer effort, particularly if the volunteer effort is in a rural area requiring volunteers to camp for the duration of the Building Blitz. The logistical concerns vary according to the size of the effort. For a large effort, the logistical concerns may include:

- Identifying what tasks can be performed by volunteers of varying skill levels

Guide to Creating a Nonprofit Homeownership Entity

- Legal waivers that release the organizing parties from any liability
- Medical preparedness at camping and work sites
- Locating camping and sleeping arrangements for volunteers
- Locating dining areas and food service
- Establishing a protocol for observers
- Orchestrating vendors and in-kind contributions that relate to the logistical aspects of the volunteer effort (not construction in-kind contributions)
- Location of portable toilets
- Locating volunteer car parking areas
- Transportation for volunteers to and from work site and camp site
- Garbage collection and removal
- Security

Serving as a Developer. If the demand for housing is strong enough, the nonprofit organization may choose to become a developer. In this case the organization acquires property or leases land from the tribe, builds homes, and sells them after completion. This model likely requires a large cash flow and certainty that the homes could be sold soon after completion.

Functioning as a Liaison for Manufactured Homes. As a liaison for manufactured homes, the nonprofit organization facilitates the process of purchasing manufactured homes for a group of mortgage approved families. As creditworthy families become approved for mortgages, the nonprofit entity negotiates with the most qualified manufactured home builder for the construction and installation of quality homes. The nonprofit also coordinates the construction of necessary infrastructure, foundations, septic, and utilities.

Facilitating a Private Mortgage Network. In facilitating a private mortgage network the nonprofit would reach out to and develop relationships with financial institutions. The nonprofit would work with the lending institutions to overcome barriers that prevent lending in Indian Country.

Housing Selection

Launching a Lease-to-Purchase Program. In launching a lease-to-purchase program, the nonprofit organization enables a family to live in their new home while they work to clear up their credit. The homeowner gains full title to their home after their credit has met the standards required by the bank. The nonprofit is required to develop the home and package the financing, own the home and lease the land during the lease period with the family, and enter into and enforce a lease and home purchase agreement with the participating family. The nonprofit Board should discuss the type of lease-to-purchase program that works for the tribe/nonprofit. Items to consider include the term of the lease and maintenance on the home.

Using Tax Credits. Low Income Housing Tax Credits are designed to stimulate private sector investment in the development of affordable rental housing. The nonprofit entity would partner with a developer interested in obtaining tax credits through the development of low-income rental housing. The units must be new construction or substantially rehabilitated and restrictions of income limits vary by state and the location of the development.

In selection of the types of homes to build, the nonprofit must take into consideration the affordability of the target population, product quality, energy efficiency, durability, climate needs, and local expectations and desires. In addition, the nonprofit needs to consider the financial resources that it plans to utilize, as certain loan products may not be available for certain types of housing. All of these variables should be addressed in the organization's strategic plan. Three possible housing types that can meet the needs of most locations through specific customization are manufactured homes, modular homes, and stick-built homes.

Manufactured homes are produced in manufactured home builder plants to specifications agreed upon in a contract between the nonprofit and the builder. Homebuyers can usually select from a variety of color schemes for the interior and exterior of the home and select cabinetry for the kitchen and bath(s) to customize their homes. When the home is completed, it is delivered to the location site and installed on a pre-constructed foundation or crawl space, or it is anchored and skirted if there is no foundation.

Contractors build **modular homes** at modular home plants to specifications agreed upon prior to construction. When the home is complete it is delivered to the location site and installed on a pre-constructed foundation or crawl space, or it is anchored and skirted if

Guide to Creating a Nonprofit Homeownership Entity

there is no foundation. These houses differ from manufactured homes in the construction process. As with manufactured homes, homebuyers can customize their homes through the selection of color schemes and cabinetry from a variety of options.

Stick-built homes are built on location usually with a combination of contractors and volunteers. When volunteers provide labor, the cost of the homes can be greatly reduced. Contractors supervise the work to ensure quality is maintained. In the case of the Self-help Program, some of the volunteers will be family members. The opportunity to customize a stick-build home during its construction will depend on the particular project. In some cases, paint, carpet, siding, cabinetry, and appliances may be in-kind contributions, which may preclude color selection.

There are a number of significant barriers that hinder lending on reservations. One barrier stems from lenders' reluctance to lend in situations where collateral for the mortgage is not a home and property, as in conventional lending. On reservations, tribal trust lands and allotted lands cannot be used as collateral on a mortgage. A number of government products have been designed to overcome this barrier. They include HUD Section 184, HUD Section 248, the U.S. Department of Agriculture's (USDA) Rural Housing Native American Pilot (RHNAP) Loan Program, and the U.S. Veteran's Affairs Direct Home Loans for Native American Veterans Living on Trust Lands. Each of these is described in detail below.

The **Section 184 Loan Guarantee Program** addresses the issue of collateral on trust lands. Section 184 loans are underwritten by HUD and provide lenders with a government guarantee on the mortgage. The lenders receive a leasehold interest as collateral. ONAP will work with nonprofit homeownership entities to identify lenders with an interest in the Section 184 program.

Like the Section 184 program, **Section 248** is under written by HUD and provides lenders with a government guarantee on the mortgage. Section 248 differs from Section 184 in that it can only be used on tribal trust land with a leasehold mortgage. Section 248 is eligible to individuals, families, and the tribe, but not the TDHE. Section 248 can also be used for refinancing.

The U.S. Department of Agriculture's Rural Housing Service (RHS) offers the **Rural Housing Native American Pilot (RHNAP) Loan Program**, which guarantees loans made on tribal land. The loans are 30-year fixed rate loans and can be for the purchase of existing homes or for new construction. The loan can be for 100 percent of the value of the

Mortgages

property. Lenders who have been approved by both RHS and Fannie Mae can originate RHSAP loans. Eligible borrowers include individual members of federally recognized tribes that have been approved by RHS to participate in the pilot program.

The U.S. Department of Veteran Affairs offers the **VA Direct Home Loans for Native American Veterans Living on Trust Lands**. This direct loan can be used to purchase, construct, or improve a home on Native American trust land. These loans generally are limited to the cost of the home or \$80,000, whichever is less. VA direct loans are available to all eligible Native American veterans who meet credit and income qualifications.

In addition, eligible veterans may apply for loans guaranteed by the VA. The guarantee program is intended to encourage lenders to offer all veterans loans with more favorable terms. VA-guaranteed loans are made by private lenders such as banks, savings and loans associations, or mortgage companies.

Funding Resources in the Stages of Development¹

Predevelopment Financing. As noted in Section 2.0, planning is critical to a successful project. During the predevelopment stage or conceptual stage of development, developers must put their “dream” project to paper. The determination of funds needed during the predevelopment stage requires the organization to identify specific tasks and the associated costs that need to be completed to move the project forward. Pre-development funds then become the resources that cover such activities and include, but are not limited to:

- Option payments
- Architectural expenses
- Engineering
- Legal services
- Environmental and soil studies
- Application and origination fees
- Consultant fees
- Title search
- Market studies
- Appraisal preparation

Predevelopment activities can be funded by a variety of sources in the form of grant, equity and/or loans to finance the project’s up-front costs.

Guide to Creating a Nonprofit Homeownership Entity

The organization should research the costs associated with each of these activities and plan the timing for accomplishment of these tasks to ensure that the project moves smoothly to the next stage of development.

Given the early stage in the development process, predevelopment funds and or predevelopment lending are considered a high risk by potential funders. As a result, predevelopment loans are typically a non-traditional loan product, not offered by most traditional lenders.

Acquisition Financing. Once the entity has determined that the project is feasible, and has completed a majority of the predevelopment activities, additional resources may be necessary to address the acquisition of the property, particularly if the land is not currently on trust land.

Acquisition funds are used to acquire the site. These costs include the contractual purchase price of the property, any applicable fees associated with the property specific to the project, and any associated closing costs.

Acquisition funds are resources that usually come in the form of loans ranging from non-conventional lending sources to private financing. Lenders usually require that the loan be secured by the property as collateral for the loan. Depending upon the condition of the property, these funds have a more moderate risk than the predevelopment loan because the lender will have some form of collateral.

However, if it is trust land, alternative sources of collateral will be required. Some states have programs that will provide guarantees, or the reserve accounts of the TDHE can be used. Traditional lenders will often require borrowers to provide some equity into the transaction (10 percent) and will not finance 100 percent of the acquisition cost of a property.

Through the appraisal process, the value of the collateral is established and the loan amount can be projected. For instance: If an organization wanted to acquire a property and the appraised value was \$100,000, a lender may be willing to lend up to \$90,000 on the property. An appraisal is almost always required by a lender to obtain the value of the property.

On tribal trust land, or land near trust land appraisals can be more difficult, since market comparables are hard to find. In the example listed above, the organization, through its own capital, would be

required to provide the remaining resources necessary to acquire the site.

Construction Financing. Once a project has reached the stage where construction is ready to start, the entity should have identified all of the funding resources. Construction lenders generally will not issue a financing commitment until all permanent financing sources have been identified. (Single family home construction or rehab would be the exception.) Depending upon the resources within a community, some lenders provide both the construction and the permanent loan. Generally, the phases are separately outlined in lending documents. In addition, settlement on the construction loan may take place simultaneously with the acquisition of the property if all construction related tasks have been completed by the organization.

Construction funds provide the financial resources to fund costs associated with the construction process. These costs can include the physical development of the building “hard construction costs” and other costs necessary to engage the construction process, or “soft costs.” Soft construction costs can include all predevelopment-related expenses, such as appraisal costs, environmental expenses, legal costs, consultants’ fees, and other fees or costs associated with the development of the property, such as interest expense, which are not related to the project’s physical development.

Construction funds can be provided from a variety of sources but are usually in the form of loan funds from both non-conventional lenders and private banks. Equity providers, construction loan funds, trust funds, and the developer/organization can also fund construction-related activities. The risk of these types of loans center on the ability of the developer to complete the project on time and at the projected cost. Unlike other resources provided to the developer, construction funds are provided in “draws” submitted to the developer on a regular basis. The lender will often limit the draws based on the percentage of completion, in order to mitigate their risk and to closely monitor the construction process.

Construction loans on trust land present additional obstacles, since the lender cannot take a lien on the land – or use the value of the land to reduce their risk to the loan. To overcome this obstacle, the entity may need to identify other sources of collateral or receive a guarantee from another source. One option is HUD’s Section 184 mortgage loan which provides for a permanent mortgage loan that can be used for construction financing as well. Since there is only one loan closing, certain costs noted above are substantially reduced.

Guide to Creating a Nonprofit Homeownership Entity

Permanent Financing. Upon completion of the construction phase, the project requires permanent financing on the property. This type of financing will typically stay in the project until all of the debt or principal on the primary loan is repaid. In most circumstances, the loan will be amortized over a long period of time, and extends for a time period ranging from five to fifty years. Permanent loans will generally “take-out” or replace the other financing that has been placed on the property. As such, the permanent financing source is commonly referred to as the “take-out” lender.

The term of the permanent loan usually commences at the completion of construction and upon compliance with other requirements of the permanent lender, such as debt-service coverage ratios, lease-up requirements and stabilized occupancy. Permanent loans can come from either private or public sources, including commercial banks and thrifts, insurance companies, and federal, state and local governments. It is important to emphasize that resources for permanent financing will generally be defined at the community level. The entity is encouraged to investigate as many options for permanent financing as possible.

