

**TOQUAHT NATION GOVERNMENT**

**HOUSING ACT**

**TNS 1/2019**



This law enacted on

Signed *Anne Mack*  
Anne Mack, ḥaʔwił of the Toquaht Nation

DEPOSITED IN THE  
REGISTRY OF LAWS AND  
OFFICIAL RECORDS

ON 19/05/28

*Kristen Johnson*

Signature of Law Clerk



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## **PREAMBLE**

Since time immemorial the Toquaht have nurtured and supported each other in both individual and community development. Housing plays a vital role in building livable, vibrant and lasting communities and a strong economy. Adequate, safe and affordable housing is the basic foundation which individuals and families need in order to build stable and productive lives. All Toquaht citizens have an interest in housing and all Toquaht citizens should, to the extent reasonably possible, have access to adequate, safe and affordable housing.

The Toquaht Nation adopts this Act based on these values.



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## PART 1 - INTRODUCTORY PROVISIONS

### Short title

1.1 This Act may be cited as the Housing Act.

### Executive oversight

1.2 The member of the Executive holding the lands, public works and environmental protection portfolio is responsible for the executive oversight of this Act.

### Application

- 1.3 (a) This Act is enacted under sections 13.11.1, 13.12.1, 13.12.2 and 13.14.1 of Chapter 13 Governance of the Maa-nulth Treaty and under sections 3.2(d) and 3.2(f) of the Constitution.
- (b) This Act governs
- (i) the use and occupation of Toquaht housing,
  - (ii) maintenance of Toquaht housing, and
  - (iii) construction or acquisition of new Toquaht housing.
- (c) For certainty but subject to this Act, the Residential Tenancy Act (British Columbia) applies to Toquaht housing and the tenancy agreement.
- (d) For certainty, the cost of any
- (i) repairs, maintenance or renovations to Toquaht housing, or
  - (ii) construction or acquisition of new Toquaht housing,
- must be authorized in accordance with the Financial Administration Act.

### Interpretation

- 1.4 (a) In this Act, words or expressions defined in the Land Act that are also used in this Act will, except where the context requires otherwise or is otherwise indicated, have the same meaning as those words or expressions defined in the Land Act, with necessary changes in the details.
- (b) In this Act,
- “allocation application” means an application under section 6.2 for allocation of Toquaht social housing;

“annual budget” has the meaning given to that term in the Financial Administration Act;

“condition inspection” means an inspection under section 8.5;

“dependent” means

- (i) an individual who depends primarily on an applicant or tenant, or a spouse of the applicant or tenant if that spouse is ordinarily resident in the same household as the applicant or tenant, for the necessities of life, including food, shelter and clothing, and that individual is ordinarily resident in the same household as the applicant or tenant, and
- (ii) the spouse of an applicant or tenant if that spouse is ordinarily resident in the same household as the applicant or tenant;

“eligibility application” means an application under section 5.2 for an assessment of eligibility to rent Toquaht social housing;

“eligible individual” means an individual whose name appears on the housing list;

“good financial standing” means not owing any money or maintaining current repayment of any money owed when due and payable;

“housing and infrastructure manager” means the means the office established under section 2.3 or the individual appointed to hold that office;

“housing list” means the list of eligible individuals under section 5.5;

“tenancy agreement” means an agreement under section 8.1 between an individual and the Toquaht Nation, as represented by the Housing Committee, for the rental of Toquaht housing;

“tenant” means an individual who is renting Toquaht housing under a tenancy agreement;

“Toquaht housing” means a unit of housing which is managed, maintained or owned by the Toquaht Nation and any land immediately adjacent to that housing and indicated in the applicable tenancy agreement to form part of that Toquaht housing for purposes of that tenancy agreement;

“Toquaht infrastructure” means structures and facilities managed, maintained or owned by the Toquaht Nation and necessary or desirable for the operation of Toquaht lands, including sewer and water systems, roads and public buildings;

“Toquaht market housing” means a unit of Toquaht housing rented in accordance with Part 7;



“Toquaht social housing” means a unit of Toquaht housing allocated and rented in accordance with Parts 5 and 6.



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## PART 2 - DIVISION OF HOUSING AND INFRASTRUCTURE

### Division of Housing and Infrastructure established

2.1 The Division of Housing and Infrastructure is established as a division of the Department of Lands, Public Works and Resources.

### Mandate

2.2 The mandate of the Division of Housing and Infrastructure is to perform the following duties and exercise the following powers:

- (a) manage and administer Toquaht housing and Toquaht infrastructure as required
  - (i) under this or any other Toquaht enactment, or
  - (ii) by the Executive;
- (b) maintain and protect records relating to Toquaht housing and Toquaht infrastructure;
- (c) prepare forms and instruments to be used in relation to Toquaht housing and Toquaht infrastructure;
- (d) provide administrative support to the Executive, the Housing Committee, the director of operations, the director of lands, public works and resources and other departments as required
  - (i) under this or any other Toquaht enactment, or
  - (ii) by the director of operations or the director of lands, public works and resources;
- (e) any additional duties or powers assigned to the Division of Housing and Infrastructure
  - (i) under this or any other Toquaht enactment, or
  - (ii) by the director of operations or the director of lands, public works and resources.

### Manager of housing and infrastructure

- 2.3
- (a) The office of the manager of housing and infrastructure is established.
  - (b) The director of operations must appoint an individual to hold the office of housing and infrastructure manager after considering the recommendation of the director of lands, public works and resources.

- (c) The housing and infrastructure manager reports to the director of lands, public works and resources.

