



# Community Organization Property Tax Exemption Regulation

## *BILD Alberta Supplementary Submission*

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### **1. BACKGROUND**

Residents' Associations (RAs) are not-for-profit entities that professionally manage, maintain and operate parks, green space, lakes, facilities and programming for residents. There are presently nine RAs in Calgary and two in Edmonton who provide programs and services to a total of 124,227 Albertans. The responsibility for continued funding and operation of these not-for-profit entities and their facilities is entirely reliant on the residents who finance them through annual memberships. All of this is done at no cost to municipalities and actually saves them money through alleviating pressure to provide similar municipal facilities and services.

Existing RAs face significant risk to financial viability through the annual increased cost of having to pay property taxes on facilities and park space. These costs cannot be easily recouped from residents, as the fees charged via title encumbrance are typically limited to increases equal to CPI by bylaw. A denial of tax exempt status will also discourage the creation of any similar entities and their associated parks / facilities in future communities given the model may no longer be financially viable. The responsibility to provide these services will be given to municipalities who are already under financial strain.

It is our understanding that revisions to the Community Organization Property Tax Exemption Regulation (COPTER) were intended to finally clarify tax exemptions related to properties held and managed by RAs. Unfortunately the polices contained within the draft regulation released in fall 2017 maintain many of the policies that have led to annual appeals and legal challenges while adding a new restriction which will make it increasingly difficult for a number of RAs to continue operating in their current form.

### **2. AFFORDABILITY OF HOUSING IN RESIDENTS ASSOCIATIONS**

There appears to be a perception that RAs are associated with elite, wealthy or even gated residential communities. A review of the [2017 Property Assessment Market Report](#) prepared by the City of Calgary shows that the median assessed value of homes within RAs to be only slightly higher than the city-wide median values:

Housing Prices in RA Communities Relative to City of Calgary		
Unit Type	Community's w/ RAs	City of Calgary
Single Residential	\$509,222	\$460,000
Condominium	\$303,625	\$270,000

This data also demonstrates that the communities with RAs have added value which translates into increased municipal assessments and property taxes which benefits the municipality.

The affordability of units is further demonstrated through an assessment of present listings in the various RAs in Calgary which identifies units available for below the median assessed value with options available for under \$300,000 in the majority of the communities. Unfortunately, the City of Edmonton does not prepare a similar report and the affordability needs to simply consider the present listings within the two RAs relative to the City’s average home sale price:

Price Range of Available Units in Edmonton RA Communities							
Community	Current Listings	* Percentage of Available Units at Various Price Ranges					
		\$150,000-\$250,000	\$250,000-\$350,000	\$350,000-\$450,000	\$450,000-\$550,000	\$550,000-\$650,000	\$650,000 +
Summerside	211	12.3%	27.5%	28.0%	17.1%	7.1%	8.1%
Chapelle Gardens	80	13.8%	26.3%	41.3%	13.8%	3.8%	1.3%

\* Home values gathered from [www.realtor.ca](http://www.realtor.ca) on November 10, 2017

With an average residential home sale price in 2017 of \$378,211 (as of September) for Edmonton, according to the [Canadian Real Estate Association](http://www.crebb.ca), it is evident that homes within the two Edmonton RAs are largely affordable including numerous options being available for \$250,000 or less.

Based on the unique demographics of Alberta, the majority of new communities are built with housing affordability in mind. There has been ongoing demand for affordable housing options to meet the needs of first-time home buyers, families and seniors of a variety of incomes. This has resulted in new communities featuring a variety of housing alternatives at and below the median home value within specific municipalities. These increasingly dense and inclusive communities provide residents from all walks of life the opportunity to be part of unique communities served by RAs.

### 3. COST VS. BENEFIT

While RAs vary in nature, they predominantly focus on providing recreational, educational and social facilities and programs designed to encourage physical activity, social interaction and learning. Municipalities provide some of these services, however, they cannot accomplish this to the extent of RAs. This is largely due to a municipality’s financial limitations and its requirement to serve a population base in excess of one million residents. Requiring these not-for-profits to pay, in some cases, relatively large amounts of property taxes would fundamentally limit their ability to serve the community. While the property tax collected would mean little to a municipality, it is an amount that could financially cripple an individual RA.

New communities are required to fund all onsite infrastructure, provide park space, fund offsite infrastructure improvements and will now also be funding recreation centres, fire halls, police stations and libraries. Communities with RAs provide the above like any other new development but in addition provide the funding and land to construct additional parks, facilities and other amenities. An RA is then established and either “purchases” the facilities through a mortgage or loan or it is provided to them free of charge. The RA is then responsible for all costs and work associated with the operation and maintenance of the facilities and programs provided. The funding for this comes entirely from membership / user fees and fundraising. At no point is a municipality required to contribute.