For homeownership projects the ability to identify permanent financing is defined by the homebuyer—their income and their credit—and the perceived value of the structure. Again, the value of the structure can be difficult to define on trust land, since there is a lack of comparables and the extra “market” restrictions related to resale. For the Section 184 program, lenders will typically accept the “cost” method for the appraisal. The homebuyer’s income and creditworthiness determines the mortgage amount. Subsidy financing depends on the homebuyer’s income.

For rental projects the permanent financing available is defined by the income of the renters, by the “cash flow” the project provides and the value of the property.

Working Capital and Gap Financing. During the course of the development of the property, it is not unlikely that the entity will have cash flow challenges. If the developer or sponsor miscalculates the flow of any financing source into the project, a “gap” in the financing can occur. In these circumstances, an organization may draw upon its own internal resources to bridge this gap.

Many nonprofit organizations and housing authorities/TDHEs sustain themselves through the fees that they earn in the development process, in managing properties or in consulting for other organizations. The

income generated through these activities provides the necessary capital for the organization to operate. The utilization of these resources to fund gaps in the project financing structure is commonly referred to as working capital.

An infusion of working capital into a project during any of these time periods allows the project to continue to move forward until the identified source flows into the project. If the requirements for funds are permanent, i.e., cost overruns, the organization may need to find additional equity to infuse into the project to cover the increase in the total development cost of the project.

An effective tool for monitoring the financial status of a project is a Pro Forma. (See sample in Exhibit 6.2). This is a template that brings all of the costs together and offsets them against known financing sources (grants, donations, and loans). When project data is entered into an electronic version of the sample in Exhibit 6.2, it becomes clear whether the project is affordable to the applicants and whether the current level of financing is sufficient.

Grants and Subsidy. As mentioned earlier, the nonprofit organization has access to additional resources that a typical real estate developer may not have. These resources are made available through a number of different sources to allow the developer to keep the project targeted for a certain income level resident. Grants infuse capital into a project and lower the amount of debt the project will need to carry, ultimately lowering the total development cost of the property. Grants typically specify how the sponsor can use the proceeds.

Federal grant programs have been created to stimulate very specific types of housing development, including single family homeownership, housing people with special needs or Native American initiatives. In addition, grants can be related to the development process, targeting specific costs such as feasibility expenses. It is very important that the nonprofit entity understand what granting organizations (private, state and local) exist in their specific community.

Guide to Creating a Nonprofit Homeownership Entity



Figure 6.2. Project Information for Pro Forma

| | Answers? |
|---|----------------------|
| What is the name of your project? | <input type="text"/> |
| Developer Name? | <input type="text"/> |
| How many units will your project have? | <input type="text"/> |
| What is the average income you expect resident to have? | <input type="text"/> |
| Area Median Income | <input type="text"/> |
| Source of Home Buyer First Mortgage | <input type="text"/> |
| Interest Rate | <input type="text"/> |
| Term | <input type="text"/> |
| Percent of Income to housing expenses | <input type="text"/> |
| Percent of Income to Total Debt | <input type="text"/> |
| Is the Down Payment a set cash amount? If so amount. | <input type="text"/> |
| Is the Down Payment a percent of first mortgage amount? If so %. | <input type="text"/> |
| Is the Down Payment a percent of total purchase price? If so % | <input type="text"/> |
| Will the home buyer have any monthly taxes or fees? If so, amount | <input type="text"/> |
| Will the home buyer have monthly required reserve payments? Amount? | <input type="text"/> |

| Financing Sources | | Source | Amount/Unit | Total Amount | Acq./Pre-development | Construction | When Available |
|---|---|---------------|--------------------|---------------------|-----------------------------|---------------------|---|
| | | | | | | | Permanent |
| What are the subsidy sources? <i>Please place in order the funds are available</i> | 1 | | | \$ - | | | |
| | 2 | | | \$ - | | | |
| | 3 | | | \$ - | | | |
| | 4 | | | \$ - | | | |
| | 5 | | | \$ - | | | |
| | 6 | | | \$ - | | | |
| | 7 | | | \$ - | | | |
| | 8 | | | \$ - | | | |
| Do any of the financing sources require homebuyer repayments or liens? If "Yes" which ones? (<i>in order or lien priority</i>) | | | | | | | I=Interest Only N=Nonamortizing A="Amortizing |
| | | | | Yes | Interest Rate | Term | |
| | | | | | 0.0% | | N |
| | | | | | 0.0% | | N |
| | | | | | 0.0% | | N |

| | | | |
|--|----------------------|----------------------|------|
| What are construction financing sources? | <input type="text"/> | <input type="text"/> | \$ - |
| | <input type="text"/> | <input type="text"/> | \$ - |
| | <input type="text"/> | <input type="text"/> | \$ - |

Guide to Creating a Nonprofit Homeownership Entity

A subsidy acts much like a grant in that it allows the nonprofit to provide additional resources to a particular project. The primary difference is that a subsidy typically is funding over time and works to lower the ongoing expenses of a project or increase its revenues, as opposed to a direct infusion of capital into the property. Subsidies are very effective in making the project available to a wider range of residents.

Subsidies can be a challenge for the nonprofit to plan around if the subsidy is short term. For instance, if there are annual renewal features within the subsidy or the subsidy travels with the recipient (as opposed to being project based), the developer cannot be assured the operating subsidy will be continuous. In these cases, a prospective lender will adjust their underwriting accordingly.

Irrespective of the housing delivery system, at some point in the process the nonprofit will have to procure the services of some vendor or contractor. It is likely that the nonprofit will use the Request for Proposal (RFP) process. The first step in the RFP process is for the nonprofit to draft an RFP, which is a document that details the services sought, any necessary specifications, and how and when the bidder should respond. (See sample in Appendix 6.0).

When the nonprofit has completed the RFP, it can advertise a notice in local papers to alert prospective bidders of the opportunity to bid. The notice identifies the nonprofit entity, the services it seeks, and where/how prospective bidders can obtain the RFP. A notice generally runs for a period of two to four weeks. The nonprofit should have a protocol established for receiving, tracking, and responding to the requests for the RFP.

A protocol for receiving, reviewing, and scoring bids or responses to the RFPs must also be established. Bids will likely be received before the actual close date. After the close date and time has arrived, the bids can be reviewed and scored. The ranking criteria should include a category that rates the completeness or responsiveness of the bid as well as other specific characteristics relevant to the needs of the project. Exhibit 6.3 depicts a sample proposal rating for construction services.

Procurement

Figure 6.3
Sample Proposal Rating

| | Proposal A | Proposal B | Proposal C |
|--------------------------|------------------|-----------------------|-------------|
| Criteria | Percent of Total | Rating Scale (1 to 5) | Final Score |
| Responsiveness to RFP | 25% | 4 | 1.0 |
| Cost | 20% | 3 | .6 |
| General Performance | 15% | 4 | .6 |
| Plans | 10% | 2 | .2 |
| Technical Specifications | 10% | 2 | .2 |
| Warranty | 10% | 3 | .3 |
| Delivery/Sale | 10% | 5 | .5 |
| Totals | 100% | 23 | 4.0 |

When all of the proposals have been reviewed and ranked, the information will be presented to the nonprofit's Board of Directors and the Board will make a decision on vendor selection. If no suitable bids are received, the Board can reject all proposals and opt to negotiate a sole source contract.

When a vendor is selected, the nonprofit negotiates final details on the services to be rendered and a legal contract is forwarded to the vendor. The details of the contract may require further negotiations until both parties are satisfied. Once negotiations are complete, letters are sent to the unselected bidders to notify them of the nonprofit's decision.

In some instances, the nonprofit may not conduct negotiations with vendors. Rather, the organization accepts the lowest, most responsive bid and enters into a fixed price contract with the vendor.

6.3 Housing Counseling

Housing counseling is a critical piece of a homeownership initiative. Tribal families often know little about homeownership, its benefits, and requirements. Further, they may have poor or no credit histories, may not be familiar with the mortgage lending process and terminology, nor required home maintenance activities. Education and counseling can be crucial in demystifying the process and helping an individual or family to become and remain a homeowner.

Guide to Creating a Nonprofit Homeownership Entity

An important initial step for the nonprofit is to determine homebuyer readiness and tailor counseling to the individual needs of households. It is recommended that the nonprofit provide housing counseling to all households receiving services from the entity.

An on-site counselor should be available to provide extensive pre-purchase and post-purchase counseling, in-group and one-on-one settings. The counseling can cover such topics as:

- Budgeting for mortgage payments
- Money management
- Home selection
- Housing care and maintenance
- Referral to community resources
- How to apply for and complete the mortgage loan process
- Alternatives for financing the purchase
- Real estate and mortgage lending terms
- How to develop a plan to accumulate down payment and closing costs
- If appropriate, credit counseling which may include assistance in improving credit-worthiness and consolidating debt
- Avoiding mortgage default and foreclosure
- Importance of routine and preventive maintenance to preserve house value
- Role of the homeowners' association

Default and foreclosure counseling are important parts of the services offered. Due to the unique status of tribal land and the use of tribal courts, there are particular procedures and processes on reservations for default and foreclosure, making counseling of this type very important. It may include such activities as:

- Determination of whether the mortgagor, with assistance from the nonprofit, might bring the account current within a time period and payment plan acceptable to the lender
- Working out repayment plans with the homebuyer's other creditors
- Follow-up counseling if the loan is brought current or the lender proceeds with foreclosure
- Alternatives to foreclosure

Homebuyer's Club

Another way the nonprofit can assist, train, and educate homebuyers is by establishing a Homebuyer's Club designed to develop an open forum group of all interested homebuyers. The club can be open to those residents who are interested in homeownership in the future, as well as those residents who are currently involved in the mortgage process. If this club includes an opportunity for the participants to have open discussions regarding their questions, fears, and hesitations, the club can assist those participants in overcoming some of their personal concerns.

The Club can sponsor various speakers on topics of interest to the individual homebuyers. These speakers may discuss topics regarding the legal closing process, insurance issues, tax issues, landscaping programs, and other issues that will assist participants understand the homeownership process. The club may also provide the opportunity for individual work sessions on topics such as budgeting, credit counseling, and financial planning.

6.4 Resource Referral Services

A critical role for a nonprofit organization promoting homeownership opportunities is to function as a resource referral center – a single location where interested parties can obtain information on the process of buying a home, financial intermediaries, real estate brokers, builders and contractors, and local housing options and programs. The path to homeownership can seem daunting because of the paperwork, the involvement of multiple government agencies, and the need to obtain large amounts of financing.

The organization's goal is to address each family's concerns and questions about homeownership and assist the family through the process if it decides to pursue homeownership. The entity will provide families with housing counseling, serve as a liaison between families and lending institutions, assist in finding the best lending package, and assist applicants in finding an affordable home for purchase or construction. Assistance also should be offered to homeowners seeking home improvement loans or grants or mortgage refinancing.

The kinds of information the nonprofit entity will have available includes:

- HUD ONAP "Our Home" brochures
- Housing Counseling process
- Standard mortgage loan applications
- Financing options
- Real estate options

Guide to Creating a Nonprofit Homeownership Entity

- Listing and brokerage services
- Contractors and builders
- Manufactured home builders
- Modular homes
- How to resolve land title questions

6.5 Marketing²

Marketing is an essential part of nonprofit business operations. It oftentimes determines how successful the nonprofit organization will be. The organization's aim is not only to attract and keep a steady group of loyal customers, but also to expand the customer base by identifying and attracting new customers and to reduce risks by anticipating market shifts that can affect the organization's bottom line.

An organization's marketing plan should include strategies typical of any marketing plan. The plan should especially include what marketers dub as the 4 P's of Marketing (Product, Price, Place and Promotion) Include a brief explanation for each strategy.