### **Duties of housing and infrastructure manager**

**2.4** The housing and infrastructure manager must perform the following duties and may exercise the following powers:

- (a) manage the Division of Housing and Infrastructure;
- (b) provide forms, information and assistance to individuals who wish to apply
  - (i) under section 5.2 to have their name added to the housing list,
  - (ii) under section 6.2 to be allocated Toquaht social housing,
  - (iii) under section 7.2 to rent Toquaht market housing,
  - (iv) under section 9.4 for a spousal tenancy, or
  - (v) under section 5.8, 6.6, 9.5(f) or 9.6(d) for a review of a Housing Committee decision by the Administrative Decisions Review Board;
- (c) maintain the housing list;
- (d) receive, on behalf of the Housing Committee, and process completed application forms;
- (e) assist the Housing Committee in the performance of its duties and the exercise of its powers;
- (f) identify, research and report to the director of operations on potential new housing opportunities;
- (g) identify and apply for grants or funding from Canada, British Columbia or other persons for potential new housing opportunities, as directed by the director of operations;
- (h) provide the director of operations and the director of lands, public works and resources with information and technical or logistical support that may be necessary or desirable in negotiations regarding housing;
- (i) at the request of the director of operations, develop a draft housing plan for approval by the Executive;
- (j) provide Toquaht citizens with information regarding funding opportunities or financing strategies for

- (i) repairs, maintenance or renovations to their home, or
  - (ii) construction or acquisition of a new home;
- (k) at the request of the Executive or the director of operations, report on the activities of the Department of Housing and Infrastructure by oral or written report at a meeting of
  - (i) the People's Assembly,
  - (ii) Council, or
  - (iii) the Executive;
- (l) perform any additional duties or exercise any additional powers assigned to the housing and infrastructure manager
  - (i) under this or any other Toquaht enactment, or
  - (ii) by the director of operations or the director of lands, public works and resources.

**Delegation authority**

- 2.5** (a) Upon the approval of the director of lands, public works and resources, the housing and infrastructure manager may delegate, in writing, the performance of any of his or her duties or the exercise of any of his or her powers to
- (i) another Toquaht government employee, or
  - (ii) an independent contractor of the Toquaht Nation.
- (b) Despite the delegation of any duties or powers under subsection (a), the housing and infrastructure manager remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.



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## PART 3 - HOUSING COMMITTEE

### Housing Committee established

**3.1** The Housing Committee is established as a standing committee of the Executive.

### Mandate

**3.2** The mandate of the Housing Committee is to

- (a) make decisions
  - (i) under section 4.1 regarding the designation of Toquaht housing as Toquaht social housing or Toquaht market housing,
  - (ii) under sections 5.1 and 5.6 regarding eligibility to rent Toquaht social housing,
  - (iii) under section 6.4 regarding the allocation of Toquaht social housing,
  - (iv) under section 7.3 regarding the rental of Toquaht market housing,
  - (v) under sections 8.2 and 8.3 regarding the rent and any security deposit or pet damage deposit payable under a tenancy agreement,
  - (vi) under section 8.6 regarding non-residential uses of Toquaht housing,
  - (vii) under section 8.7 regarding the assignment of subletting of Toquaht housing,
  - (viii) under section 8.9 regarding alterations to Toquaht housing by the tenant,
  - (ix) under section 8.12 regarding the seizure and sale of a tenant's personal property,
  - (x) under section 8.13 regarding the termination or restriction of services to a tenant, and
  - (xi) under section 8.16 regarding the termination of a tenancy agreement,
  - (xii) under Part 9 regarding spousal tenancies,
- (b) enter into tenancy agreements on behalf of the Toquaht Nation,
- (c) represent the Toquaht Nation in
  - (i) any review request under section 5.8, 6.6, 9.5(f) or 9.6(d), and

- (ii) any dispute resolution under the Residential Tenancy Act (British Columbia) in respect of Toquaht housing,
- (d) make recommendations to the Executive regarding
  - (i) repairs, maintenance or renovations to Toquaht housing, and
  - (ii) construction or acquisition of new Toquaht housing, and
- (e) perform any additional duties or exercise any additional powers assigned to the Housing Committee
  - (i) under this or any other Toquaht enactment, or
  - (ii) by the Executive.

### **Composition and term**

- 3.3** (a) The Housing Committee is composed of
- (i) the housing and infrastructure manager, and
  - (ii) three other individuals appointed by the Executive,
    - (A) none of whom are Toquaht government representatives,
    - (B) none of whom are Toquaht government employees,
    - (C) one of whom is not a Toquaht citizen and ordinarily resident on Toquaht lands,
    - (D) all of whom bring particular expertise or other considerations to the Housing Committee.
- (b) The housing and infrastructure manager is a non-voting member of the Housing Committee and must not be counted for the determination of quorum but for all other purposes is considered a full member of the Housing Committee.
- (c) The term of office for an individual appointed to the Housing Committee under subsection (a)(ii) is four years or until he or she resigns, is deceased or is removed or replaced in accordance with subsection (d).
- (d) An individual appointed to the Housing Committee under subsection (a)(ii) may be removed or replaced at any time by the Executive, by resolution.
- (e) Despite subsections (a)(ii)(C) and (c), if at the time of an appointment under subsection (a)(ii) there are no non-citizens ordinarily resident on Toquaht lands or



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no non-citizens ordinarily resident on Toquaht lands wish to become a Housing Committee member,

- (i) subsection (a)(ii)(C) does not apply, and
- (ii) the Executive must designate one individual on the Housing Committee whose term of office is four years or until
  - (A) he or she resigns, is deceased or is removed or replaced in accordance with subsection (d), or
  - (B) a non-citizen ordinarily resident on Toquaht lands delivers written notice to the Executive that he or she wishes to become a Housing Committee member.

