



# HOUSING BY-LAW

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## Timiskaming First Nation

AUGUST 2019

I hereby certify that this document is a complete and true copy of the original document consisting of 31 pages

Certified this 23<sup>rd</sup>, day of October, 2019

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Darlene Chevrier, Director of Housing



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**BAND COUNCIL RESOLUTION:**

***By-Law regarding the administration of housing of the Timiskaming First Nation***

**WHEREAS;** the Timiskaming First Nation wishes to take action to address the challenges of the Housing Rental Program;

**WHEREAS;** the Timiskaming First Nation wishes to strengthen the administration of the Housing Rental Program in the Community;

**WHEREAS;** the Timiskaming First Nation wishes to adopt corrective measures to insure proper collection of rent from all tenants residing in a band owned unit;

**WHEREAS;** the Timiskaming First Nation wishes to adopt corrective measures to insure proper maintenance of the housing stock;

**WHEREAS;** the Timiskaming First Nation wishes to adopt corrective measures to ensure respectful neighbourly conduct;

**WHEREAS;** the power conferred under subsection 81 (1) of the *Indian Act* "The Council of a band may make By-Laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes";

**WHEREAS;** the powers conferred to a Band Council to adopt a By-Law under section 81 (1), subsection (h) includes "The regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band";

**WHEREAS;** the power conferred to a Band Council to adopt a By-Law under section 81 (1), subsections (p.1, p.2) includes "To provide for the rights of spouses or common-law partners and children who reside with members of the band on the Reserve with respect to any matter in relation to which the Council may make By-Laws in respect of members of the band";

**WHEREAS;** the power conferred to a Band Council to adopt a By-Law under section 81 (1), subsection (r) includes "The imposition on summary conviction of a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding thirty days, or both, for violation of a By-Law made under this section".

**THEREFORE BE IT HEREBY RESOLVED;** that the following By-Law is enacted pursuant section 81, subsections 1 (h), (r) and p.1, p.2 of the *Indian Act* and will come into force pursuant to the provisions of section 1.7.3 (2) of the within By-Law.



## **SECTION 1: GENERAL PROVISIONS**

### **1.1 Short Title**

1. This Housing By-Law may be cited as "TFN Housing By-Law".

### **1.2 Synopsis**

1. The intent of the TFN Housing By-Law is to clearly define the roles, responsibilities and powers of Timiskaming First Nation's primary stakeholders regarding their involvement in housing matters as described within this TFN Housing By-Law. The relations between the different stakeholders are also regulated to promote sound governance, separation of power, financial accountability and to reduce the housing shortage.

### **1.3 Application**

1. The TFN Housing By-Law applies to all tenants and private home-owners of Timiskaming First Nation in regards to occupancy of dwellings within the boundaries of the community.
2. The TFN Housing By-Law applies to the Housing Committee and its members as a dispute resolution and arbitration process regarding the application of this By-Law.
3. The TFN Housing By-Law applies to the TFN Housing Representative regarding the application and enforcement of rules and regulation and the implementation of a Strategic Plan.
4. The TFN Housing By-Law applies to Chief and Council regarding its adoption and amendments of a TFN Housing By-Law as well as the adoption of a Strategic Plan.

### **1.4 Interpretation**

1. The design of this By-Law is intended to improve Timiskaming First Nation's housing governance. It is to achieve that goal by promoting sound behaviours in order to reduce maintenance and repair costs, achieve financial balance and pave way to new opportunities regarding housing. This By-Law is also designed to support accountability, separation of power, increased administrative efficiency of the housing sector and to implement neutral and transparent procedures.
2. In a case of dispute or ambiguity, this By-Law and its stipulations are to be interpreted in conformity with the intent of this By-Law.

### **1.5 Use of Masculine Form**

1. The masculine form is used in this document for the sole purpose of simplifying the text and should be read as including the feminine gender.

### **1.6 Definitions**

"BCR" means Band Council Resolution.

"Chief and Council" means the political body duly elected of the Timiskaming First Nation Band.

"Co-Occupant" means a person who pays a stipulated sum to a tenant for lodging.

"Co-Tenant" means any child over the age of eighteen (18), still residing with a tenant.

"Conflict of Interest" means a situation in which the personal interest of a person conflicts or may conflict with the interest of TFN housing estate or, more specifically, a situation in which there is an incompatibility, real or apparent, between a TFN representative's professional duties and his personal interests, including matters relating to close family and/or friends.

"Enactment Date" means the date at which this By-Law takes effect and becomes applicable to TFN band members.

"Housing Committee" means the committee created pursuant to this By-Law who acts as an arbitration body and is an impartial voice to dispute resolutions.

**"Housing Representative (TFN Housing Representative)"** means the person mandated by TFN to enforce and manage the band-owned rental units and the Housing Loan Program, on the behalf of the Band Council.

**"Housing Sector"** means the administrative body of the Timiskaming First Nation, responsible with the management of housing.

**"Immediate Family Member"** means the father, mother, children of a given family.

**"Lease Agreement"** means a written agreement between the Timiskaming First Nation and a tenant for the right to occupy a rental unit, including any renewal of such agreement.

**"Officer"** means any Police Officer, Constable or other person charged with the duty to preserve and maintain public peace, and any person appointed by TFN for the purpose of maintaining law and order on the reserve.

**"Rent"** means the amount specified in the Lease Agreement, or any renewal thereof, including any increase, paid or required to be paid by a tenant to TFN for the right to occupy a rental unit.

**"Rental Unit"** means a rental unit owned by the Timiskaming First Nation Band, a living accommodation used or intended to be used by a residence. A rental unit includes a Social Housing Dwelling, but does not include the land upon which the band-owned rental unit is situated.

**"Reserve"** means the Timiskaming First Nation.

**"Resident"** means a person who, at the time of the application and the allocation made pursuant to this Housing By-Law, has continuously resided for the past twelve (12) consecutive months within the Traditional Territory of the reserve. Any person who is absent from the reserve to go to school, for training, for hospitalisation, to obtain care in a nursing home, or who is absent from the reserve for purposes of work for a period of more than six (6) months per calendar year shall not lose his residency on the reserve;

**"Stakeholders"** means Chief and Council, the Housing Committee and the TFN Housing Representative.

**"Tenant"** means a person who signs a Lease Agreement with TFN and respects the obligation that is included thereof.

**"TFN"** means Timiskaming First Nation.

**"Traditional Territory"** means the territory further defined in Annex 1.

## **1.7 Enactment**

1. Chief and Council, upon deliberation and consensus and with the power conferred to them under the *Indian Act* Section 81 (1), (H), (R) and (p.1, p.2) hereby enact the following as the Timiskaming First Nation Housing By-Law.
2. This By-Law will come into effect in accordance with subsection 86 (4) of the Indian Act.

