

---

## **CRA GUIDANCE ON CHARITIES THAT PROVIDE HOUSING**

---

*By Theresa L.M. Man\**

### **A. INTRODUCTION**

On February 8, 2014, Canada Revenue Agency (“CRA”) released a new guidance entitled: *Housing and charitable registration* (CG-022) dealing with charities that provide housing to their beneficiaries (“Guidance”).<sup>1</sup> It updates and replaces CRA’s Policy Statement CPS-020, *Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants* that was released on April 1, 2003 (“Previous Policy”). This *Bulletin* provides an overview of the new Guidance.

### **B. TWO TYPES OF HOUSING CHARITIES**

The Guidance addresses situations in which housing is provided by charities: (1) the housing relieves poverty, or (2) the housing provides specially adapted facilities or services to help eligible beneficiaries overcome or manage their conditions associated with the aged or with their disabilities. This is consistent with the requirements set out in CRA’s Summary Policy CSP-H01 *Housing (Rental)*, dated October 25, 2002, which is also no longer available. This policy stated that an organization established exclusively to provide housing for the poor, the handicapped or the aged, is charitable if it is apparent that the intention of the organization is to provide some measure of relief associated with these conditions.

---

\* Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M., is a partner practicing in the area of charity and not-for-profit law..

<sup>1</sup> Canada Revenue Agency, Guidance CG-022, *Housing and charitable registration*, February 7, 2014 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/hsng-eng.html>).

## C. HOUSING CHARITIES THAT RELIEVE POVERTY

The Guidance sets out CRA's requirements with which organizations that provide housing to relieve poverty may qualify as a charity.

The Guidance states that the charitable purpose of relieving poverty may be satisfied if a charity provides "comfortable, modest" housing to eligible beneficiaries that are poor at below fair market value. The reference to providing "comfortable, modest" housing is a new requirement which was not mentioned in the Previous Policy.

The Guidance further states that eligible beneficiaries may be "individuals or families that are needy, necessitous, underprivileged, low-income, of small/limited means, or other judicially recognized synonyms." The eligible beneficiaries may also be further narrowed by a second characteristic, such as poor seniors. This appears to be a more flexible approach than the requirement in the Previous Policy that beneficiaries should be "low income", "low or modest income" or "needy."

In order to qualify as a charity that provides housing to relieve poverty, the Guidance sets out a number of requirements on an operational level:

- The charity "must" annually assess whether the beneficiaries continue to be eligible to receive the housing.
- The eligibility assessment criteria used by charities to assess beneficiaries "should include" the income, assets, and liabilities of the beneficiaries.
- The charity "must" establish and implement reasonable policies and procedures that address circumstances where individuals or families are no longer eligible for the housing.
- The charity must ensure that assistance given to individuals is no more than that required to relieve their need. Charities are directed to refer to CRA's *Guidelines for Registering a Charity: Meeting the Public Benefit Test* in this regard.<sup>2</sup> While this is an important element of the requirements, it is not

---

<sup>2</sup> Canada Revenue Agency, Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*, March 10, 2006 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-024-eng.html>).

clear why this requirement is set out in the footnote of the Guidance rather than in the body of the Guidance.<sup>3</sup>

These requirements are similar to those set out in the Previous Policy with the exception of the requirement that assessment criteria are to include the income, assets, and liabilities of the beneficiaries.

In addition to providing housing to relieve poverty, the Guidance states that charities may also offer other amenities and necessities to their beneficiaries, such as meals, basic utilities, clothing, furniture, or counselling.

The replacement of the Previous Policy is a welcome change. The Guidance is more practical than the Previous Policy and it allows more flexibility for charities in structuring their purposes and activities in light of the general requirements in the Guidance. The Previous Policy was very detailed and prescriptive, and it contained criteria that made it difficult for many housing charities to meet. For example: the Previous Policy required that low-cost housing charities only rent up to 10% of the units to market-rent tenants and up to 33% of the units to them if specific requirements set out in the Previous Policy were met; charities that operate buildings on separate grounds were required to each meet the criteria on their own merits; and it differentiated between a housing non-profit organization that simply administered government funds on a non-profit basis and a housing charity that did more than that.

