PLAIN LANGUAGE POLICY GUIDELINES
FOR
POST-1985 SECTION 95
NON-PROFIT CO-OPERATIVE HOUSING
PROGRAM

These reader-friendly modules have been prepared in simplified non-technical language for the convenience of a general readership. They have been made available on the Agency's website for use by housing co-operatives who are interested in gaining an understanding of how the federally funded co-op programs work.

It is important to note that these modules do not replace CMHC's guidelines and policies. In the event of any conflict or lack of clarity, CMHC's guidelines and policies will prevail. Further, any and all references to the Agency should be interpreted to mean "the Agency on CMHC's behalf."

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1. GENERAL

Co-ops will enter into a Project Operating Agreement with CMHC. The Agreement sets out the terms and conditions for management of the project and payment of subsidy assistance.

The Agency will ensure the project is operated in accordance with the standard terms and conditions.

As long as all terms and conditions are met, the Project Operating Agreement will be in effect for the lesser of 35 years, the length of the mortgage, or the useful life of the project, as determined by CMHC.

1.1 *Changing incorporating documents*

The co-op is not to change the incorporation document that CMHC has reviewed and accepted. The co-op agrees not to change its non-profit status, as defined in NHA section 27(2), unless it has CMHC's written approval.

2. PROJECT MANAGEMENT

2.1 *Management in keeping with operating agreement*

The co-op is to keep to the terms and conditions of the operating agreement as it operates the project.

2.2 *Management*

The co-op is to manage the project effectively. It will maintain and repair the project based on professional management standards that, in the Agency's opinion, will reduce operating risk to acceptable levels.

The co-op can hire suitably qualified staff to manage the co-op. The co-op will not enter into any agreement with other parties for the management of all or part of the project without the prior written approval of the Agency.

2.3 Poor Management

If the Agency believes that the co-op is not meeting the standards in 2.2, it can require the co-op to make changes to the management of the project, even if the co-op is not behind with its mortgage payments.

If the Agency believes the co-op is in financial trouble, it can require the co-op to hire a professional manager. A professional manager means a firm or individual with the skills to assess project difficulties, and put in place ways to solve the problems and keep the problems from returning.

If the co-op breaches the mortgage agreement and will not agree to a management change that the agency thinks is necessary, the Agency will advise CMHC that professional management must be hired.

2.4 Giving control of management back to the co-op

When the co-op is required to hire professional management, the Agency will give back to the co-op the right to choose management as soon as the Agency and co-op agree that the co-op is ready.

If there are outside directors on the board, the Agency will agree with the board on a plan to replace them with resident directors over time.

2.5 Governance

The co-op will ensure good governance of the association and its affairs by having a trained, committed board of directors.

Any board member or manager with a conflict of interest must tell the board that there is a conflict. That person may not take part in discussions or in making decisions about the matter that causes the conflict.

A conflict of interest can happen when a director, officer, employee or committee member is involved in co-op decisions that could give that person, or a relative or business associate of that person, some benefit the rest of the co-op wouldn't have.

2.6 Weak Governance

If the Agency believes that the co-op is not meeting the governance standards as set out in 2.5, the co-op may be asked to

- get training for board members
- require directors to resign if they are in breach of their duty
- hold elections for new directors to fill vacancies on the board
- appoint temporary directors from outside of the co-op

3. BUDGET REVIEW

3.1 *Budget Year*

The co-op's budget year will be the same as the co-op's fiscal year. Fiscal year ends must be December 31, or March 31, whichever has been established by CMHC.

3.2 *Annual operating budget*

Co-ops receiving subsidy under this program will submit an annual operating budget for each project to the Agency at least four months prior to the start of the fiscal year. Failure to submit the project operating budget may result in suspension of subsidy assistance until the budget and required reports are received by the Agency.

The budgets will be in a format acceptable to the Agency and consistent with the requirements set out in the operating agreement.