### **1.7.1 Repeal and Replace**

1. This By-Law, upon the enactment date, will repeal and replace any previous By-Law addressing matters that are specifically provided by this By-Law.
2. This By-Law does not prevent Timiskaming First Nation from exercising its right to recourse and seek reparation for events that may have occurred before the enactment date and which result from a breach of the tenants' obligations.

### **1.7.2 Amendments**

1. Any and all amendments made to this By-Law will require a resolution from Chief and Council in which will appear the revoked stipulations, the new stipulations and the justification for the amendment. Pursuant to the procedures provided by the *Indian Act*, Chief and Council will publicise the amendment to Timiskaming First Nation Members.
2. Unless specified otherwise, any new stipulations will come into force on the day on which it is first published under Section 86 (4) of the *Indian Act* or on any later day specified in the By-Law.

For greater clarity, increase of rent is not considered an amendment to this By-Law.



## **SECTION 2: SEPARATION OF POWERS**

### **2.1 Synopsis**

1. Section 2 establishes the roles and responsibilities of Timiskaming First Nation's primary stakeholders in housing, which are Chief and Council, the Housing Committee and the TFN Housing Representative. Within this section, the powers of each stakeholder are described, to who they are required to report to and, to a certain extent, how they interact with one another.

### **2.2 Chief and Council**

1. Chief and Council is the legislative body of Timiskaming First Nation in regards to housing and is the spokesperson responsible of informing local stakeholders of the housing file. It is Chief and Council that will instruct the Housing Sector of the First Nation's vision in regards to housing and the Strategic Plan.

#### **2.2.1 Duties**

1. The first duty of Chief and Council is to be informed of the housing situation and its progress throughout time and inform community members of the state of housing.
2. Furthermore, Chief and Council provide guidance to the Housing Sector according to the First Nation's vision in regards to housing. It will support efforts and decisions made by staff and the Housing Committee.
3. Chief and Council have the responsibility to periodically review the TFN's Housing By-Law and adopt the amendments deemed beneficial for the welfare of the community.

#### **2.2.2 Powers**

1. Chief and Council have the power to adopt and update the TFN's Housing By-Law and to adopt a Strategic Plan for the development of housing.
2. Under no circumstances, shall Chief and Council void or reverse a decision made by the Housing Committee in a matter of arbitration or by the TFN Housing Representative in matters of administration.
3. Any other mandate or activity of a legislative nature not specified in this By-Law will be the prerogative of Chief and Council.

#### **2.2.3 Nomination**

1. Chief and Council will appoint one member of the elected officials to be responsible for providing support to the TFN Housing Representative when a situation requires political support, such as assisting to public events ("Housing Portfolio").

#### **2.2.4 Reporting**

1. The Housing Portfolio responsible will report the status and the progress of housing to community members once a year at a meeting called to this effect.

### **2.3 TFN Housing Representative**

1. The TFN Housing Representative, and its sector, is under the purview of the Director General of the Timiskaming First Nation. The TFN Housing Representative acts on behalf of the TFN with the input and guidance of the Director General in regards to matters relating to housing.

#### **2.3.1 Duties**

1. The TFN Housing Representative is responsible for implementing, supporting, and enforcing the TFN Housing By-Law and implementing the Strategic Plan and programs related to housing with the input and guidance of the Director General.
2. The TFN Housing Representative has the administrative responsibilities of managing the programs and the human resources of the Housing Sector with the input and guidance of the Director General.

3. More specifically, the TFN Housing Representative shall have the exclusive responsibilities set out in the TFN Housing Representative Job description.

### **2.3.2 Powers**

1. The TFN Housing Representative has discretionary powers in regards to the implementation strategy of the TFN Housing By-Law and the Strategic Plan. This includes modifying the *Tenant's Selection Guidelines* so that allocation of units is consistent with realising TFN Strategic Plan.
2. The TFN Housing Representative has the authority to initiate legal proceeding on behalf of the Timiskaming First Nation Band for unpaid rent, arrears or violation of obligation or to impose administrative sanction or penalty as provided by this By-Law.
3. Nothing in this By-Law shall obligate the TFN Housing Representative to file a complaint to the Housing Committee if the TFN Housing Representative is of the opinion that a matter should be brought before a court of competent jurisdiction, namely rent, arrears and illegal activities.
4. The TFN Housing Representative may make suggestions and recommendations to the Director General, who will forward the agreed upon changes to Chief and Council for the addition, modification or revoking of stipulations contained within the TFN Housing By-Law.
5. Under such circumstances, the TFN Housing Representative must inform the Housing Committee of its intent and justification prior to presenting the recommendation to the Director General.

### **2.3.3 Nomination**

1. TFN shall appoint one (1) TFN Housing Representative and shall provide reasonable remuneration to be paid to the TFN Housing Representative.

### **2.3.4 Reporting**

1. Every trimester, the TFN Housing Representative will report the status of housing to the Director General, in which instance, the Director General will report the housing activities to Chief and Council.
2. In the eventuality there is no Director General, the TFN Housing Representative will report to Housing Portfolio Holder.

## **2.4 Housing Committee**

1. The Housing Committee is an arbitration body that is composed of a panel of TFN band members that do not owe any money to TFN. The Housing Committee's mandate is to resolve conflicts that may arise under the terms of a signed Lease Agreement. This body is the institution that promotes good tenancy behaviours and is the overseer to the respect of Lease Agreements.
2. The Housing Committee takes root and draws its legitimacy in the terms of a signed Lease Agreement which stipulates that both parties agree to submit to such arbitration when a conflict arise in matters not relating to rent, arrears and illegal activities.
3. Housing Committee members will undertake to sign a non-disclosure agreement relating to their role as defined herein in order to preserve the confidentiality of all stakeholders and tenants.

### **2.4.1 Duties**

1. The Housing Committee is primarily a dispute resolution body which attempts to resolve conflicts. This body also promotes the respect of TFN's Housing By-Law and good occupancy practices.

2. The Housing Committee, when called upon, will act as an arbitration body when tenants whom are fined wishes to appeal their fines or sanction.
3. In respect to guideline set out, they are also tasked with allocating tenants to units when rental units become available.