#### **D. HOUSING CHARITIES THAT HELP THE DISABLED OR SENIORS**

Other than providing housing to relieve poverty, the CRA also accepts that housing may be provided to relieve the needs of the disabled or the aged.

The Guidance states that charities may provide “comfortable, modest housing that includes specially adapted facilities, services, or other amenities” to eligible beneficiaries in order to provide them with relief from their conditions associated with mental or physical disabilities or conditions associated with the aged. Because the purpose of these charities is not to relieve poverty, the Guidance clarifies that there is no need to assess beneficiaries based on their income or financial criteria, and the housing does not need to be provided below

---

<sup>3</sup> *Supra* note 1, footnote 1.

fair market value. Since these are not low-cost housing programs, these programs were not governed by the Previous Policy referred to above.

The Guidance contains a helpful reference in the footnote to a case in the U.K., *Joseph Rowntree Memorial Trust Housing Association Ltd. and Others v. Attorney-General* (“Rowntree”).<sup>4</sup> *Rowntree* is very helpful in examining whether the provision of housing to seniors under different arrangements is charitable. However, a more fulsome review of the legal principles from this case in the footnote would be a welcome improvement to the Guidance.

While the Guidance acknowledges that providing housing to relieve needs associated with old age is charitable, it does not explain what this means. In this regard, CRA’s Policy Statement CPS-002 *Relief of the Aged*, July 6, 1990 (“Relief of the Aged Policy”) sets out CRA’s policy on the charitable registration of organizations that are established for the relief of the aged.<sup>5</sup> This policy is helpful in explaining what it means to relieve the needs associated with old age.<sup>6</sup> The Relief of the Aged Policy also contains detailed requirements on housing charities that are established to provide housing for seniors.<sup>7</sup> As well, helpful

---

<sup>4</sup> [1981 J. No. 8146] - [1983] Ch. 159.

<sup>5</sup> Canada Revenue Agency, Policy Statement CPS-002 *Relief of the Aged*, July 6, 1990 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-002-eng.html>).

<sup>6</sup> See paragraphs 7 and 8 of the policy:

7. Activities directed toward the alleviation of loneliness and isolation, such as social clubs are considered charitable. Aged persons need social activities during that particular time of life when they have excess time on their hands, no companionship, no money, and very special needs considering the limited activities their aging bodies permit. If not for the fact that the recipients are aged, social clubs would not be considered charitable.

8. The word relief is not synonymous with benefit. It implies that the beneficiaries have a need attributable to the condition of being aged, and that the condition requires alleviating. The particular needs attributable to old age may co-exist with other charitable needs, for example, the aged may also be infirm, in which case the organization could qualify for registration as a charity for the promotion of health.

<sup>7</sup> These are set out in paragraphs 9 to 15 of the policy:

9. Organizations that are established to provide low cost housing for the elderly may qualify for registration as a charity, without the requirement that the beneficiaries be poor, as long as the organization intends to provide some measure of relief from the infirmities of old age. It would be inappropriate to apply this reasoning where accommodation is obtained by way of bargain and not bounty, as in the case of a co-operative or other organization established to provide housing for its members.

10. If an organization's purpose is to provide low cost housing for the aged, it is not a requirement that both spouses occupying a unit be elderly.

examples are provided in a number CRA's Information Letters, which are no longer available on CRA's website.<sup>8</sup> It would be helpful if the Guidance was cross referenced to the Relief of the Aged Policy in order to provide a complete picture of what the CRA requires of housing charities for seniors, or to consolidate the requirements set out in that policy in to the Guidance. It is not clear whether the fact that the CRA did not do so implies that those requirements may be revised in the near future.