- Describe the target market by
 - Age
 - Sex
 - Profession/career
 - Income level
 - Educational level
 - Residence

Since the organization will have limited resources target only those customers who are more likely to purchase the organization's product or service. As the organization grows and its customer base expands, then, it may need to consider modifying this section of the marketing plan to include other customers.

- Identify competition
 - Market research data
 - Demand for product or service
 - Nearest direct and indirect competitors
 - Strengths and weaknesses of competitors
 - Assessment of how competitors are doing
 - Description of the unique features of the organization's product or service
 - Similarities and dissimilarities between the organization's product or service and competitor's

- Pricing strategy for and comparison of the organization's and the competition's

- Describe product/service
 - Describe the organization's product or service

Try to describe the benefits of the organization's goods or services from the customer's perspective. Emphasize its special features -- i.e., the selling points. Successful business owners know or at least have an idea of what their customers want or expect from them. This type of anticipation can be helpful in building customer satisfaction and loyalty.

- Develop marketing budget
 - Advertising and promotional plan
 - Costs allocated for advertising and promotions
 - Advertising and promotional materials
 - List of advertising media to be used

Operating an effective marketing plan requires money, so the organization will have to allocate funds from its operating budget to cover advertising, promotional and all other costs associated with marketing. Develop a marketing budget based on the cost for the media to be used, and the cost for collecting research data and monitoring shifts in the marketplace.

- Describe location (Place)
 - Description of the location
 - Advantages and disadvantages of location
- Develop pricing strategy
 - Pricing techniques and brief description of these techniques
 - Retail costing and pricing
 - Competitive position
 - Pricing below competition
 - Pricing above competition
 - Price lining
 - Multiple pricing
 - Service costs and pricing
 - Service components
 - Material costs
 - Labor costs
 - Overhead costs

The key to success is to have a well-planned strategy, to establish the organization's policies and to constantly monitor prices and operating

Guide to Creating a Nonprofit Homeownership Entity

costs to ensure profits. Keep abreast of changes in the marketplace because these changes can affect the organization's bottom line.

- Develop an effective promotional strategy
 - Advertising media
 - Print media (newspaper, magazine, classified ads, Yellow Pages advertising, brochure)
 - Radio
 - Television
 - Networking
 - Business cards
 - Tee shirts, hats, buttons, pens

Develop a promotional strategy that uses various media for promoting the organization and its products. Monitor the different media identifying those that most effectively promote the organization.

Financial institutions weigh the soundness of an organization's marketing plan when deciding whether the organization is a good risk for their money. It is important that the organization prepare and present credible market data that shows there is a need in the community for the organization and its products and that demonstrates the organization's ability to compete successfully.

6.6 Fund-raising³

Fund-raising and grantsmanship are skills crucial to the nonprofit organization. Generally, the Board and chief executive are active in fund-raising activities. It is not necessary for a small organization to seek out the expertise of a professional fund-raiser. Many of the most successful fund-raisers learned the fine art of grantsmanship as they struggled to find funds for their fledgling programs.

Fund-raising can take many forms ranging from bake sales and telemarketing to requests for sizeable grants from foundations, corporations or government entities. Fund-raising activities should be guided by the organization's strategic plan and business plan. A growing number of organizations receive some or all of their funds from one or more government agencies. Public funding differs from private funding in the proposal process, accountability requirements, and guideline compliance in such areas as hiring practices and client targeting.

The first step in securing a large grant from a foundation, corporation or government entity is a simple one: make sure the proposed program is worthy of funding and that the appeal is directed to the appropriate

funder. Proposals should be written only after the purpose and scope of the program have been delineated in detail, its relationship to existing community services outlined, and the methods and target population defined.

While most funders have explicit proposal requirements, most proposals contain the following basic components:

- Cover Letter
- Proposal Summary
- Organization Qualifications
- Statement of Need
- Goals and Objectives
- Approach to Addressing Need
- Staffing
- Evaluation
- Future Funding
- Budget
- Appendix (Supporting Documentation)

The proposal review process can be a lengthy one, especially for government agencies. Be patient. If funds are not awarded, the funder should provide a technical debriefing to identify where the proposal was deficient. This information will help create a stronger proposal for the next funding cycle or for another funder. If funds are awarded, the organization and funder will sign a contract, sometimes after negotiation, which stipulates the terms and conditions associated with the award.

Many successful organizations generate numerous funding appeals and proposals in a year. The rationale is simple: the larger the number of appeals, the greater the chances for success.

6.7 Monitoring and Evaluation

Program and staff monitoring is critical for ensuring that the organization and its programs are operating according to approved policies, contracts and legal requirements. Each staff person is responsible for monitoring their own performance, the chief executive is responsible for monitoring staff performance and program operations and the Board of Directors is responsible for monitoring the overall organization to ensure goal attainment, budget adherence, quality control and compliance with legal and regulatory requirements.

Monitoring

Guide to Creating a Nonprofit Homeownership Entity

On the staff level, the chief executive monitors staff performance through regular staff meetings, document review and annual staff evaluations. The Board monitors the organization's operations by reviewing documents provided by the chief executive at each Board meeting and through informal discussions with the chief executive at any time.

Monitoring results should be documented, kept on file, and include specific recommendations and timeframes for improving staff performance and/or program operations. These results should be linked to program evaluation, budgeting, and planning activities.

Evaluation⁵

Program evaluation is a careful collection of information about a program or some aspect of a program in order to make necessary decisions about the program. The type of evaluation used to improve the organization's programs depends on what the organization wants to learn about the decisions that need to be made. There are three types of program evaluation:

- **Goals-based Evaluation:** Are the programs achieving their overall and measurable goals?
- **Process-based Evaluation:** How do the programs really work and what are their strengths and weaknesses?
- **Outcomes-based Evaluation:** To what extent did the programs actually provide benefits to the clients?

Outcomes-based evaluation increasingly is important to nonprofits and their funders because of the need to know the actual impact of a program or a grant. Exhibit 6.4 provides an overview of the major methods used to collect data during evaluations.

Exhibit 6.4 Program Evaluation Methods

| Method | Overall Purpose | Advantages | Challenges |
|---|--|--|---|
| Questionnaires Surveys Checklists | When need to quickly and easily get lots of information from people in a non-threatening way. | <ul style="list-style-type: none"> • Can complete anonymously • Inexpensive to administer • Easy to compare and analyze • Can get lots of data • Many sample questionnaires exist already | <ul style="list-style-type: none"> • Might not get careful feedback • Wording can bias client responses • Are impersonal • May need sampling expert • Doesn't capture full story |
| Interviews | When want to fully understand client impressions or experiences, or learn more about their questionnaire responses | <ul style="list-style-type: none"> • Get full range and depth of information • Develops relationship with the client • Can be flexible with the client | <ul style="list-style-type: none"> • Can be time-consuming • Can be difficult to analyze and compare • Can be costly • Interviewer can bias client responses |
| Document review | When want impression of how program operates without interrupting the program; includes review of applications, finances, memos, minutes, etc. | <ul style="list-style-type: none"> • Get comprehensive and historical information • Doesn't interrupt program or client's routine in the program • Information already exists • Few biases about the information | <ul style="list-style-type: none"> • Often takes much time • Information may be incomplete • Need to be clear about what looking for • Not a flexible means for getting data • Restricted to document availability |
| Observation | When need to gather accurate information on actual program operations. | <ul style="list-style-type: none"> • View program operations in action • Adaptable to changing events | <ul style="list-style-type: none"> • Can be difficult to interpret actions • Can be complex to categorize observations • Can influence behaviors of program participants • Can be expensive |
| Focus groups | When need to explore a program in depth through group discussions and can be useful in marketing. | <ul style="list-style-type: none"> • Quickly and reliably get common impressions • Can be efficient way to get a range and depth of information quickly • Can convey key information about the program | <ul style="list-style-type: none"> • Can be hard to analyze responses • Need good facilitator for safety and closure • Difficult to schedule 6-8 people together |
| Case studies | When need to fully understand a client's experiences in the program and to conduct comparison with similar programs. | <ul style="list-style-type: none"> • Fully depicts client experiences • Powerful means to portray program to outsiders | <ul style="list-style-type: none"> • Usually quite time consuming to collect and describe • Represents depths of information rather than breadth |

Guide to Creating a Nonprofit Homeownership Entity

A nonprofit may elect to conduct informal evaluations at any time and some form of evaluation should be conducted annually. Formal evaluations should be conducted by an contracted independent entity to assure the integrity of the results. Further, formal evaluations require advanced skills that may be beyond the organization's capabilities.

Introduction

7.0 Pine Ridge Case Study

During the summer of 1998, Secretary Andrew Cuomo of the United States Department of Housing and Urban Development (HUD) visited the Pine Ridge reservation. Secretary Cuomo examined first-hand the severe housing and economic development challenges facing the Oglala Sioux Tribe and met with tribal leaders to listen to their concerns.

Tribal leaders discussed their interest in promoting homeownership, articulated in the Tribe's Indian Housing Plan. They pointed out the need for a philosophical change in the delivery of housing services. Since the 1960s, the Tribe's Housing Authority has provided rental and other federally assisted housing options, but it has not had the capacity to provide extensive homeownership services.

In response to these discussions and the poor housing conditions he witnessed, the Secretary sought to partner with the Tribe to bring more homeownership opportunities to the families living on reservations through the Shared Visions Initiative.

Shared Visions seeks to create comprehensive approaches to developing affordable low- and moderate-income homeownership housing and to increase the investment of both private and nonprofit capital. The Initiative will build a framework for future homeownership, legal and economic development efforts throughout Indian country. To serve as a national catalyst, HUD designated the Pine Ridge reservation as a pilot project centered on public and private partnerships to make homeownership a reality for Native Americans nationwide.

Since the Secretary's visit last summer, the partners involved in the Pine Ridge pilot of Shared Visions have made enormous strides. They have established a nonprofit entity, identified and counseled homebuyers who have since qualified for mortgages, and have been intimately involved in the development of new housing units on the reservation. This section details these exciting developments.

Pine Ridge, South Dakota

The Pine Ridge reservation, located in southwestern South Dakota, is the home of the Oglala Sioux Lakota Tribe. The reservation spans an area that roughly equals the size of the state of Connecticut. The reservation population is estimated to be 38,000.

Pine Ridge is located in Shannon County which has been the poorest county in the United States for the past 30 years. According to the 1990 Census, the per capita income in Shannon County is approximately

Guide to Creating a Nonprofit Homeownership Entity

\$11,000 per year. The reservation faces severe housing and economic development needs. The unemployment rate reaches 85 percent at certain times of the year. Little infrastructure exists and commerce is minimal. An estimated 4,000 families need homes. In many cases, three or four families share a single house and many houses are in substandard condition and lack complete plumbing.

The Oglala Sioux Lakota Housing (OSLH) has been identified by the Oglala Sioux Tribal Council as the Tribally-Designated Housing Entity (TDHE). The OSLH was established in 1961 and was the first Indian Housing Authority in the nation. The OSLH currently manages a total of approximately 1,700 reservation housing units, consisting of 1,200 low-income rental units and roughly 500 homeownership units. In its most recent Indian Housing Plan, the OSLH identified a need for 4,000 additional units on the reservation. The waiting list for housing includes more than 1,200 families.