#### **2.4.2 Powers**

1. The Housing Committee has the power to adopt its own rules of proceedings that are to be ratified by Chief and Council. Excluded however, is the arbitration procedures set out in the TFN Housing By-Law.
2. The Housing Committee shall provide information to community members in regards to the responsibilities of tenants and promote good occupancy practices which are set forth within the TFN Housing By-Law.
3. The Housing Committee has the power to recommend changes to the TFN Housing By-Law. In doing so, they must keep the TFN Housing Representative informed of their recommendations and motives at the time of sending the recommendations to the Director General of the Timiskaming First Nation who will send it to Chief and Council for analysis.
4. Subject to section 4, the Housing Committee shall hear complaints and render decisions or orders pursuant to this Housing By-Law.
5. The Housing Committee has the power to select and allocate rental units to applicants in respects to the guidelines set out in the *Tenant Selection Guidelines*.
6. The Housing Committee is also mandated to:
  - a) Receive and investigate complaints and arbitrate disputes between the Housing Sector and tenants;
  - b) Subject to section 4, investigate allegations of violation of the TFN Housing By-Law;
  - c) Subject to section 4, issue notices, decisions and orders as authorised by the TFN Housing By-Law;
  - d) Subject to section 4, to hold hearings as provided under the TFN Housing By-Law.
7. The Housing Committee shall not have the authority to remove, replace, instruct or give tasks to the TFN Housing Representative; the power to do so belongs to the Director General.

#### **2.4.3 Composition**

1. The Housing Committee will consist of seven (7) band members, five (5) of which will be regular Housing Committee members. Two (2) other substitute members will be nominated to be available for replacement, in the event that any regular member of the Housing Committee is unable to act in such a capacity. Their mandate will be for two (2) years. All, when seated, will have the right to speak and vote.
2. To ensure continuity, the first term will expire 2 years after the coming into force of the TFN Housing By-Law for only 3 regular Housing Committee members and 1 substitute member. The first term of the other members of the Committee will expire 3 years after the entry into force of the By-Law. All terms thereafter will have a duration of 2 years.
3. The TFN Housing Representative will, when required, participate at the Housing Committee regular meetings. The TFN Housing Representative does not have the right to vote, but has the right to speak.
4. No more than one immediate family member can be a member of the Housing Committee, so to ensure equity of decisions that are rendered.

#### **2.4.4 Nomination**

1. At a duly convened meeting to this effect, band members can propose themselves as candidate to become a member of the Housing Committee. If there are only five (5) candidates, they will be elected by acclamation. If there are seven (7) candidates, they may decide amongst themselves who are to be regular members and who are to be substitute members.
2. In the event that there are more than seven (7) candidates, or in the event that the seven candidates do not agree amongst themselves which are to be regular members and which are to be substitutes, the community shall proceed with a vote to elect candidates to the Housing Committee within the same meeting.
3. The five (5) candidates who receive the most votes will be elected as regular members. The following two (2) will be the elected as substitute members.

#### **2.4.5 General Provisions**

1. Any decision or order made by the Housing Committee requires a quorum of three (3) members. A substitute member sitting on a formal Housing Committee meeting has full voting power.
2. In the event a regular member resigns or is terminated pursuant to the TFN Housing by-Law; one of the substitute will become a regular member.
3. The Housing Committee Members may remove any member by resolution, who have missed three (3) consecutive meeting without a valid reason and replace him with any other suitable individual. In this instance, a unanimous decision is required from all regular members, to the exception of the targeted member.

#### **2.4.6 Arbitration**

1. The Housing Committee may render its decision upon review of the file or may allow the parties to be heard in conformity with the Housing Committee rules of proceeding. A copy of the decision will be sent to Chief and Council, the TFN Housing Representative and the tenant which asked for arbitration.
2. Any decision rendered is to be justified, recorded and properly archived in the tenants file in the TFN Housing Representative's office. Such decision will guide any new Housing Committee members so that all decisions are consistent.

## **SECTION 3: RIGHTS AND OBLIGATIONS**

### **3.1 Synopsis**

1. Section 3 describes the rights and obligations of tenants and TFN in matters relating to the rental units belonging to Timiskaming First Nation. The intent is to provide peaceful enjoyment of healthy units and maintaining sound financial practices in order to achieve a prosperous housing sector.

### **3.2 Application**

1. Section 3 applies to the use and occupancy of rental units and to Lease Agreements for band-owned rental units, notwithstanding any other Housing By-Law, provincial statute or any agreement or waiver to the contrary, except as specifically provided for in this part.
2. Both parties are deemed to know their rights and obligations.
3. First and foremost, both parties are to demonstrate good faith and must be forthcoming in their dealings regarding their rights and obligations under the Lease Agreement and TFN Housing By-Law.

### **3.3 Contractual Relationship**

1. The relationship between TFN and the tenant created under a signed Lease Agreement is one of contract only. It is upon the signature of the Lease Agreement that a tenant acquires rights and obligations in regards to a rental unit. A signed Lease Agreement does not create any interest in land in favour of the tenant, co-tenant or occupant, unless a contract specifies otherwise.
2. All Lease Agreements entered into after the enactment date shall be signed and in writing. All Lease Agreements entered into prior to the enactment date shall be deemed to include the provisions of the Lease Agreement form set out in this By-Law.
3. TFN shall not be entitled to take, seize, detain or sell, for unpaid rent payable under a signed Lease Agreement, on the goods and personal property of any person without an order of a court of competent jurisdiction.
4. For greater certainty, the right of occupancy and residency in a Section 95 unit belongs to the tenant only. Subject to Section 5 of this Housing By-Law, occupants have no right to continue residing in a rental unit after it has been vacated by the tenant. A co-tenant may however be given the opportunity to renew the Lease Agreement in respect to stipulations in Section 5 of TFN Housing By-Law.
5. Any amendment to the Lease Agreement must be convened in writing to tenants forty (40) days prior the coming into effect of the amendments.
6. The tenant and TFN agree when signing the Lease Agreement to go to arbitration before the Housing Committee for any breach of obligation except for matters relating to rent, arrears and illegal activities. The restrictions imposed by this section may be enforced by application to the Housing Committee unless specified otherwise.

#### **3.3.1 Restrictions**

1. No tenant, shall assign, sublet or otherwise part with possession of the rental unit without the express written consent of the TFN Housing Representative. More so, no tenant has the right to designate new occupants of a rental unit, including Section 95, without the express written consent of the TFN Housing Representative.
2. No tenant shall modify the rental unit it is occupying, except changes resulting from aging or fair wear and tear of the rental unit or superior force. In the event a tenant does so, he will be required, if the TFN Housing Representative deems it necessary, to bring the rental unit back to its original condition.