### **Rules of order and procedure**

- 3.4**
- (a) Subject to this Act, the Housing Committee may establish its own rules of order and procedure.
  - (b) A quorum for decision-making at a meeting of the Housing Committee is two voting members of the Housing Committee.
  - (c) The housing and infrastructure manager is the chair of the Housing Committee.



## **PART 4 - HOUSING DESIGNATION**

### **Designation of Toquaht housing**

- 4.1** (a) Subject to subsection (b), the Housing Committee must, by resolution and from time to time, designate and maintain a list of each unit of Toquaht housing as either Toquaht social housing or Toquaht market housing.
- (b) Subject to section 6.7, the Housing Committee must ensure that at least the prescribed percentage of Toquaht housing is Toquaht social housing.



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## PART 5 - SOCIAL HOUSING ELIGIBILITY

### Eligibility criteria

- 5.1** An individual is eligible to rent Toquaht social housing if that individual
- (a) is a Toquaht citizen and is at least 19 years of age,
  - (b) has a combined household income equal to or less than the prescribed amount,
  - (c) has not been convicted of an indictable offence within the past 10 years, and
  - (d) is in good financial standing with the Toquaht Nation.

### Application for assessment of eligibility

- 5.2** An individual who wishes to rent Toquaht social housing must apply in the prescribed form to the Housing Committee for an assessment of eligibility.

### Information gathering

- 5.3** The Housing Committee may request additional information from an applicant or any other person that the Housing Committee considers necessary or desirable to determine the applicant's eligibility to rent Toquaht social housing.

### Notice of eligibility

- 5.4**
- (a) Within 60 days of receipt of an eligibility application, the Housing Committee must deliver notice in accordance with Toquaht law to the applicant advising the applicant that he or she is
    - (i) eligible to rent Toquaht social housing, or
    - (ii) ineligible to rent Toquaht social housing.
  - (b) If the Housing Committee determines the applicant is eligible to rent Toquaht social housing, the housing and infrastructure manager must place the applicant's name on the housing list.
  - (c) If the Housing Committee determines the applicant is ineligible to rent Toquaht social housing, the Housing Committee must, in the notice under subsection (a),
    - (i) provide written reasons for its decision, and
    - (ii) inform the applicant of his or her right to reapply to the Housing Committee under section 5.7 or request a review of the decision by the Administrative Decisions Review Board under section 5.8.

**Housing list**

- 5.5** (a) The housing and infrastructure manager must maintain a list of individuals to whom the Housing Committee has provided a notice of eligibility under section 5.4(a)(i).
- (b) The housing list must include
- (i) the name of each eligible individual, and
  - (ii) the date that individual's complete eligibility application was received
- and may include other information which the housing and infrastructure manager or the Housing Committee considers appropriate.
- (c) The housing and infrastructure manager must
- (i) add to the housing list the name of an individual who the Housing Committee has provided a notice of eligibility under section 5.4(a)(i),
  - (ii) remove from the housing list the name of an individual required to be removed under section 5.6, and
  - (iii) add to or remove from the housing list the name of an individual in accordance with a decision of the Administrative Decisions Review Board under section 5.8.

**Removal from housing list**

- 5.6** (a) The housing and infrastructure manager must remove an individual's name from the housing list
- (i) on the written request of the individual,
  - (ii) if the individual is deceased, or
  - (iii) if the Housing Committee determines that the individual is no longer eligible to rent Toquaht social housing on the basis of
    - (A) the individual ceasing to be a Toquaht citizen, or
    - (B) any new and relevant information available to the Housing Committee.
- (b) If the Housing Committee determines under subsection (a)(iii) that an individual is no longer eligible to rent Toquaht social housing, the Housing Committee must deliver in accordance with Toquaht law notice of its decision to that individual.

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- (c) A notice under subsection (b) must
    - (i) include written reasons for the decision, and
    - (ii) inform the applicant of his or her right to reapply to the Housing Committee under section 5.7 or request a review of the decision by the Administrative Decisions Review Board under section 5.8.

### **Reapplication**

**5.7** An applicant who has received notice under section 5.4(a)(ii) or 5.6(b) may reapply under section 5.2 180 days or more after the date of that notice.

### **Review of ineligibility decision**

**5.8** An individual who has received

- (a) notice under section 5.4(a)(ii) that he or she is ineligible to rent Toquaht social housing, or
- (b) notice under section 5.6(b) that he or she is no longer ineligible to rent Toquaht social housing

may request a review of that decision under the Administrative Decisions Review Act.





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## PART 6 - SOCIAL HOUSING ALLOCATION

### Request for applications

- 6.1** When Toquaht social housing becomes available for rent, the Housing Committee must deliver notice in accordance with Toquaht law to every eligible individual inviting him or her to apply for allocation of that Toquaht social housing.

### Application for allocation

- 6.2** An eligible individual who wishes to be allocated Toquaht social housing referred to in a notice under section 6.1 must apply to the Housing Committee for allocation of that Toquaht social housing in the prescribed form and within 14 days of the date of the notice.

### Assessment of applications

- 6.3** (a) Within 30 days of a notice under section 6.1, the Housing Committee must assess each allocation application by assigning points in the prescribed manner.
- (b) The Housing Committee may request additional information from an applicant or any other person that the Housing Committee considers necessary or desirable for the purposes of the assessment under subsection (a).