In addition, the Guidance also did not make reference to another CRA Policy Commentary CPC-004, *Housing for Seniors (Life-Tenancy Agreement)*, April 10, 1992 ("Life-Lease Policy"), in relation to whether providing housing to the aged under a life-tenancy agreement is charitable.<sup>9</sup> Having made reference to the *Rowntree* case, the Life-Lease Policy clarifies that "Life-tenancy agreements are not unique to the aged nor do they in themselves resolve problems associated with old age. They are merely a particular form of *quid pro quo* and do not imply any charitable relief. Therefore, an organization established simply to provide housing to the aged under a life-tenancy agreement cannot be registered as a charity." However, the Life-Lease Policy implies, but does not clarify, that charities that provide housing to seniors to relieve their needs associated with old age through a life-lease arrangement can be charitable. In light of the global trend of aging populations, the demand to provide programs and services including housing to seniors is on the rise.

---

11. The organization must indicate the criteria to be used in selecting recipients for any housing unit. Relief is inherent in the case of a nursing home or other domiciliary care facility but may not be as evident for apartment projects. Where residents are provided with rooms as opposed to independent units and receive some care (for example, meals), the organization would likely be recognized as established for relieving some need attributable to old age. Conversely, in cases where the organization has simply provided independent residential units without meals or housekeeping assistance, these would be less likely to meet the requirements for registration.

12. In the case of apartment projects, the provision of wheelchair ramps, medical treatment facilities, a fellowship room and monitoring services would normally be indications of a charitable intent, as would statements to the effect that the organization hopes to help the elderly remain independent without the burdens of caring for a house or its grounds.

Disqualifying circumstances

13. The obvious and controlling purpose of an organization must be determined in all circumstances. If an organization merely administers a rental program, prepares the necessary financial reports and screens the applicants, but does not dispense medical services or provide meals for the residents, it is likely not carrying on a charitable activity.

14. An organization must provide sufficient information about how it intends to operate to ensure that housing will be provided solely for relief of the aged. Where the tenants of a housing project are mixed between those in need of charitable relief and those not in need, for example, arrangements with Central Housing and Mortgage Corporation programs, registration as a charity will be denied on the grounds that the organization's operations are not exclusively charitable.

15. If an organization is constituted to provide rental accommodation to the elderly and the only requirement to be met by prospective tenants is that they be over 60 years of age, registration will be denied because no charitable relief is demonstrated in that circumstance.

<sup>8</sup> Canada Revenue Agency, Information Letter CIL – 1996 – 010, July 19, 1996; Information Letter CIL – 2001 – 019, July 27, 2001; Information Letter CIL – 1994 – 007, June 15 1994.

<sup>9</sup> Canada Revenue Agency, Policy Commentary CPC-004, *Housing for Seniors (Life-Tenancy Agreement)*, April 10, 1992 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-004-eng.html>).

Many organizations find it attractive to provide seniors housing projects through a life lease arrangement. It would be helpful if the Life-Lease Policy better clarified what type of programs would qualify for charitable registration in this regard. It would also be helpful for the Guidance to either cross reference to the Life-Lease Policy or to consolidate those requirements in to the Guidance.

## E. RENTING TO INELIGIBLE BENEFICIARIES

The Guidance states that if an organization rents housing to persons who are not eligible beneficiaries, then the housing must either qualify as investment property income generating a fair market value return, or meet the related business provisions of the *Income Tax Act* (and the Guidance directs readers to refer to CRA's Policy Statement CPS-019, *What is a Related Business?*<sup>10</sup>). The Guidance clarifies that although it is acceptable for a charity to earn investment income or engage in related business activities, doing so must remain incidental and ancillary to furthering the charity's purposes. The approach in the Guidance of stating the requirements in broad terms is better than the restrictive approach in the Previous Policy which stated that "the presence within the project of areas leased to commercial tenants is normally an indication of non-charitable status, except where it can be determined that such rentals involve areas unsuited to habitation, or are a specific design feature intended to provide necessary goods and services for tenants without transportation or with mobility impairments. However, even in these cases, the commercial space cannot exceed 10% of the project's area."