3. In the event the tenant does not comply, the TFN Housing Representative may mandate a contractor to do so and send the invoice to the tenant for payment. The tenant will be deemed responsible and will be required to reimburse any amounts, plus interest and fees, owed to TFN in this regard.

### **3.3.2 Residential Purpose**

1. The tenant shall use the rental unit for residential purposes only. No trade or business shall be carried on in the rental unit or the premises without the prior written approval of the TFN Housing Representative.

### **3.3.3 Healthy Housing**

1. Both parties are responsible to maintain, in the manner specified hereunder, the rental unit in a general good state in order to maximise the life expectancy of the unit and its components.

### **3.3.4 Peaceful Occupancy**

1. Both parties shall not disturb the occupancy and peaceful enjoyment of the rental unit.

### **3.3.5 Altering of Locks**

1. No person shall, during the occupancy of a rental unit by the tenant, alter or cause to be altered the locking system on any door giving entry to the rental unit except by prior written consent of the tenant and the TFN Housing Representative.
2. If for any reason, a new lock has been added, a copy of the key must be immediately provided to the TFN Housing Representative.

### **3.3.6 No Smoking**

1. Smoking of tobacco or any other substance that may cause damage to the unit is prohibited in rental units. It is the responsibility of the tenant to ensure that the members of his household and any other person respect this rule. If this rule is not complied with, TFN reserves the right to charge the tenant for any cleaning or remediation costs incurred as a result of the damage to the unit.

## **3.4 Band Council (TFN)**

### **3.4.1 Role**

1. Subject to financial limitation, the role of TFN is to provide rental units that are fit for occupation at all times and its peaceful enjoyment. The Housing Sector will structure its housing portfolio in a manner to achieve financial viability.

### **3.4.2 Obligations**

1. TFN shall be responsible for providing and maintaining the rental units in a good state of repair and fit for habitation during the occupancy. TFN shall also comply with all health and safety standards within the limits of the financial capabilities of programs and the housing financial situation.
2. TFN is responsible for the maintenance of the structural components of the rental units. The obligations imposed under this section shall not apply where the state of disrepair is the result of the intentional act or negligence of a tenant or anyone permitted on the premises by the tenant.

### **3.4.3 Privacy**

1. The TFN Housing Representative must give at least sixty (60) days' notice to tenants of any increase in rent to be charged to the tenant. Tenants have fifteen (15) days to contest the rent increase to a court of competent jurisdiction.



2. The Housing Sector will maintain strict standard in regards to maintaining personal information of tenant confidentiality. Any breach of TFN obligations imposed in this section may be enforced by application to the Housing Committee in its arbitration body capacity.

#### **3.4.4 Insurance**

1. The TFN Housing Representative shall arrange for fire and basic building insurance (public liability) for the rental unit. The tenant shall be responsible for insuring the contents, as well as any improvements or fixtures, which he has placed on the property.

#### **3.4.5 Rights**

1. TFN has the right to receive and collect all rents agreed upon in the signed Lease Agreements.
2. Based on the Nation Occupancy Standard, the TFN Housing Representative has the right to reasonably increase rent, if the occupancy is superior to the Nation Occupancy Standard as set out in Annex 3.
3. The TFN Housing Representative may, at any time, send an inspector to verify the state of a rental unit and the number of occupants in the rental unit. TFN representatives has the right to enter the premises when circumstances justify them doing so.

### **3.5 Tenants**

#### **3.5.1 Role**

1. First and foremost, the role of the tenant is to peacefully occupy a rental unit and pay the full amount of rent on the date agreed upon.

#### **3.5.2 Obligations**

1. Every tenant shall pay to the Finance Department of TFN, the rent required by the Lease Agreement on the dates specified in the Lease Agreement with no exception. The tenant is responsible to repay past arrears of rent plus interest, thereon at the indexing rate in effect.
2. It is the responsibility of the tenant to ensure that proper funds are available for the payment of rent at the specified date on the Lease Agreement.

#### **3.5.3 Maintenance of Rental Unit**

1. Every tenant is responsible for the proper maintenance and care of minor components of a rental unit in a manner to avoid premature decay.
2. Every tenant is responsible for the repair of any damages to the rental unit caused by the willful or negligent conduct of the tenant or any person who is permitted on the premises by the tenant. These repairs must bring the unit to the original state of repair and be done in accordance with Industry Standards.
3. Tenants are not, however, responsible for ordinary wear and tear of a rental unit. This does not constitute damages to the premises. Damages that result from an intentional act, by negligence, by a guest or that are repeatedly damaged, will be held responsible for repairs by the tenant.

#### **3.5.4 Change of Status**

1. The tenant must inform the TFN Housing Representative that he will be vacating the rental unit thirty (30) days prior to the expiry date of the Lease Agreement.



2. If a tenant does not provide notice to the TFN Housing Representative that he will be vacating the rental unit at the expiry of the Lease Agreement or thirty (30) days prior, the tenant is deemed to renew the Lease Agreement on the same terms as the original Lease Agreement, subject however to rent increase.

### **3.5.5 Repair Damages**

1. If a tenant does not repair the damages that he has caused whether intentionally, by negligence or by a guest, the TFN Housing Representative may send someone to repair such damages and charge the cost of the repairs to the tenant plus reasonable administrative fees.
2. No tenant shall remove from a rental unit 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 (satellite dishes) or ceiling of the rental unit without the prior written consent of the TFN Housing Representative.

### **3.5.6 Peaceful Enjoyment**

1. A tenant shall not disturb any other tenant's occupancy or peaceful enjoyment of a rental unit. A disturbance caused by a person permitted by a tenant to enter the rental unit shall be deemed to be a disturbance caused by the tenant. Peaceful enjoyment is applicable to all residents of the Timiskaming First Nation community.

### **3.5.7 Cleanliness and Overcrowding**

1. Every tenant shall maintain the rental unit in a state of ordinary cleanliness. Every tenant shall maintain the land surrounding the rental unit in a good and clean condition, and shall be responsible for yard maintenance, including cutting grass, raking leaves and proper garbage disposal. Every tenant shall maintain a healthy and safe environment; by disposing of any abandoned vehicles, any scrap metal, tires, chemical waste and any other debris around the yard.
2. A tenant shall not permit other persons such as co-occupant to occupy the rental unit for more than 3 months on a continuing basis, without informing the TFN Housing Representative of the number of occupants and subject to rent increase. Any breach of the tenants' obligations imposed in this section may be enforced by application to the Housing Committee in its arbitration body capacity or a court of applicable jurisdiction.
3. Cleanliness and overcrowding is applicable to all residents of the Timiskaming First Nation community.