### Allocation decision

- 6.4** (a) The Housing Committee must allocate available Toquaht social housing to the applicant who has been assigned the highest number of points in accordance with section 6.3.
- (b) If the highest number of points has been assigned to more than one applicant, the Housing Committee must allocate the Toquaht social housing to the applicant with the highest number of points whose eligibility application was received by the Housing Committee on the earliest date.

### Notice concerning allocation

- 6.5** (a) Within 14 days of an allocation decision under section 6.4, the Housing Committee must deliver notice in accordance with Toquaht law
- (i) to the applicant allocated the Toquaht social housing advising him or her of the allocation, and
- (ii) to any other eligible individuals who applied under section 6.2 advising them of the decision to allocate the Toquaht social housing to another eligible individual and informing those applicants of their right to request

a review of that decision by the Administrative Decisions Review Board under section 6.6.

### **Review of allocation decision**

- 6.6** (a) An applicant who has received a notice of non-allocation under section 6.5(a)(ii) may request a review of that decision under the Administrative Decisions Review Act within 14 days of the date of the notice.
- (b) After conducting a review under subsection (a), the Administrative Decisions Review Board may
- (i) dismiss the review request, or
  - (ii) reverse the decision of the Housing Committee and order the Housing Committee to reconsider its decision.

### **No allocation applications**

- 6.7** (a) If no eligible individual applies for available Toquaht social housing within the 14 days of a notice being sent under section 6.1, the Housing Committee must within 30 days issue a new notice in accordance with section 6.1 for that Toquaht social housing.
- (b) If no eligible individual applies for available Toquaht social housing within 14 days of a notice being sent under subsection (a), the Housing Committee may rent that Toquaht social housing as though it were Toquaht market housing to the individual the Housing Committee considers most appropriate in the circumstances, including, for certainty, an individual who is not a Toquaht citizen, for a term or possible term no greater than three years.
- (c) For certainty, if Toquaht social housing is rented as Toquaht market housing under this section to an individual who is not an eligible individual, upon the expiration or earlier termination of the applicable tenancy agreement, that Toquaht social housing is not Toquaht market housing and continues as Toquaht social housing and must be allocated to an eligible individual in accordance with this Part.

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## PART 7 - MARKET HOUSING RENTALS

### Notice of availability

- 7.1** When Toquaht market housing becomes available for rent, the Housing Committee must
- (a) post a notice in accordance with Toquaht law, and
  - (b) publish a notice in accordance with Toquaht law,
- that the Toquaht market housing is available for rent and inviting individuals to apply to rent that Toquaht market housing.

### Application to rent

- 7.2** An individual who wishes to rent Toquaht market housing referred to in a notice under section 7.1 must
- (a) apply to the Housing Committee to rent that Toquaht market housing in the form approved by the Housing Committee and within 14 days of the date of the notice, and
  - (b) provide the Housing Committee with at least two of the following references indicating the individual's suitability as a tenant:
    - (i) from a former landlord;
    - (ii) from an individual who has known the applicant for at least five years; and
    - (iii) from an individual not related to the applicant who has had financial dealings with the applicant in the past three years.

### Rental decision

- 7.3** The Housing Committee may rent available Toquaht market housing to an individual
- (a) who makes an application in accordance with section 7.2, and
  - (b) who the Housing Committee determines is the best applicant in the circumstances in accordance with any prescribed criteria.

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## PART 8 - TENANCY RIGHTS AND RESTRICTIONS

### Tenancy agreement

- 8.1** (a) An individual who has been allocated or rents Toquaht housing may only occupy that Toquaht housing after entering into a tenancy agreement in the prescribed form with the Toquaht Nation, as represented by the Housing Committee.
- (b) A tenant must occupy his or her Toquaht housing in accordance with his or her tenancy agreement.
- (c) Despite subsection (a) and section 3.3(a) of the Administrative Decisions Review Act, if review request is made under section 6.6 regarding the allocation of Toquaht social housing
- (i) the Housing Committee must not enter into a tenancy agreement in respect of that Toquaht housing, and
  - (ii) the individual allocated that Toquaht housing must not occupy it until the review request has been
  - (iii) withdrawn by the applicant,
  - (iv) resolved as a result of informal intervention of the review officer under section 2.2(c) of the Administrative Decisions Review Act, or
  - (v) dismissed by order of the Administrative Decisions Review Board under section 4.7(b)(i) or 4.7(e) of the Administrative Decisions Review Act.
- (d) In the event of an inconsistency between this Act and the regulations and
- (i) a tenancy agreement, or
  - (ii) the required, prohibited or standard terms for tenancy agreements under the Residential Tenancy Act (British Columbia)
- this Act and the regulations prevail.

### Rent

- 8.2** (a) Subject to this section, the Housing Committee must determine the amount of rent payable under a tenancy agreement.
- (b) The Housing Committee may from time to time increase the rent payable under a tenancy agreement in accordance with the Residential Tenancy Act (British Columbia).

- (c) Despite subsection (b) and the Residential Tenancy Act (British Columbia), if a tenant ceases to be eligible to rent Toquaht social housing during the term of his or her tenancy agreement but wishes to continue to occupy that Toquaht housing, the Housing Committee may increase his or her rent up to the then applicable rate for Toquaht market housing, on terms and conditions the Housing Committee considers appropriate.
- (d) Despite the Residential Tenancy Act (British Columbia), a notice of rent increase must be in the form approved by the Housing Committee.
- (e) A tenant may deduct from his or her rent, in accordance with the Residential Tenancy Act (British Columbia), reasonable costs incurred by the tenant for emergency repairs.

