

By-Law No 1994. 06
**A BY-LAW OF THE GWA'SALA-'NAKWAXDA'XW INDIAN BAND
TO REGULATE RESIDENCY AND
THE ORDERLY ALLOCATION, USE AND OCCUPANCY
OF BAND OWNED HOUSES**

Enacted on the 24TH day of February, 1994

WHEREAS the Council of the Gwa'Sala-'Nakwaxda'xw Band desires to make a by-law for the regulation of residency on reserve, the allocation, use and the occupancy of band owned houses;

AND WHEREAS paragraphs 81(1)(a), (c), (h), (p.1), (q) and (r) of the Indian Act empower the Council of the Gwa'Sala-'Nakwaxda'xw Band to make by-laws to provide for the health of residents, the observance of law and order, the regulation of construction, repair and use of buildings, whether owned by the band or by individual members of the band, the residence of band members and other persons on the reserve, and with respect to any matter arising out of or ancillary to the exercise of the power, and for the imposition of a penalty for a violation thereof;

AND WHEREAS it is deemed to be expedient for the welfare of the inhabitants of the Gwa'Sala-'Nakwaxda'xw reserve to regulate residency and in order to do so, to provide for the orderly allocation of band owned houses, and to provide for their use and occupancy;

NOW THEREFORE the Council of the Gwa'Sala-'Nakwaxda'xw Band hereby enacts the following by-law:

Short Title

1. This By-law may be cited as the «Gwa'Sala-'Nakwaxda'xw Band Residential Occupancy By-law.»

Interpretation

- 2.(1) In this by-law,

«*application*» means the list where all applications for occupancy of a band owned house are registered upon being submitted to the band council or the Housing Committee;

«*band owned houses*» means a house owned by the band that is a living accommodation used or intended for use as a residence, and includes a room in a boarding house or lodging house;

«*band council*» means the band council of the Gwa'Sala-'Nakwaxda'xw band as defined in the *Indian Act*;

"judicial council" means those members, or alternate members appointed pursuant to the Gwa'Sala-'Nakwaxda'xw Judicial Council By-law.

«*housing agreement*» means an agreement, whether written, oral or implied, between the band council and a resident for the right to occupy a band owned house, including any renewal of such an agreement;

«*housing administrator*» means a person appointed by the band council pursuant to section 4, to administer this by-law, and is an agent of the band council for the purposes of this By-law;

«*Housing Committee*» means a Committee created pursuant to section 40, the main purpose of which is to resolve disputes between the band council and residents of a band owned house, to maintain a list of all applications made for occupancy of band owned houses, and to make recommendations to the band council on the allocation of band owned houses;

«*occupancy fee*» includes the amount of any consideration paid or required to be paid by a resident to the band council for the right to occupy a band owned house;

«*resident*» means a person who enters into a housing agreement with the band council and who pays an occupancy fee in return for the right to occupy a band owned house;

«*officer*» means any peace officer, police constable or other person charged with the duty to preserve and maintain the public peace, and any person appointed by the council for the purpose of maintaining law and order on the reserve;

«*reserve*» means the reserves of the Gwa'Sala-'Nakwaxda'xw Band;

(2) For the purposes of this by-law, a resident has vacated the band owned house where the housing agreement has been terminated pursuant to this by-law, and

- (a) the resident has left the band owned house and informed the housing administrator that he does not intend to return; or
 - (b) the resident does not ordinarily live in the band owned house.
- (3) For the purposes of this by-law, a resident has abandoned the band owned house where the housing agreement has not been terminated pursuant to this by-law and
- (a) the housing administrator has reasonable grounds to believe that the resident has left the band owned house; or
 - (b) the resident does not ordinarily live in the band owned house and he has not expressed an intention to resume living in the said house.

Application

3. This by-law applies to the allocation, use and occupancy of band owned houses and housing projects *where the band council has received a contribution pursuant to section 95 or 98 of the National Housing Act, RSC 1985, c. N-11*, and to housing agreements only, notwithstanding any other by-law or any agreement or waiver to the contrary.

