

SHB *notification*

Subject: Ambiguity in Urban Native Operating Agreements

Legislation/Regulation
 Operational

Release 02-04

The Ministry of Municipal Affairs and Housing would like to make Service Managers aware of a potentially controversial issue related to the interpretation and ambiguity in Urban Native Operating Agreements.

There is an inconsistency in the program qualifications of non-native tenants or the family of non-native tenants, if the native leaseholder no longer resides in the unit, in the Urban Native Pre86 and the Urban Native Post 85 Operating Agreements.

Urban Native Pre 86 Operating Agreements

Section A1.1(b) of Appendix “A” states “a housing unit is leased to persons of native ancestry if it is leased to a tenant of native ancestry who is the sole occupant of the unit or if it is leased to a tenant or tenants and at least half of the occupants are of native ancestry”.

In a recent legal opinion, the interpretation is clear that the named tenant on the lease could be non-native, but that provided the native occupants out number the non-native occupants the tenants would qualify under the program if they meet all other qualifications.

Urban Native Post 85 Operating Agreements

Section 4.1 states that “only eligible native clients may be selected to occupy the designated units”.

In a recent legal opinion two interpretations were provided:

Taken from the perspective that the “client” is the person who is applying for the unit, that a child cannot enter into a lease and that the program is aimed at alleviating the economic and social disadvantage historically suffered by Aboriginal people, which is allowed under various Human Rights legislation.

If the Native leaseholder leaves the unit, the non-native leaseholder would not qualify for the program.

If the Native leaseholder leaves the unit and non-native leaseholder with native children reside in the unit, the non-native leaseholder has not suffered the disadvantage because he is not a native person and would merely be gaining economic advantage because the children happen to be native. The non-native leaseholder would not qualify for the program.

Taken from the perspective that the program is more in line with social assistance to Native people in general.

One could see that although the leaseholder is non-native the native children are clients of the program also, require housing and are served by the program. In this case the family would qualify.

The Urban Native Post 85 agreement does not address the issue of the percent of Native tenants in a unit that would qualify.

The final interpretation of the agreement on this issue would be determined by a court if a challenge were made by a non-native leaseholder that is considered non-qualified for the program if the native leaseholder no longer resides in the unit.

Action

Service Managers may want to review this ambiguity with their legal counsel and the Urban Native providers and mutually amend the Post 85 Operating Agreements to clarify the qualifications for non-native leaseholders where native children reside in the unit.

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