### **3.5.8 Illegal Activities**

1. No resident/tenant shall carry on or permit to be carried on any illegal activity or do or permit the doing of any illegal activity in a rental unit or premises.
2. The obligations imposed under this stipulation shall be enforced by contacting the police and, if applicable, the court of applicable jurisdiction.

### **3.5.9 Rights**

1. Each tenant has the right to peacefully occupy and enjoy the rental unit they occupy, the right to live in a healthy environment and the right to privacy. All information shared with the Housing Sector will remain confidential.
2. Each tenant has the right to remain on premises at each renewal of Lease Agreement to the same term and conditions as the previous Lease Agreement, provided no amendments has been adopted on the TFN Housing By-Law, and subject to rent increase.

### **3.6 Lease Agreement Renewal**

1. Unless a new Lease Agreement is signed, when a Lease Agreement ends on a specific date and the tenant did not communicate a notice that he will be vacating thirty (30) days prior to that date, the TFN Housing Representative and tenant shall be deemed to renew the Lease Agreement, on that date for the same duration as the initial Lease Agreement and with the same rights and obligations as existed under the former Lease Agreement, subject to any rent increase, if any, in accordance with rent increase guidelines recommended by the TFN Housing Representative and approved by TFN.

#### **3.6.1 Offences**

1. Any person who:
  - a) Troubles the peaceful enjoyment of another tenant and continues to do so after having been advised by written notice;
  - b) Fails to comply with any reasonable requirement of the TFN Housing Representative in the exercise of his powers and in the performance of his duties under the TFN Housing By-Law;
  - c) Furnishes false information in any sworn statement to the TFN Housing Representative;
  - d) Doesn't respect the terms of the Lease Agreement such as maintaining the house in a good condition or the cleanliness of the yard.
2. May see its Lease Agreement revoked and will be liable for an administrative penalty not exceeding two hundred and fifty dollars (\$250.00).

#### **3.6.2 Termination and Repossession**

1. TFN shall regain possession of a rental unit if:
  - a) The tenant informed the TFN Housing Representative that they will cease to occupy the rental unit at the expiry date of the Lease Agreement;
  - b) The tenant has vacated the rental unit following the notice that he will vacate;
  - c) The tenant has abandoned the rental unit; or
  - d) An order made pursuant to a judgment by a court of competent jurisdiction has authorized the termination of the Lease Agreement and the eviction of anyone occupying the premises.

#### **3.6.3 Consent to Terminate**

1. The TFN Housing Representative and a tenant may agree in writing after a Lease Agreement has been entered into, to terminate the lease Agreement on a specified date prior to the original date specified in the signed lease agreement.

#### **3.6.4 Termination by Tenant: Fixed Term**

1. Where a Lease Agreement specified a date of termination, the tenant may terminate the occupancy on the date specified in the Lease Agreement by giving the TFN Housing Representative, a notice of termination which, must be in written form not later than thirty (30) days before the termination date, to be effective on the termination date.

#### **3.6.5 Termination for Cause**

1. The TFN Housing Representative may at any time, give a tenant a notice of termination of at least thirty (30) days, when:
  - a) The tenant has failed to pay rent on the due date;
  - b) The tenant has failed to meet its obligations under TFN Housing By-Law;
  - c) The Lease Agreement has not been respected;
  - d) The tenant is affecting the safety of other individuals;
  - e) The tenant repeatedly troubles the peaceful enjoyment of another or other tenant(s);
  - f) The tenant or a guest repeatedly damages the unit, whether intentionally or by negligence.

2. If the tenant fails to vacate the premises pursuant to a notice under these stipulations, the TFN Housing Representative shall apply to the *Régie du Logement* or any other court of competent jurisdiction, for a judgment terminating the Lease Agreement and evicting the tenant(s).
3. Furthermore, in the instance of termination for cause, any co-tenant loses its right to take over the rental unit as stated in section 5 of the TFN Housing By-Law.

### **3.6.6 Contents for Notice of Termination**

1. A notice of termination by a tenant or the TFN Housing Representative shall be in writing and must:
  - a) Be signed by the tenant, or the TFN Housing Representative;
  - b) Identify the rental unit to which the notice applies;
  - c) State the date on which the occupancy is to be terminated; and
  - d) In the case of termination by the TFN Housing Representative for termination for cause, state the reason for the termination of the occupancy.

### **3.6.7 Mending of the Notice**

1. Where a tenant who received a notice from the TFN Housing Representative for termination for cause, has addressed the issue or has made satisfactory arrangements to the TFN Housing Representative within seven (7) days after receiving the notice, the notice of termination will be considered null and void.
2. This procedure may be applied once and only once and any repeated offence will result in a termination of Lease Agreement. This section does not apply to termination following illegal activities.

### **3.6.8 Further Contravention by Tenant**

1. Where a notice of termination has become null and void under these stipulations by reason of the tenant complying with the terms of the notice within seven (7) days and where the tenant repeats the offence, thereafter, again contravenes the notice for termination is finale.

### **3.6.9 Suspension for Repairs**

1. When the TFN Housing Representative determines:
  - a) That the suspension of occupancy Lease Agreement regarding a rental unit is required for the purposes of:
  - b) Demolition, or
  - c) Making repairs or renovations so extensive as to require the rental unit be unoccupied for a period of time; and
  - d) That the TFN Housing Representative has obtained all necessary permits or other authority that may be required.
2. The TFN Housing Representative may make an order recommending to TFN to halt the occupancy, but shall give the tenant ninety (90) days' notice to this effect. TFN will have no obligation to reimburse the lodging expenses of the tenants when such matter arises, but will make an effort to relocate the tenant.
3. Upon the completion of all repairs or renovations, as the case may be, the Lease Agreement continues at the option of the tenant, and the tenant may reoccupy the premises as a tenant.

### **3.6.10 Effect of Abandonment**

1. Where a tenant abandons a rental unit, the Lease Agreement is terminated on the date the premises were abandoned. The tenant shall remain liable for all amounts owing at the time of abandonment and for a penalty of one month of rent as liquidated damaged.

### **3.6.11 Order of Eviction**

1. Where the TFN Housing Representative has established that a Lease Agreement must be terminated, proceedings shall then be taken before a court of competent jurisdiction in order to receive a judgment for the termination of the Lease and eviction of the tenant.
2. An Officer shall, upon receiving a copy of an eviction judgment issued by the court, serve the notice to the tenants.
3. TFN shall, following the terms of said judgment, regain possession of the unit and for that purpose shall, after reasonable demand of admission, request the Officer to force open the door of the rental unit and evict the tenants.