Housing Administrator

- 4.(1) The Council may, by resolution, appoint one or more housing administrators, who shall be responsible for the administration and enforcement of this by-law.
- (2) The Council may, in the resolution, provide for reasonable remuneration to be paid to the housing administrator.
- (3) For the purpose of this by-law, the housing administrator is an agent of the band council.

Contractual Relationship

5.(1) For the purpose of this by-law, the relationship of the band council and the resident created under a housing agreement is one of contract only and does not create any interest in land in favour of the resident.

(2) A housing agreement takes effect on the date the resident is entitled to occupy the band owned house.

(3) The band council shall not be entitled to take, seize, detain or sell for occupancy fees payable under the housing agreement on the goods and personal property of any person.

Housing Agreements

6.(1) A housing agreement may be oral, written or implied.

(2) A written housing agreement shall be signed by the parties and may be in the form set out in Schedule "A".

Deemed Inclusion of Provisions

7. A housing agreement shall be deemed to include the provisions of the housing agreement form set out in Schedule "A" and any provision of the housing agreement that is inconsistent with this by-law is of no effect.

Resident to Receive Copy

8. Where a housing agreement is in writing, the housing administrator shall ensure that a copy of the housing agreement, signed both by himself, as agent for the band council, and by the resident, is given to the resident within thirty (30) days after it has been signed by the resident and delivered to the housing administrator.

Additions only by Consent

9.(1) In addition to the rights and obligations contained in the housing agreement set out in Schedule "A", the housing administrator, as agent for the band council, and the resident may provide in a written agreement for other rights and obligations which are not inconsistent with this by-law.

(2) Where an additional obligation concerns the resident's use, occupancy or maintenance of the band owned house, the obligation cannot be enforced unless it is reasonable in all circumstances.

(3) The housing administrator shall not establish, modify or enforce rules concerning the resident's use, occupancy or maintenance of the band owned house, unless the rules are reasonable in all the circumstances and in writing and made known to the resident.

(4) The housing administrator or the resident may apply to the Housing Committee to determine whether an obligation or rule is reasonable.

(5) The Housing Committee that receives an application pursuant to subsection (4) may determine whether an obligation or rule is reasonable and order the housing administrator or the resident to comply.

(6) Any determination made pursuant to subsection (4) by the Housing Committee shall be rendered within 30 days after the date that it has received an application made pursuant to subsection (4).

Allocation of Band Owned Houses

10.(1) Any band member may apply to the Housing Committee for a band owned house.

(2) The application shall be filed with the Housing Committee and shall include

- (a) if the applicant proposes to reside on the reserve for a limited time, the approximate duration of the proposed residence;
- (b) the name of the applicant's house, if any;

- (c) the names of the applicant's dependent children, if any; and
- (d) any other relevant information the applicant wishes to provide that assist the Band Housing Authority in decisions relating to allocation of a unit.

Determination of Allocation

11.(1) In determining whether to allocate a band owned house, the Housing Committee shall take into consideration each of the following:

- (a) whether the applicant agrees to pay the occupancy fee;
- (b) the availability on the reserve of adequate housing;
- (c) whether the applicant is willing to enter into a housing agreement;
- (d) whether the applicant has a large family;
- (e) where the applicant is presently living and if those premises meet health and safety standards; and
- (f) the order of the applications on the application list.

(2) After having reviewed the applications, the Housing Committee shall make its recommendations to the band council;

(3) The band council shall in turn dispose of the application by:

- (a) granting the applicant a band owned house; or
- (b) refusing the application,

and shall give written notice incorporating reasons in support of its decision to the applicant.

(4) Within five (5) days after disposing of the application, the band council shall post a notice of its decision in the Band office.

(5) Any applicant whose application is refused under this section may appeal to the band council pursuant to section 51.

(3) When the housing administrator intends to exercise the right to enter, pursuant to subsection (2), he shall give written notice to the resident at least twenty-four hours before the first time of entry under the notice, specifying the purpose of the entry and the days and the hours during which the housing administrator intends to enter the band owned house.

(4) The hours during which the housing administrator may enter the band owned house shall be between 8:00 a.m. and 8:00 p.m.

(5) Unless the resident objects to the days and hours set out in the housing administrator's notice and specifies alternative days and hours that are reasonable in the circumstances, the housing administrator may enter in accordance with the notice given under subsection (3).

