



## II. NATURE OF HFA

### A. Unique quasi-governmental financial organization

MBOH Statutory Authorization – 2-15-1814 creates Board of Housing.

- Governor appoints members informed and experienced in housing, economics or finance; members not considered to have conflict of interest under state ethics law (2-2-201) merely because member is stockholder, officer or employee of a lending institution that may participate in Board's programs.
- Board elects presiding officer and other necessary officers.
- Board is allocated to DOC for administrative purposes:
  - Board exercises its quasi-judicial, quasi-legislative, licensing and policymaking functions independent of, and without control or approval of, DOC; Submits budgetary requests through DOC; Submit any required reports through DOC; DOC Director represents Board in communications with Governor.
  - DOC handles clerical, administrative, financial, staffing, and publications and provides office space.
- DOC provides all staff (state employees) and services Board determines necessary to carry out its programs, and assesses Board for costs.
- Board is quasi-judicial board under 2-15-124:
  - At least 1 member must be attorney licensed to practice law in Montana;
  - Members may be removed by Governor only for cause;
  - Addresses appointment, confirmation, vacancies, Board member compensation;

- Majority of membership constitutes quorum; a favorable vote of at least a majority of all Board members required to adopt any resolution, motion or other decision.
- B. Legislature specifies purposes and powers
- Housing Act (90-6-102): The legislature finds and declares that there is a shortage in Montana of decent, safe, and sanitary housing which is within the financial capabilities of lower income persons and families. In order to alleviate the high cost of housing for these persons, the legislature believes that it is essential that additional public moneys be made available through the issuance of revenue bonds to assist both private enterprise and governmental agencies in meeting critical housing needs.
  - Board Powers (90-6-104): lengthy list, includes rulemaking, making agreements with other governmental agencies, private entities, housing sponsors, lenders, acquiring and hold property (e.g., notes and mortgage interests, title at foreclosure), loan servicing, housing consultation, investment of funds subject to bondholder agreements, collect interest and fees for making and servicing of loans, procure mortgage loan insurance, issue notes and bonds (90-6-111 – 127).
  - Rulemaking authority (90-6-106)
- C. Self-supporting (no taxing power); enjoys tax breaks
1. Revenue sources (spread; fees; investment income)
- D. Primary Programs (“Lines of Business”)
1. Single Family Program
  2. Multi Family Bonds
  3. LIHTC/HUD/NSP
  4. Other – e.g., RAM, Veterans Loans

E. Multiple “Overseers”

1. Governor and Legislature
2. IRS; HUD; SEC; CFPB
3. Rating agencies/capital markets
4. Press

Stakeholders

1. Lower income persons
2. Bondholders
3. Financial counterparties
4. Private industry “partner” groups (lenders, developers, realtors, non-profits)

F. Challenges

1. Revenues down
2. Uncertain federal housing policy
3. Increased federal regulation (some exemptions)
4. Rapid and expensive technology changes

### III. ROLE OF BOARD

- A. Govern and monitor, macromanage but don't micromanage
  - 1. Review and approve programs
  - 2. What to monitor (finances, programs)
  - 3. How to monitor (internal reports, auditor reports, rating agencies)
  
- B. Set Policy
  - 1. Program policies (mission; financial prudence; transparency)
  - 2. Operational policies (ethics, travel, investment, swaps, etc.)
    - SOX—Ethics, Whistleblower, Record Retention

Review Periodically
  
- C. Plan (long-term strategic and short-term)

#### IV. BOARD WORKS AS A TEAM

- A. No individual Board member authority
  - 1. Sector representative
- B. Consensus building is key
- C. Get to know the Board team members
- D. Executive Director is key part of the Board team

## V. BOARD/EXECUTIVE DIRECTOR RELATIONSHIP

- A. Executive Director is CEO (has *all* day-to-day management responsibility) – DOC employee
- B. Executive Director recommends/Board approves—Trust is key
- C. Executive Director responsible for:
  - 1. Implementing and recommending Board policies
  - 2. Representing HFA in negotiations and public events
  - 3. Maintaining legislative liaisons – via DOC
  - 4. Hiring, directing, supervising, educating, evaluating and disciplining staff – via DOC
  - 5. Preparing HFA annual budget and managing its finances – via DOC
  - 6. Overseeing HFA programs and reporting to Board
  - 7. Planning annual HFA operations consistent with Board long-term plan
  - 8. Staying abreast of industry developments and keeping the Board up-to-date
  - 9. Monitoring compliance with federal, state and local laws and program rules
- D. Board needs to tell Executive Director what information Board needs to properly monitor HFA operations (SOX); but not too much
- E. Executive Director’s boss is full Board only—not individual Board members
- F. Board should annually evaluate Executive Director (SOX) and have a job description – MT: N/A because DOC rather than MBOH hires and supervises Board Executive Director.