In testing innovative and comprehensive approaches to addressing the housing challenges that face Pine Ridge, HUD's Office of Native American Programs (ONAP) partnered with Oglala Sioux Tribe to develop a national pilot project in designing homeownership opportunities. In consultation with the Tribal Council, OSLH, and other reservation partners, ONAP awarded the tribe a grant to create a non-profit entity that would be separate and independent from the tribal governance structure. Its functions include:

- Assess homebuyer readiness and provide pre- and post-homeownership counseling
- Develop personal financial management and housing counseling services
- Serve as a conduit between lending institutions and tribal members
- Market-shop and negotiate for the best lending packages for tribal members
- Develop housing that is desired and affordable by homebuyers
- Maintain funding sources to close the gap on down payment and monthly mortgage costs
- Seek out and secure other sources of gap financing
- Develop sources of housing and housing-related products

Organizational Development of OSTPH

Creation of a Nonprofit Corporation

- Serve as a resource and referral center for tribal members interested in homeownership

In essence, the nonprofit homeownership entity will bridge the gap between Native American borrowers and the private market that provides the services needed to facilitate on-reservation homeownership.

The Oglala Sioux Tribal Council unanimously enacted Ordinance No. 99-04 on January 28, 1999 (see Exhibit 7.1), adopting a charter for Oglala Sioux Tribe Partnership for Housing, Inc., a nonprofit corporation chartered under the laws of the Oglala Sioux Tribe.

Exhibit 7.1 Tribal Ordinance

Ordinance of the Oglala Sioux Tribal Council Approving the Oglala Sioux Tribe Partnership for Housing, Inc.

WHEREAS, there continues to be housing crisis on the Pine Ridge reservation for its residents, and

WHEREAS, a part of the efforts to address the housing shortage is to develop new models and new methods to provide housing to the residents of the Pine Ridge reservation, and

WHEREAS, the Oglala Sioux Tribe Partnership for Housing, Inc. will have the capacity to assist tribal members to find affordable, decent and safe housing by improving access to the lending market, and

WHEREAS, the Oglala Sioux Tribe Partnership for Housing, Inc. will have the ability to work with private and public agencies to develop affordable, decent, and safe housing through cooperative efforts of tribal, federal, private and public agencies, foundations, associations and groups, and

WHEREAS, the establishment of the nonprofit entity is in the long-term best interest of the Oglala Sioux Tribe, and its families, and members, now

THEREFORE BE IT ORDAINED, that the Oglala Sioux Tribe does hereby adopt the attached Not-For-Profit Charter of the Oglala Sioux Tribe for Partnership for Housing, Inc. and its by-laws.

OSTPH formally adopted its interim Articles of Incorporation and By-laws on February 17, 1999. Recently, the OSTPH Board of Directors adopted a revised and amended Charter and Articles of Incorporation to clarify its purpose and authority. (See Appendices 3.1 and 3.2)

Guide to Creating a Nonprofit Homeownership Entity

After the tribal ordinance was enacted, an interim Board of Directors was established. Currently, eight members of the tribe comprise the OSTPH Board of Directors: President Paul Iron Cloud, Vice President Wilbur Between Lodges, Vice President Melvin Cummings, Treasurer Mike Graham, Secretary Bim Pourier, Harold Dean Salway, Elsie Meeks, and Gerald One Feather. The Board meets at least once a month and a held a strategic planning retreat in late May.

During February and March 1999, office space was obtained and a temporary Administrative Assistant was hired. In May 1999, the Board of Directors hired Roger Campbell as the Executive Director. As envisioned by the Board, OSTPH would maintain a staff comprised of a housing counselor, a specialist in tribal land assembly issues, and a construction manager to coordinate development activities.

A two-year operational budget has been developed by OSTPH. The budget identifies sources and uses of funds for the organization's administrative functions and programmatic initiatives related to homeownership counseling, leveraging financial capital, and developing new housing stock for ownership.

To further its mission and obtain additional sources of support, OSTPH secured official recognition from the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986. Recognition under Section 501(c)(3) allows contributions made to OSTPH to qualify for charitable deductions under the rules set forth in Section 170 of the Internal Revenue Code. OSTPH operates exclusively for charitable and educational purposes, by providing homeownership to low and moderate income tribal members. This promotes the general welfare of the tribe and combats community deterioration while lessening the burdens of government.

In early fall 1998, discussions began on the preliminary plans for the construction of new homes by early August 1999. It was determined that OSTPH would work to identify interested families and provide counseling and training to help them become homebuyers. Families would have the option of a manufactured or a stick-built home. The organization would serve as a liaison with the mortgage bank and manufactured home dealers.

OSTPH decided to hire local contractors to lay foundations and build the modular homes. This creates employment opportunities on the reservation, and helps build local skills and capacity for future construction-related jobs. In fact, use of local labor is one of the key principles underlying the construction planning for the Building Summit.

Board of Directors

Executive Director and Staff

Filing for IRS Designation as a 501(c)(3) Tax-exempt Organization

The Pine Ridge Building Summit

Construction Philosophy

Two principles underlie the construction planning for the Building Summit:

- As a corporate citizen of the Pine Ridge reservation, OSTPH seeks to use its building project to stimulate the local economy and to use local service and materials providers to the greatest extent possible.
- As a nonprofit organization with limited funds working in an area with great need, OSTPH seeks to keep all costs as low as possible in order to provide greater housing options to the largest number of families.

The Building Summit Partners

Collaboration by many public, private and nonprofit partners is making the Building Summit a reality. All have committed to work together to make OSTPH a successful model for replication throughout Indian Country. Developing the Shared Visions model and preparing for the Building Summit have been an excellent example of interagency coordination on the ground at Pine Ridge. OSTPH has coordinated closely with BIA on construction preparation for homes to be built, including streamlined approval of sites for preparation. Indian Health Services conducted the design and infrastructure development oversight at no cost. In addition, the U.S. Navy Seabees have donated the labor to construct and pave the roads. Recent designation of Pine Ridge as an Empowerment Zone also complements the efforts through coordination with Rural Development at the U.S. Department of Agriculture. HUD and the Tribe have worked to incorporate private interests into the initiative, including Norwest Mortgage, Inc., the First National Bank of Gordon, and Amerind Risk Management Corporation. Ginnie Mae is participating by guaranteeing the security that Norwest Mortgage, Inc. is creating.

Exhibit 7.2 lists the key partners that have contributed funds, resources, and people to the first phase of the Building Summit.

Guide to Creating a Nonprofit Homeownership Entity

**Exhibit 7.2
Pine Ridge Building Summit Partners**

| Public | Private | Nonprofit | Tribal |
|--|-------------------------------------|--|---|
| U.S. Dept. of Housing & Urban Development and Ginnie Mae | Norwest Mortgage, Inc. | Oglala Sioux Tribe Partnership for Housing, Inc. | Oglala Sioux Tribal Council & President |
| U.S. Dept. of Agriculture | First National Bank of Gordon | The Enterprise Foundation | Ogala Sioux Lakota Housing (TDHE) |
| Indian Health Service | Amerind Risk Management Corporation | The Communities Group | The Lakota Fund |
| Bureau of Indian Affairs | | | Oglala Lakota College |
| Federal Home Loan Bank Board of Des Moines | | | |
| Department of Defense (U.S. Navy Seabees) | | | |

OSTPH worked to identify potential homebuyers through community education and outreach including hosting homebuyer fairs, sending mailings, holding informational meetings, and collecting pre-applications. This activity started soon after Secretary Cuomo's visit, when tribal leaders began working with ONAP to plan and sponsor a homebuyer fair to begin to determine the level of interest in homeownership on the reservation.

A couple of months later, the newly-created OSTPH partnered with the ONAP Denver office to sponsor a second homebuyer fair and follow-up meeting to discuss homeownership opportunities on the reservation with interested parties.

Over 300 people attended both homebuyer fairs held on the reservation. These were attended not only by prospective homebuyers, but also by parties interested in becoming partners in the initiative. These included financial institutions, builders, and manufactured home providers such as Norwest Mortgage, Inc., FHA, USDA Rural Housing Service, Habitat for Humanity, Rapid City Housing Coalition, Centennial Homes, Legend Homes, I-Deal Homes, Omaha Steelheart, Stockmens National Bank, KILI Radio, and the Manufactured Housing Institute.

In January 1999, a mailing was sent to nearly 3,000 tribal families, which included attendees of the homebuyer fairs, homebuyer meeting,

Establishing a Pool of Applicants

and families with postal addresses in the three targeted districts of the reservation.

OSTPH and ONAP reviewed the responses to the mailing in which families answered basic questions on debt and income. Based on the survey information provided, OSTPH and ONAP invited those families thought likely to apply for a mortgage to a homebuyer meeting. At this meeting, families had the opportunity to complete a mortgage application with Norwest Mortgage, Inc. and select a preference for a site option and home construction type.

Housing counseling was made available to those families that were determined not to be “homebuyer ready,” to help them take steps to prepare for homeownership. Families that completed a mortgage application but did not qualify were referred to Norwest Mortgage’s Homebuyers Club for housing counseling. In addition, these families were offered housing counseling from OSTPH. The families that were pre-qualified for a mortgage and targeted for underwriting were required to attend a series of housing counseling workshops.

These housing counseling workshops covered a variety of topics, and were offered multiple times, during the week and on weekends. Different partners offered these sessions free of charge.

- Norwest Mortgage, Inc. offered a session covering “Understanding Mortgages and Land Status” and “Waiting for Loan Approval,” as well as another session on “What Happens at Loan Closing?,” “Documents You Will be Signing,” and “What is Hazard Insurance?”
- The Rapid City Housing Coalition offered a session on “Why Own a Home?,” “Budgeting – A Plan for Spending,” and “Importance of Good Credit.”
- Legend Homes and the Regional Vice President for the National Association of Realtors presented on “Caring for Your Home,” “Good Neighbor Policy,” “Importance of Making Your Payments on Time,” and “What to Do if You Can’t Make Your Payment?”

In September 1999, OSTPH engaged an experienced homeownership counselor to deliver individual and customized counseling to interested homebuyers who need to resolve specific debt, income and mortgage application issues. This one-on-one counseling has proven highly effective in reassuring the homebuyers during the mortgage application and closing phases and in resolving specific problems that require strict confidentiality.

Guide to Creating a Nonprofit Homeownership Entity

A commitment from the United States Department of Agriculture (USDA) to fund 75 percent of the infrastructure costs for 50 homes was obtained. OSLH committed to fund the remaining 25 percent of infrastructure costs and to provide up to \$100,000 in NAHASDA funds for down payment and closing cost assistance (\$2,000 per family).

For the currently qualified mortgage applicants, Norwest Mortgage, Inc. is offering 30-year fixed rate mortgages underwritten by HUD Section 184 loan guarantees. OSTPH has budgeted grant funds to assist further with principal and closing cost buy-downs as necessary.

To help offset the cost of the homes, OSTPH received a grant under the Affordable Housing Program offered by the Federal Home Loan Bank of Des Moines to assist in the buy-down of housing construction costs.

Through the combined efforts of the Tribal government, BIA, and the Enviro-Tech Team, fifty-seven sites in seven locations were identified for the construction of these units. Three districts on the reservation are targeted for the new homes: the Wakpamni District, Oglala in White Clay, and Pine Ridge Village. Sites for this project were chosen from set-aside lands and were limited to a 35-mile radius of Pine Ridge. In the future, OSTPH plans to undertake building efforts in all districts.

In May 1998, President Clinton launched the Partnership for Advancing Technologies in Housing (PATH), an initiative designed to dramatically reduce carbon emissions from houses. Under PATH, the federal government is working with the private sector and state and local governments to deploy technologies that curb greenhouse gas emissions. Technologies that promote energy efficiency, such as better insulation and building materials, benefit the homeowner and the environment.

The houses built during the Pine Ridge Building Summit incorporate PATH components to maximize efficiency and minimize homeowner utility costs.

