

The **Nelrod** Company®

GOVERNING DOCUMENTS & AGREEMENTS

PRESENTED BY DEREK ANTOINE



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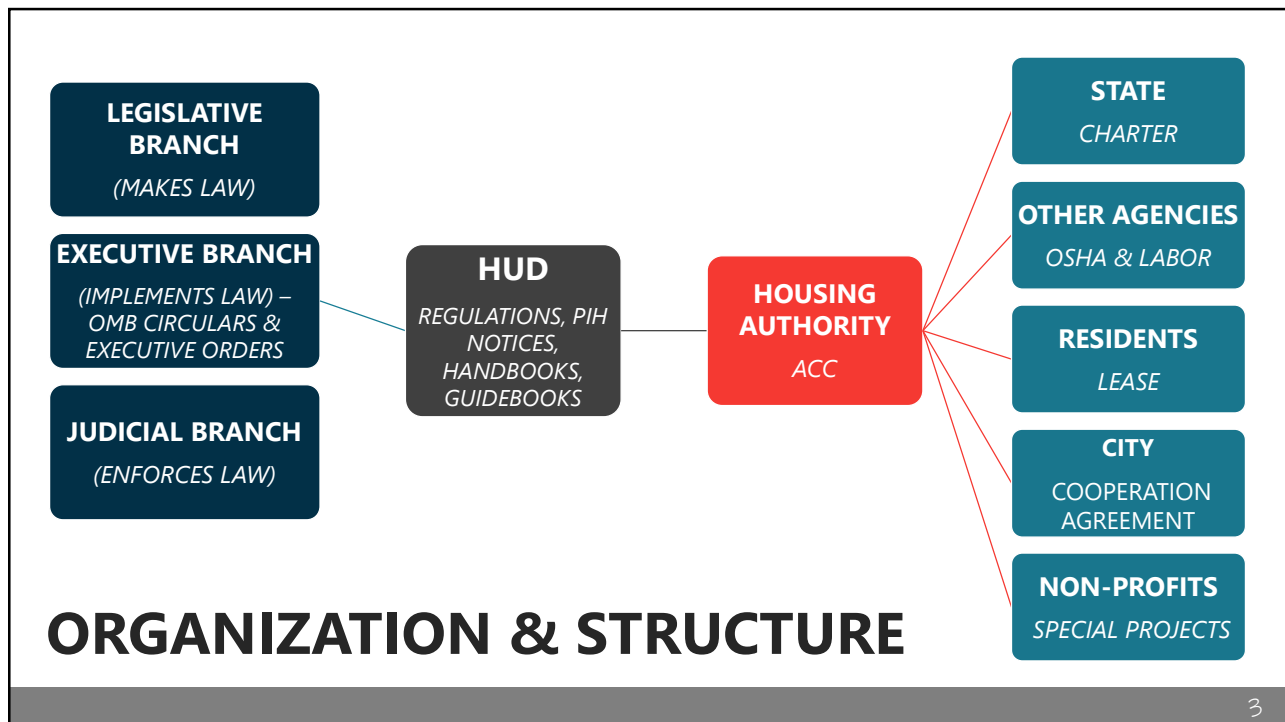
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DOCUMENTS TO BE DISCUSSED

- Articles of incorporation
- By-laws
- Board appointments
- Oath of office
- General depository agreement
- Cooperation agreement
- Payment in lieu of taxes (pilot) form
- Annual contributions contract (acc)
- Declaration of trust/restrictive covenants
- Agency memorandums of understanding (mou's)

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WHY DOCUMENTS & AGREEMENTS PLAY AN IMPORTANT ROLE

- Provide evidence of mutual understanding
- Set common goals between the two parties
- List terms to which both parties agree
- Reflect specific dates and signatures
- Avoid future complications or conflicts
- Avoid “He said/She said” situations

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WHY DOCUMENTS & AGREEMENTS PLAY AN IMPORTANT ROLE

- Document or Agreement must be in writing
- Bind parties to work together
- Build trust between the two parties
- Strengthen relationships and partnerships
- Contract provides equal rights
- Contract provides remedies
- Signed Documents are the foundation of the relationship

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ARTICLES OF INCORPORATION (PURPOSE)

- Necessary to establish a business
- Contains the identifying characteristics of the business
- Ensures that a similar business name is not used in the same state
- Location will designate what laws must be obeyed
- Must be filed with a state agency
- Once articles are approved, business is legal

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ARTICLES OF INCORPORATION

→ State law dictates:

- ✓ Specific format and content
- ✓ Where the Articles of Incorporation must be filed

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ARTICLES OF INCORPORATION (GENERALLY, INCLUDES)

- Entity Name
- Principal office street address
- Principal office mailing address
- Registered agent name and mailing address
- Names and address of organizers
- Purpose of the business
- Description of distribution of assets upon dissolution

