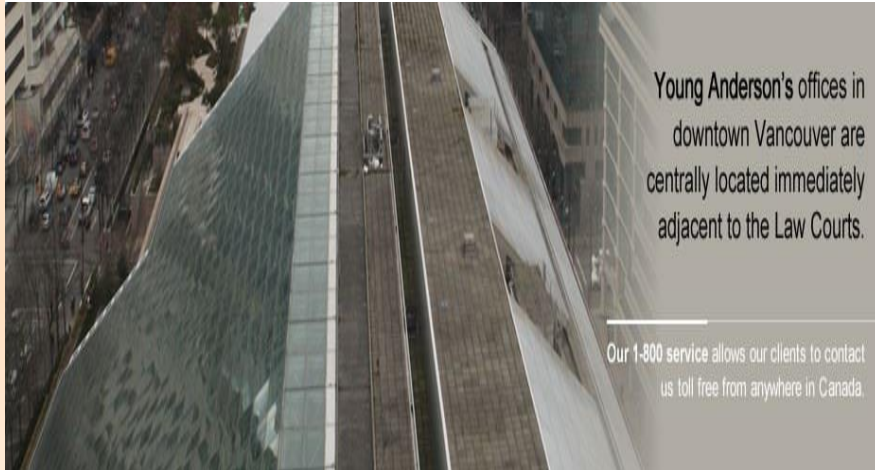


Municipal Housing Corporations

*Building & Maintaining Affordable Housing
in British Columbia Communities*



Introduction: Local Government Lawyers & Corporate Law



- ***Advice on Incorporation and Capitalization Options for Local Government Corporations.***
- ***Applications to the Inspector of Municipalities.***
- ***Drafting & Filing Incorporating Documents (Company Articles, Notice of Articles, Partnering Agreements).***
- ***Corporate Governance and Annual Filings.***

What is a Corporation?

Business Corporations Act (British Columbia)

"corporation" means a company, a body corporate, a body politic and corporate, an incorporated association or a society, however and wherever incorporated, but does not include a municipality or a corporation sole.



Local Government Corporations: Authority

Government Body	Statute	Section	Provision
Regional Districts	<i>Local Government Act</i>	263(f)	Subject to the specific limitations and conditions established under this or another Act, the corporate powers of a board include the following to engage in commercial, industrial and business undertakings and incorporate a corporation or acquire shares in a corporation for that purpose.
Municipalities	<i>Community Charter</i>	185	<p>A municipality may only</p> <ul style="list-style-type: none">(a) incorporate a corporation other than a society, or(a) acquire shares in a corporation <p>with the approval of the inspector or as authorized by regulation. An incorporation applies as an exception to the restriction under section 183 (investment of municipal funds).</p>

Types of Local Government Corporations



Why Incorporate?



Limitation of Liability

Shareholders of a company are not personally liable for the debts, obligations, defaults or acts of the company.



Flexibility

Corporations are separate legal entities and are not bound by the statutory requirements of the Local Government Act and Community Charter.



Engage in Commercial Activities

Corporations can pursue profit driven ventures and business opportunities.

Regulatory Considerations for Local Governments



Assistance to Business: There is a general prohibition on local governments providing assistance to a business (Section 25 of the *Community Charter*).

Notice Requirements: Statutory notice requirements must be adhered with when transferring local government property or assets to its local government corporation (Sections 24 & 26 of the *Community Charter*).

Electoral Approval: Approval of electors is required for certain financial transactions (e.g., incurring a long-term capital liability under agreement).

FOIPPA: Local Governments and Local Government Corporations are required to adhere to the *Freedom of Information and Protection of Privacy Act*.

Choosing a Company Name

Distinctive Element: *Geographical location, municipal name.*

Descriptive Element: *the nature of the business.*

Corporate Designation: *Limited, Incorporated, Corporation.*

DISTINCTIVE	DESCRIPTIVE	CORPORATE DESIGNATION
Qualicum Beach	Housing Corporation	Ltd.

Local Government Corporation Ownership

Wholly Owned by the Local Government	100% Ownership by the Local Government as the sole shareholder.
Ownership Shares Divided Between a Number of Local Governments	Shares in corporation held by a number of local governments who co-own the corporation and share in its profits.
Co-Ownership with Other Parties	Shares in corporation held by local government and other non-local government parties.

The Inspector of Municipalities

Approval to incorporate must be obtained from the Inspector of Municipalities.

Covering Letter:
setting out how the Local Government has addressed the requirements to obtain the Inspectors consent to incorporate.

Certified Resolution of the Board or Council:
authorizing the application for incorporation by the Local Government.

Background Reports:
business plans or feasibility studies and staff reports prepared in evaluating the decision to create the corporation.

Company Articles:
Complete set of articles in final draft form.

Company Articles: Mandatory Provisions



Annual Information Meeting: To provide an opportunity for local residents to meet the directors and senior officers of the corporation and ask questions about the corporation's affairs.



Auditor and Annual Audit: Articles must state that the corporation will appoint an auditor and have audited financial statements prepared each year.



Corporate Purpose: The articles should include a short statement of the corporate mandate and operating objectives.



No Amendments without Approval: The articles must provide that those articles that have been required by the Inspector of Municipalities may not be amended without the approval of the Inspector.



No Subsidiary without Approval: The articles must specify that the corporation may not form a subsidiary corporation without the approval of both the shareholders and the Inspector.



Disposal of Assets: The articles must specify that shareholder approval is required if the corporation intends to dispose of significant assets.



Year End: Must establish the financial year end as December 31st.

Capitalization of Local Government Corporations

Share Acquisition

Invest in a corporation through the acquisition of shares.

Debt Financing

The corporation is not bound by the borrowing rules applicable to the municipal owner.

Lending Under Agreement

Loans may typically only be made through a partnering agreement.

Partnering Agreements

Section 8 (2) of the *Community Charter* provides that:

A municipality may provide any “**service**” that the council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.



Corporate Board Structure – The Directors

Local Government Staff & Elected Officials

May sit on the board of the company but must only act in the interest of the company when making decisions as a board member.

Private Sector Participants

Private sector expertise (developers, builders, housing managers). Allow council members to focus on other municipal issues.

Maintaining a Corporation



Housing Corporations: Functions

Develop & Build

Building subsidized and market housing.

Acquisition of Housing

Acquisition of existing rental housing or transfer of assets owned by the Local Government.

Housing Management

To manage the operations, maintenance and upkeep of real property assets.



Housing Corporations in British Columbia



Developments in Municipal Housing Corporations in British Columbia

Burnaby Housing Authority





Questions & Discussion
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