## **SECTION 4: ARBITRATION AND PROCEDURES**

### **4.1 Synopsis**

1. The intent of this section is to provide a framework in which an arbitration body would be able to perform its duties in impartiality while respecting the rights of opposing parties when a breach of obligations has arisen.

### **4.2 Arbitration: Rule of Proceedings**

1. A complaint shall be in the form of a written letter, and shall have attached, copies of all available documentary evidence to be used by the complainant.
2. A complaint to the arbitrator is to be made within thirty (30) days of contesting a notice or from the date that either party became aware of a breach of an obligation under the TFN Housing By-Law or the Lease Agreement or the situation referred to in which the complaint arose.
3. Where the complaint arises from a continuing breach, the time for this section shall be calculated from the date of the most recent breach.

#### **4.2.1 Notification of the Complaint**

1. Notwithstanding any other provision of the TFN Housing By-Law, eligible complaints shall be made to the Housing Committee. A copy of the complaint and attachments shall be simultaneously served to the other party.
2. Failing to properly serve the other party within the guidelines will result in an automatic discharge of the complaint.

#### **4.2.2 Response**

1. The responding party shall, at the latest ten (10) working days before the hearing, either comply or file with the Housing Committee a response to the complaint in the form of a written letter. The responding party shall attach any available documentary evidence to the response.
2. This response will be simultaneously served to the opposing party along with any documentary evidence. They are however not under the obligation to disclose their arguments and strategy.

#### **4.2.3 Notice**

1. Any notice, process or document to be served to the TFN Housing Representative shall be served in person or by certified mail, effective on the seventh day after mailing, or by leaving a copy to every regular member of the Housing Committee.
2. Any notice, process or document to be served to a regular Housing Committee shall be served in person to every regular member of the Housing Committee, or by certified mail, effective on the seventh day after mailing, or by leaving a copy with the TFN Housing Representative at the Band Office.
3. Any notice, process or document to be served to a tenant shall be served in person or by certified mail, effective on the seventh day after mailing. If the tenant is absent or evading service, the notice may be served on the tenant by serving it with the signature from any adult person in the rental unit that are included in the lease.

### **4.3 Procedures**

1. In any proceeding instigated at the request of the TFN Housing Representative, it is the TFN Housing Representative who shall determine the questions to be decided by the Housing Committee.
2. If the proceedings are instigated at the request of the tenant, it is the Housing Committee who shall determine the questions to be decided.

3. In all proceedings, the Housing Committee shall take into account principles of natural justice, as well as the customs and traditions of the Timiskaming First Nation and the Algonquin people in order to guide the proceedings.

#### **4.3.1 Conflict of Interest**

1. A member of the Housing Committee shall withdraw in any hearing of a complaint or participate in the deliberation and rendering of any order or decision of the Housing Committee where his participation may result in a conflict of interest.
2. In the event that a member of the Housing Committee withdraws from participating in the deliberation and rendering of any order or decision as a result of conflict of interest, an alternate, as provided in this By-Law shall replace that member.
3. In the case that the TFN Housing Representative is in a conflict of interest in the proceedings, the Director General will take the place of the TFN Housing Representative during the course of the proceedings.

#### **4.3.2 Settlements**

1. Where a complaint has been made to the Housing Committee, the Housing Committee shall inquire into the matter and encourage the parties to settle the matter by mediation, supervised by the Housing Committee.
2. A complainant may withdraw his complaint at any time before an order or decision is made by the Housing Committee.
3. The TFN Housing Representative may, at his own discretion and instead of instigating proceedings, submit requests for mediation to the Housing Committee for all matters except illegal activities.
4. Before a hearing and where the Housing Committee has inquired into the matter and is of the opinion that:
  - a) It is unlikely that the parties will be able to settle the matter by arbitration; or
  - b) The urgency of having the matter resolved;
5. The Housing Committee shall instruct the TFN Housing Representative to instigate proceedings at a court of competent jurisdiction in order to receive judgment.
6. The Housing Committee shall select a date upon which the hearing will take place if it is of the opinion that the matter can be resolved internally through the arbitration process.
7. During the course of the arbitration, the complaining party will proceed by stating the question and go over his explanation of the situation. When the complaining party is done exposing his point of view, the defending party will be able to expose his point of view on the matter.
8. The Housing Committee will then inquire on the matter by asking questions to both parties and witnesses. Both parties will have the opportunity to respond to the opposing party at the end of the arbitration process.
9. No interruptions will be allowed during when a party is exposing his point of view.

#### **4.3.3 Right to Examine the Filed Material**

1. All parties to proceedings under this Housing By-Law may examine all material filed with the Housing Committee relevant to the proceedings.

#### **4.3.4 Committee May Inquire, Inspect and Question**

1. At a hearing, the Housing Committee may question the parties and witnesses who are in attendance at the hearing, with a view to determine the truth concerning the matters in dispute.
2. The Housing Committee may, before or during the hearing:
  - a) Conduct any inquiry or inspection it considers necessary; and
  - b) Question any person, by telephone or otherwise, concerning the dispute.

#### **4.3.5 Additional Outside Evidence**

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

#### **4.3.6 Order of Decision made by the Committee**

1. After conducting a hearing and having regard to all the circumstances, when the Housing Committee is satisfied that an order or decision that has been applied for is justified, the Housing Committee shall apply that order or decision.



## **SECTION 5: HOUSING PROGRAMS**

### **5.1 Synopsis**

1. This section describes the housing programs in Timiskaming First Nation.

### **5.2 Application**

1. This section applies to the qualification, allocation of rental and private housing unit with their specific procedures.

### **5.3 General Provisions**

#### **5.3.1 Qualifications for Housing**

1. Any band member over the age of twenty-two (22) residing within the Traditional Territory of the Timiskaming First Nation (as defined within Annex 1) for a period of twelve (12) consecutive months may apply to the TFN Housing Representative for a rental unit.
2. No band member who has outstanding amounts owing to TFN will be eligible for any of the available housing programs, unless the members pays in full any amount he owns to TFN.
3. Members who have been evicted from a TFN housing unit will not be eligible for application for any rental unit seven (7) years after the date of which the tenant was evicted.

### **5.4 Housing Rental**

#### **5.4.1 Qualification for a Rental Unit**

1. Priority for housing will be given to band members who have followed a home maintenance course and a budgeting workshop.
2. Those who have been allocated a rental unit must occupy the unit immediately or upon availability.

#### **5.4.2 Allocation of a Rental Unit**

1. All applicants will be assessed by the *Tenant Selection Guideline* Point System developed by the Housing Committee and the TFN Housing Representative. The assessment will be conducted by the Housing Committee. The Tenant Selection Guideline will be subject to change from time to time.