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ARTICLES OF INCORPORATION **(SIGNIFICANCE OF INCORPORATION)**

- Protects the Board from personal liability
- Board can limit their liability if ever sued
- Corporation protects Board for the business debts and obligations
- Corporation is seen as a legal entity
- Can file Lawsuits
- Can buy and sell property
- Corporations have unlimited life

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BY-LAWS **(PURPOSE OF BY-LAWS)**

- Serve as your organizational manual
- Guide PHA through the orderly operation of its corporation
- Establish procedures for holding elections, organizing meetings, quorum requirements, membership structure
- Address essential operations of the organization

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BY-LAWS – OFFICERS

Section 1. Officers

Section 2. Chairperson

Section 3. Vice-Chairperson

Section 4. Secretary

Section 5. Executive Director/CEO

Section 7. Election or Appointment

Section 8. Vacancies

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BY-LAWS – MEETINGS

Section 1. Annual Meeting

Section 2. Regular Meetings

Section 3. Special Meetings

Section 4. Quorum

Section 5. Order of Business

Section 6. Manner of Voting

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BY-LAWS – AMENDMENTS

- By-Laws can be amended
- With the approval of at least 3 members
- At a Regular or Special-Called Meeting
- No amendment can be adopted unless at least seven days notice has been given
- To all members of the Authority

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BOARD APPOINTMENTS

- Who makes the appointments ?
- Who can be appointed ?
- How many can be appointed ?
- Can a Board member be paid ?
- Can a commissioner be removed ?
- Are Conflicts of Interest allowed ?

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PHA BOARD APPOINTMENTS

- State law mandates a PHA be governed by a Board of Commissioners (BOC)
- A BOC can consist of 5,7,9 or 11 Board members
- The number of BOC members depends on State Law

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PHA BOARD APPOINTMENTS

- In most cases, a commissioner can not be an official or employee of the local municipality
Example: California law allows a city employee to be on the BOC. The official can have no interest.
- A commissioner can be a tenant of the PHA

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PHA BOARD APPOINTMENTS

- A Certificate of Appointment is filed with the City Clerk's office
- The Certificate is evidence of proper appointment
- Appointments are usually made by the Mayor

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PHA BOARD APPOINTMENTS

- Appointments can be recommended by City Council members
- In a Regional or County PHA, the appointment is usually made by the County Commissioners Court or County Judge

Example: In Delaware, the Governor makes one appointment to the Municipal PHA Board

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PHA BOARD APPOINTMENTS

- Failure to attend meetings can be cause for removal
- PHA Board members cannot receive compensation
- BOC members can be reimbursed for expenses in the discharge of their duties
- The Chairperson and officers are elected on an annual basis

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PHA BOARD APPOINTMENTS

- In most cases, BOC members can be removed for inefficiency, neglect of duty or misconduct
- A Commissioner may not have dealings with a PHA for pecuniary gain or have a conflict of interest

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CERTIFICATE OF APPOINTMENT OF COMMISSIONERS

HOUSING AUTHORITY OF THE CITY OF _____ (Succeeds
_____ Term Expires _____)

I HEREBY APPOINT the _____ () persons hereinafter named to serve as Commissioner(s) of
the Housing Authority of the City of _____, _____ from the _____ Day of
_____, _____, until the expiration date as indicated below.

_____, _____ (Succeeds _____) Term Expires _____, _____ (Succeeds
_____) Term Expires _____, _____ (Succeeds _____) Term Expires
_____, _____ (Succeeds _____) Term Expires _____
(Succeeds _____) Term Expires _____

I hereby certify that none of the above newly designated Commissioners is an officer or employee of
the City of _____ WITNESS WHEREOF, I have hereunto signed my name as
Mayor of the City of _____, _____, and caused the official seal of said City to be
attached this _____ Day of _____, _____.

City Clerk

Mayor

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OATH OF OFFICE - SOLEMNLY SWEAR:

- I will faithfully execute my duties as a commissioner
- Protect, preserve and defend the U.S. Constitution
- I have not directly or indirectly paid, or promised to contribute
any money or promised any employment as a reward to secure
this appointment

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OATH OF OFFICE OF COMMISSIONERS

HOUSING AUTHORITY OF _____, I do solemnly swear that I will faithfully execute the duties of the office of the Commissioner of the Housing Authority _____, _____, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State. I solemnly swear that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure appointment, so help me God.

Commissioner

Subscribed and sworn to before me, by the said _____ this ____ Day of _____, _____, to certify which witness my hand and seal of office.

Notary Public

(SEAL)

My Commission Expires: _____.