Where Entry without Notice Allowed

14.(1) The housing administrator has the right to enter the band owned house without giving the notice required by subsection 13(3) where:

- (a) an emergency exists;
- (b) the resident consents at the time of entry; or
- (c) the housing administrator has reasonable grounds to believe that the resident has vacated or abandoned the band owned house.

(2) In the case referred to in paragraph (1)(a), the housing administrator has a right to enter even though the resident is not at home at the time and has not given his permission to the housing administrator to enter.

(3) In the case referred to in paragraph (1)(a), where a resident is at home at the time, he shall permit the housing administrator to enter.

Remedy for Breach of Privacy or Right of Entry

15. Where, on application of the housing administrator or of a resident, the Housing Committee determines that an obligation imposed by section 13 or 14 has been breached, the Housing Committee may make an order:

- (a) requiring the person who breached the obligation to not breach the obligation again; or
- (b) requiring the person who breached the obligation to compensate the affected party for loss suffered as a direct result of the breach.

Band Council's Obligations

House to be Habitable

16.(1) The band council shall:

- (a) provide and maintain the band owned house in a good state of repair and fit for habitation during the occupancy; and
- (b) ensure that the band owned house provided complies with all health, safety, maintenance and occupancy standards required by law.

(2) Subsection (1) applies even where a resident had knowledge of any state of non-repair before he entered into the housing agreement.

(3) Where, on the application of a resident, the Housing Committee determines that the band council has not fulfilled an obligation imposed by this section, the Housing Committee shall recommend to the band council:

- (a) to comply with its obligation;
- (b) to authorize any repair or other action to be taken by the resident to remedy the effects of the band council's breach and to pay any reasonable expenses associated with the repair or action; or
- (c) to compensate the resident for loss that has been or will be suffered as a direct result of the breach.

Resident to Have Peaceful Occupancy

17.(1) The band council shall not disturb a resident's occupancy or enjoyment of the band owned house.

(2) Where, on the application of a resident, the Housing Committee determines that the band council has breached the obligation imposed by this section, the Housing Committee shall recommend to the band council:

- (a) to comply with its obligation;
- (b) to compensate the resident for loss that has been or will be suffered as a direct result of the breach.

Provision of Addresses for Notices

18.(1) The housing administrator shall give written notice to the resident or:

- (a) his name and address for the giving of notices or documents and telephone numbers; and
- (b) the name, address and telephone number of the Housing Committee having authority in respect of the band owned house.

(2) Where, on the application of a resident, the Housing Committee determines that the band council has not complied with the obligations imposed by this section, the Housing Committee shall recommend to the band council to comply with this obligation.

Resident's Obligations

Obligation to Pay Occupancy Fee

19.(1) A resident shall pay to the housing administrator, as agent for the band council, the occupancy fee required by the housing agreement on the dates specified by the housing agreement.

(2) Where, on the application of the housing administrator, as agent for the band council, the Housing Committee determines that a resident has failed to pay the

occupancy fee in accordance with subsection (1), the Housing Committee may make an order:

- (a) requiring the resident to pay the occupancy fee owing;
- (b) requiring the resident to pay his occupancy fee on time in the future; or
- (c) terminating the occupancy on the date specified in the order and ordering the resident to vacate the band owned house on that date.

Obligation to Repair Damage

20.(1) A resident is responsible for the repair of any damage to the band owned house caused by the wilful or negligent conduct of the resident or any person or persons who are permitted on the premises by the resident.

(2) A resident shall not remove from the band owned house any fixtures, sinks, bathtubs, or appliances, and shall not alter, make additions to or affix any item, fixture or thing to the floors, exterior or interior walls, roof or ceiling of the band owned house without the prior written consent of the housing administrator.

(3) Ordinary wear and tear of the band owned house does not constitute damage to the premises.

(4) Where, on the application of the housing administrator, as agent for the band council, the Housing Committee determines that a resident has failed to comply with the obligations imposed by this section, the Housing Committee may make an order:

- (a) requiring the resident to comply with his obligation;
- (b) prohibiting the resident from doing any further damage;
- (c) requiring the resident to compensate the band council for loss suffered as a direct result of the noncompliance;
- (d) authorizing any repair or other action that is to be taken by the housing administrator to remedy the effects of the resident's breach;
- (e) requiring the resident to pay any reasonable expenses directly associated with the repair or action; or
- (f) terminating the occupancy on the date specified in the order and ordering the resident to vacate the band owned house on that date.

