



Guide for *Housing Services Act* (HSA) housing co-operatives entering into service agreements



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Introduction

For many years CHF Canada has been concerned about the future of *Housing Services Act* (HSA) co-ops when they reach the end of their mortgage. Research we commissioned in 2016 showed that the funding model in the HSA would have a negative impact on HSA co-ops and would threaten their financial viability if it continued after the mortgage ends.

Working with the province and municipal Service Managers to fix the problems made it clear that the End of Mortgage (EOM) was an opportunity: we could fix the funding model and problems caused by negative operating subsidy and change or transform the relationship between Service Managers and co-ops. The current rules in the HSA set in place a relationship that is based on rules, compliance and enforcement by the Service Manager. This rules-based system was, and is, a constraint to growth and innovation.

In April, 2022 the province released a new regulation, [Ontario Regulation 241/22](#), which created a new system for co-ops and non-profits when they reach EOM. The regulation has the potential to transform the relationship between co-ops and Service Managers. The regulation allows co-ops to move into a new section of the HSA when they reach EOM through the signing of a service agreement. Once a service agreement is signed, the old HSA rules would not apply. Alternatively, co-ops could leave the HSA and the benefits it offers through an exit agreement. For an overview of the regulation, see [What do Ontario HSA regulation changes mean for your co-op?](#) on the CHF Canada website.

Seeing your co-op through the EOM and negotiating and making informed decisions about service agreements will take significant work for co-op boards and members. The service agreement, however, has the potential to ensure the financial viability of your co-op after EOM. It can also set in place a new approach to the relationship between Service Managers and the co-op that is not based on the old HSA compliance-and-enforcement model. Instead, the intent of service agreements is that they are based on a partnership between Service Managers and co-ops and will encourage new initiatives, entrepreneurial practices and growth.

Knowing what you want

Before your co-op begins negotiating your service agreement, you need to know what your vision is for your co-op when you reach EOM. The new service agreement system opens options that may not have been possible under the old HSA rules.

For example:

- Does your co-op want to start some new initiatives or services?
- Does your co-op have the capacity and commitment to develop new co-op housing?
- Does your co-op want to join a land trust or a co-op of co-operatives, to:

- make it easier to support development and manage your capital asset over the long-term?
- meet the changing needs of member residents?
- Is your co-op’s priority renewing your existing homes for future generations?

There are many potential options. Your co-op will be well prepared for negotiations if you have worked on a vision for your co-op community at EOM.

CHF Canada and the regional federations are prepared to provide support to every HSA co-op in Ontario to help them clarify their vision for the future, and prepare for negotiating a new agreement.

Getting to a win-win for everyone

Service and exit agreements have the potential to be a win-win for everyone involved, including the co-op and the Service Manager. To help start out negotiations on the right foot, think about what shared priorities everyone is hoping to get out of service and exit agreements.

What do co-ops want out of Service and Exit Agreements?

- Financial stability;
- To offer good quality homes;
- To live our co-op principles and values, and
- To offer a mixed-income housing community, including Rent-Geared-to-Income (RGI) subsidy and help for people in need of housing.



What do Service Managers want out of Service and Exit Agreements?

- Stable, well managed housing communities;
- To provide homes to households on their Central Waiting List;
- The homes are in good condition with no urgent repairs;
- The cost of providing households rental assistance is reasonable in comparison to other non-profits and co-ops in the area, and
- To increase the number of affordable homes available in their community.

Keeping these shared priorities top of mind will help keep the negotiations on track, moving towards the goal of an agreement that is a win-win for both the co-op and the Service Manager.

Co-ops can also look to their Service Manager’s most recent 10-Year Housing and Homelessness Plan. This plan can give you insight into their housing priorities and how they might align with the vision of the co-op.



How to use this guide

This guide outlines approaches to key issues in the negotiation of service agreements.

Best practices are approaches that are transformational. They are partnership-based, meet the requirements of the service agreement regulations, and will make new initiatives, entrepreneurial direction and growth possible for co-ops that are interested.