## VI. BOARD/PROFESSIONAL TEAM

- A. All HFAs employ non-staff professionals
- B. Professionals' relationships to Board vary, and Board needs to understand why:
  - 1. General counsel and bond counsel have legal confidential obligations to the HFA (and thus the Board); not counsel to Executive Director (SOX)
  - 2. Investment bankers—complicated “trusting” relationship (SEC Muni Advisor limits)
  - 3. Accountants must be “independent” (SOX)
    - Report on internal controls
  - 4. Bond Trustee—fiduciary for the bondholders first, and the HFA second
  - 5. Financial advisor—HFA fiduciary (New SEC Muni Advisor rules)
- C. Professional team needs to work well with Executive Director
- D. Board members must not abuse professional team relationships (e.g., soliciting gifts, political or charitable donations)
- E. Periodic review of professional team, and nature of the review, differ widely; one rule—try to keep it merit-based

## VII. BOARD MEETINGS

- A. Where the Board's work is largely done – all are open by MT law
- B. Each Board member should:
  - 1. Attend meetings
  - 2. Prepare for the meeting (read the advance packet; think about the issues; seek advance input on issues)
  - 3. Take part in discussions
  - 4. Compromise and cooperate
  - 5. Understand basics of parliamentary rules
  - 6. Know applicable open meetings rules – MT: what constitutes a “meeting”?
  - 7. Learn traditional Board meeting practices
- C. Should be conducted in a business-like, on-time manner
- D. Should follow an agenda developed by Chair and Executive Director – MT: must give prior public notice of and allow public comments on items on which Board takes action. Board may discuss – but not act on – items not on agenda
- E. Should include review and approval of previous Board minutes (which is the legal record)
- F. Focus on substantive matters; use consent agenda (SOX)

## VIII. BOARD COMMITTEES – MT: Not used but available

- A. Full Board creates them and specifies their powers
  
- B. Usually used for subjects for which full Board meeting is inefficient
  - Full Board should not rehash subjects
  
- C. Two types—standing (or permanent) and “ad hoc” (or temporary)
  
- D. Standing committees usually include audit (generally the most important), budget, elections (nominating), personnel/human resources
  
- E. Committee work is as important as full Board work
  
- F. Rotate membership

## IX. BOARD MEMBER'S LEGAL DUTIES

- A. Duty of due care—exercise ordinary and reasonable care (SOX)
  - 1. Carry out legislatively specified legal (“ministerial”) duties
  - 2. Adopt appropriate programmatic (“discretionary”) policies
  - 3. Supervise and monitor HFA operations
  - 4. Adopt appropriate management policies
  - 5. Become and stay informed (no “Dummy directors”)
  - 6. Exercise independent judgment
  - 7. Protect confidential information
- B. Duty of loyalty
  - 1. Avoid conflicts (SOX; “handling” conflicts is key)
  - 2. Avoid situations that give rise to litigation against the HFA (e.g., LIHTC’s and executive sessions/press statements)
  - 3. Do not take personal advantage of HFA opportunities (“Steering”) [SEC]
- C. Duty of disclosure (federal anti-fraud securities laws)
  - 1. Disclose to staff/counsel any information of which you have personal (nonpublic) knowledge that may be material to a reasonable person investing in the HFA’s bonds (e.g., program mortgage lender or developer about to file for bankruptcy)

## X. MONTANA ETHICS AND OTHER REQUIREMENTS

- A. Ethics Rules: Code of Ethics/Standards of Conduct (State Employee Guide -- State Ethics Policy)
  - 1. Conflict of Interest
    - a. What constitutes a conflict?
    - b. How to handle potential conflicts
    - c. Prior legal guidance
  - 2. Self-Dealing
  - 3. Unwarranted Privileges
  - 4. Overlapping Employment
  - 5. Collecting Compensation
  - 6. Use of State Property
  - 7. Gifts
    - 1. COP Memo re Gift Ban
    - 2. Political Activity
      - i. SHRD Fact Sheet
- B. Ex parte communications
- C. Confidential Information
  - 1. Right to Know/Public Disclosure Laws
  - 2. What Information is Protected from Disclosure?

## XI. BOARD MEMBER LIABILITY - AND HOW TO AVOID IT

- A. Personal liability only if Member does not fulfill his/her Board duties (so need to know what your job is!)
- B. Pay attention at meetings
- C. Know and follow Board policies
- D. Use common sense
- E. If in doubt, contact HFA general counsel
- F. State law protection – Montana Law
- G. Montana Self-Insurance
- H. Practically - very little risk of personal liability unless grossly negligent or knowingly violate laws (Business Judgment Rule)
- I. Do not panic if sued!!