Homebuyers had two basic options from which to choose: modular homes assembled at a facility located in Kyle, on the Pine Ridge reservation, or manufactured homes assembled off the reservation but delivered directly to the building sites. Homebuyers selected three and four bedroom models.

To proceed with the first phase of the development of the new homes, OSTPH procured manufactured homes from dealers in Rapid City and

Leveraging Financial Resources to Make Homeownership Affordable

Site Selection

Partnership for Advancing Technologies in Housing

Housing Options

Construction Management

contracting with local labor to assemble modular homes at a facility located in Kyle, on the reservation.

The Building Summit project is owned by OSTPH which has general oversight responsibility for all aspects of the project. To facilitate the day-to-day management of construction activities, OSTPH entered into a memorandum of understanding with OSLH to provide construction supervision and inspection of the installation of foundations, utilities, construction of modular homes, pre-closing inspection and project budgeting and accounting. OSTPH reimburses OSLH for actual services performed by its employees on an hourly rate.

Manufactured Homes

For the manufactured homes, OSLH managed the site preparation and infrastructure development. In May 1999, OSTPH issued Requests for Qualifications/Proposals with PATH compliant specifications, selected the two best-qualified manufactured home builders, and entered into negotiations regarding price, quality, performance, and delivery schedule. Contracts were signed in June 1999 with Iseman Corp. and Foothills Homes Inc. During June the manufactured home builders met with the homebuyers, who made their final determination on options related to floor plans, house color, and finishes. The homes were delivered and completed during the summer and fall of 1999.

Modular Homes

For the modular homes, OSLH managed all aspects of the construction of the homes at the Kyle modular home facility, including the selection of labor contractors, mechanical and electrical contractors, and materials procurement policies and procedures. This delivery mechanism was identical to that employed by OSLH in constructing 18 modular homes for housing authority inventory and relies primarily on tribally-based contractors. The OSTPH held a contractors' pre-bid meeting to describe the construction plan. OSTPH then issued a Request for Proposals for subcontractors for the modular units and construction of foundations. OSTPH entered into multiple contracts with local contractors for the construction of foundations for all homes.

Financing

Many financial resources needed to be leveraged to enable tribal families to purchase their first homes. Building homes or transporting manufactured homes is more expensive because of the remote location of the Pine Ridge Reservation. For example, infrastructure costs – paving new roads, creating access to water and sewer– are high at over \$17,000 per home. Total development costs are over \$100,000 per home. Financing has been obtained to address two issues: lower interest rates on the mortgages and gap financing for construction.

Guide to Creating a Nonprofit Homeownership Entity

To keep homeownership affordable, it is important to obtain lower interest rates on the mortgages. The lower the interest rate, the higher mortgage amount each homebuyer can receive. Two techniques were used to reduce interest rates – guarantees and mortgage revenue bonds. Norwest Mortgage, Inc. originates the mortgages and packages them into a “security.” The mortgages are then underwritten by the HUD Section 184 loan guarantee program and the “security” was then guaranteed by Ginnie Mae. The State of South Dakota Housing Development Agency plans to purchase the mortgage-backed security with proceeds from the Mortgage Revenue Bond program. The result – 30-year mortgages with only 5.95 percent interest rate.

Even with the lower interest rates, the low incomes of tribal members means the average mortgage a buyer can afford is less than \$65,000 – nearly \$40,000 short of total development costs. This gap is similar to other rural and inner city regions. Several financing sources were tapped to “fill the gap”:

- *Federal Home Loan Bank of Des Moines Affordable Housing Program (FHLBDM):* The FHLBDM awarded OSTPH a grant to provide \$10,000 per home to help “fill the gap.” While the program is very competitive (they receive over 5 times the applications they can fund), they have a priority for rural projects and for projects for those with very low incomes.
- *Rural Development Program of the U.S. Department of Agriculture (RDUSDA):* RDUSDA pledged almost \$10,000 per home to install water and sewer infrastructure. To save on the costs of hiring specialists to oversee the design and installation of the water and sewer systems, the Indian Health Service performed the design and infrastructure development oversight at no cost. In addition, the U.S. Navy Seabees donated the labor to construct and pave the roads.
- *U.S. Department of Housing and Urban Development Rural Housing and Economic Development Initiative Program:* The Oglala Sioux Tribe Partnership for Housing, Inc. has obligated \$20,000 per home of HUD Rural Housing and Economic Development grant funds toward “filling the gap.” The program provides grants to innovative projects that promote development in distressed rural communities.
- *Native American Housing Assistance and Self-Determination Act Block Grant:* The Tribe’s TDHE, Oglala Sioux Lakota Housing, has committed \$2,000 in NAHASDA funds to each homebuyer to cover their down payment and closing costs.

Lower Interest Rates

Construction Gap Financing

Homeownership Agreements

- *Foundation support:* OSTPH has been actively seeking Foundation support for this project. An estimated \$2,500 per home came from Foundation support.

OSTPH and other partners are subsidizing portions of the Building Summit – from the construction of roads and water and sewer lines to buying mortgage principal and closing costs. In order to maintain these subsidy amounts on the new homes, OSTPH is taking a “soft” second mortgage against the value of the subsidy placed in the home. The outstanding balance of the second mortgage declines over a ten-year satisfaction period – whereby the homebuyer agrees to make first mortgage payments in a timely manner and participates in a homeowner association that develops rules related to homeownership maintenance and occupancy.

After the ten-year satisfaction period, the homebuyer can sell the home at its market value with no repayment of subsidy investments. OSTPH also retains the first right for refusal to purchase a home if one of the homebuyer decides to sell the structure prior to the end of the ten-year period.

Accomplishments in the First Year

In its first year of operation (Phase 1), OSTPH constructed and sold 19 new homes to qualified buyers who had received homeownership training and counseling. These first homes brought in financing unique to the Tribe, including the first use of state mortgage revenue bonds. The total development cost for these new homes was \$2,346,379 of which \$671,000 was funded by a 1998 Rural Housing and Economic Development grant which leveraged \$1,675,379 in other funds.

Shared Visions Court Homeowners Association: The owners of nine clustered houses have formed the Shared Visions Court Homeowners Association in an effort to preserve home values, maintain safety and security, and promote a healthy living environment. OSTPH encouraged the formation of the association and provided training and technical assistance so that the homeowners could develop and enforce the rules and regulations. The association is awaiting approval from the Tribe for its Articles of Incorporation and Bylaws. Additional homeowners associations are planned at all other clustered housing developments to promote neighborhood cohesion and collaboration.

Future Housing Development Plans

OSTPH will continue to work with interested families to become eligible for private mortgages and to purchase a home. As enough families qualify for mortgages and additional funding is secured, OSTPH will facilitate the construction of new homes. OSTPH plans on using a

Guide to Creating a Nonprofit Homeownership Entity

variety of approaches to bring homeownership opportunities to the Pine Ridge reservation.

In Phase 2, OSTPH plans to:

- Construct and sell 10 houses in collaboration with the Department of Defense and the Walking Shield American Indian Society
- Construct and sell 8 houses under the Shared Visions Initiative
- Implement a Self-Help Housing Initiative to build and sell 6 homes
- Construct and sell 1 house using low-cost, advanced steel frame technology
- Construct 20 rental units using Low Income Housing Tax Credits
- Provide homeownership training and counseling to over 50 potential homebuyers and homeowners

In October 1999, OSTPH entered into an agreement with Global Modular Home Builders to purchase a demonstration unit for location on the Pine Ridge reservation. Global modular has designed a steel-framed, pre-fabricated modular assembly unit with a technically advanced Viroc board for high resistance factor sheathing. These homes are also fire, termite and rodent-resistant. The first 1,152 square foot three-bedroom unit will be completed by May 2000 and stored at a warehouse (at no cost to OSTPH) by the First National Bank of Gordon. This home will be moved in July to the Oglala development site.

Over an approximately 8-week period beginning in May 2000, the U.S. Navy Seabeas 3rd Construction Brigade of roughly 14 people will construct two homes. In an intensive 21-day period beginning on July 6, 2000, the U.S. Army Reserve 980th Engineer Battalion of more than 550 Army Reservists will construct 8 homes. The Department of Defense estimates the value of donated military personnel to be \$1,934,000.

Beginning in June 2000 six families will begin building their homes over a twelve-week period. The families will assist each other in building their homes, using volunteer-friendly design and materials brought from self-help models completed in Texas, with modifications defined by community design "charrettes" held at Pine Ridge in November 1999 and March 2000. Since self-help requires specialized oversight skills, OSTPH will hire a construction manager specifically for the self-help initiative in May, 2000.

In September 2000 OSTPH will release an RFP for builders for 8 manufactured homes to be delivered to Pine Ridge in November 2000 (4 homes) and March 2001 (4 homes). The homes will be built to energy-efficient and durability standards developed by OSTPH over the last

Conclusion

year. OSTPH will release an RFP in September 2000 for local contractors to complete the installation and finishes for these houses, to be completed in a two month period after homes are delivered.

OSTPH is conducting on-going marketing for Phase 2 homes. On average, three to four applicants call or come to the OSTPH offices each day. Thirty-seven people, who are income eligible but have credit or other obstacles to home-ownership, are enrolled in classes designed to improve their credit and prepare for home ownership. About half of these families will be eligible in time to purchase one of the houses.

The OSTPH Board will consider implementing a lease-to-purchase program on a pilot basis. The program, called Path-to-Purchase, will enable tribal members with uneven credit to move into their new homes while working to clear up their credit. The homebuyer would gain full title to the home after their credit has met the standards required by OSTPH.

The creation and mission of OSTPH represent an achievement of the Oglala Sioux Tribe in exerting greater control and sovereignty over a fundamental human need: the financing and development of decent and affordable housing.

OSTPH's success at attracting housing development funding from numerous public, private and nonprofit sources and its ability to implement a variety of housing initiatives help reduce tribal dependency on unpredictable and limited HUD funding. For the first time in its history, the Tribe is able to build new housing and provide wider housing choice to homebuyers and renters, especially those with lower incomes and physical disabilities.

End-Notes

Section 2.0

1. 1. Marcus, Jay. "The Development Process: Funding Sources through the Development Process," The Enterprise Foundation, 10227 Wincopin Circle, Suite 500, Columbia, Maryland 21044. Presented at the 10th Annual Oweesta Conference.

Section 5.0

1. "Ten Basic Responsibilities of Nonprofit Boards." Washington, DC: National Center for Nonprofit Boards, 1988. <http://www.ncnb.org/html/faq.html>
2. "Right from the Start: A Handbook for Not-For-Profit Board Members," State of New York Attorney General, <http://www.oag.state.ny.us/charities/duties.html>.
3. Ibid.
4. Ibid.
5. From National Center for Nonprofit Boards (NCNB) Webpage, Frequently Asked Questions (FAQ), <http://www.ncnb.org/html/faq.html#question2>. For a sample conflict of interest policy and disclosure form, see National Center for Nonprofit Boards' booklet, "How to Manage Conflicts of Interest: A Guide for Nonprofit Boards."
6. . Ibid.
7. Bryson, John M., Alston, Farnum K. Creating and Implementing Your Strategic Plan. San Francisco, CA: Jossey-Bass Inc., 1996.
8. Canada/British Columbia Business Service Centre, Online Small Business Workshop, <http://www.sb.gov.bc.ca/smallbus/workshop/busplan.html>
9. Hummel, Joan. Starting and Running a Nonprofit Organization. Minneapolis: University of Minnesota Press, 1980.
10. "How Do We Prepare a Budget?" Alliance for Nonprofit Management Webpage. <http://www.allianceonline.org/faqs/fmfaq20.html>
11. "What is an Internal Accounting Control System and How Can We Make Ours Effective?" Alliance for Nonprofit Management Webpage. <http://www.allianceonline.org/faqs/fmfaq24.html>

Guide to Creating a Nonprofit Homeownership Entity



Section 6.0

1. Marcus, Jay. "The Development Process: Funding Sources through the development process," The Enterprise Foundation, 10227 Wincopin Circle, Suite 500, Columbia, Maryland 21044. Presented at the 10th Annual Oweesta Conference
2. "The Marketing for Success Workbook". U.S. Small Business Administration Webpage. <http://www.sbaonline.sba.gov:70/11/Business-Development/Business-Initiatives-Education-Training/Marketing-Plan>
3. Hummel, Joan. Starting and Running a Nonprofit Organization. Minneapolis: University of Minnesota Press, 1980.
4. McNamara, Carter. "Basic Guide to Program Evaluation". Management Assistance Program for Nonprofits Webpage. http://www.mapnp.org/library/evaluation/fnl_eval.htm#anchor1586742

Appendix 3.2 – Sample Articles of Incorporation

AMENDED AND RESTATED

CHARTER

AND

ARTICLES OF INCORPORATION

OF

OGLALA SIOUX TRIBE PARTNERSHIP FOR HOUSING, INC.