### **Security deposit and pet damage deposit**

- 8.3**
- (a) Subject to this section, the Housing Committee must determine the amount of any security deposit or pet damage deposit payable under a tenancy agreement.
  - (b) The security deposit and the pet damage deposit payable under a tenancy agreement must each not exceed one half of the monthly rent payable under that tenancy agreement.
  - (c) The Housing Committee must not require a tenant to pay more than one pet damage deposit regardless of the number of pets the tenant is permitted to keep in his or her Toquaht housing.
  - (d) At the end of a tenancy, the Toquaht Nation
    - (i) may retain all or a portion of a security deposit or pet damage deposit in accordance with the Residential Tenancy Act (British Columbia), and
    - (ii) must return any portion of the security deposit or pet damage deposit not retained in accordance with the Residential Tenancy Act (British Columbia).

### **No application fees**

- 8.4** The Toquaht Nation must not charge an application fee for eligibility applications, allocation applications or applications for Toquaht market housing under section 7.2.

### **Condition inspections**

- 8.5** (a) The housing and infrastructure manager and a tenant must inspect the condition of Toquaht housing together

- 
- (i) when the tenant is entitled to possession of the Toquaht housing or another mutually agreed day,
  - (ii) when the tenant starts keeping a pet in the Toquaht housing or another mutually agreed day, if a condition inspection was not completed at the start of the tenancy, and
  - (iii) at the end of the tenancy or another mutually agreed day.
- (b) The housing and infrastructure manager must give a tenant at least two reasonable opportunities for a condition inspection.
  - (c) If a tenant fails to attend a condition inspection, having being given two reasonable opportunities in accordance with subsection (b), the tenant forfeits his or her right to the return of any security deposit or pet deposit paid by the tenant.
  - (d) The housing and infrastructure manager must prepare a condition inspect report following each condition inspection.
  - (e) Despite the Residential Tenancy Act (British Columbia), a condition inspection report must be in the form approved by the Housing Committee.
  - (f) A condition inspection report is not invalid merely because it has not been signed by the applicable tenant.

### Permitted uses

- 8.6**
- (a) Subject to subsection (b), a tenant is entitled to use and occupy his or her Toquaht housing for the duration of his or her tenancy agreement, including any renewal of the tenancy agreement, for residential purposes only.
  - (b) A tenant may apply to the Housing Committee for permission to carry out a non-residential use in the applicable Toquaht housing provided that
    - (i) the application is made in a form approved by the Housing Committee,
    - (ii) the non-residential use complies with all applicable zoning laws and all other applicable enactments and any additional requirements imposed by the Housing Committee,
    - (iii) the tenant agrees to pay any additional rent under the tenancy agreement required by the Housing Committee, and
    - (iv) any permission given by the Housing Committee under this section expires upon the earlier of

- (A) the expiration or earlier termination of the applicable tenancy agreement, or
  - (B) the date the permission is revoked in writing with reasons by the Housing Committee.
- (c) An application under subsection (b)
- (i) must be considered by the Housing Committee within 90 days of receipt, and
  - (ii) may be rejected or approved by the Housing Committee, with or without conditions.
- (d) A decision of the Housing Committee under subsection (c) is not reviewable.

### **Assignment and subletting**

- 8.7**
- (a) Unless the Housing Committee consents in writing, a tenant must not assign a tenancy agreement or sublet his or her Toquaht housing.
  - (b) If a fixed term tenancy agreement has 6 months or more remaining in the term, the Housing Committee must not unreasonably withhold the consent required under subsection (a).
  - (c) A tenant must not pass in a Will his or her right to use and occupy his or her Toquaht housing.
  - (d) The Housing Committee must not agree to a sublet of
    - (i) Toquaht social housing for a term or possible term exceeding one year, or
    - (ii) Toquaht market housing for a term or possible term exceeding three years.
  - (e) An subtenant may only occupy Toquaht housing after entering into a subletting agreement in the prescribed form with the Toquaht Nation, as represented by the Housing Committee.

### **Insurance**

- 8.8**
- (a) The Toquaht Nation must insure all Toquaht housing against foreseeable risks and perils, including fire, wind, storm, tsunami and earthquake, for the full replacement value.
  - (b) A tenant may maintain tenant's insurance in respect of his or her Toquaht housing on such terms as the tenant considers appropriate; provided that, for certainty, the Toquaht Nation is not liable for any damage to or loss of the tenant's personal

belongings, any personal liability the tenant incurs as a result of his or her use and occupation of that Toquaht housing or any other matter typically covered in tenant's insurance.

### **Alterations**

**8.9** A tenant must not alter his or her Toquaht housing or allow the housing to be altered without obtaining the prior written approval of the Housing Committee and complying with all applicable law.

### **Unsightly housing**

- 8.10** (a) An individual who uses or occupies Toquaht housing under a tenancy agreement must comply with Part 4 of the Environmental Protection Act regarding that Toquaht housing and every tenancy agreement for Toquaht housing is deemed to include a representation and warranty from the tenant to the Toquaht Nation that the tenant under that tenancy agreement will comply with Part 4 of the Environmental Protection Act and will not allow the applicable Toquaht housing to become unsightly.
- (b) The housing and infrastructure manager may perform the duties and may exercise the powers of an inspector and the director of lands, public works and resources under Part 4 of the Environmental Protection Act as they relate to Toquaht housing.

### **Entry**

- 8.11** The housing and infrastructure manager may enter Toquaht housing subject to a tenancy agreement if one or more of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the housing and infrastructure manager gives the tenant written notice that includes the following information:
- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the Toquaht Nation provides housekeeping or related services under the terms of the tenancy agreement and the entry is for that purpose and in accordance with those terms;



- (d) the Toquaht Nation has an order under the Residential Tenancy Act (British Columbia) authorizing the entry;
- (e) the tenant has abandoned the Toquaht housing; or
- (f) an emergency exists and the entry is necessary to protect life or property.