Municipalities have stated they are concerned at the lost revenue through not being able to tax the facilities and amenity space. **In 2017, the total taxes on RA properties in Calgary will be \$223,506. In Edmonton the total taxes are \$110,558.** While we understand that all orders of government are challenged annually with budgetary restrictions, it is important to recognize the increased tax revenue and savings municipalities receive from many communities who have an RA:

1. Municipalities generate property taxes from each and every resident who is a member of the RA. Homes within RAs generally have a higher tax assessments and homes that are adjacent or back onto park or lake features within the neighbourhood have substantially increased tax assessments netting the municipality substantially more property tax revenue than traditional neighbourhoods. Taxes on the park space / facility along with increased assessments for homes adjoining these features results in double taxation.
2. As part of the development of the neighbourhood, the developer is required to provide:
  - The funding to construct all roads and hard infrastructure onsite (water, wastewater and stormwater);
  - Funding, via offsite levies, for any offsite improvements to roadways and hard infrastructure as a result of the development;
  - Lands or cash-in-lieu for parks and schools in the amount of 10% of the developable land; and
  - Capital to construct the parks in some instances.
3. Through providing facilities and programming related to recreation and education, RAs are decreasing the financial burden on municipalities who otherwise would be under pressure to provide the same facilities and services. This results in municipalities not having to provide similar facilities but more importantly, it reduces or eliminates the need to maintain these facilities as they continue to age and require renovations. All ongoing capital and operating costs are funded by the RA.

Given the net benefit a municipality and all residents receive, it is inexplicable why municipalities would not support RAs within all communities. Many municipalities consistently speak of a lack of funding and resources to provide the services residents want. The RA model is designed to help municipalities tackle this challenge and it requires zero public dollars.

## **CHALLENGES WITH EXISTING REGULATION**

Our understanding of the intent of the amendments to COPTER in 2012 was to provide exemptions for RAs. Unfortunately some municipalities have continued to deny RAs tax exempt status based on their interpretation of the words “general public” and “minor fee”. This has led to numerous costly legal challenges that continue to threaten existing RAs while discouraging their inclusion in future communities across the Province. While the draft regulation attempts to address some of these issues, a number of cumbersome restrictions and a new test exacerbate the problem as outlined in the following:

### ***Items / Uses Not Exempt – Additional Stress Test***

The draft regulation adds / modifies a stress test under Section 24(2)(b) which could be cumbersome to demonstrate. This appears to be a modification of Section 14.1(2)(b) from the existing regulation and specifically, it denies exemptions to:

*“property that is used solely for community games, sports, athletics or recreation if, for the majority of the time the property is in use, services offered do not give priority to children, youth, senior citizens or the disadvantaged”.*

Lake Summerside provides a good example of the challenge this policy brings. While there are a number of amenities, the lake is certainly a highly used feature by all members. The general use of the lake during most days may not be associated with any program or service that provides “priority to children, youth, senior citizens or the disadvantaged”. While other amenities including, at times, the lake provide these services, the City of Edmonton can simply argue that by virtue of the lake being open on a daily basis for members that it does not meet this threshold.

### ***Restricted Use of Property in the Context of Residents Associations***

Property is not exempt if access is restricted due to property ownership for more than 30% of the time. However, property ownership is a necessary component of being a member of RAs as is highlighted in the definition under Section 2(3). This conflict has been highlighted by both the MGB and CARB on a number of occasions. Here are notes from a 2013 ECARB decision (00660, pg. 11-12):

*It would be absurd to prohibit an exemption from taxation on the basis of “ownership” when ownership is a requirement under the definition of “Residents Association”.*

This is further complicated by Section 9(2)(a) which states that the requirement for membership does not constitute a restriction if “membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee”. Membership in RAs is based on property ownership in many cases and creates yet another conflict with the definition and purpose of RAs. Neither of these inconsistencies have been addressed though specific recommendations that were included as part of our September 23, 2016 submission.

### ***General Public and Residents Associations***

While a slight change has been made to the definition of “general public”, this will still likely be a point of contention between municipalities and RAs. While we may view the definition and wording of 23(1)(b)(i) as applicable to RAs, we anticipate municipalities continuing to argue that RAs do not benefit the “general public” due to the inherent property ownership and membership associated with them. They will likely contend that this should not apply given there is limited access.

This will continue to lead to unnecessary appeals. Perhaps the appeal bodies will decide that this section no longer applies given there is a section dedicated to RAs but without the regulation indicating it is not applicable there is a good chance it will remain a point of contention.

