

NEW CCRA POLICY ON CHARITIES THAT PROVIDE RENTAL HOUSING FOR LOW INCOME TENANTS

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A. INTRODUCTION

This *Charity Law Bulletin* (“Bulletin”) provides a brief overview of the *Policy Statement* entitled *Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants* that was released by Canada Customs and Revenue Agency (“CCRA”) on April 1, 2003 (“Policy Statement”). The *Policy Statement* applies only to organizations applying for registered charity status that are established to relieve poverty by providing low-income tenants with housing, as well as non-profit organizations with activities that have not been considered charitable in the past, but as a result of the *Policy Statement*, will now be considered to be charitable. Other charities that supply accommodation may also be charitable under other categories, such as the relief of distress and suffering caused by a mental and physical disability, a symptom of aging, or violence against the person. The *Policy Statement* is available on the CCRA website at <http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-020-e.html>.

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Portions of this *Bulletin* were previously published in a paper prepared for the Sixth Annual Estates and Trusts Forum entitled, “Recent Changes under the *Income Tax Act* and Policies Related to Charities and Charitable Gifts”, which can be accessed at <http://www.carters.ca/pub/article/charity/2003/tsc1119.pdf>.

B. BENEFICIARIES OF RENTAL HOUSING FOR LOW-INCOME TENANTS

Under the *Policy Statement*, the definition of the class of beneficiaries is integral to understanding the document as a whole. Beneficiary class is defined as “[a] class of poor, needy, necessitous, underprivileged, low-income, in financial need, of small/limited means, or an acceptable synonym”. The term “beneficiary” has been widely rather than narrowly construed, as CCRA appears to be giving greater latitude to applicants for charitable registration that are organized to provide rental housing for low-income tenants. It therefore should be easier to characterize the intended beneficiary class of an applicant to be charitable in order to meet CCRA requirements, since “acceptable synonym” referred to in the above definition can be relied upon when describing people of limited means.

C. ACCEPTABLE OBJECTS FOR CHARITIES PROVIDING RENTAL HOUSING FOR LOW-INCOME TENANTS

The *Policy Statement* provides a number of rules with respect to drafting objects for applicants who fall under its scope. They include the following:

- ◆ The applicant’s objects must clearly identify its beneficiaries and be supported by the actual criteria that will be used to select beneficiaries, and how services will be provided to these persons; and
- ◆ Where the beneficiary class is only identified by a group, e.g. Aboriginals or refugees, the members of which contain a high proportion of poor individuals, the charity may qualify for registration if:
 - it amends its objects to refer, for example, to "low-income Aboriginals" or "needy refugees," and;
 - it provides documentary evidence (for example, the provisions in its operating agreement with a government housing agency that specify tenant selection criteria) that it serves an appropriate beneficiary class.

CCRA also provides two examples of acceptable main objects, namely:

- To provide and operate low-rental residential accommodation and incidental facilities exclusively for persons of low income; [senior citizens primarily of low or modest income; and disabled persons primarily of low or modest income].
- To meet the needs of low-income persons by providing them with housing and any associated amenities upon terms appropriate to their means.

These two objects are relatively broad in comparison to CCRA's normal requirement for specificity in drafting an organization's charitable objects. The inherent breadth of these sample objects will be of assistance to charities that provide low-income rental housing, since terms including "incidental facilities" and "associated amenities" suggest a degree of breadth in the method and resources that an organization can utilize in providing accommodation to their designated beneficiary class.

D. STIPULATED METHOD OF OPERATIONS

Notwithstanding the breadth in the objects referred to above, the *Policy Statement* establishes a number of criteria concerning the way in which rental housing is to be allocated to beneficiaries. There are very clear-cut, concise, methodological guidelines in relation to who is eligible for social housing, specifically:

- the beneficiaries must pass screening tests to determine their eligibility;
- the organization must administer the screening mechanism at least once a year, and establish policies to handle cases where the tenants' income rises to a point that disqualifies them as beneficiaries;
- the tenants who are not eligible beneficiaries must pay market rents;
- all housing charities may have up to 10% of their housing units occupied by tenants paying market rent, an allowance that will be deemed an incidental and ancillary activity by CCRA; and
- the organization itself must relieve poverty.

