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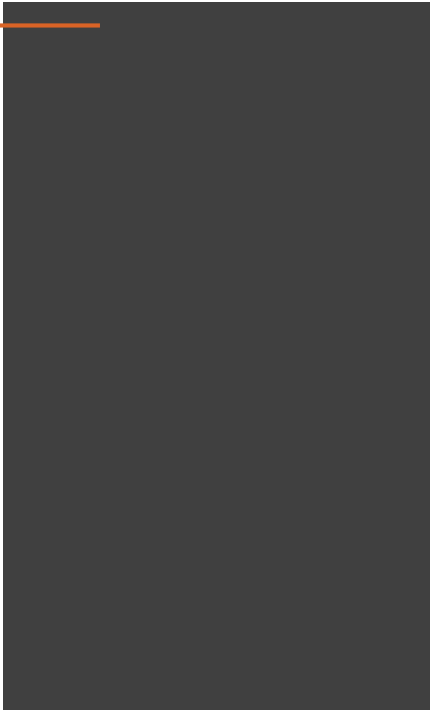
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September 26, 2024



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## Presentation At-a-Glance

1. What are Related Corporations?
2. Issues with Related Corporations
3. Possible Solutions

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## What are Related Corporations?

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## What are Related Corporations?

- Agencies may establish an additional corporation for a specific purpose, such as:
  - Residential housing
  - Fundraising
  - Revenue-generating activities
- Agencies will want to ensure that they have some control over these **Related Corporations**

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## Common Types of Related Corporations



- Housing Corporations**
- Foundations**
- Social Enterprises**



## Housing Corporations

## What is a Housing Corporation?

- **Then:**

- The Ministry required agencies to hold Ministry-funded residential properties in separate corporations



## What is a Housing Corporation?

- **Now - objectives:**

- To strategically invest funds and resources in residential properties to improve the well-being of people with disabilities
- To leverage assets
- To protect assets from Ministry interference



## Housing Corporation: Corporate Structures

**Residential properties may be held in a:**

### 1. Not-for-profit corporation (“NFP”)

- Agency’s charitable status not jeopardized
- Additional requirements for the transfer of funds from Agency (charity) to the NFP (non-qualified donee)
- NFP may generate incidental profits only



## Housing Corporation: Corporate Structures

**Residential properties may be held in a:**

### 2. Charity

- Agency’s charitable status not jeopardized
- Transfer of funds from Agency to charity is more feasible
- Charity may generate fees from rent at below market rates (if aligned with charitable purposes)



## Housing Corporation: Corporate Structures (cont'd)

**Residential properties may be held in a:**

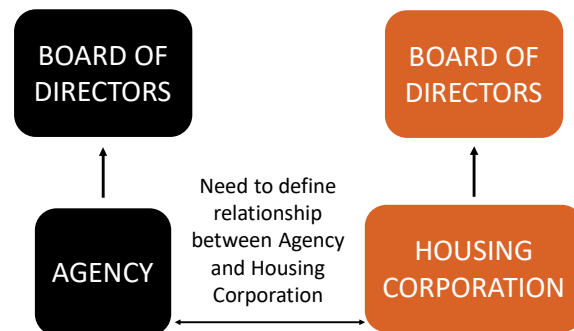
### 3. For-profit corporation ("FPC")

- Agency's charitable status not jeopardized
- Profits are transferred from the FPC to the Agency (as the sole shareholder of the FPC)
- FPC may generate fees from rent at below market rates and at fair market rates



## Housing Corporation Sample Structure

- Set up as a **not-for-profit (NFP)** to hold residential properties
- The NFP could be registered as a charity to facilitate the transfer of funds from the agency to the NFP/charity





# Foundations

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## What is a Foundation?