## F. DRAFTING PURPOSES AND CHARITABLE REGISTRATION

The Guidance provides a few examples of charitable purposes for both types of housing charities.<sup>11</sup> The Guidance directs readers to CRA's Guidance on how to draft charitable purposes and CRA's model purposes.<sup>12</sup> As a result of CRA's Guidance on how to draft purposes released in 2013, it is no longer necessary to explain how to draft purposes in the Guidance, as in the case in the Previous Policy.

---

<sup>10</sup> Canada Revenue Agency, Policy Statement CPS-019, *What is a Related Business?* March 31, 2003 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-019-eng.html>).

<sup>11</sup> *Supra* note 1, para. 8, 12 and 13.

<sup>12</sup> Canada Revenue Canada, Guidance CG-019, *How to Draft Purposes for Charitable Registration*, July 25, 2013 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/drftprpss-eng.html>); and Canada Revenue Canada webpage *Model purposes* (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/mdl/mdl-bjcts-eng.html>).

The Guidance indicates that on an application for charitable status, a housing organization's statement of activities must include the following:

- the criteria used to select their beneficiaries;
- the process used to select beneficiaries;
- the process used to determine rental rates;
- the policies and procedures in place to ensure that only eligible beneficiaries receive charitable benefits;
- the proportion of tenants who are not eligible beneficiaries, and whether such tenants pay market rent;
- all goods, services, and associated amenities provided by the organization to eligible beneficiaries and other tenants; and
- if any space is leased to commercial tenants, all details of these arrangements and the reason for entering into these arrangements.

## G. OTHER ISSUES

The Guidance sets out two very helpful reminders to charities.

First, in some situations, organizations that provide housing may be required to issue T5007s to beneficiaries. T5007 slips are used to identify recipients of workers' compensation benefits and social assistance payments, and to report the amount of benefits and assistance paid to them. The T5007 slips make it easier for recipients of these benefits or assistance payments to determine the amounts they received during the year. The income shown on the T5007 slip is not taxable, but the recipients must include the amounts in their net income. The recipients need this information if they want to claim the guaranteed income supplement and certain tax credits and payments to which they may be entitled.<sup>13</sup>

Second, charities that make leasehold improvements to property leased from others should also be aware of CRA's Policy Statement CPS-006, *Registered Charities Making Improvements to Property Leased from Others*.<sup>14</sup> In a nut shell, this policy states that improvements to leased property are often insignificant or made over a lengthy lease period and therefore deplete their value, but where the improvements involve an increase in the value of the property, the charity must demonstrate that any personal benefits conferred on the lessor are offset by reasonable consideration to the charity.

---

<sup>13</sup> For more information see T4115 T5007 Guide - Return of Benefits (online: [http://www.cra-arc.gc.ca/E/pub/tg/t4115/t4115-e.html#P117\\_4646](http://www.cra-arc.gc.ca/E/pub/tg/t4115/t4115-e.html#P117_4646)).

<sup>14</sup> Canada Revenue Agency, Policy Statement CPS-006, *Registered Charities Making Improvements to Property Leased from Others*, October 11, 1994 (online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-006-eng.html>).

## H. CONCLUSION

The replacement of the Previous Policy with the Guidance is a welcome change. It is helpful that the Guidance sets out general requirements of the CRA rather than the highly prescriptive approach taken in the Previous Policy. Cross referencing to other CRA policies is also helpful, such as how to draft purposes, what a related business means, etc.

That said, it would be beneficial if the Guidance was to also make cross reference to the Relief of the Aged Policy and Life-Lease Policy that also set out requirements for housing charities or to consolidate them into the Guidance. Better clarification on whether and how housing for seniors provided under a life lease arrangement would qualify for charitable registration would also be helpful. Finally, it would also be of assistance for the Guidance (perhaps in the footnote) to include a more fulsome review of the legal principles from the *Rowntree* case in relation to whether the provision of housing to seniors under different arrangements is charitable.