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GENERAL DEPOSITORY AGREEMENT FORM HUD-51999

- Agreement requires PHA to select a Depository (Bank or Credit Union) whose deposits are insured
- Deposits must be insured by the Federal Deposit Insurance corporation (FDIC) or a National Credit Union Share Insurance Fund (NCUSIF)

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GENERAL DEPOSITORY AGREEMENT FORM HUD-51999

- The Agreement is executed by the Depository (Bank or Credit Union) and the PHA (Chairman signs Document)
- An Agreement is required with every Bank or Credit Union where the PHA is depositing funds
- All agreements must be on the HUD required form HUD-51999

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MUTUAL COVENANT BETWEEN THE PARTIES

- ✓ Deposits and Accounts will continue to be insured by the FDIC and NCUSIF
- ✓ Any portion of a PHA deposit not insured shall be collateralized with US Government securities. The PHA or a third party will have possession of the securities and will be maintained for the full term of the deposit
- ✓ If the Depository receives written notice from HUD that no withdrawals by the PHA from the PHA accounts, the Depository shall not honor any check from the PHA until HUD authorizes that permission to do so again

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MUTUAL COVENANT BETWEEN THE PARTIES

- ✓ The rights and duties of the Depository under this Agreement shall not be transferred or assigned to another Depository without permission by HUD
- ✓ HUD is intended to be a third-party beneficiary of this Agreement and may sue to enforce this provision and to recover damages.
- ✓ The provisions of this Agreement may not be modified by either party without prior written HUD permission.

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GENERAL DEPOSITORY AGREEMENT – FORM HUD – 51999

- At no time shall the PHA account funds be permitted to exceed the amount insured by the Federal Deposit Insurance. If the amount in the account exceeds the limit, the depository must notify the PHA and remit payment to the PHA or purchase securities approved for investment

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ANNUAL CONTRIBUTIONS CONTRACT (ACC) PH | FORM HUD-53012

- Contract between US Government (HUD) and PHA
- The HUD 53012 (04/2018) supersedes all other ACCs
- The ACC covers all PH Projects and all amendments and any new developments that may be added by future amendments
- The ACC will remain in effect for the maximum period remaining under previously executed ACCs including any extension of the original ACC term based on the PHA's receipt of Modernization and Operating Subsidies

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TERMS & CONDITIONS OF THE ACC

Section 1. Definitions

Section 2. Mission of HUD and HA

Section 3. HUD Requirements.

Section 4. Cooperation Agreement(s)

Section 5. Declaration of Restrictive Covenants

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TERMS & CONDITIONS OF THE ACC

Section 6. Disposition and Encumbrances

Section 7. Insurance Requirements

Section 8. Employer Requirements

Section 9. Accounts, Records and Government Access

Section 10. Grant Funding

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TERMS & CONDITIONS OF THE ACC

Section 11. Term

Section 12. Depository

Section 13. Termination of a Project

Section 14. Notices, Defaults, Remedies

Section 15. HUD in Possession of Project(s)

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TERMS & CONDITIONS OF THE ACC

Section 16. Conflict of Interest

Section 17. Civil Rights Requirements

Section 18. Members or Delegates to Congress

Section 19. Rights of Third Parties

Section 20. Waiver or Amendment

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COOPERATION AGREEMENT

- Annual payment to local entity based on HUD formula
- Responsibilities by local municipality for receiving Payment in Lieu of Taxes (PILOT)
- Limits on actual payment based on local tax rate
- Services must be provided by local municipality

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COOPERATION AGREEMENT

- Easements and street dedication are also included
- Provision of utilities/city services for PHA developments
- What happens for failure or refusal to provide services
- Local officials cannot have any interest
- Abrogation of Agreement

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PAYMENT IN LIEU OF TAXES (PILOT) FORM HUD-52267

- Provided for in State Law
- Required in Cooperation Agreement
- Formula Fee set by HUD
- Required to be reviewed in Audit process

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PILOT – FORM HUD-52267

Name of Local Agency:	Location:	Contract Number:	Project Number:

Part I - Computation of Shelter Rent Charged.

1. Tenant Rental Revenue (FDS Line 703)	\$	<input type="text"/>	
2. Tenant Revenue Other (FDS Line 704)		<input type="text"/>	
3. Total Rental Charged (Lines 1 & 2)			\$ <input type="text" value="0.00"/>
4. Utilities Expense (FDS Line 931 - 939)			
5. Shelter Rent Charged (Line 3 minus Line 4)			\$ <input type="text" value="0.00"/>

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PILOT – FORM HUD-52267

Part V - Payments in Lieu of Taxes.