Duty Not to Interfere with Others' Occupancy

21.(1) A resident shall not disturb any other residents' occupancy or enjoyment of a band owned house.

(2) A disturbance caused by a person permitted by a resident to enter the band owned house shall be deemed to be a disturbance caused by the resident.

(3) Where, on the application of the housing administrator, as agent for the band council, the Housing Committee determines that a resident has not complied with the obligations imposed by subsection (1), the Housing Committee may make an order:

- (a) requiring the resident to comply with his obligation;
- (b) requiring the resident to not breach his obligation again; or
- (c) terminating the occupancy on the date specified in the order and ordering the resident to vacate the band owned house within 60 days of the order.

Housing Administrator to Investigate Complaints

22.(1) Where a resident informs the housing administrator that he has been affected by another resident's breach of the obligation imposed by subsection 21(1), the housing administrator shall inquire into the complaint and take appropriate action, including the making of an application under subsection 21(3).

(2) Where, after receiving a complaint under subsection (1), the housing administrator does not make an application under subsection 21(3), and the complaining resident is not satisfied with the action, if any, that the housing administrator has taken, the complaining resident may give a written notice to that effect to the Housing Committee and the housing administrator.

(3) Where the Housing Committee receives a notice under subsection (2), the Housing Committee shall inquire into the matter and where it is of the opinion that there would be reasonable grounds for an application under subsection 21(3), shall attempt, by whatever reasonable means it considers necessary, to resolve the complaint by agreement between the housing administrator and the complaining resident.

(4) Where the Housing Committee is of the opinion that it has been unable to resolve the complaint within a reasonable time:

- (a) an application by the housing administrator, as agent of the band council, under subsection 21(3) against the resident alleged to have breached the obligation imposed by subsection 21(1) shall be deemed to have been made; and
- (b) the housing administrator, as agent for the band council, the complaining resident and the resident alleged to have breached the obligation are parties to the application.

Cleanliness and Overcrowding

23.(1) A resident shall maintain the band owned house of which the resident has exclusive use in a state of ordinary cleanliness.

(2) A resident shall not permit such number of persons to occupy the band owned house on a continuing basis that results in the contravention of health, safety or housing standards required by law or in breach of the housing agreement.

(3) Where, on the application of the housing administrator, as agent of the band council, the Housing Committee determines that a resident has breached an obligation imposed by this section, the Housing Committee may make an order:

- (a) requiring the resident to comply with his obligation;
- (b) requiring the resident to not breach his obligation again;
- (c) requiring the resident to compensate the band for loss suffered as a direct result of the breach;
- (d) authorizing any action that is to be taken by the housing administrator to remedy the effects of the resident's breach and requiring the resident to pay any reasonable expenses directly associated with the action; or
- (e) terminating the occupancy on the date specified in the order and ordering the resident to vacate the band owned house within 60 days of the date of the order.

Illegal Activities

Where Agreement ends on Date Specified

27.(1) Where a housing agreement ends on a specific date, the band council and the resident shall be deemed to renew the housing agreement on that date as a monthly occupancy with the same rights and obligation as existed under the former housing agreement, subject to any occupancy fee increase, if any, provided that any increase is reasonable in the circumstances.

(2) Subsection (1) does not apply where:

- (a) the band council and the resident have entered into a new housing agreement; or,
- (b) the occupancy has been terminated in accordance with this by-law.

Termination

Termination by Mutual Agreement

28. The housing administrator, as agent of the band council, and a resident may agree in writing after a housing agreement has been entered into, to terminate the occupancy on a specified date and the occupancy is terminated on the date specified.

Termination by Resident: Fixed Term

29. Where a housing agreement specifies a date of termination, the resident may terminate the occupancy on the date specified in the agreement by giving the housing administrator, as agent of the band council, a notice of termination not later than thirty days before the termination date.