3.3 *Approval of operating budget*

The Agency will review and approve annual project operating budgets before the start of the fiscal year. The Agency will determine estimated losses for the purpose of determining potential subsidies, cash flow, and the need for advances.

4. PROJECT REVENUES

4.1 *Annual project revenue*

The annual project revenue to be considered in determining the amount of subsidy assistance is the revenue from:

- housing charges
- parking charges
- laundry

- interest (excluding interest from Replacement Reserve), and
- other revenues

4.2 *Housing charges based on rent-to-income scale*

Housing charges shall be based on the application of the federal rent-to-income scale as determined by CMHC.

4.3 *Live-in caretaker*

If applicable, the live-in caretaker's unit housing charge will be based on the market rent for the unit and is to be included in the project's revenues. The difference between the economic rent and the market rent for the caretaker's unit is considered to be an operating expense.

5. NON-SHELTER COMPONENT

5.1 *Non-shelter space at full market rent*

The co-op must rent commercial or other non-residential space at the greater of economic or market rent. If a market rate cannot be determined the co-op can charge the economic or break-even rent.

5.2 *Non-shelter space must break even*

Non-shelter space must at least break even. No deficits are to accrue to the shelter component.

5.3 *Non-shelter surpluses*

Use of surpluses generated by the non-shelter space will be determined by the Agency. Generally, such surpluses will be used to offset operating costs associated with the shelter portion of the project.

6. ADVANCING OF SUBSIDY

6.1 *Annual subsidy assistance payable*

The annual subsidy assistance payable to a project is equal to the difference between:

- the eligible annual operating costs and
- the project revenues

6.2 *Assistance paid for 35 years or the useful life of the project*

Subsidy assistance will be paid for thirty five (35) years (i.e., the term of the operating agreement) or the useful life of the project, whichever is the shorter period of time, provided the project is managed and operated within the terms of the operating agreement.

6.3 *Calculated from the Interest Adjustment date or substantial completion*

The subsidy assistance will be calculated from the Interest Adjustment Date (IAD) of the mortgage.

6.4 *Assistance paid directly to the co-op*

CMHC will advance subsidy assistance directly to the co-op on an advance basis. The Agency will ensure the co-op has sufficient funds to cover project operating losses during the course of their fiscal year, in accordance with the approved budget.

Note: It is suggested that the monthly accountable advances be issued to cover the project's estimated losses and that after a four month period has lapsed subsequent advance not be issued prior to receipt of the unaudited actuals for the previous quarter. Where advances are issued quarterly, unaudited actuals are to be provided no more than one month after the end of the quarter.

6.5 *Overpayment or shortfall of subsidy assistance*

If subsidy assistance paid in any fiscal year is greater than the actual eligible operating loss, the co-op will have to repay the overpayment to CMHC. The actual eligible operating loss is determined by the Agency after reviewing the audited financial statements. The overpayment can be repaid by sending a cheque to CMHC or through a reduction in subsequent advances.

If subsidy assistance paid in any fiscal year is less than the actual eligible operating loss, CMHC will have to make a shortfall payment to the co-op. The actual eligible operating loss is determined by the Agency after reviewing the audited financial statements. The additional payment can be made by sending a cheque to the co-op or through an increase to subsequent subsidy advances.

6.6 *Reporting requirements*

If the audited financial statements, Annual Information Return, and operating budget are not received as required, the Agency may make a recommendation to CMHC to suspend payment of the subsidy assistance until the required reports are submitted.

7. MORTGAGE PAYMENTS

7.1 *Making mortgage payments on the due date*

The co-op will make loan payments to the Approved Lender as required and by the due dates. Failure to make the payments by the due dates is a breach of the operating agreement.

The co-op agrees to notify the Agency before making any change in its mortgage payments.

8. MORTGAGE PREPAYMENT

Prepayment of all or any part of the mortgage loan requires prior agreement of CMHC.

9. MORTGAGE RENEWAL

The interest rate at the time of mortgage renewal is the Direct Lending rate provided by CMHC.