### **Seizure and sale of personal property**

**8.12** The Housing Committee, on behalf of the Toquaht Nation, may only seize and sell personal property of a tenant in accordance with the Residential Tenancy Act (British Columbia).

### **Termination or restriction of services or facilities**

- 8.13** (a) Subject to subsection (b), the Housing Committee may terminate or restrict a service or facility if the Housing Committee
- (i) gives 30 days' written notice of the termination or restriction in a form approved by the Housing Committee, and
  - (ii) reduces the rent to reflect the reduction in the value of the tenancy agreement, if any, stemming from the termination or restriction.
- (b) The Housing Committee must not terminate or restrict a service or facility if
- (i) the service or facility is essential to the tenant's use of the applicable Toquaht housing as living accommodation, or
  - (ii) providing the service or facility is a material term of the tenancy agreement.

### **Vacating Toquaht housing**

- 8.14** (a) Unless the housing and infrastructure manager and a tenant otherwise agree, the tenant must vacate his or her Toquaht housing by 1 p.m. on the day the tenancy ends.
- (b) When a tenant vacates his or her Toquaht housing, the tenant must
- (i) leave the Toquaht housing reasonably clean and undamaged except for reasonable wear and tear, and
  - (ii) give the housing and infrastructure manager all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the Toquaht housing.

**Fixed term tenancy**

**8.15** Despite the Residential Tenancy Act (British Columbia), a fixed term tenancy agreement may include a requirement that the tenant vacate the applicable Toquaht housing at the end of the term.

**Ending a tenancy**

- 8.16** (a) The Housing Committee may terminate a tenancy agreement for one or more of the grounds permitted under the Residential Tenancy Act (British Columbia), including
- (i) non-payment of rent,
  - (ii) cause,
  - (iii) the tenant ceasing employment with the Toquaht Nation as a caretaker, manager or superintendent of Toquaht housing, or
  - (iv) the Toquaht Nation entering into an agreement in good faith to sell the Toquaht housing,
  - (v) the Toquaht Nation intending in good faith to
    - (A) demolish the Toquaht housing,
    - (B) renovate or repair the Toquaht housing in a manner that requires the Toquaht housing to be vacant,
    - (C) convert the Toquaht housing to strata lots under the Strata Property Act (British Columbia);
    - (D) convert the Toquaht housing into a not for profit housing cooperative under the Cooperative Association Act (British Columbia);
    - (E) convert the Toquaht housing for use by a caretaker, manager or superintendent of the Toquaht housing;
    - (F) convert the Toquaht housing to a non-residential use, or
  - (vi) the tenant ceasing to qualify for the Toquaht housing, or
- (b) Despite subsection (a) and the Residential Tenancy Act (British Columbia),
- (i) a notice to end tenancy must be in the form approved by the Housing Committee,

- (ii) in the case of a notice to end tenancy for non-payment of rent, the notice to end tenancy may specify a period greater than five days in which the tenant may pay the overdue rent or apply for dispute resolution.

### **Dispute resolution**

**8.17** For certainty, the Housing Committee, on behalf of the Toquaht Nation, or a tenant may apply for dispute resolution under the Residential Tenancy Act (British Columbia) regarding

- (a) a rent increase not authorized under this Act or the Residential Tenancy Act (British Columbia),
- (b) return of a security deposit or pet damage deposit,
- (c) a tenant's damages to Toquaht housing,
- (d) the restriction of a service or facility not authorized under this Act or the Residential Tenancy Act (British Columbia),
- (e) a notice to end tenancy not authorized under this Act or the Residential Tenancy Act (British Columbia), or
- (f) any other matter permitted under the Residential Tenancy Act (British Columbia).

## PART 9 - SPOUSAL TENANCY

### Definitions

#### 9.1 In this Part,

“domestic contract” means

- (a) a “spousal agreement” entered into between two individuals made in writing, signed and witnessed in which they agree on their respective rights and obligations while residing together as spouses or, on separation, in relation to the possession or division of family assets and may be a separate agreement or a part of an agreement dealing with their rights and obligations, or
- (b) a “separation agreement” entered into between the spouses who are living separate and apart, made in writing, signed and witnessed in which they agree on their respective rights and obligations on separation in relation to the possession or division of family assets and may be a separate agreement or part of an agreement dealing with their rights and obligations;

“family home” means Toquaht housing occupied in accordance with a tenancy agreement where

- (a) the tenant is a Toquaht citizen, and
- (b) a dependent is ordinarily resident in the family home;

“separate and apart” means intending to live separate and apart, where the marriage or marriage-like relationship has broken down and the tenant and spouse do not intend to reconcile and, for the purposes of this Part, may include living separate and apart under the same roof if the intent to live separate and apart exists;

“spousal tenancy” means the exclusive possession of a family home by a spouse under section 9.4(b) in accordance with a spousal tenancy agreement;

“spousal tenancy agreement” means a rental agreement for a family home entered into between the Toquaht Nation, as represented by the Housing Committee, and a spouse under section 9.5(c)(iii);

“spouse” means an individual who is not a Toquaht citizen and is a spouse of a tenant or was a spouse of a tenant within the past 12 months;

“tenant” means a tenant who is a Toquaht citizen and includes the estate of a deceased tenant, as represented by the executor, administrator or other personal representative of the estate of the deceased tenant.