Termination by Resident: Periodic Occupancy

30. Where a housing agreement does not specify a date of termination, the resident may terminate the occupancy on the last day of a period of the occupancy by giving the housing administrator, as agent of the band council, a notice of termination,

- (a) in the case of a weekly occupancy, at least seven days before the termination date; or

- (b) in the case of an occupancy other than a weekly occupancy, at least thirty days before the termination date.

Right to Terminate on Death or Incapacity

31. Notwithstanding any other provision of this by-law, where a resident dies or the health or physical condition of the resident deteriorates and he is unable to pay the housing occupancy fee, the resident, his heirs, assigns or legal or personal representative may terminate the housing agreement by giving notice to the housing administrator.

Termination for Cause by Band Council

32.(1) The housing administrator, may, at any time, give a resident a notice of termination of at least thirty days, where:

- (a) the resident, or any person permitted in or on the premises of the band owned house by him, has caused damage to the band owned house and the resident has failed to comply with an order made pursuant to subsection 20(4);
- (b) the housing agreement has been frustrated;
- (c) the safety of other band members is seriously impaired by an act or omission of the resident or a person permitted by him in or on the premises of the band owned house; or
- (d) a resident has repeatedly failed to pay the full amount of the occupancy fee or to pay the occupancy fee on the dates specified in the housing agreement.

(2) A housing administrator who has given a notice of termination pursuant to subsection (1) shall make an application to the Housing Committee for an order to terminate the housing agreement and the Housing Committee may issue an order terminating the occupancy on the date specified in the order and ordering the resident to vacate the premises on that date, subject to appeal.

Contents of Notice of Termination

33.(1) A notice of termination by a resident or the housing administrator, as agent of the band council, shall be in writing and must:

- (a) be signed by the resident or the housing administrator;
- (b) identify the band owned house to which the notice applies;
- (c) state the date on which the occupancy is to terminate; and
- (d) state the reason for the termination of the occupancy.

The housing administrator shall not charge a fee for giving the notice of termination.

Termination for Demolition, Major Repairs

1) Where, on the application of the housing administrator, the Housing Committee determines:

- (a) that occupancy of a band owned house is required for the purposes of
 - (i) demolition;
 - (ii) making repairs or renovation so extensive as to require that the band owned house be unoccupied for a period of time; and
- (b) that the housing administrator has obtained all necessary permits or other authority that may be required, the band council may make an order terminating the occupancy, but shall give the resident a ninety (90) day notice to this effect.

Where

- (a) a resident has received a notice for termination for the reason stated in subparagraph(1)(a)(ii); and
- (b) has indicated in writing to the housing administrator, before vacating the band owned house, that he wishes to have a right of first refusal to reoccupy the premises as a resident when the repairs or renovations are completed, the resident shall have the right of first refusal to occupy the said house, provided that the resident informs the housing administrator of his address.

Right of Abandonment

38. Notwithstanding any other provision of this by-law, where this by-law provides that an application is to be made to the Housing Committee, the application may be made, within the time limit set out in subsection 37(1) with the Housing Committee, and a copy of the application shall be served on the other party at least five (5) days before the day named in the application for the hearing.

SERVICE OF NOTICES

39.(1) Subject to subsection (3), any notice, process or document to be served by or on the housing administrator, as agent of the band council, a resident or the Housing Committee may be served by personal delivery or by registered mail to the housing administrator at the address given in the tenancy agreement or mailed to the resident at the address of the band owned house and at the address of the Housing Committee.

(2) A notice, process or document sent by registered mail shall be deemed to have been served on the seventh day after the date of mailing.

(3) Where a notice cannot be served personally on a resident who is absent or evading service, the notice may be served on the resident by serving it on any adult person who apparently resides with the resident, and by posting it in the band council office.

Housing Committee

40. The band council may create a Housing Committee for the purpose of implementing this by-law:

(1) The band council shall create a Housing Committee consisting of a council member or council members, one or two Band Elders and the band administrator or financial controller of the Band, to hear appeals pursuant to this by-law.

(2) Any decision of the Housing Committee requires the support of at least three (3) members.

Duties and Powers of the Housing Committee

Policy of Non-Intervention

41. The Housing Committee shall encourage the housing administrator and residents to attempt to resolve their dispute themselves.