1. 10% of shelter rent (10% of Line 6 of Part I or 10% of Line 5 of Part II, whichever is applicable)**	\$ <input type="text"/>
2. Payments in Lieu of Taxes (If Part IV is not applicable, enter the amount shown on Line 1, above, or the total in Part III, whichever is the lower. If Part IV is applicable, enter the amount shown on Line 1, above, or the amount shown on Line 5 of Part IV, whichever is lower.)	\$ <input type="text"/>

* Same as Line 2 if the statement includes all projects under the Annual Contributions Contract. If this statement does not include all projects under the Annual Contributions Contract, enter prorata share based upon the development cost of each project.
 ** If the percentage specified in the Cooperation Agreement or the Annual Contributions Contract with HUD is lower, such lower percentage shall be used.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Prepared By: <input type="text"/>	Approved By: <input type="text"/>
Name: <input type="text"/>	Name: <input type="text"/>
Title: <input type="text"/>	Title: <input type="text"/>
Date: <input type="text"/>	Date: <input type="text"/>

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DECLARATION OF TRUST (DOT)

- General Declaration of Trust requirements
- Purpose of the DOT
- Term of the DOT
- Types of DOT
- PHA Compliance Requirements
- Release of the DOT
- PHA Steps for release of DOT

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GENERAL DOT REQUIREMENTS

- All PHAs are required to record all current DOTs against PHA property
- The PHA ACC requires the PHA to have a current DOT on all properties: Acquired, Developed, Maintained or Assisted with HUD funds
- Many PHAs are unaware that the original DOT has expired with the repayment or forgiveness of the Development debt

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GENERAL DOT REQUIREMENTS

- PHA properties that continue to receive HUD assistance are required to have a DOT recorded
- PHAs should record DOTs on an on-going basis to:
 - ✓ Ensure the accuracy of HUD subsidy calculations and payments under the Operating and Capital Fund and
 - ✓ Expedite HUD's processing and approvals of other HUD programs

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PURPOSE OF THE DOT

- Legal instrument that grants HUD an interest in public housing property
- Provides public notice that the property must be operated in accordance with the Federal regulations
- Property may not be conveyed or encumbered unless authorized by HUD

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TERM OF THE DOT

→ Operated at Public Housing

- ✓ Acquisition or Development – 40 years
- ✓ Modernization or Capital Funds – 20 years
- ✓ Operating Fund (Operating Subsidy) – 10 years

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TYPES OF DOTs

→ Prior to June 2019, it depended on the funding from HUD

- ✓ Development Funds – form HUD-52190-A
- ✓ Modernization/Capital Funds – form HUD-52190-B
- ✓ Mixed-Financed Development

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TYPES OF DOTs

- June 2019 – form
- HUD-52190 (4/2018) – Declaration of Trust/Restrictive Covenants
 - ✓ Per PIH 2019-14

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DOT COMPLIANCE REQUIREMENTS

- Under the ACC, PHAs certify with their Annual Plan their compliance with all Federal requirements
- PHAs must ensure all current DOTs are recorded
- HUD expects all PHAs to be in compliance and PHAs should closely monitor all their properties

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RELEASE OF A DOT BY THE FEDERAL GOVERNMENT

- Current forms of DOT do not automatically terminate or expire from public records when HUD approves a property from removal from the ACC
- PHA must request that their Field Office release the DOT for the property that was approved
- PHA may not dispose of a property that has been approved by the Special Applications Center (SAC) until the Field Office releases the DOT

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STEPS TO FOLLOW FOR RELEASE OF DOT:

- PHA receives approval from the SAC
- PHA request HUD Field Office to release
- HUD Field Office Counsel verifies the property has been released by the SAC and that all requirements have been satisfied
 - ✓ i.e., Land Survey, Warranty Deed, Title Reports

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STEPS TO FOLLOW

- Field Office Counsel recommends a release of DOT
- PH Field Office Director releases DOT
- PHA records the release in the County Land records
- Once released, PHA may dispose of property

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DECLARATION OF RESTRICTED COVENANTS

- What is a Covenant?
- Covenants related to land
- Imposed restrictions by HUD
- Trust period created by parties
- Outline of binding commitments
- Term of HUD declaration
- Enforcement of Covenants

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DECLARATION OF RESTRICTED COVENANTS

- Assignments or transfers of interest
- Consent by controlling party (HUD)
- Modifications of declarations
- Release of declaration by HUD

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PHA MEMORANDUM OF UNDERSTANDING (MOU)

- What is a Memorandum of Understanding?
- Formal agreement between State Agency and Housing Agency
- MOU identifies roles and responsibilities of each party
- Components of an MOU
- Why the MOU is required

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AGENCY MOU

- Contact Director of Agency to execute an MOU
- Discuss the importance of data sharing
- Discuss PHA requirements to report to welfare agency
- Discuss Client authorization of release
- Expiration dates on authorization form
- Discuss the importance of updated information for both parties

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AGENCY MOU

- Meet with your Agency representative regularly
- Go beyond the 50058 form or PIC info
- MOU amendment or termination process

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