10. ELIGIBLE PROJECT OPERATING EXPENSES

10.1 *Eligible operating expenses*

Only the operating expenses related to the designated residential portion of the project are eligible for federal subsidy assistance under this program. The following expenses are considered reasonable eligible expense that co-ops will usually encounter in their day-to-day operations:

- Mortgage interest and depreciation *
- Property taxes
- Insurance
- Maintenance and repairs (including janitorial services)
- Utilities
- Security
- Ground rent or lease payments
- Marketing and advertising
- Administration **
- Governance
- GST/HST
- Bad debts
- Allocation to Replacement Reserve

When the Agency reviews the amounts of expenses, it considers industry standards and best practices.

* The mortgage expense is:

- the annual mortgage interest changes, on an accrual basis, and
- the amount of mortgage principal repaid, which is recorded as depreciation

**CMHC has historically used a 12% guideline to assess the reasonableness of administration costs. In effect, CMHC's guideline states that a co-op's administration costs should not exceed 12% of the total operating costs not including amortization costs. However, CMHC has recognized that many factors can affect the cost of administration for any given co-op and has considered these factors in applying the guideline. Until the Agency accumulates its own data regarding operating expenses for annual comparison, it will look to CMHC's administration cost guideline for comparative purposes.

11. INELIGIBLE EXPENSES

11.1 *Ineligible expenses*

The following expenses are considered examples of ineligible expenses:

- Costs for running non-shelter parts of the project (such as daycare) including a share of common operating expenses associated with the non-shelter parts such as property taxes
- Costs for a benefit that isn't shelter related, such as vocational training resources; but reasonable social expense that encourage member involvement in the co-op are eligible
- Costs that belong to another phase of the project developed under a different program.
- General project-wide expenses (such as administration costs) that should be divided among all phases.
- Gifts and donations, except for nominal ones
- Costs for housing-related services, such as cable television, for income-tested households that are over and above what is in the operating agreement's definition of fully-service accommodation.

Ineligible expenses can only be recovered through:

- Surcharges added to the occupancy charge
- Revenue from non-subsidized sources, such as earning from the investment of member loans, deposits and shares or the proceeds of social events
- Non-shelter revenue such as fundraising

12. OCCUPANCY AGREEMENTS

Occupancy agreements may also be referred to as "leases", although the more common and appropriate term for housing co-ops is occupancy agreements.

12.1 *Units rented as defined by criteria*

Units may be rented only to applicants as defined by the criteria for:

- Households in need, and
- Core Need Income Thresholds

12.2 *Occupancy agreements acceptable to the Agency*

Occupancy agreements must be in a form acceptable to the Agency.

12.3 *Occupancy agreements to prohibit subletting*

Occupancy agreements are to include a clause prohibiting subletting or assignment of units.

12.4 *Parties to the occupancy agreement*

The occupancy agreement or lease must be signed by at least one adult in the household. If there are adult occupants who are not married or in a common-law relationship, each of those adults must sign the occupancy agreement.

12.5 *Only persons named in the occupancy agreement to occupy the unit*

All household occupants shall be named in the occupancy agreement and the occupancy agreement shall be occupied only by the individuals named in the agreement.

12.6 *No agreement in excess of 12 months*

Leases and occupancy agreements between the co-op and the household must give the co-op the right to change the housing charge annually.

12.7 *Housing charges based on adjusted income*

Occupants will pay housing charges according to their adjusted income, based on the applicable rent-to-income scale. Where fully serviced accommodation is not provided, the housing charge is to be reduced by an amount approved by the Agency which represents the costs of services not provided. Where additional services are provided, the housing charge is to be increased by an amount approved by the Agency.

12.8 *Occupants in receipt of social assistance*

Occupants in receipt of social assistance must pay the greater of:

- the maximum shelter component of their benefit payment up to the regular occupancy charge or,
- an occupancy charge based on the rent-to-income scale

12.9 *Modified units*

Units that have been modified to meet the needs of physically disabled occupants are to be leased only to eligible households in which at least one member is physically disabled.