General Powers

42.(1) The Housing Committee shall:

- (a) provide information to the housing administrator and residents respecting occupancy matters;
- (b) receive and investigate complaints and mediate disputes between the housing administrator and the residents;
- (c) investigate allegations of violations of this by-law;
- (d) issue notices and orders as authorized by this by-law;
- (e) allow the housing administrator to enter a band owned house at any reasonable time, after giving reasonable notice, for the purpose of carrying on his duties under this by-law; and
- (f) hold hearings and give notice of hearings to the parties.

(2) The Housing Committee shall give reasons for any order or decision it issues and serve a copy of the order or decision and the reasons on the housing administrator and the resident affected.

PROCEDURE

Principles of Natural Justice to be Followed

43. The Housing Committee shall adopt the most expeditious method of determining the questions arising in any proceedings and ensure that the principles of natural justice are followed.

Committee to Encourage Settlement

44.(1) Where an application has been made to the Housing Committee, the Housing Committee shall inquire into the matter and shall assist the parties to the proceeding in attempting to settle the matter by agreement.

(2) An applicant may withdraw an application at any time before an order or decision is made.

Hearing when no Settlement of Where Urgency Exists

45.(1) Where the Housing Committee has inquired into the matter and is of the opinion that:

- (a) it is unlikely that the parties to a proceeding will be able to settle the matter by agreement; or
- (b) the urgency of having the matter resolved requires that a determination be made, the Housing Committee shall notify the parties and hold a hearing.

(2) The Housing Committee is not disqualified from holding a hearing and determining a matter by reason only of the fact that

- (a) it attempted to assist the parties to the proceedings in settling the matter by agreement;
- (b) it took part in an inquiry or inspection to the dispute.

Right to Examine Material Filed

46. All parties to a proceeding under this by-law may examine all material filed with the Housing Committee relevant to the proceedings.

Examination of Parties

47. At a hearing, the Housing Committee may question the parties who are in attendance at the hearing and any witnesses, with a view to determining the truth concerning the matters in dispute.

Committee may Inquire, Inspect, and Question

48. The Housing Committee may, before or during a hearing:
- (a) conduct any inquiry or inspection it considers necessary; and
 - (b) question any person, by telephone or otherwise, concerning the dispute.

Committee may Consider Evidence Outside Hearing

49. In making its decision, the Housing Committee may consider any relevant information it obtained in addition to the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.

Committee to Make Order or Decision

50. After holding a hearing and having regard to all the circumstances, where the Housing Committee is satisfied that:
- (a) an order or decision that has been applied for is justified, it shall make that order or decision; or
 - (b) another order or decision that could have been applied for is justified, it may make that other order or decision.

Appeal to the Band Council

51.(1) A resident may appeal an order or a decision of the Housing Committee or appeal an allocation of a band owned house with the band council, within fourteen (14) days after the date of being served a copy of the order or after the date that a notice has been posted in the band office.

(2) A notice of appeal and a copy of the notice of appeal shall be served on the Housing Committee or the housing administrator, not later than seven (7) days prior to the appeal.

(3) An appeal under this section stays the operation of the order in respect of which the appeal is made.

- (4) Within thirty (30) days after the filing of the appeal, the band council shall convene and shall conduct a hearing with respect to the appeal.
 - (5) At least fourteen (14) days prior to the date of the hearing, the band council shall:
 - (a) give written notice to the resident of the date, time and place of the hearing and shall inform the resident that he has the right to appear and make oral and written submissions at the hearing in support of the appeal; and
 - (b) post in the Band Office a copy of the notice.
 - (6) At the hearing, the band council shall:
 - (a) provide the resident with an opportunity to present evidence and to make oral and written submissions in support of the appeal; and
 - (b) provide any person present, who has an interest in the outcome of the proceeding, with the opportunity to be heard.
 - (7) After it has heard all of the evidence and submissions, the band council shall meet in private to consider the appeal.
 - (8) Within ten (10) days after hearing the appeal the band council shall dispose of the appeal by
 - (a) allowing the appeal and substituting its own decision for the decision of the Housing Committee; or
 - (b) dismissing the appeal,
- and the decision of the band council shall incorporate written reasons for the decision.
- (9) The band council shall provide written notice incorporating reasons for its decision to the resident, and shall address a copy to the Housing Committee.
 - (10) Within five (5) days after its decision is rendered, the band council shall post a notice of its decision in the Band Office.