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## **Application of Part**

**9.2** This Part applies only to Toquaht housing rented by a tenant under this Act.

## **Application of federal or provincial law**

- 9.3** (a) Nothing in this Part limits the application of valid laws of Canada or British Columbia in relation to matrimonial causes, except to the extent that such laws deal expressly or implicitly with a spouse's interest in a tenancy agreement and to that extent this Part shall apply.
- (b) No order may be made by a court that results in a transfer of an agreement or possession of Toquaht housing in favour of a spouse or a dependent that is not a Toquaht citizen.

## **Application for spousal tenancy**

- 9.4** (a) Upon the happening of the earlier of any of the following events, a spouse may, and acquires the right to, apply in accordance with this Part to the Housing Committee for a spousal tenancy:
- (i) the date agreed upon in a domestic contract between the spouse and the tenant when they commenced living separate and apart;
  - (ii) the date a court makes a declaratory judgment that the spouse and the tenant have no reasonable prospect of reconciliation with each other;
  - (iii) the date the spouse and the tenant enter into a separation agreement;
  - (iv) the date a divorce is granted to the spouse and the tenant, if they are married;
  - (v) the date the marriage between the spouse and the tenant is annulled;
  - (vi) the death of the tenant; or
  - (vii) such other time as a court determines.
- (b) An application under subsection (a) must be
- (i) in the prescribed form,
  - (ii) signed and certified by the spouse, and
  - (iii) made within 90 days of the event giving rise to the right to apply under subsection (a).

- (c) Before considering an application under this section, the Housing Committee may require the spouse to provide whatever documentation and information the Housing Committee considers reasonably necessary or desirable in order to consider the factors under section 9.5(a).

### **Review of application for spousal tenancy**

- 9.5** (a) The Housing Committee, in reviewing an application made under section 9.4, will consider, in descending order of importance, the following factors:
- (i) which spouse has custody of a dependent child;
  - (ii) the possible disruptive effects on the dependent child of moving out of the community or to other accommodation;
  - (iii) the dependent child's views and preferences if such can reasonably be ascertained;
  - (iv) any mental, physical or emotional violence committed by the tenant or spouse against the other or a dependent child of either;
  - (v) the financial position of both the spouse and the tenant;
  - (vi) any existing court support orders;
  - (vii) the duration of time the spouse resided in the family home;
  - (viii) any domestic contract between the spouse and the tenant;
  - (ix) the availability of other suitable and affordable accommodation for each of the spouse and the tenant; and
  - (x) any other factors the Housing Committee considers relevant.
- (b) An application under section 9.4 must be considered within 14 days from the later of the day the application is received by the Housing Committee or the day the Housing Committee receives all the documentation and information requested under subsection (a).
- (c) Upon receiving an application under section 9.4 and considering the factors in subsection (a), the Housing Committee may
- (i) deny the application, or
  - (ii) terminate the tenant's tenancy agreement by giving 14 days' notice of the termination to the tenant delivered in accordance with Toquaht law, and

- (iii) grant the spouse exclusive possession of the family home and enter into a tenancy agreement with the spouse substantially on the same terms as the tenancy agreement for the family home commencing on the expiration of that 14 days.
- (d) The decision of the Housing Committee under subsection (c) must be communicated to the spouse by the housing and infrastructure manager verbally as soon as practicable after the decision is made and in writing within seven days.
- (e) Upon the termination of a tenant's tenancy agreement under subsection (c)(ii), the spouse is entitled to exclusive possession of the family home in accordance with the spousal tenancy agreement and the tenant must immediately give up exclusive possession of the family home to the spouse.
- (f) A tenant or spouse affected by a decision of the Housing Committee under subsection (c) may request a review of that decision under the Administrative Decisions Review Act.

### **Termination of spousal tenancy**

- 9.6** (a) A spousal tenancy will terminate on the earlier of any of the following events:
- (i) the death of the spouse with the spousal tenancy;
  - (ii) the spousal tenancy is no longer in the best interests of a dependent child ordinarily resident in the family home;
  - (iii) the spouse with the spousal tenancy has ceased to occupy the family home as a principal residence;
  - (iv) the spouse with the spousal tenancy no longer has primary custody of a dependent child who is ordinarily resident in the family home;
  - (v) the last child of either the spouse or the tenant for which the spouse with the spousal tenancy had primary custody is no longer a child;
  - (vi) the spouse with the spousal tenancy remarries, or enters into a marriage-like relationship, with an individual other than the tenant; and
  - (vii) there has been a substantive change in the factors considered under section 9.5(a) since the spousal tenancy was granted which warrants the termination of the spousal tenancy.
- (b) If the housing and infrastructure manager is of the opinion that a spousal tenancy has terminated under subsection (a), the housing and infrastructure manager must prepare and issue a written report to the Housing Committee setting out the facts on which the opinion is based.

- (c) After considering a report issued by the housing and infrastructure manager under subsection (b), the Housing Committee may terminate the spousal tenancy agreement by giving 60 days' notice of the termination delivered in accordance with Toquaht law to the spouse with the spousal tenancy agreement that has been terminated.
- (d) A spouse whose spousal tenancy agreement has been terminated by the Housing Committee under subsection (c) may request a review of that decision under the Administrative Decisions Review Act.

### **Enforcement of spousal tenancy**

- 9.7**
- (a) A person who interferes with a spousal tenancy or conducts themselves in a manner calculated to disrupt or interfere with the quiet possession of the applicable Toquaht housing by the spouse with the spousal tenancy or a child of either spouse, commits an offence and is liable, on summary conviction, to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 90 days.
  - (b) An enforcement officer may arrest without warrant an individual the enforcement officer believes on reasonable grounds to have committed an offence under subsection (a).
  - (c) Where a tenant or other person is interfering with the exclusive possession of a family home granted by the Housing Committee under section 9.5(c)(iii) or conducting themselves in a manner calculated to disrupt or interfere with the quiet possession of the family home by the spouse with the spousal tenancy or a dependent child ordinarily resident in the family home, the spouse with the spousal tenancy may apply to the Provincial Court which may make an order that the tenant or other person not enter the family home or approach within a particular distance of the family home.