## **RECOMMENDED CHANGES TO REGULATION**

It is important for clarity that the guiding parameters and restrictions for RAs be contained in one section of the regulation. In the draft regulation the section pertaining to RAs ties into the policies surrounding restricted use under Section 9. As outlined above the provisions of Section 9 are contrary to the very basis, definition and function of RAs so they should not apply. A more effective approach would be to clearly outline the scenarios where RAs would not be exempt in one section of the regulation. The following outlines our recommended changes to the regulation:

### ***Items / Uses Not Exempt***

We understand the Province’s concern that RAs should not receive a blanket exemptions which could work as a loophole for any organization that wants to receive a tax exemption. We believe

that through utilizing some of the existing restrictions outlined in Section 9 along with a few additional items, this can be achieved. The following provides our suggested framework.

1. Do not exempt property that is used in the operation of a professional sports franchise **or golf course or private club which does not require residency as a condition of membership.**
2. Exempt property that is used for community games, sports, athletics, recreation or social purposes if a Residents Association administers regularly planned programs and services to children, youth, senior citizens or the disadvantaged.
3. With the exception of lakes (due to safety and insurance limitations), in order to be tax exempt properties must be made available to all residents of a municipality at least twice a year either through planned events or informal activities.
4. Do not exempt any properties, commercial facilities or services that generate a profit to an operator outside of the RA unless all profit is used to fund the residents association.

### ***Restricted Use of Property in the Context of Residents Associations***

The policies surrounding “restricted use” in the regulation will require modification as they currently state ownership of property and the requirement to become a member of an organization as being considered “restricted use”, potentially nullifying the tax exempt status of all RAs. As stated above, these are central components surrounding the formation of RAs and without clarity, all parties will continue to be confused.

In order to avoid the same appeals that are brought forward on a seemingly annual basis it is critical the regulation specifically excludes RAs from the application of 9(1)(b), 9(1)(d) and 9(2)(a). This could be achieved in the following manner (change shown in red):

*9(1) Property is not exempt from taxation under section 362(1)(n)(i) to (v) of the Act or this Regulation if, for more than 30% of the time that the property is in use, the use of the property is restricted on any basis, including a restriction based on*

*(b) the ownership of property **unless the property is part of a residents association,***

*(d) the requirement to become a member of an organization **unless the property is part of a residents association.***

*9(2) The requirement to become a member of an organization does not make the use of the property restricted if*

*(a) **with the exception of residents associations,** membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and*

### ***General Public and Residents Associations***

Without Clarity surrounding the definition of “general public” relative to RAs there will continue to be needless appeals and uncertainty. For the sake of clarity and to avoid confusion, there are two alternatives to address this (change shown in red):

*“general public” means pertaining to some or all individuals in a municipality **including those within a residents association,** other than a group with limited membership or a group of business associates;*

OR

*23(1) A non-profit organization that holds property on which any of the following facilities are operated may apply to the municipality within whose area the property is located for an exemption from taxation under section 362(1)(n) of the Act:*

- (b) a facility used for a charitable or benevolent purpose that is for the benefit of the general public **or residents association** if*
  - (i) the charitable or benevolent purpose for which the facility is primarily used is a purpose that benefits the general public **or residents association** in the municipality in which the facility is located, and*

## **CONCLUSION**

This submission has demonstrated that RAs offer affordable housing options for residents while providing a positive benefit to the community for a nominal cost to municipalities. In total, the City of Calgary would lose out on \$223,506 in tax revenue through a clear exemption of RAs, \$110,558 in the case of the City of Edmonton. This lost tax revenue is recovered by the individual municipalities through increased assessments on many of the homes within the RAs and through a reduction in demand for many facilities, amenities and services which are provided by the individual RAs.

The RA model has led to the creation of truly unique communities that feature lakes, vibrant parks, community facilities and programs for all ages. These supplement the parkland requirements and levies provided to municipalities by developers as part of the development process along with property tax revenue collected by a municipality annually. This results in substantially more park / green space and recreational facilities for the general community and municipality as a whole.

The ability to fund and manage these not-for-profits is based on predictable expenses and funding these expenses through reasonable membership and user fees from residents. Should municipalities be permitted to tax the park space and facilities associated with these not-for-profits, it will significantly hinder their ability to operate in a meaningful capacity. We understand that the regulation cannot simply provide a blanket exemption which would be ripe for abuse and have proposed some clear restrictions aimed at preventing this. We would appreciate the opportunity to continue working with the Province to craft legislation that clearly exempts proper RAs while preventing improper use of the tool.