Offences

52. Any person who:

- (a) harasses a resident for the purpose of forcing a resident to vacate or abandon his band owned house;
- (b) fails to comply with any reasonable requirement or direction of the housing administrator in the exercise of his powers and the performance of his duties under this by-law;
- (c) obstructs or hinders the housing administrator in the exercise of his powers or the performance of his duties; or
- (d) furnishes false information in any sworn statement to the housing administrator

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding 30 days, or to both.

Judicial Council

53. The Judicial Council may advise on matters arising out of the enforcement of this by-law.

SCHEDULE "A"

HOUSING AGREEMENT

General Information

Note: No part of this Agreement may be altered or deleted, but additions may be included under section 8, where both the housing administrator (as agent for the Band Council) and the resident agree and where the additions do not conflict with the "Gwa'Sala-'Nakwaxda'xw BAND RESIDENTIAL OCCUPANCY BY-LAW".

(Include apartment number, street number, postal code or other information to adequately describe the location of the band owned house.)

Duration

3 The Band Council and the resident agree that the occupancy is to begin on _____ and

(a) is to end on _____

OR (b) is to run

(i) from month to month, or

(ii) from week to week.

(Complete either (a) or (b). Where an occupancy is for a definite period include to termination date in (a). Where the occupancy is to have no fixed termination date, cross out either subparagraph (i) or (ii) of paragraph (b).)

Termination of Occupancy

4.(1) Notwithstanding that a fixed date for the end of the occupancy is specified under paragraph 3(a), the Band Council and the resident agree that the occupancy is renewed on that date unless a new housing agreement has been entered into and the renewal is subject to an occupancy fee increase made in accordance with subsection 5(4) of this Agreement.

OR

(2) Where no fixed date is specified, the Band Council and the resident agree that a notice of termination of this occupancy is to be served by the resident on the Band Council as follows:

- (a) if the band owned house is occupied from month to month and the occupancy has continued for twelve months or more, at least sixty days before the expiration of any such month to be effective on the last day of the second month: for example, if the band owned house is occupied from the 1st of March on a month-to-month basis and have been occupied for twelve months or more, the notice to terminate is given on the 30th of March of the subsequent year would state that the resident will vacate the band owned house on the 31st of May;
- (b) if the band owned house is occupied from month to month and the occupancy has continued for less than twelve months, at least one month before the expiration of any such month to be effective on the last day of the second month: for example, if the band owned house is occupied from the 15th of each month on a month-to-month basis and has been occupied for less than twelve months, the notice would have to be given not later than thirty days before the 14th day of the previous month; or
- (c) if the band owned house is occupied from week to week, at least seven days before the expiration of any such week to be effective on the last day of that week; for example, if the band owned house is occupied from Wednesday on a week-to-week basis, the last day of a week would be Tuesday and notice would have to be given not later than Tuesday of the previous week.

Occupancy Fee

5.(1) The resident agrees to pay an occupancy fee at the following rate or rates:

_____ to
(week, month, etc.)

(Name and Address where payments are to be made)

(1) The Band Council and the resident agree that the first payment of the occupancy fee is due on the _____ day of _____, 19____, and subsequent payments are to be made on the _____ day of each _____.
(week, month, etc.)

(2) The Band Council and the resident agree that the occupancy fee mentioned above includes payment for the following services and facilities:

and that provision of the following services and facilities is the responsibility of the resident

Note: Services and facilities such as heat, furniture, appliances, electricity, water, should be stated above.

OPTIONAL PROVISION

NOTE: Where the Band Council and resident have not provided in subsection 5(1) for future increases in the occupancy fee and the occupancy is for a fixed term, subsection 5(4) may be included in this Agreement by checking here: _____

(4) The Band Council may increase the occupancy fee on the band owned house only once in any twelve-month period during the term of the occupancy by giving at least three months notice to the resident.