#### **5.4.3 Re-allocation of a Rental Unit**

1. Unless the termination of Lease Agreement is for cause and that 50% of a mortgage of a Section 95 unit has been paid, when reassigning a Section 95 unit in a case that a tenant has vacated or abandoned the rental unit, the priority will be given to a family member or the co-tenant.
2. The family member or the co-tenant will however be responsible for any arrears accumulated during the tenancy of the previous tenant. If the tenant waives his right, the allocation procedure will commence as stated in the TFN Housing By-Law. This does not apply to Band Owned units.

### **5.5 Housing Loan Program**

#### **5.5.1 Synopsis**

1. This subsection defines the procedures a potential home buyer must follow in order to secure himself a loan with a Financial Institution.

## 5.5.2 Application

1. This section applies to any Timiskaming First Nation member who wishes to purchase, improve or build a house on the Timiskaming First Nation Reserve.

## 5.5.3 Definitions

**"Borrower"** means a band member approved for the housing loan program pursuant to this part.

**"Certificate of Possession"**, means a person who is lawfully in possession of land on a reserve, the certificate is evidence of his right to possession of a land described therein.

**"Chief and Council"** means the political body duly elected of Timiskaming First Nation Band.

**"Housing Loan Agreement"** means a written agreement between the Council and a Borrower, pursuant to section 10 of the *National Housing Act*, R.S.C. 1985, Ch. N-11, for the purpose of assisting in the purchase, improvement or construction of a housing project.

**"Housing Representative (TFN Housing Representative)"** means the person mandated by TFN to enforce and manage the Band-Owned Rental Units and the housing loan program, on the behalf of the Band Council.

**"Loan agreement"** means the contract upon which a schedule of the monthly payment paid to a Financial Institution by the Borrower.

**"Equity of redemption"** means the right for a Borrower to proceed with the sales of his house after default notices have been issued by the Financial Institution and before Council can proceed with judicial sales of the unit.

**"Financial Institution"** means an approved lender under the *Canadian Bank Act* in accordance with schedule I and II of the *Canada Bank Act*.

**"House"** means a private housing unit of whom the proprietor is a member of Timiskaming Band.

**"Housing Sector"** means the administrative body of the Timiskaming First Nation, responsible with the management of housing.

**"Judicial Sale"** means the process in which TFN will proceed with the sale of the house with the consent of a court.

**"MLG"** means Ministerial Loan Guarantee with Indigenous Services Canada (ISC).

**"Officer"** means any Police Officer, Constable or other person charged with the duty to preserve and maintain public peace, and any person appointed by TFN for the purpose of maintaining law and order on the Reserve.

## 5.5.4 Ownership

1. As a condition for obtaining a loan from a Financial Institution, the Borrower must transfer to the Band Council, in the name of the Timiskaming First Nation, his right to possession of the land on which the house lies, as provided for in section 24 of the *Indian Act* as collateral.
2. The Borrower must assign to TFN all rights and titles to the land which he or his heirs, executors or administrators may claim to have. The Borrower must further consent to the cancellation of his Certificate of Possession to the said land.
3. The Band Council, in the name of the Timiskaming First Nation, shall retain full ownership of the land and the house until the total amount borrowed is paid in full.
4. When the Housing Loan Agreement has been fully paid by the Borrower, the Council shall:
  - a) Transfer title of the House to the Borrower, and
  - b) Transfer or grant a Certificate of Possession.

### **5.5.5 Obtaining a Loan Agreement**

1. The Borrower must obtain a prequalification letter from the Financial Institution for a potential loan agreement.
2. The Borrower shall submit to TFN Housing Representative the letter of prequalification, plans for the future unit, lot upon which the unit shall be constructed or purchased, and his T4 statement for the previous year and a proof of employment.
3. The monetary limit that TFN will approve for an MLG is \$150 000, any further expense is to be the responsibility of the Borrower.
4. If satisfactory, it shall be recommended to Chief and Council to adopt a BCR which must state the conditions as required by ISC MLG Program:

**THAT:** the First Nation is informed and understands the MLG Process and its requirements.

**THAT:** the loan, if granted, will provide for the construction, acquisition, or renovation of housing on lands as defined.

**THAT:** services and/or utilities for the project will or are planned to be in place by the completion of the project.

**THAT:** the owner or borrower certifies that all housing to be constructed, acquired or renovated shall be inspected by qualified inspectors and will meet or exceed the National Building Code (NBC) standards and other relevant standards. The record of inspection and record of compliance to the NBC standards or other relevant standards is to be kept on file by the First Nation for the life of the Ministerial Loan Guarantee.

**THAT:** the project will comply with the Canada Environmental Assessment Act (or equivalent). The First Nation in undertaking of this project should practice due diligence and be aware of obligations or responsibilities associated with all applicable federal environmental acts and regulations including the Canadian Environmental Protection Act, Species at Risk Act and the Fisheries Act to avoid potential violations.

**THAT:** where section 89 of the *Indian Act* is applicable, the Council of the Band shall provide Her Majesty in Right of Canada with a waiver to the application of section 89 with respect to assets other than land.

**THAT:** the First Nation agrees that if the Minister pays under the Guarantee Agreement in respect of the Ministerial Loan Guarantee, the amount paid by the Minister is a debt due and immediately repayable by the First Nation to the Minister, and, in addition to any other remedies available to the Minister, the debt plus any interest that may accrue, may be recovered by set off in one or more installments as the Minister may determine, against payments made by Canada to the First Nation pursuant to any Funding Agreements in effect from time to time.

**THAT:** notwithstanding paragraph 9, the Minister and the First Nation may agree to enter into a repayment agreement.

**THAT:** in respect of the loan that is the subject matter of the Guarantee Agreement, if the Borrower (s) and the lender agree to renew the loan for another term, or agree to refinance the loan or transfer the loan to a new lender, or the lender assigns the loan to a new lender, the First Nation will continue to assume the obligations set out in paragraphs 1-10 above.

The promises/commitments made herein are irrevocable.

### **5.5.6 Loan Agreement**

1. The Borrower shall enter a financial agreement with a Financial Institution in which the terms and condition of the loan agreement shall be set out.

2. The Borrower shall pay to the Financial Institution the loan as required in the terms and condition of the loan agreement.