- Focus on **public foundations** (as opposed to private foundations)
- **Public foundation:** generally gives more than 50% of its income annually to other qualified donees (i.e. registered charities), but may carry out some of its own charitable activities
- Usually established by charities to separate fundraising from the Board's responsibilities



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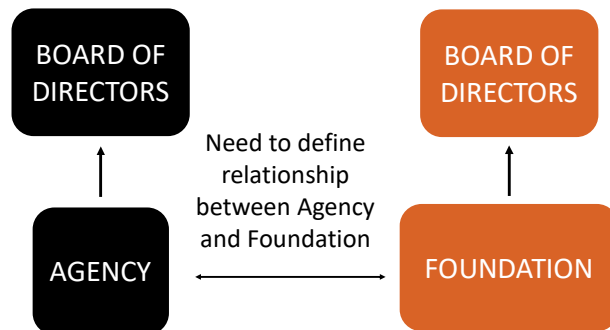
## Foundations: Pros & Cons

PROS	CONS
Separates fundraising duties from the Board	Two distinct organizations means: <ul style="list-style-type: none"> <li>- Greater costs</li> <li>- More complexity</li> <li>- Potential for culture clash</li> </ul>
Board members, volunteers recruited with focus on fundraising	Challenges in recruiting Board members
Protection of assets in a separate entity	Lead organization does not have full control of funds raised
Optics for donors	Potential for foundation to go "rogue"
	Delicate balance – Foundation Board may not feel as though it has any control



## Foundation Sample Structure

- A registered charity is set up to collect and pool donations to support community needs
- Funds could be used to make grants to qualified donees and operate charitable programs





# Social Enterprises

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## What is a Social Enterprise?

- A social enterprise is a business that is used for a social purpose, where profits are reinvested back into the business
- **Examples in the DS sector:**
  - A charity operates its own café or food service operation
  - A charity runs a packaging business that employs people with disabilities
  - A charity establishes a for-profit corporation to invest in various business activities



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## Corporate Structure for Social Enterprise

- Agencies could run a social enterprise as a **“Community Economic Development”** activity or as a **“related business”**
- These activities would be housed within the Agency
- Agencies must ensure that their charitable purposes allow for this activity
  - If not, the charitable purposes should be revised



## Corporate Structure for Social Enterprise (cont'd)

- Alternatively, Agencies could establish a **related corporation** to house revenue-generating activities, without jeopardizing charitable status
- Agencies could consider converting an existing related corporation into a Social Enterprise



## How to Determine Impact on Charitable Status

- ✓ **STEP 1: Is the business a Community Economic Development (“CED”) activity?**



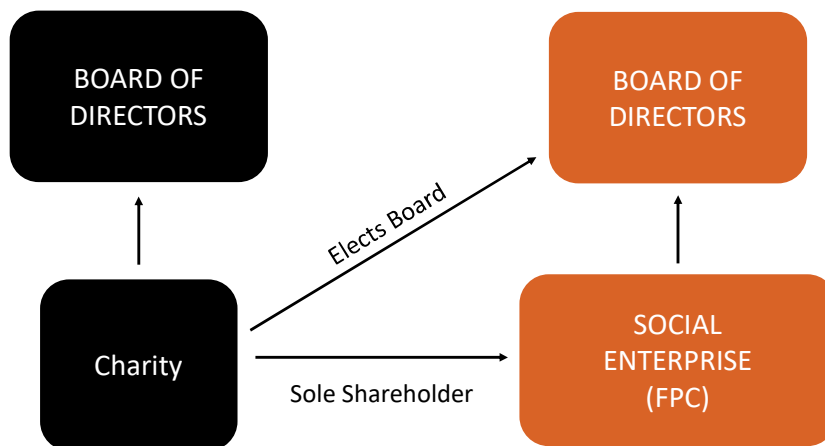
- ✓ **STEP 2: Is the charity carrying on a related business?**



- ✓ **STEP 3: Select the optimal legal structure**



## Example: Social Enterprise – For-Profit Corporation



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## Issues with Related Corporations



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### ISSUE #1: CONFLICT OF INTEREST

- The Agency and the Related Corporation (“RC”) may have an overlap of Directors and Officers
  - In some cases, the same Board governs both corporations
- Directors on a Board have a **fiduciary duty** to the corporation
- If directors are on both Boards, it gives rise to a **conflict of interest**, due to:
  - Sharing of confidential information
  - Choosing between corporations when opportunities arise