The undersigned, who is a citizen of the United States and enrolled member of the Oglala Sioux Tribe, acting as an incorporator of a nonprofit corporation, hereby adopts the following Articles of Incorporation:

ARTICLE I

The name of the corporation is “Oglala Sioux Tribe Partnership For Housing, Inc.” and its period of duration is perpetual.

ARTICLE II

The initial place on the Pine Ridge Reservation where the principal office of the Corporation is to be located is:

The Old Ambulance Building
Pine Ridge, South Dakota

Its mailing address is:

Oglala Sioux Tribe Partnership For Housing, Inc.
PO Box 3001
Pine Ridge, SD 57770

ARTICLE III

- A. This Corporation is organized and shall be operated exclusively for charitable and educational purposes as contemplated and permitted by Sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). All references in these Articles of Incorporation to a particular section of the Code shall include the corresponding provisions of any future federal tax law. Within the framework and limitations of the foregoing, the specific primary purposes of the Corporation include:
- 1) To improve the community physically, socially, and economically by the coordinated efforts of the citizens of the Oglala Sioux Tribe, the business community, and government representatives, thus promoting the general welfare and combating community deterioration while lessening the burdens of government.
 - 2) To promote and develop affordable, decent, safe, and sanitary housing for residents of the Pine Ridge Reservation.
 - 3) To enhance affordable home ownership opportunities among residents of the Pine Ridge Reservation.
 - 4) To establish linkages and partnerships with public and private financial intermediaries and to provide financial services and assistance, including, but not limited to, home ownership loans, down payment buy-downs, lease-purchase options, revolving loan funds, and loan loss reserve services.
 - 5) To provide information, technical assistance, and housing counseling to the residents of the Pine Ridge Reservation concerning the methods and resources available for construction of new housing and the rehabilitation of substandard housing. The Corporation is also formed for the educational purposes of instructing the residents of the Pine Ridge Reservation on how to prepare for home ownership, purchase a home, and maintain and rehabilitate a home, which will improve or develop the capabilities of the community.
 - 6) To provide grants, loans, guarantees, or other arrangements to individuals or organizations working to develop the community, and to enter into lawful agreements to secure and enforce the performance and payment obligations of such financial assistance.
 - 7) To enter into contracts, partnerships, joint ventures, or other arrangements to provide or secure services, funding, or other assistance which serve the purposes of this Corporation.
 - 8) To solicit, hold, use, invest, and dispose of money, personal property, or real property and collect and use proceeds of such money or property, including interest,

rent, sale proceeds, and other types of income, for the purposes for which this Corporation is formed.

- 9) To acquire, hold, use, invest, and dispose of money, personal, and real property, and exercise any lawful right to make use of that property, including, but not limited to, renting, leasing, assigning, exchanging, selling, mortgaging, or otherwise encumbering, improving, converting, or altering such property.
 - 10) To acquire, hold, use, and dispose of through any lawful means or instrument, shares in stock, bonds, notes, debentures, mortgages, and other securities.
 - 11) To incur debt obligations and secure such debt or obligations through any lawful instrument which is reasonable and appropriate to achieve the purposes of the Corporation.
 - 12) To sue and be sued.
 - 13) To communicate with residents and government regarding capital improvements, needed services, available programs, and resources that currently or potentially impact the Oglala Sioux Tribe.
 - 14) To work in cooperation with other organizations having aims similar to those of Corporation.
 - 15) To do any and all lawful things which a natural person might find necessary and desirable for the general purposes for which the Corporation is organized, as permitted by a nonprofit corporation organized under Oglala Sioux tribal law and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code.
- B. The Corporation (1) is a separate entity from the Oglala Sioux Tribe, (2) does not share the sovereign immunity of the Oglala Sioux Tribe, its officers, employees, agents, or attorneys, and (3) has no power to waive the sovereign immunity of the Oglala Sioux Tribe, its officers, employees, agents, or attorneys.

ARTICLE IV

- A. The Corporation is organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Code. Notwithstanding any other provision of these Articles of Incorporation, the Corporation will not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (2) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code.

Guide to Creating a Nonprofit Homeownership Entity



B. This Corporation is not organized nor will it be operated for pecuniary profit and no part of this Corporation's net income, earnings, or assets shall, directly or indirectly, ever inure to the benefit of, or be distributed to, any member or person having a personal and private interest in the activities of the Corporation, except that the Corporation may pay reasonable compensation for services rendered to this Corporation in furtherance of its purposes set forth in Article III. The property of the Corporation is irrevocably dedicated to charitable and public purposes. No substantial part of the activities of this Corporation will be conducting propaganda or attempting to influence legislation, except pursuant to an election under, and as permitted by, Section 501(h) of the Code, nor will this Corporation participate in or intervene in any political campaign on behalf of or in opposition to any candidate for political office.

ARTICLE V

The initial registered agent will be:

Paul Iron Cloud
PO Box C
Pine Ridge, SD 57770

ARTICLE VI

The name and address of the incorporator of the Corporation is:

Harold Dean Salway
PO Box H
Pine Ridge, SD 57770

ARTICLE VII

Provisions for the regulation of the internal affairs of the Corporation will be set forth in the Bylaws of the Corporation. The Corporation shall have no members.

ARTICLE VIII

The Corporation will abide by all criminal, civil, and regulatory laws of the Oglala Sioux Tribe.

ARTICLE IX

A. The affairs of the Corporation will be managed by its Board of Directors. The number, qualifications, terms of office, method of selection or election, powers, authority, and duties of the directors of this Corporation, the time and place of their meetings, and such other provisions with respect to them as are not inconsistent with the express provisions of these Articles of Incorporation shall be as specified in or prescribed pursuant to the Bylaws of the Corporation.

B. The current Board of Directors will consist of :

| | | |
|-----------------------|---------------|------------------------|
| Harold Dean Salway | PO Box H | Pine Ridge, SD 57770 |
| Paul Iron Cloud | PO Box C | Pine Ridge, SD 57770 |
| Michael Graham | HCR 49, Box 2 | Wounded Knee, SD 57794 |
| Wilbur Between Lodges | PO Box H | Pine Ridge, SD 57770 |
| Melvin Cummings | P.O. Box 109 | Manderson, SD 57776 |
| Warren (Bim) Pourier | Box 1987 | Pine Ridge, SD 57770 |
| Elsie Meeks | PO Box 340 | Kyle, SD 57752 |
| Gerald One Feather | PO Box 109 | Oglala, SD 57764 |

They will serve until the first annual election of directors or until their successors are elected and qualify.

ARTICLE X

A. The Corporation may be dissolved in accordance with the following:

- 1) Involuntary dissolution. The Oglala Sioux Tribal Council ("Tribal Council") may involuntarily dissolve the Corporation by a resolution, only if it is established that (a) the Corporation procured its nonprofit corporation status under Oglala Sioux tribal law through fraud, (b) the Corporation has continued to exceed or abuse the authority conferred upon it by the Tribal Council, (c) the Corporation fails to submit financial reports to the Tribal Council in the manner and at the times described in Oglala Sioux tribal law, or (d) the Corporation fails to appear before the Tribal Council or its committees when requested. The Tribal Council shall provide the Corporation with written notice of its intent to dissolve the Corporation, and shall provide the Corporation 60 days in which to cure its breach of the above requirements. If the Tribal Council believes that such breach is not cured within such time, the Tribal Council shall give the Corporation, acting through its Board of Directors, an opportunity to be heard by the Tribal Council after providing the Corporation at least ten (10) days notice of the hearing before any vote is taken by the Tribal Council regarding whether to dissolve the Corporation pursuant to this Article X(A).

Guide to Creating a Nonprofit Homeownership Entity



- 2) Voluntary dissolution. The Corporation may voluntarily dissolve for any reason at any time, after providing notice to its known creditors and claimants, and posting a notice of intent to dissolve on the Reservation for a period of one month. Upon the expiration of 90 days after the notice was posted, if there are no known creditors or claimants, then the Corporation may dissolve by submitting Articles of Dissolution with the Tribal Council, which shall be subject to the Tribal Council's approval and acceptance.
- B. Upon dissolution of the Corporation, and after the payment of all liabilities and obligations of the Corporation and all costs and expenses incurred by the Corporation in connection with such dissolution, any remaining assets shall be distributed to one or more nonprofit corporations that are organized under Oglala Sioux tribal law and that are organized and operated exclusively for charitable and/or educational purposes and that have established their tax exempt status under Section 501(c)(3) of the Code, or shall be distributed to the Oglala Sioux Tribe for housing and educational purposes, in the manner and in such amounts as may be determined by the Board of Directors. The Board of Directors shall make all reasonable efforts to distribute the Corporation's assets to one or more nonprofit corporations organized or operated exclusively for the purpose of promoting affordable, decent, safe, and sanitary housing for residents of the Pine Ridge Reservation and that have established their tax exempt status under Section 501(c)(3) of the Code. Notwithstanding anything apparently or expressly to the contrary contained in this Article X, if any assets are then held by the Corporation in trust or upon condition or subject to any executory or special limitation, and if the condition or limitation occurs by reason of the dissolution of the Corporation, such assets shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, conditions, or limitation.

ARTICLE XI

- A. The Corporation shall indemnify its directors, officers, employees, and agents, including persons formerly occupying such positions, and the heirs, executors, and administrators of such persons, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any action, suit, or proceeding relating to the Corporation, including an action by or in the right of the Corporation.
- B. No indemnification shall be provided for any person with respect to any matters as to which he or she shall have been adjudged in any proceeding not to have acted in good faith or in the reasonable belief that his or her action was in the best interests of the Corporation. If he or she has not been so adjudged, he or she shall be entitled to indemnification unless the Board of Directors determines that he or she did not act in good faith or in the reasonable belief that his or her action was in the best interests of the Corporation. To the fullest extent permitted by law, and except as otherwise determined by the Board of Directors in a specific instance, expenses incurred by a person seeking indemnification in defending any action, suit or proceeding shall be advanced by the



Guide to Creating a Nonprofit Homeownership Entity

Corporation before final disposition of the proceeding and upon receipt by the Corporation of an undertaking by that person to repay such amount unless it is ultimately determined that the person is entitled to be indemnified by the Corporation for those expenses.

