

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

WHEREAS the Council of the Metlakatla 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),(p.1),(q) and (r) of the Indian Act empower the Council of the Metlakatla 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 removal and punishment of persons trespassing upon reserve or frequenting the reserve for prohibited purposes, 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 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 Metlakatla Band 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;

THEREFORE the Metlakatla Band Council enacts the following by-law:

Short Title

1. Metlakatla Band Residential Occupancy By-law

Interpretation

2.(1) "application list" means the list where all applicants for occupancy of a house are registered upon being submitted to the council.

"Council" means the band council of the Metlakatla Band as defined in the Indian Act;

"house" means a house owned by the band that is living accommodation used or intended for use as a residence,
and includes a social house dwelling, but does not include any land upon which the band owned house is situated;

"housing agreement" means a written agreement, between the council and a resident for the right to occupy a house, including any renewal of such agreement;

"housing administrator" means a person appointed by the Council pursuant to section 4, to administer this by-law;

"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 house;

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

"reserve" means all reserves of the Metlakatla Band;

"resident" means a person who enters into a housing agreement with the Council and who pays an occupancy fee in return for the right to occupy a house;

"social housing dwelling" means any dwelling on reserve constructed with funds supplied to the Council pursuant to section 95(56.1) of the National Housing Act, RSC 1985, cN-11;

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

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

(a) the resident has left the house and informed the housing administrator that she/he does not intend to return; or

(b) the resident does not ordinarily live in the house.

(3) For the purposes of this by-law, a resident has abandoned the 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 house; or

(b) the resident does not ordinarily live in the house and has not expressed an intention to resume living in the house.

Application

3. This by-law applies to the allocation, use and occupancy of houses and housing projects and to the housing agreements only, notwithstanding any other by-law or any agreement or waiver to 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.

Contractual Relationship

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

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

(3) The Council shall not be entitled to take, seize, detain or sell occupancy fees payable under the housing agreement on the goods and personal property of any person without an order of the court.

Housing Agreements

6.(1) A housing agreement shall be written

(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.

8. All terms and conditions in any agreement made prior to the coming into force of this by-law shall remain in force.

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

Resident to Receive Copy

9. The housing administrator shall ensure that a copy of the housing agreement, signed by him/her self, as a agent for the Council, and by the resident, is given to the resident within thirty days after it has been signed by the resident and delivered to the housing administrator.

Additions only by Consent

- 10.(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 Council, and the resident may provide in a written agreement for other rights and obligations which are not consistent with this by-law.
- (2) Where an additional obligation concerns the residents use, occupancy or maintenance of the 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 residents use occupancy or maintenance of the house, unless the rules are reasonable in all the circumstances and in writing and made known to the resident.

Allocation of Band Owned Houses

- 11.(1) Any Band member may apply for a house on an application form provided by the band.
- (2) The application shall be filed with the Band Office and shall include
- (a) if the applicant proposes to reside on reserve for a limited time, the approximate duration of the proposed residence;
- (b) the name of the applicants spouse, if any;
- (c) the names of the applicants dependent children and any other individual who may reside, if any; and
- (d) any other relevant information the applicant wishes to provide that assists the Band Council in decisions relating to the allocation of a house.

Determination of Allocation

- 12.(1) In determining whether to recommend the allocation of a house, the Band Council 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 Band Council shall in turn dispose of the application by:
- (a) granting the application; or
- (b) refusing the application,

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

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

- (3) Within five days after disposing of the application, the Council shall post a notice of its decision in the Band office and community bulletin board.
- (4) Any applicant whose application is refused under this section may appeal to the Council pursuant to section 52.

No Altering of Locks

- 13.(1) No person shall, during occupancy of a house by the resident, alter or cause to be altered the locking system on any door giving entry to the house except by mutual consent of the resident and the housing administrator.
- (2) Where, on the application of the housing administrator or a resident, the Band Council determines that an obligation imposed by this section has been breached, the Band Council may make an order:
 - (a) requiring the person who breached the obligation to give access to the band owned house;
 - (b) requiring the person who breached the obligation not to breach the obligation again; or
 - (c) requiring the person who breached the obligation to compensate the party affected for loss suffered as a direct result of the breach.