Band Council's Obligations

6.(1) The Band Council agrees that it

- (a) shall deliver the band owned house to the resident in a good state of repair and fit for habitation;
- (b) shall maintain the band owned house in a good state of repair and fit for habitation;
- (c) shall comply with all health, safety, housing and building standards, and any other legal requirements respecting the band owned house; and
- (d) shall keep all common areas in a clean and safe condition.

Note: Failure of the Band Council to perform his obligations may entitle the resident to have the obligation performed pursuant to an order of the Housing Committee at the Band Council's expense and may result in the occupancy being terminated.

OPTIONAL PROVISIONS

(May be used only where a band owned house is comprised of one family dwelling unit)

(2) Notwithstanding subsection (1), the Band Council and the resident agree that the Band Council's responsibility under (1)(a)____, (1)(b)__, (1)(c)__, and (1)(d)__, *(Check appropriate box(es))* shall be performed by the resident, with the exception of repairs required as a result of reasonable wear and tear or as a result of damage by fire, water, tempest or other act of God.

Resident's Obligations

7.(1) The resident agrees that he

- (e) shall be responsible for ordinary cleanliness of the band owned house;
- (f) shall repair within a reasonable time after its occurrence any damage to the band owned house caused by the wilful or negligent conduct of the resident or of persons who are permitted in the band owned house by the resident;
- (g) shall conduct himself and require other persons in the band owned house with his consent to conduct themselves in a manner that will not disturb the

Band Council's or other residents' occupancy or enjoyment of the band owned house.

- (h) shall not enter into an oral, written or implied sub-letting agreement/contract.

(2) The resident agrees to comply with the rules concerning the resident's use, occupancy or maintenance of the band owned house or use of services and facilities provided by the Band Council that are set out below and as may, from time to time, be established or modified by the housing administrator, provided that the rules are in writing, made known to the resident and reasonable in the circumstances.

Note: Failure of the resident to perform his obligations may render the resident liable to compensate the Band Council and may result in the housing agreement being terminated.

Condition of the Band Owned House

8.(1) The Band Council and the resident agree that the Band Council and the resident will inspect the band owned house at the commencement of the occupancy and upon the surrender of occupancy at or following the expiration of the occupancy and that the condition of the band owned house will be noted on the document attached to this Agreement. The attached document shall be signed by the parties performing the inspection.

(2) The Band Council and the resident agree that the inspection document may be used as proof of the condition of the band owned house at the times indicated.

Permitted Uses

9. The Band Council and the resident agree that the band owned house will be used only for residential purposes.

Additions to Agreement

10. The Band Council and the resident agree to the following additions to this Agreement:

Note:

- 1. *No addition may alter any right or duty stated in the "Gwa'Sala-'Nakwaxda'xw Band Residential Occupancy By-Law".*
- 2. Additions must appear on both copies of this Agreement.
- 3. If there is not enough space provided here, separate sheets must be attached. Both copies of the attached sheets must be signed by the Band Council and the resident to be valid.

___ Check here if no additional obligations

Notices

11. The Band Council and the resident agree that notices shall be given in accordance with section 39 of the "Gwa'Sala-'Nakwaxda'xw Band Residential Occupancy By-Law" which states as follows:

"39(1). Subject to subsection (3), any notice, process or document to be served by or on the Band Council, a resident or the Housing Committee may be served by personal delivery or by registered mail to the Housing Administrator at the address given in the tenancy agreement or mailed to the resident at the address of the band owned house and at the address of the Housing Committee.

(2) A notice, process or document sent by registered mail shall be deemed to have been served on the seventh day after the date of mailing.

(3) Where a notice cannot be served personally on a resident who is absent or evading service, the notice may be served on the resident by serving it on any adult person who apparently resides with the resident, or by posting it in the Band Council office.

Decisions of Housing Committee

12. The parties acknowledge and agree to abide by any decision, declaration or order made by the Housing Committee in relation to this Agreement and to comply with all

obligations imposed on them by the "Gwa'Sala-'Nakwaxda'xw Band Residential Occupancy By-Law".

Binding Effect

13. This Agreement is binding on and is for the benefit of the heirs, executors and administrators of the parties.

THIS AGREEMENT is signed at _____
_____, _____ by the Band Council and the resident on this _____ day of _____
_____, 19__.

*Signature of Band Council
(by its agent)*

Signature of resident

Witness

Witness