ARTICLE XII

These Articles of Incorporation and the Bylaws of the Corporation may be amended to include any provision permitted by law, or may be restated in their entirety, at the times and in the manner provided in the Bylaws of the Corporation; provided that the Tribal Council shall approve any amendments, alterations, repeals, or restatements of the Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand this day of , 1999.

INCORPORATOR

Date

Wilbur Between Lodges

Appendix 3.3 – Sample Bylaws

OGLALA SIOUX TRIBE PARTNERSHIP FOR HOUSING, INC.

BYLAWS

Table of Contents

Title Section

Title 1 BOARD OF DIRECTORS

- 100 General Authority
- 101 Election, Term and Structure of Board
- 102 Powers and Duties
- 103 Vacancies
- 104 Termination of Directors
- 105 Meetings
- 106 Quorum and Voting for Meetings of Board of Directors
- 107 Telephonic Meetings
- 108 Written Consent
- 109 Conflict of Interest
- 110 Compensation

Title 2 OFFICERS

- 200 Officers
- 201 Election and Terms of Office
- 202 President
- 203 Vice President
- 204 Treasurer
- 205 Secretary

Title 3 STAFF

- 300 Employees
- 301 Executive Director

Title 4 COMMITTEES

- 400 Committees
- 401 Community Involvement

Title 5 MISCELLANEOUS

- 500 Amendments
- 501 Seal
- 502 Offices
- 503 Books and Records
- 504 Audit and Reporting
- 505 Fiscal Year

OGLALA SIOUX TRIBE PARTNERSHIP FOR HOUSING, INC.

BYLAWS

TITLE ONE BOARD OF DIRECTORS

100 GENERAL AUTHORITY

The affairs of the Corporation shall be managed by its Board of Directors.

101 ELECTION, TERM, AND STRUCTURE OF THE BOARD

- a) The Board of Directors shall consist of eight (8) directors, but from time to time the number may be decreased to not fewer than three (3) or increased to not more than fifteen (15) persons, by a majority vote of the Board of Directors. Directors of the Corporation must be adult natural persons. A majority of the directors shall be members of the Oglala Sioux Tribe who reside on the Reservation. The Board of Directors shall strive to elect as directors representatives of the business community, representing businesses which are supportive of the purposes of the Corporation, representatives of Tribal and/or other governments and/or its/their agencies which are supportive of the purposes of the Corporation, and elder members of the Oglala Sioux Tribe.
- b) Directors shall be elected by a majority vote of the directors at the Annual Meeting of the Board of Directors, from the slate of nominees approved by the Nominating Committee. Voting shall be conducted by secret, written ballot.
- c) Directors shall serve for two years and until a successor is elected and qualified, or until the earlier death, resignation, or removal of the director. Their terms shall be staggered by electing a number equal to one half of the initial members plus one for a one-year term and the balance of the initial members for a two-year term at the first Annual Meeting or Special Meeting, whichever is first. Directors can serve up to two (2) consecutive terms. No director shall serve more than two (2) consecutive terms, but may serve additional non-consecutive terms.

102 POWERS AND DUTIES

- a) To fulfill its responsibilities set forth in Section 100, the Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Corporation and may take any action not forbidden by law or these Bylaws. Included among the duties of the Board of Directors are:

Guide to Creating a Nonprofit Homeownership Entity



1. To serve as the coordinating body that facilitates, networks, supports and catalyzes resources, and to expedite activities and to facilitate the establishment of any entities which will have a positive impact on the community;
 2. To identify governmental, foundation and private funding for economic, social and cultural development activities and to facilitate the establishment of entities which will further the Corporation's goals;
 3. To establish committees and assign members to serve on those committees pursuant to these Bylaws;
 4. To utilize expertise and resources to accommodate the Corporation's goals, pursuant to all applicable laws and ordinances; and
 5. To employ persons as may be necessary to carry out the Corporation's objectives, subject to the availability of funds.
- b) The Board of Directors may authorize any officers or agents of the Corporation, in addition to the officers authorized by these Bylaws, to enter into any contracts or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or specific.
- c) Directors shall, in addition to their general duties, communicate with the Tribal Council in the manner required under Oglala Sioux tribal law and distribute periodic reports regarding the activities of the Board of Directors and the Corporation to each District Office of the Tribe.

103 VACANCIES

The Board of Directors shall fill any Board vacancy resulting from the death, resignation or removal of any director. Each such vacancy shall be filled by a person from the same category as his or her predecessor, who shall serve for the remainder of his or her predecessor's term.

104 TERMINATION OF DIRECTORS

- a) A directorship shall terminate if any of the following occurs:
1. Two thirds (2/3) of the membership of the Board of Directors affirmatively vote to remove a director from office based on a determination that said director has failed to fulfill his or her fiduciary obligations to the Corporation, or has engaged in conduct seriously prejudicial to the purposes and interests of the Corporation. Before a termination under this sub-section, the subject director shall be given ten (10) days prior notice of the proposed termination and shall

be given the opportunity to be heard by the Board of Directors before a vote is taken;

2. A director resigns from the Board of Directors;
 3. A director fails to attend three (3) consecutive meetings or more than four (4) meetings in a calendar year, unless such absences are excused by a majority vote of the other directors; or
 4. A director's term is completed and a successor is elected and qualified.
- b) A director removed under the provisions of this section shall not be eligible to serve on the Board of Directors for one year from the date of his or her removal.
 - c) The Board of Directors shall acknowledge in the minutes of its meeting any director who has been removed and/or replaced.

105 MEETINGS

- a) The Board shall meet annually for the purposes of organizing the Board, electing directors and officers, and transacting such other business as may properly come before the Board. The Annual Meeting of the Board of Directors of the Corporation shall be held at a date, time, and place as designated by the Board of Directors. If any necessary election of directors cannot be held at the Annual Meeting, the Board of Directors shall cause the election to be held as soon thereafter as convenient. Any such elections shall have the same force and effect as an election at an Annual Meeting. The Secretary of the Corporation shall give notice stating the place, day and hour of the Annual Meeting of the Board of Directors of the Corporation, which shall be sent to each board member not fewer than five (5) days nor more than thirty (30) days before the date of such meeting. The Board of Directors shall determine the method of notice.
- b) The Board of Directors shall meet monthly, or at such other interval determined by the Board from time to time and consistent with any requirements of tribal law. The Secretary of the Corporation shall give advance notice of a regularly scheduled meeting of the Board of Directors not fewer than five (5) days nor more than thirty (30) days before the date of such meeting. The Board of Directors shall determine the method of notice.
- c) The President or his or her designee may call a Special Meeting of the Board of Directors provided he or she gives twenty-four (24) hours notice personally, by facsimile, telephone, telegraph or electronic mail stating the time, date, place and purpose of the meeting stating. If one-third (1/3) of the directors request in writing that the President call a Special Meeting and state the time, date, place and

purpose of the requested meeting, the President shall call that meeting in like manner.

- d) Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.
- e) Meetings shall be open to the public, but the Board of Directors shall maintain the right to adjourn into Executive Session by majority vote. Notice of such meetings shall be posted within the Reservation, as required by ordinance of the Tribal Council.
- f) If any meeting of the Board of Directors cannot be convened because a quorum is not present, a new notice of rescheduled meeting must be provided as set forth herein.

106 QUORUM AND VOTING FOR BOARD OF DIRECTORS MEETING

- a) At meeting of the Board of Directors the presence of a simple majority of directors, with at least one being an officer, shall constitute a quorum for the transaction of business. A quorum shall exist for the entire meeting once it is established, even if one or more directors leave the meeting with the result that less than a simple majority is present after the departure of such director or directors. Except as otherwise provided in these Bylaws, the acts done and decisions made by a majority of directors present at a meeting at which a quorum exists shall be the acts of the Board of Directors.
- b) A quorum established at the inception of any Board meeting, for the transaction of business, shall continue notwithstanding the subsequent departure of any member who was counted for the purposes of establishing a quorum.
- c) No director may vote by proxy.
- d) The Board of Directors may approve the following, only upon the affirmative vote of two-thirds (2/3) of the directors:
 - 1) The sale or disposition of the all or substantially all the Corporation's assets;
 - 2) Any merger, reorganization or restructuring involving the Corporation and the principal terms of such a merger;
 - 3) Any election to dissolve the Corporation;

- 4) Any amendments to, or restatements of, the Articles of Incorporation of the Corporation or these Bylaws.

107 TELEPHONIC MEETINGS

Members of the Board may participate in a meeting through the use of a conference telephone or similar communications equipment, so long as all directors participating in such meeting can hear one another. Participation in a meeting pursuant to this paragraph constitutes presence in person at such meeting.

108 WRITTEN CONSENT

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting and without prior notice, if all of the directors consent in writing to the action. The written consent shall be filed with the minutes of the proceedings of the Board of Directors. Action by written consent (to include facsimile) shall have the same force and effect as the unanimous vote of the Board.

109 CONFLICT OF INTEREST

- a) Any director, officer, employee of the Corporation, or member of a committee of the Corporation who is interested in a contract or transaction presented to the Board or a committee for action, authorization, approval, or ratification shall, without request, make a prompt, full, and frank disclosure of his or her interest therein to the Board or the committee, prior to action upon the contract or transaction. The disclosure (if required) shall include all material facts about the contract or transaction.
- b) The body to which the disclosure is made shall thereupon determine, by majority vote, whether a conflict of interest exists. A person shall be deemed to be "interested" in a contract or transaction if he or she is a party (or one of the parties) proposing to contract or deal with the Corporation, or is a shareholder, partner, employee, officer, trustee, or director of, or has a material financial or influential interest in, an entity proposing to contract or deal with the Corporation. A person shall not be deemed to be "interested" in a contract or transaction solely because it results in a benefit to a person or his or her family by virtue of their membership in the class of persons intended to be benefitted by a charitable program, as long as the contract or transaction is authorized by the Corporation in good faith and without unjustified favoritism.
- c) If the body determines that a conflict of interest does exist, the interested person shall not vote on, nor use his or her personal influence on, nor participate (other than to present factual information or to respond to questions) in, the discussion with respect to the contract or transaction. The interested person shall not be counted in determining the presence of a quorum at any meeting where the

contract or transaction is considered or acted upon. The minutes of the meeting shall reflect the disclosure made, the vote on the existence of a conflict, and, where applicable, the interested person's abstention from voting and participation, and whether a quorum was present.

- d) This Section 109 shall not apply to the approval of compensation for a director's personal services to the corporation as a director.

110 COMPENSATION

Each attending director shall receive compensation of \$50 per meetings of the Board of Directors and committees (for all meetings of the Board of Directors and up to 12 committee meetings per calendar year), plus mileage. In the event that a quorum of directors or committee members is not present at a scheduled meeting at the noticed time of meeting, the directors and/or committee members that do attend shall receive mileage but not compensation.

Directors shall receive reimbursement for actual expenses incurred while attending conferences or other meetings when requested to attend such conferences or meetings by the President or a majority of the directors. Reimbursable expenses shall not exceed the current prevailing rates for federal employees.

TITLE TWO OFFICERS

200 OFFICERS

The officers of the Corporation shall be a President, Vice President, Secretary and Treasurer. These officers shall be appointed from among the members of the Board of Directors.

201 ELECTION AND TERMS OF OFFICE

- a) The officers of the Corporation shall be elected by majority vote of the Board of Directors at the first and each subsequent Annual Meeting.
- b) Officers may be removed from office pursuant to section 104 of these Bylaws. If an officer is removed, a successor shall be elected by the Board of Directors to serve until the next Annual of Special Meeting of the Corporation.

202 PRESIDENT

- a) The President shall be the Chief Executive Officer of the Corporation and shall preside at all meetings of the Board of Directors. The President is authorized to execute, in the name of the Corporation, all contracts and other documents authorized either generally or specifically by the Board to be executed by the

Corporation, except when by law or these Bylaws the signature of another director or member is required.