Band Council's Obligation in Relation to Social Housing Dwellings

House to be habitable

- 14.(1) This section is restricted in application to social housing dwellings only.
- (2) the Council shall:
 - (a) provide and maintain any social housing dwelling in a good state of repair and fit for habitation during the occupancy; and
 - (b) ensure that the social housing dwelling provided complies with all health, safety, maintenance and occupancy standards required by law.
- (3) Subsection (2) applies even where a resident had knowledge of any state of non-repair before he/she entered into the housing agreement.
- (4) Where, on the complaint of a resident, the Housing Administrator determines that the Council has not fulfilled an obligation imposed by this section, the housing administrator shall recommend to the 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 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

- 15.(1) The Council or its agent, as the case maybe, shall not disturb a resident's occupancy or enjoyment of the house.
- (2) Where, on the complaint of a resident, the housing administrator determines that the Council has breached the obligation imposed by this section, the housing administrator shall recommend to the Council:

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

- (a) to comply with its obligation; or
- (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

- 16.(1) The housing administrator shall give written notice to the resident of his/her name and address for the giving of notices or documents and telephone numbers.
- (2) Where, on the complaint of a resident, the Band Council determines that the housing administrator has not complied with the obligations imposed by this section, the Band Council shall recommend to the housing administrator to comply with this obligation.
- (3) Every resident shall provide to the housing administrator the resident's postal address and a telephone number if available to the resident.

Resident's Obligations

OBLIGATION TO PAY OCCUPANCY FEE

- 17.(1) Every resident shall pay to the housing administrator, as agent for the Council, the occupancy fee required by the housing agreement.
- (2) The occupancy fee shall be made payable to the Metlakatla Band Council at the Band office.
- (3) When a resident has failed to pay the occupancy fee in accordance with subsection (1), the housing administrator may make an order:
- (a) requiring the resident to comply with his/her 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 residents breach;
 - (e) requiring the resident to pay any reasonable expenses directly associated with the repair or action; or
 - (f) recommending to Council to terminate the occupancy on the date specified in the order and to order the resident to vacate the house on that date.

DUTY NOT TO INTERFERE WITH OTHERS OCCUPANCY

- 18.(1) A resident shall not disturb any other residents occupancy or enjoyment of a house.
- (2) A disturbance caused by a person permitted by a resident to enter the house shall be deemed to be a disturbance caused by the resident.
- (3) Where, a resident has not complied with the obligations imposed by subsection (1), the housing administrator 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) recommending to Council to terminate the occupancy on the date specified in the order and to order the resident to vacate the house within 30 days of the order.

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

OBLIGATION TO REPAIR DAMAGE

- 19.(1) Every resident is responsible for the repair of any damage to the house caused by the willful or negligent conduct of the resident or any other person who is permitted on the premises by the resident.
- (2) No resident shall remove from a house any fixtures, sinks, bathtubs, or appliances, and shall not alter, make additions to or affix any item, fixture or things to the floors, exterior or interior walls, roof or ceiling of the house without prior written consent of the housing administrator.
- (3) Ordinary wear and tear of a house does not constitute damage to the premises.
- (4) Where, on the complaint of the housing administrator, the Band Council determines that a resident has failed to comply with the obligations imposed by this section, the Band Council may make an order:
 - (a) requiring the resident to comply with his/her 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 non compliance;
 - (d) authorizing any repair or other action that is to be taken by the housing administrator to remedy the effects of the residents breach;
 - (e) requiring the resident to pay any reasonable expenses directly associated with the repair or action; or
 - (f) to terminate the occupancy on the date specified in the order and to order the resident to vacate the house on that date.

HOUSING ADMINISTRATOR TO INVESTIGATE COMPLAINTS

- 20.(1) Where a resident informs the housing administrator that he/she has been affected by another residents breach of the obligation imposed by subsection 17(1), the housing administrator shall inquire into the complaint and take appropriate action, including the lodging of a complaint under subsection 17(3)

Cleanliness and Overcrowding

- 21.(1) Every resident shall maintain the 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 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 filing of a complaint by the housing administrator, the Band Council determines that a resident has breached an obligation imposed by this section, the Band Council may make an order:
 - (a) requiring the resident to comply with this 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) recommending to Council to terminate the occupancy on the date specified in the order and to order the resident to vacate the house within thirty days of the date of the order.

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

Illegal Activities

22.(1) No resident shall carry on or permit to be carried on any illegal activity or do or permit the doing of any illegal activity in a house.

(2) Where, on the filing of a complaint by the housing administrator, the Band Council determines that a resident has breached an obligation imposed by this section and that the housing administrator or another resident has been adversely affected, or is likely to be adversely affected by the continuation or repetition of the breach, the Band Council may make an order:

- (a) requiring the resident to comply with his/her obligation;
- (b) requiring the resident to not breach his/her obligation again; or
- (c) to terminate the occupancy on the date specified in the order and to order the resident to vacate the house no that date.

Termination and Regaining of Occupancy

23.(1) No person shall terminate a housing agreement except in accordance with this by-law.

(2) The Council shall not regain occupancy of a house unless:

- (a) the resident has vacated or abandoned the house; or
- (b) an eviction order made pursuant to section 30 of this by-law has authorized the regaining of occupancy.

