Questions and Answers about the End of Your Section 27/61 CMHC Operating Agreement

What is the S27/61 operating agreement?

The S27/61 operating agreement is the legal contract between CMHC and housing co-operatives funded between 1973 and 1978. “S27” and “S61” refer to clauses of the *National Housing Act*. (Originally, S61 was clause 34.18 and S27 clause 15.1. The numbers changed with amendments to the Act in 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 S27 or S61 Program.

What did your co-op and CMHC agree to?

The agreement spells out the key features of the S27/61 Programs. These included mortgage financing from CMHC to cover 100 per cent of the cost of your co-op at an interest rate that was then below market. The loan—only 90 per cent of which had to be paid back—was repayable over 50 years. In some provinces, rent supplements were made available for a minimum number of units under a federal/provincial cost-shared arrangement. The agreement also set out your responsibility to manage well, keep up your property and fund a capital replacement reserve.

You will find a brief summary of the S27/61 Program on the Agency’s public website, as well as detailed plain-language program guidelines.

How long does the S27/61 operating agreement run?

The agreement ends when your mortgage is fully paid off. For most co-ops, this is 50 years after you started making payments. Ask your relationship manager if you are unsure of the date your agreement ends.

What will happen about rent supplements?

Many S27/61 co-ops receive rent supplements from CMHC or their province. These payments come under a separate agreement with government. They will end when your operating agreement ends, unless the government decides to continue them. Some co-ops surcharge higher-income households or use funds of their own to assist other households. They can choose to keep doing this or not, as they wish.

Once our agreement has ended, what will change?

When the agreement ends, your co-op will no longer be bound by the pledges you made to CMHC when you started out. For instance, income limits for new members will no longer be required. Nor will surcharges for higher-income members. 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. Your current relationship with the Agency and CMHC will come to an end.

Your last Annual Information Return (AIR) to the Agency will normally be for the year in which you make your last mortgage payment. The Agency will confirm this with you. After you file your last AIR, you will receive a final package of Agency reports.

Some co-operatives were developed over several phases and perhaps under more than one program. That means they have two or more operating agreements that end on different dates. If one of your agreements has ended, your year-end return to the Agency will change. Please check with your relationship manager for more information.

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&A on Workouts. If you have a workout agreement, it runs no longer than your operating agreement.

What will stay the same?

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 rent supplement, for example, that no longer apply.

So will we still need a capital replacement reserve?

Absolutely. Keeping a capital replacement reserve will remain a vital part of taking care of your property. Your co-op will need to continue setting aside money in the reserve each year. In fact, you will want to put more aside, since your buildings will keep growing older. Having a sound capital plan or asset-management 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 raised 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 co-ops' successful operation. It would not be fair if a windfall benefit went to a household that just happened to be living in the co-op when the agreement ended.

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

Your co-op should be able to get another mortgage without difficulty. 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 Agency's Q&A on Secondary Financing has some general advice to offer on this process.

The first step is to make sure you have a current capital replacement 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 new building problems.

Lenders will use this and other information to assess your application. Both CHF Canada and CHF BC offer their members assistance in finding new financing. Talk to them or your Agency relationship manager about what else lenders look for and what you can do to qualify for a loan.

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 CHF Canada or your local federation about the range of resources available as you plan for this next stage in your co-op's life.

Updated May 2018