## PART 10 - HOUSING MAINTENANCE

### Housing management and maintenance

- 10.1** The Toquaht Nation must manage and maintain all Toquaht housing by performing the duties and exercising the powers of a reasonably prudent homeowner including
- (a) the collection of rent for tenanted Toquaht housing,
  - (b) inspecting Toquaht housing at least annually,
  - (c) ensuring that all Toquaht housing, and housing assets managed and maintained by the Toquaht Nation, are insured for the full replacement value,
  - (d) ensuring that all Toquaht housing is maintained to a reasonable physical condition which is appropriate for their purpose and use,
  - (e) paying all applicable taxes and any service charges, including water and sewer, and
  - (f) enforcing laws, policies and agreements applicable to Toquaht housing.

### Standard of management and maintenance

- 10.2** The Toquaht Nation must manage and maintain all Toquaht housing to
- (a) the standard expected of a reasonably prudent homeowner, and
  - (b) the standard required under the Residential Tenancy Act (British Columbia).

### Inspection

- 10.3** The housing and infrastructure manager must inspect Toquaht housing at least annually to ensure that it is being maintained to the expected standard in accordance with the applicable tenancy agreement and applicable law.



## PART 11 - NEW HOUSING

### Contracting

**11.1** Subject to the Financial Administration Act and this Part, the director of operations may retain a general contractor or sub-contractors for the purposes of constructing or substantially renovating Toquaht housing.

### Procurement

- 11.2** (a) Subject to sections 11.3 and 11.4, every purchase of goods or services for the construction or substantial renovation of Toquaht housing, including capital goods, with a cost of more than
- (i) \$5,000 in a fiscal year must not be made until at least three quotes have been received and considered, and
  - (ii) \$25,000 in a fiscal year must not be made until an open competition has been held and the resulting proposals evaluated.
- (b) Nothing in subsection (a) prevents the director of operations from obtaining quotes or holding open competitions for a purchase costing less than the limits set out in subsection (a).

### Quotes

- 11.3** (a) Any request for quotes must specify exactly what goods or services are sought, including the quality of those goods or services.
- (b) The director of operations must consider the quotes submitted and choose the quote which provides the best combination of price and quality relative to the request for a quote.
- (c) The director of operations is not obliged to choose the lowest or any quote under subsection (b).

### Open competition

- 11.4** (a) An open competition must be based on a written request for proposals that includes the following information:
- (i) a detailed description of the goods or services to be acquired by the Toquaht Nation;
  - (ii) the mandatory elements of the proposal;
  - (iii) the submission deadline;

- (iv) the evaluation criteria;
  - (v) the contract terms; and
  - (vi) a requirement that proposals must state they are irrevocable for a specified period.
- (b) The director of operations must evaluate the proposals in accordance with the request under subsection (a) and make a written decision stating which proposal, if any, best meets the evaluation criteria.
- (c) The director of operations is not obliged to choose the lowest cost or any proposal.
- (d) A request for proposals must be
- (i) publicly posted where it may be seen by prospective proponents, and
  - (ii) sent to known prospective proponents.

### **Confidentiality**

**11.5** Quotes and proposals received under section 11.2 are confidential and must not be disclosed to anyone other than

- (a) the Executive,
- (b) the Housing Committee, or
- (c) a Toquaht government employee whose job requires him or her to view the quote or proposal.

### **Exemptions**

**11.6** Section 11.2 does not apply if

- (a) an existing contract is in place to provide the goods or services and under which those goods or services are already being provided to the reasonable satisfaction of the director of operations,
- (b) a contract existed within the past year to provide the goods or services and under which those goods or services were provided to the reasonable satisfaction of the director of operations,
- (c) the director of operations reasonably believes that only one supplier is able to provide the goods or services, or

- (d) the director of operations reasonably believes that there is insufficient time to obtain quotes or hold an open competition under section 11.2.

**Insurance**

**11.7** The director of operations must insure all Toquaht housing under construction from onset of construction against foreseeable risks and perils, including fire, wind, storm, tsunami and earthquake, for the full replacement value.

**Land acquisition**

**11.8** The Executive may acquire real property for the purpose of developing Toquaht housing if

- (a) it has reasonable grounds to believe that the parcel is suitable for the development, and
- (b) the acquisition is authorized under the annual budget for the current fiscal year.



## PART 12 - GENERAL PROVISIONS

### Regulations

**12.1** The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.

### Limitation on actions

- 12.2** (a) For certainty and in accordance with 13.35.1 and 13.35.4 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against any Toquaht official or former Toquaht official for anything done or omitted to be done under this Act.
- (b) Despite 13.35.2, 13.35.3, 13.35.5 and 13.35.6 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against a Toquaht institution, Toquaht official or former Toquaht official for anything done or omitted to be done under this Act if they acted in good faith in the performance of their duties or the exercise of their powers.

### Offence

- 12.3** (a) An individual commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months, if that individual makes a false representation, commits fraud or knowingly conceals a material fact in order to
- (i) be assessed as an eligible individual under Part 7,
  - (ii) be allocated Toquaht housing under Part 8.

### Commencement

**12.4** This Act comes into force on the date it is enacted.