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## ISSUE #1: CONFLICT OF INTEREST

- In accordance with not-for-profit legislation, directors must absent themselves from any discussion or voting related to a matter in conflict
  - **This means that there may be no directors left on the RC Board!**

## ISSUE #2: LACK OF "CORPORATE LINK"

- There is no "corporate link" between the Agency and the RC:
  - The purposes of the RC in its letters patent/articles do not relate to the Agency
  - The Board and membership of the RC are completely separate from the Agency
- The Agency has no control over the RC from a corporate governance perspective
- This creates a risk that the RC could go "rogue"

## ISSUE #3: FINANCIAL REPORTING

- If an Agency is in “control” of a Related Corporation, it is required to have “**consolidated financial statements,**” which include the financial statements of both the Agency and the related corporation
- This may have implications for stakeholders, funders, unions

## ISSUE #3: FINANCIAL REPORTING (CONT'D)

- “**Control**” could take various forms, such as:
  - The Agency is the sole member of the Related Corporation, meaning that the Agency elects the Board of the Related Corporation; or
  - The Agency directors form the majority of the Board of the Related Corporation

## ISSUE #4: DORMANT CORPORATIONS

- The Agency has a historical housing corporation or foundation which is **inactive**:
  - Same Board as the Agency/no Board
  - No members
  - No by-laws or policies
- The related corporation may have no assets, or act as a “holding corporation” for assets
- Corporate legal obligations are not being fulfilled (i.e. Board meetings, annual meeting of members, corporate or tax filings, etc.)

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### Possible Solutions





## SOLUTION #1: Corporate Clean-up



**Where the Boards are the same,  
separate governance:**

- Separate Boards
- Separate memberships
- Separate Board meetings
- Separate Annual Meetings
- Separate meeting minutes

**There may be an overlap of directors,  
but be cognizant of conflict of interest.**

## SOLUTION #1: Corporate Clean-up (cont'd)



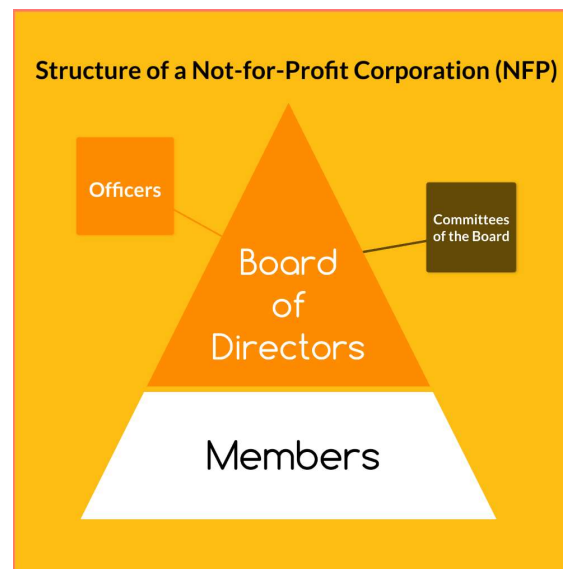
**Consider recruiting a skills-based  
Board for RCs, for example:**

- For housing corporations, directors with real estate experience
- For foundations, directors with fundraising experience

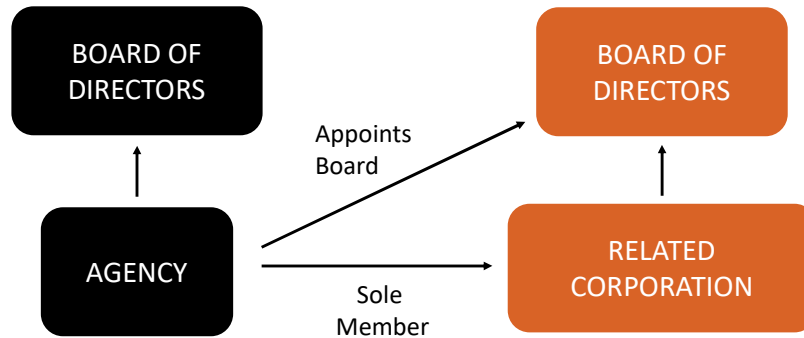
## SOLUTION #2: Corporate Control

- **Consider alternate corporate structures, where the Agency maintains control of the RC**
- **For example, where:**
  1. The Agency is the sole member of the RC
  2. The Agency's directors are the members of the RC
  3. There is an overlap of directors on the RC Board, where the majority of the RC Board is Agency directors