Reallocation of Houses

WHERE RESIDENT HAS VACATED OR ABONDED

24. When reassigning a house, if a resident has vacated or abandoned the house, the Band Council shall follow the same procedure as established in section 11 and 12.

Where Agreement Ends On Date Specified

25.(1) Where a housing agreement ends on a specific date, the Council and the resident shall be deemed to renew the housing agreement on that date as a monthly occupancy with the same rights and obligations 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 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

26. The housing administrator, as agent of the 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.

By-Law No.1997-04

BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES

TERMINATION BY RESIDENT: FIXED TERM

27. 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 Council, a notice of termination not later than thirty days before the termination date.

TERMINATION FOR CAUSE BY BAND COUNCIL

28.(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 other person permitted in or on the premises of the house by him/her, has caused damage to the house and the resident has failed to comply with an order made pursuant to subsection 18(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 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 Band Council for an order to terminate the occupancy on the date specified in the order and to order the resident to vacate the premises on that date, subject to appeal.

CONTENTS OF NOTICE OF TERMINATION

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

- (a) be signed by the resident or the housing administrator;
- (b) identify the 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.

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

TERMINATION FOR DEMOLITION, MAJOR REPAIRS

30.(1) Where, on the application of the housing administrator, the housing committee determines:

- (a) that occupancy of a house is required for the purposes of
 - (i) demolition; or,
 - (ii) making repairs or renovations so extensive as to require that the house be unoccupied for a period of time; and

(2) Where a resident has received a notice for termination for the reason stated in subparagraph(1)(a) (ii), upon the completion of all repairs or renovations, as the case may be, the housing agreement continues at the option of the resident and the resident may reoccupy the premises as a resident.

By-Law No.1997-04

**BEING A BY-LAW TO REGULATE RESIDENCY AND THE ORDERLY
ALLOCATION, USE AND OCCUPANCY OF BAND OWNED HOUSES**

EFFECT OF ABANDONMENT

31. Where a resident abandons a house, the housing agreement is terminated on the date the premises were abandoned.

ORDER OF EVICTION

32. Where, on a recommendation by the housing administrator, the council determines that an occupancy shall be terminated in accordance with this by-law, the council may make an order:
- (a) evicting the resident on the date specified in the agreement, notice or order, or on the earliest reasonable date after the date of termination of the occupancy; and
 - (b) requiring the resident to compensate the council for the use and occupation of the house, calculated for each day the resident remains in occupation following the termination of occupancy.

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ORDER OF EVICTION

30.(1) Where, on a recommendation by the housing administrator, the council determines that an occupancy shall be terminated in accordance with this by-law, the council may make an order:

- (a) evicting the resident on the date specified in the agreement, notice or order, or on the earliest reasonable date after the date of termination of the occupancy; and
- (b) requiring the resident to compensate the council for the use and occupation of the house, calculated for each day the resident remains in occupation following the termination of occupancy.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Band Council of the Metlakatla Band this 4 day of Dec. 1997.

Voting in favor of the by-law are the following members of the Council:

Charlene Jean McLean
(Councillor)

Jon Ruce
(Councillor)

M. Susan Yorke
(Councillor)

(Councillor)

Said Beynon
(Councillor)

(Councillor)

being the majority of those members of the Band Council of the Metlakatla Band present at the aforesaid meeting of the Council . The quorum of the Band Council is four members. Number of members of the Band Council present at the meeting _____.

I, Harold Leighton Chief Councillor of the Metlakatla Band, do hereby certify that a true copy of the foregoing by law was mailed to the Minister of Indian Affairs and Northern Development at the Regional office pursuant to subsection 82(1) of the Indian Act, this day of Dec. 4, 1997.

Harold Leighton
(Chief Councillor)

Francis Ruce
(Witness)

SCHEDULE A

HOUSING AGREEMENT

GENERAL INFORMATION

Note: No part of this agreement may be altered or deleted, but additions may be included under section 5, where both the housing administrator (as agent for the Band Council) and the resident agree and where the additions do not conflict with the Metlakatla Band Residential Occupancy By-Law.

AGREEMENT

Parties

1. This Agreement is made in duplicate between

_____, the Band Council(*or its Agent*)
(Name)

(Address) (Telephone)

- AND -

_____, the resident
(Name(s))

(Address) (Telephone)

Band Owned House

2. The Band council agrees to allow the resident to occupy and the resident agrees to occupy from the Band council the following band owned house:

(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.)

(2) 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.)

(3) 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 PROVISION

(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

- (a) shall be responsible for ordinary cleanliness of the band owned house;

- (b) 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;
- (c) 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.

(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 Metlakatla 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 30 of the Metlakatla Residential Occupancy By-Law.

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 « _____ 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