The *Policy Statement* also stipulates four situations by which the proposed low-income rental housing can be used by market-rent tenants at an enhanced limit of up to 33% of the total housing units available. These situations include:

- the rental activity is part of a larger regeneration scheme for a depressed neighborhood, in which keeping existing residents in place or attracting new residents is necessary to achieve the charitable purpose; or

- the project contains over 100 units, and market tenants are needed to prevent social isolation from the rest of the community; or
- if,
 - the project results from a partnership between a municipality and the organization;
 - the project has received substantial financial support from the municipality because the municipality has determined the project will reduce its welfare costs, and
 - the proportion of market units has been calculated so as to cover the carrying costs of the project, then the project may be considered charitable under the additional charitable purpose of relieving the burden of welfare costs on the municipal taxation base; or
- there is strong evidence of the organization's overriding focus on poverty-relief; [if it shows, for example, characteristics such as the following:
 - at least 50% of tenants fall into a very low-income category, such as that represented by the concept of "deep need" or "deep-core need";
 - the project is directed towards beneficiaries from a specific group that is considered to have a high percentage of individuals at risk of homelessness, such as Aboriginals, single-parent families, those facing physical or mental challenges, and those with a history of addictions;
 - selection criteria are weighted in favour of the neediest or those considered hard-to-house, or the organization has agreed to take all its beneficiaries from a housing list maintained by a government agency;
 - the project is located in a neighborhood where a high proportion of residents are in core housing need;
 - to be accepted, tenants do not need to provide references, to have a minimum income level, or to give deposits;
 - the project includes free or affordable counselling and other services directed to helping tenants overcome the limitations contributing to their poverty;
 - the project is sponsored by an existing charity working to relieve poverty; or
 - a provision that the proportion of market tenants may be reduced if their presence is no longer required in order to carry out the charitable purpose.

E. THE APPLICATION PROCESS

Charities that wish to provide rental housing for low-income tenants are reminded that when applying for charitable registration, they must include the following information:

- the particular clientèle they intend to serve;
- how they select their beneficiaries;
- the proportion of tenants who are not eligible beneficiaries, and whether such tenants pay market rent for their units;
- if any space is leased to commercial tenants, the rationale for doing so and the proportion of commercial space in relation to the total floor-space in the project; and
- if more than 10% of units are rented to non-eligible beneficiaries, how they would qualify under the listed exceptions.

F. IMPLICATIONS FOR CHARITIES

The *Policy Statement* represents another widening of CCRA's ambit with respect to the type of activities in which charities can participate. The *Policy Statement* will be of help to charities seeking to register in order to provide rental housing in two ways: firstly, the Policy Statement provides charities with a wide scope within which to craft their charitable objects in order to capture their true motivations and intentions with respect to assisting low income tenants. Secondly, the *Policy Statement* carefully lays out all of the requirements expected by CCRA in determining whether or not a charity will qualify under the relief of poverty charitable head. For the charity law practitioner, the *Policy Statement* is relatively easy to understand and therefore is a welcomed improvement to the resources available from CCRA.

G. IMPLICATIONS FOR NON-PROFIT ORGANIZATIONS

CCRA has also pointed out that the Policy Statement may apply to non-profit organizations that are involved or plan to become involved in offering rental housing to low-income tenants. Non-profit organizations offering rental housing that had in the past not qualified as a registered charity may now qualify. However, there is a potential problem that non-profit organizations that do not become registered charities may lose their registered tax exempt status:

[b]ecause the proposed criteria for qualifying for registered charity status are being broadened, [and] charities that are and continue to be registered should not be affected, assuming that their manner of operation remains largely the same as when they originally applied for registration. However, this clause is included to ensure that the proposed changes do not adversely affect existing registered charities. A more difficult problem may be non-profit corporations that previously could not qualify for registered charity status, but which would now qualify under the broader criteria. Technically, such organizations would have to register as charities or lose their exemption from tax under the *Income Tax Act*. [Emphasis added.]

As such, non-profit organizations that previously could not qualify for registered charity status should consider proceeding with the application to become a registered charity in order to not lose their current tax exempt status as a non-profit.

H. CONCLUSION

As a result of the *Policy Statement*, charities that wish to provide rental housing to needy tenants will now find it easier to obtain charitable status. As well, organizations that in the past offered rental housing but could not qualify as registered charities, may now be able to take appropriate steps to apply for charitable status in order to maintain their tax-exempt status under the *Income Tax Act*. The provision of rental housing as a charitable activity symbolizes another move by CCRA to modernize its policy in the face of the social reality of financially destitute people that remain an unfortunate part of Canadian society.

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