#### **5.5.7 Default**

1. The Borrower is responsible for any arrears of the loan agreement. If any amount of mortgage is outstanding after thirty (30) days, the Financial Institution shall send to the Borrower a notice of statement. The Financial Institution shall send a copy of the statement to the TFN Housing Representative.
2. If the Borrower has not paid in full the amount due to the Financial Institution, the Financial Institution shall send a notice of default to the Borrower asking for reimbursement. If the Borrower fails to meet with his obligation after sixty (60) days, the Financial Institution shall send notice to the Housing Sector for payment.
3. The TFN Housing Representative shall send a notice to the Borrower that he has thirty (30) days to either pay the remaining of his mortgage, proceed with the redemption of equity or foreclose the unit. If the Borrower fails to provide TFN with the monies owed, the TFN Housing Representative shall proceed to obtain from Chief and Council a BCR to proceed with to a foreclosure of the loan agreement and that the Borrower is asked to vacate the premises as agreed in an agreement between TFN and the Borrower.
4. If the Borrower fails to comply with the vacating notice to the premises, the TFN Housing Representative shall proceed to obtain from the court a request in eviction and a judicial sale of the unit.

#### **5.5.8 Borrower's Obligation**

1. The Borrower shall be responsible for providing and maintaining the unit in a good state of repair and fit for habitation during the occupancy and for complying with all Health and Safety Standards.
2. The Borrower shall not permit waste to be accumulated on the lands which are subject to the Housing Loan Agreement and shall maintain the buildings and other improvements on the premises in good state and clean conditions.

#### **5.5.9 Insurance**

1. The Borrower shall arrange for fire and building insurance (public liability) for the unit. The Borrower shall be responsible for insuring the contents, as well as any improvements or fixtures, which he has placed on the property.

## **SECTION 6: REGISTRATION OF NEW CONSTRUCTIONS AND TRANSACTIONS**

### **6.1 Synopsis**

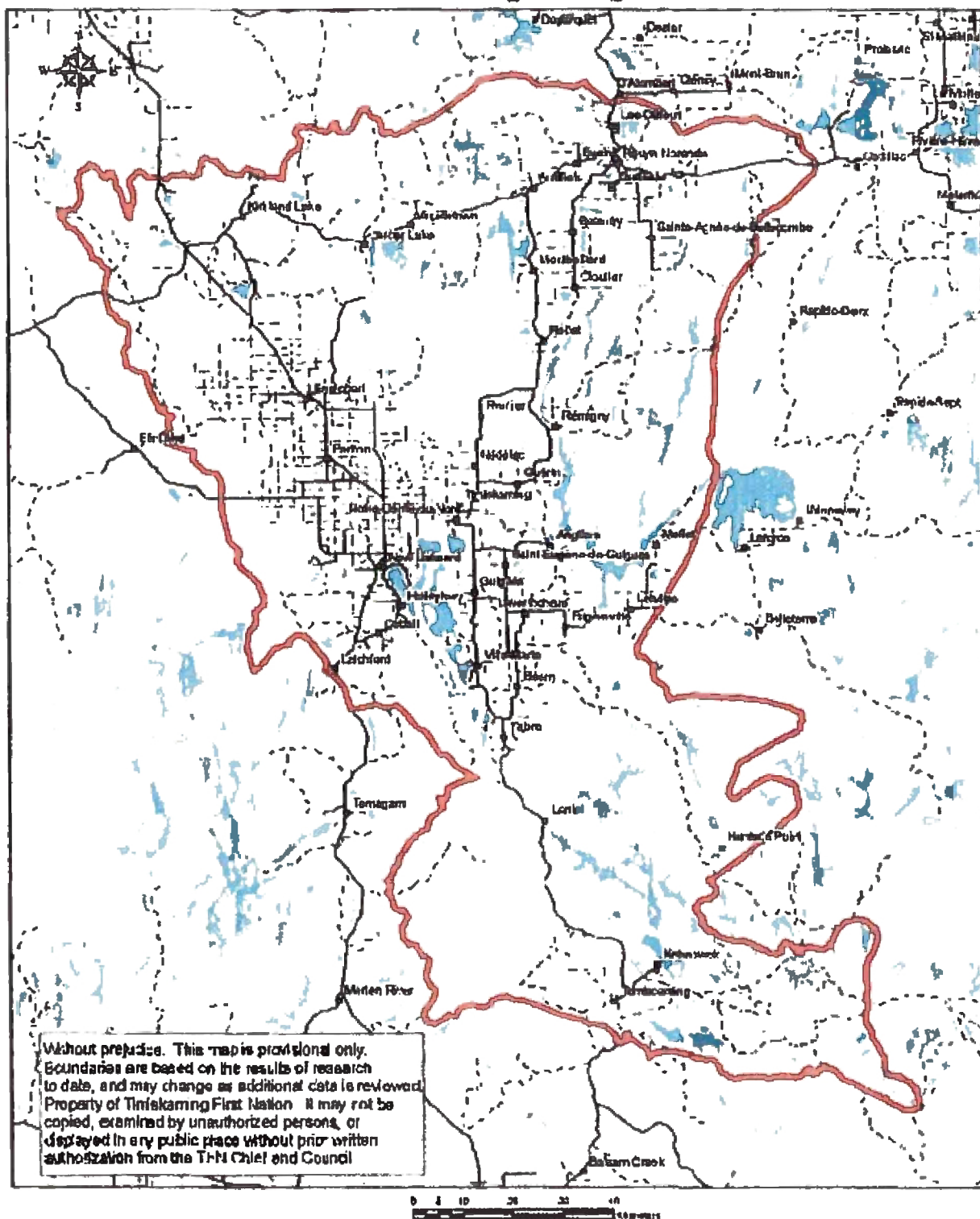
1. This section specifies the obligation to register that is incumbent upon any homeowner.

### **6.2 Obligation to Register**

1. Anyone who builds a residence or buys an existing residence within the boundaries of the Timiskaming Reserve must register the new home or transaction with the Housing Sector of the Timiskaming First Nation. The TFN Housing Representative shall issue proof of registration to the owner of the house following registration.

# Annex 1: TFN TRADITIONAL TERRITORY

## Timiskaming First Nation Asserted Aboriginal rights area







## **Annex 2: CANADIAN NATIONAL OCCUPANCY STANDARDS (Nation Occupancy Standard)**

The Canadian National Occupancy Standard (or Nation Occupancy Standard) assesses the bedroom requirements of a household based on the following criteria:

- There should be no more than two persons per bedroom;
- Children less than 5 years of age of different sexes may reasonably share a bedroom;
- Children 5 years of age or older of opposite sex should have separate bedrooms;
- Children less than 18 years of age and of the same sex may reasonably share a bedroom; and
- Single household members 18 years or over should have a separate bedroom, as should parents or couples.