13. VERIFICATION OF HOUSEHOLD INCOME

13.1 *Income verification*

Income verification must be provided by all applicants prior to occupancy and at least annually thereafter.

13.2 *Notification of housing charge change*

When housing charges change, the co-operative will notify the occupants in accordance with applicable provincial law.

13.3 *Method of verifying income*

The method of verifying income will be as determined by CMHC. CMHC is responsible for determining the most reliable method for verifying income from all sources. This could include, but is not limited to:

- employer's statement of income
- bank statements
- social assistance statements
- income tax notice of assessment together with income tax return for the same period, and/or
- a statutory declaration

14. DISCRIMINATION

14.1 *General statement of discrimination*

The co-op must respect the terms of the operating agreement and follow any other applicable Canadian laws against discrimination.

14.2 *Discrimination on age*

If the co-op's operating agreement reserves accommodation for senior citizens, this does not count as discrimination as defined in the operating agreement.

15. PROPERTY TAXES

The approved lender and the co-op will determine which of them is to arrange for the payment of property taxes.

16. INSURANCE

The co-op is required to obtain insurance that fully protects CMHC's interests including but not limited to the following:

- Fire insurance to cover the cost of replacing the building(s)
- Insurance for such risks as wind storms, hail, lightning and floods
- Insurance with a "loss payable clause" stating that the holder of the first mortgage is entitled to the first claims to be paid out.

Co-ops may insure with any federally or provincially registered Canadian insurance company.

17. REPLACEMENT RESERVES

17.1 *Investing the replacement reserve*

The co-op can only invest replacement reserve money in investments insured by the Canada Deposit Insurance Corporation, by a credit union deposit insurance corporation or as otherwise approved by CMHC.

The replacement reserve fund and investment earnings of the fund must be shown separately in the co-op's books of account and on its financial statements.

17.2 *Replacement reserve – purpose of fund*

The co-op must maintain a replacement reserve fund. It uses this fund to replace or make all repairs to capital items. The capital items that can be replaced from the reserve fund are:

a) **Major building components**
- Roofs, including coating, flashing, eavestroughs and downspouts
- Exterior wall finishes with a lower life expectancy than the rest of the project, including exterior painting and stucco
- Exterior doors and windows
- Exterior caulking that is hard to reach and hard to replace,
- Aboveground waterproofing, including vapour barriers

b) **Major building services**
- Heating systems, including boilers (hot water or steam), forced air furnaces, radiant heat components, solid fuel burning systems, chimneys and related components
- Domestic hot water tanks, booster pumps, circulating pumps and sump pumps found in multiple-unit buildings
- Septic tanks and tile beds
- Required air handling systems

c) **Basic facilities**
- Kitchen facilities, such as stoves and refrigerators, sink and faucet installations, counter tops and cabinets
- Bathroom facilities, such as toilets, sinks, vanities, tubs and fixtures

d) **Safety features**
- Fire alarm systems, such as hardwired smoke alarms, and smoke and heat detectors linked to a central alarm
- Required fire fighting or prevention equipment
- Emergency lighting
- Intercom systems in multiple-unit buildings
- Other safety items

e) **Other major facilities, equipment and features**
- Parking lots, enclosed garages and driveway and walkway surfaces, including multiple-unit garage surfaces and concrete slabs
- Garbage disposal systems in multiple-unit buildings, such as compactors and disposers
- Interior floor coverings, including those in common areas and suites
- Exterior fences
- Laundry equipment

- Water softeners, where required by the hardness of well water

f) **Regulated changes**
- Changes required by the law within a set period

Extensions to the standard list

Extensions to the standard list are items which were designed, manufactured and installed to function and perform for the life of the project, but have failed due to deficiency or environmental factors. Here are some examples:

- Foundations or significant sections of foundations
- Other structural components, such as walls, floors and roof framings
- Brickwork and pre-cast concrete panels
- Emergency generators
- Retaining walls
- Plumbing systems
- Electrical installations, including project transformers and emergency generators
- Balconies

The co-op can spend money from its replacement reserve under these conditions:

1. The co-op has an approved capital replacement plan

If a co-op has a comprehensive plan, it does not need Agency approval to spend from the replacement reserve if
- The plan has a complete schedule for replacing capital items, along with estimates of how much each item will cost
- The plan has been approved by CMHC or the Agency
- The co-op updates the plan every three years and;
- The co-op is setting aside the annual amount required by the capital replacement plan.