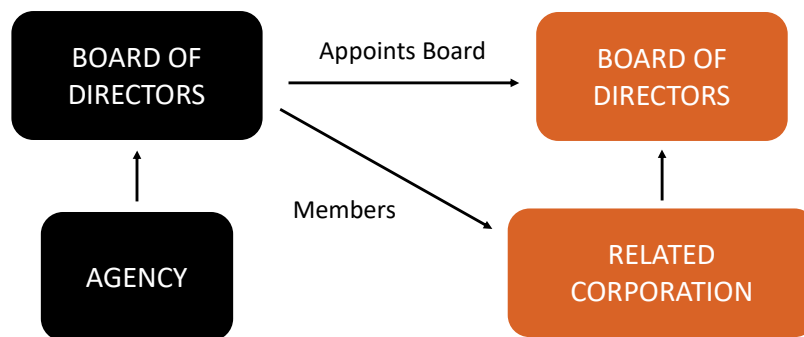
## Refresher: Structure of a Not-for-Profit



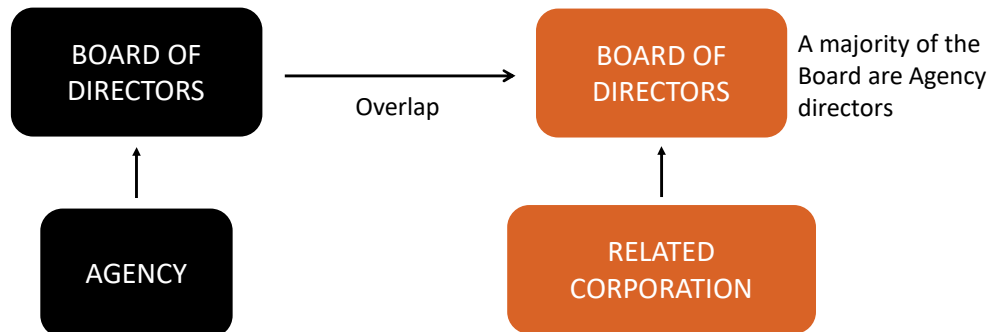
## Agency as the sole member of the RC



## Agency directors are RC members



## Overlap of Directors on the RC Board



## Recall: implications of these structures

- Consider potential **consolidated financial statements**
  - This could impact stakeholders, funders, unions
  - Alternative corporate structures could be considered, where the Agency has some say, but less control
  - It is best to run any corporate structure by your auditor
- Consider potential **conflict of interest**
  - Some overlapping directors are permissible, but not the entire Board
  - A comprehensive Conflict of Interest policy could mitigate risk

## SOLUTION #3: Dissolution



- **If RCs are inactive, consider dissolving them.**
- This would reduce the administrative burden of running two corporations (i.e. separate Boards, members, meetings, corporate/tax filings)

## SOLUTION #3: Dissolution (cont'd)

### **Steps for dissolution (NFPs/charities):**

1. RC Board approval to dissolve the RC
2. Handle any debts, liabilities, obligations of the RC
3. Transfer any remaining assets to the Agency (if allowed by the RC's letters patent/Articles/by-laws)
4. Membership approval of the dissolution, by special resolution
5. File Articles of Dissolution in the relevant jurisdiction
6. If the RC is a charity, file voluntary revocation of charitable status with the Canada Revenue Agency (CRA)

## SOLUTION #3: Dissolution (cont'd)



### Consider implications if properties are being transferred from the RC to the Agency:

- Capital gains tax
- Land transfer tax
- Ministry ownership of property
- Ministry ties to property



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- File changes to your directors and officers after your Annual Meetings.
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# “Questions?”

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