- b) The President shall insure that all orders and resolutions of the Board of Directors are carried into effect, and in general perform all duties incident to the office of President.
- c) The President shall assure that preparations for meetings of the Corporation are in order.
- d) The President shall have such other duties and authority as may be prescribed by the Board of Directors from time to time.

203 VICE PRESIDENT

- a) The Vice President shall have the authority and perform the duties of the President in the event of the absence or inability of the President to act or when requested to do so by the President.
- b) The Vice President shall have such other duties and authority as may be prescribed by the Board of Directors from time to time.

204 TREASURER

- a) The Treasurer shall maintain adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements.
- b) The Treasurer shall deposit all moneys or other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors and shall disburse the funds of the Corporation as may be ordered by the Board of Directors. The Treasurer shall render to the Board of Directors, at each scheduled Board of Directors meeting, an account of all the transactions conducted by the Treasurer and of the financial condition of the Corporation. The Treasurer shall make available for inspection at reasonable times by any director or his or her representative, the financial reports, books and records of the Corporation. Inspection requests must be received in writing, by the Board of Directors, a minimum of fourteen (14) days before the inspection is to occur. All inspections must occur at the office of record during normal business hours.
- c) All checks and disbursements shall be executed on behalf of the Corporation by the Treasurer. No expenditure over one thousand dollars (\$1,000) may be made by the Corporation without the prior approval of the Board of Directors. The Treasurer shall have the authority and perform the duties of the President in the event of the

Guide to Creating a Nonprofit Homeownership Entity



absence or inability of the President or Vice President to act or when requested to do so by the President.

205 SECRETARY

- a) The Secretary shall cause the minutes of the meetings of the Board of Directors to be kept in a manner best suited to provide an accurate and complete record.
- b) The Secretary shall see that all notices of meetings are given in accordance with these Bylaws.
- c) The Secretary shall make available for inspection by any director the Corporation's relevant books and records of account, and minutes.
- d) The Secretary shall have the authority and perform the duties of the President in the event of the absence or inability of the President, Vice President, or Treasurer, to act or when requested to do so by the President. In such cases the Secretary shall designate a recorder of the minutes of that meeting.

TITLE THREE STAFF

300 EMPLOYEES

The Board of Directors shall employ an Executive Director and shall authorize the Executive Director to hire other employees to carry out the purposes of the Corporation. All salaries and other terms of employment shall be approved by the Board of Directors.

301 EXECUTIVE DIRECTOR

- a) The Executive Director shall serve at the pleasure of the Board of Directors and for such compensation as the Board may determine. He or she shall have general direction over the operation of the Corporation, may perform any duties delegated by the Board of Directors, and shall be its official representative. He or she shall comply with all rules and policies lawfully enacted by the Board of Directors and shall submit to the Board of Directors any reports or documents requested by them. He or she shall also provide whatever staff support is requested by the Board of Directors.
- b) The Executive Director shall not be an officer of the Corporation but may be appointed as an ex-officio director without voting rights.
- c) All other staff are under the direct supervision of and shall be accountable to the Executive Director.

TITLE FOUR COMMITTEES

400 COMMITTEES

- a) The Board of Directors may, by resolution adopted by the affirmative vote of a majority of the directors, designate the officers of the Corporation as an executive committee.
- b) Prior to the Annual Meeting, the Board of Directors shall designate a Nominating Committee to prepare a slate of candidates to be presented for voting by the directors, for both vacant seats on the Board of Directors and officers of the Corporation.
- c) The Board of Directors may, by resolution adopted by the affirmative vote of a majority of the directors, designate standing and ad hoc committees. Each committee shall have at least one director as a member.
- d) Unless the Board of Directors shall otherwise provide, a committee's meetings shall be called and conducted in the same manner as provided in these Bylaws with respect to regular meetings of the Board of Directors. The Board of Directors shall have power at any time to fill vacancies in, change the membership of, or discharge any such committee at any time at its discretion.
- c) The designation of any committees and the delegation thereto of authority shall not relieve the Board of Directors of any responsibility imposed upon it by law or these Bylaws.

401 COMMUNITY INVOLVEMENT

The Corporation may invite the community to participate in its activities at its discretion from time to time. The Corporation may ensure citizen participation, community development and accountability of projects by using one or a combination of the following processes:

- a) Ad hoc or special committees of neighbors of a proposed development site;
- b) Neighborhood or District advisory councils; and/or
- c) One of a series of open meetings for the neighborhood, town or District.

TITLE FIVE MISCELLANEOUS

500 AMENDMENTS

The Articles of Incorporation of the Corporation, and these Bylaws may be altered, amended or repealed and new Articles of Incorporation or Bylaws may be adopted by the affirmative vote of two-thirds (2/3) of the Board of Directors; provided that the Tribal Council shall approve any amendments, alterations, repeals, or restatements of the Articles of Incorporation of the Corporation. Any director may propose an amendment.

501 SEAL

The Board of Directors may, by resolution, provide for an appropriate seal which shall include the name of the Corporation.

502 OFFICES

The registered office of the Corporation shall be as set forth in the Articles of Incorporation or in the most recent amendment of the Articles of Incorporation of the Corporation. The Corporation may have such other offices, within or without the Pine Ridge Reservation, as the directors shall from time to time determine.

503 BOOKS AND RECORDS

The Board of Directors shall cause to be kept at the registered office:

1. minutes of all meetings of the Board of Directors and committees;
2. all financial statements of the Corporation and other records and books of account necessary and appropriate to the conduct of the corporate business; and
3. the Articles of Incorporation and Bylaws of the Corporation.

504 AUDIT AND REPORTING

The Board of Directors may cause the records and books of account of this Corporation to be audited at least once in each fiscal year and at such other times as it may deem necessary or appropriate, and may retain such person or firm for such purposes as it may deem appropriate. The Corporation shall submit all financial documents and other required reports to the Tribal Council, in compliance with the ordinances of the Tribal Council.

505 FISCAL YEAR

The fiscal year of the Corporation shall end on September 30.

Appendix 5.0 - Job Description for President/Chairpersonⁱ

- Oversee Board and executive committee meetings
- Serve as ex-officio member of all committees
- Work in partnership with the chief executive to make sure Board resolutions are carried out
- Call special meetings if necessary
- Appoint all committee chairs and with the chief executive, recommend who will serve on committees
- Assist chief executive in preparing agenda for Board meetings
- Assist chief executive in conducting new Board member orientation
- Oversee searches for a new chief executive
- Coordinate chief executive's annual performance evaluation
- Work with the nominating committee to recruit new Board members
- Coordinate periodic Board assessment with the chief executive
- Act as an alternate spokesperson for the organization
- Periodically consult with Board members on their roles and help them assess their performance

Job description for Vice-Presidentⁱⁱ

- Attend all Board meetings
- Serve on the executive committee
- Carry out special assignments as requested by the Board president
- Understand the responsibilities of the Board president and be able to perform these duties in the president's absence
- Participate as a vital part of the Board leadership

Job description for Secretaryⁱⁱⁱ

- Attend all Board meetings
- Serve on the executive committee
- Maintain all Board records and ensure their accuracy and safety
- Review Board minutes
- Assume responsibilities of the president in the absence of the Board president, president-elect, and vice president
- Provide notice of meetings of the Board and/or of a committee when such notice is required

Job description for Treasurer^{iv}

- Knowledge of the organization and personal commitment to its goals and objectives
- Understanding of financial accounting for nonprofit organizations

Guide to Creating a Nonprofit Homeownership Entity



- Serves as financial officer of the organization and as chairperson of the finance committee.
- Manages, with the finance committee, the Board's review of and action related to the Board's financial responsibilities.
- Works with the chief executive and the chief financial officer to ensure that appropriate financial reports are made available to the Board on a timely basis.
- Assists the chief executive or the chief financial officer in preparing the annual budget and presenting the budget to the Board for approval.
- Reviews the annual audit and answers Board members' questions about the audit.

Board Manual Components^v

- the organization's annual report
- Mission statement
- Organization fact sheet (brief history and summary of current programs)
- Organizational chart
- Current strategic plan (or a summary)
- a Board organization chart
- a list of current Board members, titles, affiliations, and contact information
- Board Member Information Forms
- a description of Board members' responsibilities
- Board committee job descriptions
- Most recent minutes
- Annual calendar or program schedule
- Current annual calendar of Board and committee meetings
- the organization's newsletter, brochure, or other publications
- newspaper or magazine articles about the organization
- a brief biography of the executive director
- Articles of incorporation (corporate charter) and bylaws
- Current financial statements and budget for the current fiscal year
- Most recent audit report
- the long-range program and financial plan
- List of donors and sources of funding for two fiscal years
- Selected press releases and articles
- Promotional material (membership brochure, information brochure, advertisements, etc.)
- List of suggested resources (publications and organizations) related to the organization's area of interest

Appendix 6.0 – Sample Notice

REQUEST FOR PROPOSALS AND QUALIFICATIONS

The Oglala Sioux Tribe Partnership for Housing, Inc. (“**Purchaser**”) requests proposals and qualification statements (“**Proposals**”) for the following work (the “**Work**”):

Approximately 15 HUD Code Manufactured Homes Pine Ridge, South Dakota

The Work consists of manufacture, delivery, and installation on individual sites on the Pine Ridge Indian Reservation in and around Pine Ridge, South Dakota of approximately 15 HUD Code manufactured homes, with the following anticipated approximate specifications: 3 or 4 bedrooms, 2 baths, 1,288 square feet (28 x 46), installed on crawl space or basement (predominantly basement) foundations to be built by others. Homes must be delivered to individual sites no later than July 15, 1999 and be complete on foundations no later than July 30, 1999. There is the potential of further orders (up to approximately 100-250 homes), but there are no assurances there will be additional orders or that the supplier of the Work (“**Supplier**”) will be selected for any subsequent work.

Any potential Supplier may obtain the formal HUD Code Manufactured Homes Criteria (“**Criteria**”) by faxing a request to the Oglala Sioux Tribe Partnership for Housing, Inc. at fax number (605) 867-1522, requesting a copy of the Criteria and providing a fax number for return of the Criteria. Purchaser shall endeavor to fax back a complete set of Criteria within one business day of receiving a request, but shall not be liable if it does not do so. The Criteria will identify specific requirements of the Proposals, and identify contacts from which potential Suppliers may obtain additional information.

All Proposals must be received on May 17, 1999, at the place and in the manner set forth in the Criteria. Purchaser may, but shall have no obligation to, consider any Proposal which is not so received.

Following receipt of Proposals, the Purchaser anticipates negotiating with one or more proposed Suppliers to determine a final Supplier for the Work. Purchaser specifically reserves the right, in its sole discretion, to reject any or all Proposals, to purchase more or fewer homes with similar or different specifications than set forth in this Request or the Criteria, to request further information from any proposed Supplier, to negotiate terms different than provided in this Request or the Criteria, to have the purchases made by individual tribal members or other persons or entities, to select one or more Suppliers for any reason it deems reasonable, and to waive any nonconformity.

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ⁱⁱ From <http://www.ncnb.org/html/faq.html>

ⁱⁱⁱ *Ibid.*

Guide to Creating a Nonprofit Homeownership Entity



^{iv} From *The Finance Committee: The Fiscal Conscience of the Nonprofit Board*. Washington, DC: National Center for Nonprofit Boards, 1995. <http://www.ncnb.org/html/faq.html>

^v From NCNB, <http://www.ncnb.org/html/faq.html>