At the end of three years when the co-op updates its capital replacement plan, it does not necessarily need to do new technical studies. It may instead update the schedule of replacements and the cash flow forecast. When a capital replacement plan is updated, it must be approved by the Agency as it may affect the replacement reserve annual contribution. The annual contribution will have a direct impact on the budget and occupancy changes.

2. The co-op does not have an approved capital replacement plan

If the co-op does not have a long-term capital replacement plan, that the Agency has approved, the co-op needs the Agency's approval before it spends from its replacement reserve except as permitted in the operating agreement.

17.3 *Emergency expenditures*

Emergency replacements are repairs to capital items that, if delayed, would create a health or safety hazard. Examples include the replacement of a heating system in the winter, or a structural failure that endangers the physical safety or members.

The co-op is expected to complete these repairs immediately and inform the Agency right away.

18. PHYSICAL INSPECTIONS

18.1 *Review period for inspections*

The Agency will inspect a project every two years. The visual inspection will be limited to the exterior, common areas of the property, and vacant units unless the results of the inspection indicate that an inspection including inspection of occupied units is also required.

18.2 *Property inspection*

The inspection will look at the property's marketability and overall upkeep, including standards of maintenance and repair.

18.3 *Full inspection*

The agency will carry out a full physical inspection if it determines that one is needed based on the results of the annual compliance analysis or after a property inspection. The Agency may also decide to carry out an inspection if the co-op breaches its operating agreement.

The Agency may require the co-op to have a building condition assessment carried out at the co-op's expense.

Based on the results of the building condition assessment, the co-op may be required to complete certain repairs or carry out general maintenance.

19. ON-SITE REVIEW

19.1 *Triggers for on-site reviews*

If the Agency's risk assessment of the co-op or other indicators has raised compliance concerns, the Agency will initiate an on-site review.

19.2 *On-site review*

The Agency may
- review the books and records
- meet with the co-op's board, staff or committees
- inspect the property or the units
- carry out other examination and analysis as necessary

19.3 *On-site review report*

Following the on-site review the Agency will complete an on-site review report. A copy will be sent to the co-op's board of directors with the Agency's recommendations for improvements. The Agency will follow up, if necessary, to make sure the co-op is complying with the operating agreement and addressing any problems identified in the on-site review.

20. ENCUMBRANCES AND LENDING

A co-op can't charge, mortgage or otherwise encumber any part of a project unless it has prior written approval from its lender, CMHC and the Agency.

With the exception of reasonable nominal gifts and donations, a co-op can't lend or give away any project funds or guarantee or underwrite the repayment of any obligation by a third party with out the prior written approval of the Agency.

21. ANNUAL REPORTING AND AUDITED FINANCIAL STATEMENTS

21.1 *Audited financial statements*

Within four months of the end of the co-op's fiscal year, the co-op has to send in its audited financial statements to the Agency, along with an Annual Information Return.

Audited financial statements include the:

- auditor's report,
- statement of financial position or balance sheet,
- statement of revenue and expenses for shelter and non-shelter components as applicable,
- statement of funded reserves,
- statement of cash flow,
- statement of changes in fund balance(s),
- notes to the financial statements, and
- Auditor's Confirmation.

21.2 *Duties of the Auditor*

The auditor will complete and send in the Annual Information Return electronically.

