



Questions and Answers about the End of Your Section 95 CMHC Operating Agreement

What is the S95 operating agreement?

The S95 operating agreement is the legal contract between Canada Mortgage and Housing Corporation (CMHC) and housing co-operatives funded between 1979 and 1985. "S95" refers to a clause of the *National Housing Act*. (The operating agreement itself speaks of S56.1, the clause number before the act was changed in 1985.)

Why did our co-op sign this agreement?

Your co-op signed an operating agreement as a condition of receiving assistance under the S95 Program. This included mortgage insurance for up to 100 % of the initial cost of the housing. CMHC also gave the co-op operating subsidies (long gone) and a pool of income-tested assistance, which is still available while your agreement is in force. The operating agreement sets out the terms of your relationship with CMHC.

What did your co-op and CMHC agree to?

The agreement spells out the key points of the S95 Program. These include such things as how much money CMHC gives the co-op, your responsibility to manage well and keep up your property, the rules about income-tested assistance, and the need to fund a replacement reserve.

The Agency's public website has detailed plain-language [program guidelines](#) for the S95 Program.

How long does the S95 operating agreement run?

This agreement usually ends either when your mortgage is fully paid off or 35 years after you started paying back your loan, if that date is earlier. Ask your relationship manager if you are unsure of the date.

Once our agreement has ended, what will change?

When the agreement ends, your co-op will no longer be bound by the pledges made to CMHC when it started out. Your old mortgage will be gone, but you may want to take out a new loan in order to renew your buildings or buy new property. You will stop receiving the assistance you now get to subsidize low-income members.

However, CMHC has a new program of rental assistance called the FCHI-2, which starts in 2020. Your current relationship with the Agency and CMHC will come to an end, but a new one will begin, if your co-op accepts CMHC's offer of rental assistance.

If not, your last Annual Information Return (AIR) to the Agency will normally be for the year in which your agreement ends. The Agency will confirm this with you. After you file your last AIR, you will receive a final Risk Assessment Report, Plain-Language Financials and Performance Report from us.

Some co-operatives also have a financial workout agreement with CMHC. Workout agreements impose new rules beyond those in the operating agreement. You can learn more by reading [the Agency's Q and A on Workouts](#). If you have a workout agreement, it typically runs no longer than your operating agreement.

What will stay the same?

If your co-op accepts CMHC's rental-assistance program FCHI-2, you'll still need to complete an annual filing. The details will be set out in a new agreement.

Your co-op will still come under your provincial co-operative act. The act's rules about board elections, members meetings and so on will still apply. Any reporting you do to the province now—about changes in your board of directors, for example—will continue. Your provincial human-rights code and employment law will still apply, as will municipal and provincial building by-laws and codes.

Much of your co-op's life is defined by its own policies and by-laws or rules. After your operating agreement ends, these will still govern the actions of your board and membership, just as they do now. Assuming your co-op is running well, your watchword should be "business as usual." However, we recommend that co-ops review their rules or by-laws, perhaps with help from their local federation, to see what needs to change. Your co-op may have rules about subsidy, for example, that no longer apply.

So will we still need a capital replacement reserve?

Absolutely. Keeping a capital replacement reserve will continue to be a vital part of taking care of your property. Your co-op will need to keep setting aside money in the reserve each year. In fact, you will want to put more aside, since your buildings will keep aging. Having a sound capital plan that tells you how much to save and spend will be more important than ever.

Will we own our co-op?

The members will own the co-op in just the same way they do now—together. The legal owner of the property will still be the co-op, which will continue to rent units to the members. The responsibility for running the co-op will lie with a board of directors elected by the members. This structure will not change.

Can some of us buy our units, once the agreement ends and the mortgage has been paid off?

No. Provincial law varies, but, in every case, there are rules to keep non-profit housing co-ops non-profit. It's easy to see why.

Canada's housing co-operatives were developed with public money from the taxes of millions of Canadians. They are a source of affordable housing that is still needed. Many members who have since moved on contributed to their successful operation. It would not be fair if a windfall benefit went to a household that just happened to be living in a unit when the agreement ended.

What will happen about subsidies?

In S95 co-ops, most income-tested assistance is drawn from money the co-op gets every month from CMHC. These payments will end the month after your operating agreement ends.

The Agency encourages all eligible co-ops to opt in to the CMHC rental-assistance program FCHI-2. You can always decide to opt out at a later date.

Can we keep using our subsidy-surplus fund to help our lower-income members until it's all gone?

Yes. At one time, CMHC expected S95 co-ops to stop spending from their subsidy-surplus fund as soon as their operating agreement had come to an end. Anything left in the fund had to go back to CMHC. However, this rule has now been changed. Your co-operative should have received a letter from CMHC confirming this. Instead of returning whatever remains in this fund, you may spend from it as you see fit, until it is all gone. The one exception is the co-op that has allowed the fund to hold more than the maximum of \$500 per S95-program unit, not counting accumulated interest in the fund. The excess money would have to be returned.

If your co-op has more than one S95 agreement, you are allowed to share the subsidy funds from CMHC across all the properties that come under those agreements. However, as each agreement ends, the amount of money coming from CMHC will go down and the maximum you can hold in your subsidy surplus fund will go down too.

Our buildings need major work. Can we get another mortgage?

Your co-op should be able to get another mortgage. But you will need some time, and likely some help, to assess your financial needs and prepare a package of information to support your loan request.

The first step is to make sure you have a current capital replacement-reserve plan based on a recent building condition assessment. This will show you and the lender you hope to borrow from how much money you need. It will also show that your ability to repay won't be interrupted later on by unexpected building problems.

Lenders will use this and other information to assess your application. You can talk to your relationship manager about what else lenders look for and what you can do to qualify for a loan. Co-operative Housing Federation of Canada (CHF Canada) and CHF BC offer their members assistance in finding new financing.

Can we add new units to our co-op or change unit sizes?

Yes. You will need to be clear about what the work will involve. Your co-op may have space that has been underused or overlooked. You may also find that the needs of your members have changed. Perhaps your co-op is filling one-bedroom units more readily than the larger sizes. If so, it may make sense for you to divide up some of your bigger units. You may even want to replace an existing structure with a new building. Before undertaking a project like this, you'll want to look at all the pros and cons and understand what it will mean for your co-op. You will need expert help to plan carefully and prepare your co-op to qualify for a new mortgage.

Our co-op is built on leased land. Can we extend our land lease?

This will depend on who owns the land. If your city or another public authority owns the land, you should work with your federation to make your case for a new lease. If you have a lease from a private company, you may be able to buy the owner out, but you should expect to pay the market value for the land.

Where can we get more information about the end of our operating agreement?

Talk to your relationship manager! You can also check [the Agency's website](#).

Updated October 2019