The auditor will verify:

- the statement of financial position or balance sheet;
- the statement of revenue and expenses
- the statement of cash flow;
- the statement of changes in the fund balance,
- the statement of funded reserves, and
- the application of the rent-geared-to-income scale and determination process

The auditor will provide a report saying whether:

- the audit has been conducted according to generally accepted auditing standards
- the financial statements fairly present the co-op's financial position
- the statements have been prepared according to Canadian generally accepted account principles, (GAAP) except for exceptions to GAAP required by CMHC

21.3 *Consolidated financial statements*

A co-op can provide consolidated financial statements for multiple projects, in which case the audit must have separate statements of revenue and expenditures for each project phase.

21.4 *Auditor's notes*

The notes must say whether or not the co-op has properly funded the replacement reserve fund. The notes must also say that the co-op has added investment earnings on these funds to the fund as required.

21.5 *Explanation of audited financial statements*

The co-op will provide an explanation of information contained in the audited financial statements, as may reasonably be required by the Agency.

22. ANNUAL INFORMATION RETURN

22.1 *Annual Information Return – AIR*

The Annual Information Return (AIR) is a new reporting document.

After the Agency has gathered and reviewed the data from the AIR, it will report to the co-op on its findings and analysis.

The annual key-indicators report will show how well the project has been performing. The report looks at income from housing charges and other sources, vacancy losses, turnover, households in arrears, bad debts, spending on upkeep and so on.

The report will also provide comparative information indicating project performance against the average performance of a similar project, and the whole portfolio.

23. RETENTION OF DOCUMENTS

All documents, vouchers, records and accounts that pertain to the project must be kept by the co-op for not less than seven (7) years.

24. BREACH OF THE PROJECT OPERATING AGREEMENT

24.1 *Breach of the agreement*

Where there is a breach to the operating agreement and the co-op does not follow the Agency's direction to correct the breach, the Agency in consultation with CMHC may begin action to enforce the terms of the operating agreement.

24.2 *Subsidy suspension*

The Agency with approval from CMHC has the right to suspend or terminate the subsidy assistance when there is a breach of the operating agreement or when the mortgage is in default.

The Approved Lender is to be informed immediately.

25. PROJECTS IN DIFFICULTY

25.1 *Proposed solution affects financing*

In the event that projects get into financial difficulty, any proposed solution that will affect the amount of the financing or the amount of subsidy assistance paid each year must receive prior approval from CMHC.

25.2 *Difficulty as a result of poor management*

Where the Agency determines that a project is in difficulty as a result of poor project management, the Agency will recommend that the co-op hire professional management. If the co-op refuses to act upon the recommendation, the Agency may in consultation with CMHC:

- suspend or terminate subsidy
- obtain legal advise on the appointment of a receiver (if the mortgage is in default)

A receiver may be put in place. This will not trigger an acquisition or allow the co-op to redeem the mortgage and terminate the operating agreement.

26. DEFAULT UNDER THE INSURED LOAN

In the case of default under the insured loan, the conditions and provisions with respect to the administration of defaults are contained in the Loan Insurance Agreement.

27. SALE OF PROJECT/UNITS

27.1 *Sale*

No co-op can sell all or part of its assets without the permission of CMHC, as long as the operating agreement is in force. CMHC will only consider the sale of a project in exceptional circumstances.

Here are some examples of exceptional circumstances:
- the merger or combining of a co-op with another non-profit project
- transferring some units to another non-profit project
- transferring a co-op to another non-profit housing provider, where the co-op says it is not able to carry out the governance duties needed in a housing co-op

The sale would only take place if it was in the best interests of the co-op and is in keeping with program purposes. The co-op would be sold for $1 and the buyer would take on the outstanding mortgage balance. The buyer would assume the obligations of the project, operate it within the program, and follow the operating agreement with CMHC.

Under certain circumstances, it may be necessary for a co-op to sell a portion of the co-op to make it more viable overall. Any such sale must be at market value, and the specifics associated with it would require the prior approval of the Agency in consultation with CMHC.