The guide is arranged in six sections:

1. Approach to negotiations
2. Funding
3. Reporting and accountability
4. Dispute resolutions
5. RGI targets
6. Interim funding

Each section will help co-ops know what to expect in the negotiation process and highlight key topics to understand as they prepare for negotiation.



Section 1: Approach to negotiations

The approach that co-ops and Service Managers take to negotiations will be key to their success in transforming the relationship. Successful approaches include:

- working as a real partnership;
- promoting flexibility in what goes into a service agreement, and
- inviting the participation of the sector through CHF Canada and/or regional federations.

The agreement also needs to be sustainable for both parties. The agreement must be for at least 10 years. This means it is crucial that the financial plan works without ongoing additional funding requests and that the level of reporting and accountability is appropriate to the funding and reasonable for both co-op and Service Manager staff.

Best practice

1. The Service Manager signs an agreement with CHF Canada and/or the regional federation for services to be provided to EOM co-ops in preparation for negotiations. These include a Building Condition Assessment (BCA), an Asset Management Plan (AMP) and a Strategic Plan.
2. The Service Manager and co-op work with CHF Canada and/or the regional federation on what they would like to see in the service agreement. Ideally, a model service agreement between the Service Manager and CHF Canada or the regional federation is in place as a starting point for co-ops.
3. CHF Canada and/or the regional federation act as facilitators between the Service Manager and co-ops. Service Managers and co-ops are open to best practices from other regions.
4. The Service Manager and co-op should take a partnership approach to negotiations. The Service Manager and the co-op should engage in discussions well in advance of EOM. The Service Manager should provide funding for services, or helps the co-op access funding for services, so that the co-op can prepare for negotiations (such as BCA, Asset Management Plan, Strategic Plan, legal advice). The co-op should reach out to CHF Canada or their regional federation for support.

Why this is important

The approach to negotiating a service agreement taken by the co-op and Service Manager will influence their relationship in the future and impact the performance of the co-op. A poor agreement will potentially limit the co-op's options to meet the future needs of the members, including growth. A negotiation built on partnership that works towards achieving shared outcomes can unlock new opportunities for both the co-op and Service Manager.

Section 2: Funding

The regulations require that the co-op and Service Manager develop a financial plan and that the Service Manager funds the rent-geared-to-income subsidy to the market housing charges. The regulation also states additional funding from the Service Manager should be available if the financial plan identifies it as necessary to reduce non-RGI housing charges or to enable the co-op to maintain the co-op in a “satisfactory state of repair and fit for occupancy.”

A well-developed financial plan will ensure the co-op has the money to meet the vision it has established for itself post-EOM and better able to fund education, community development, and new initiatives.

There is an important caveat. The new partnership arrangement envisioned for service agreements means that the co-op should operate in a more independent and entrepreneurial manner. It means that revenues should not be artificially suppressed. It also means, however, that co-ops should not be looking to Service Managers to pay additional funds for every new initiative. The co-op should be able to plan and fund this work based on their financial plan.

For more on the details of the funding requirements, see [What do Ontario HSA regulation changes mean for your co-op?](#)

Best practice

The Service Manager partners with CHF Canada and the regional federation to ensure the financial future of co-ops. This includes:

- All co-ops are brought up to a state of *good* capital repair (based on a *Facilities Condition Index* assessment) and there is a plan in place to adequately fund reserves for current and future capital needs through a mixture of:
 - Adequate housing charges
 - Grants
 - Refinancing

Why are BCAs and Asset Management Plans important?

Without a proper understanding of the current state of the buildings, a co-op can’t reasonably negotiate their funding agreement. With a BCA and Asset Management Plan in place, co-ops will know how much money they will need, and when they will need it to ensure their homes remain in good condition for the future.

CHF Canada and the regional federations will be helping many co-ops prepare to negotiate their service and exit agreements. This expertise will help ensure that the agreement your co-op signs will support its success well into the future.

Facility Condition Index (FCI) is an industry standard asset management tool which measures a building’s condition at a specific point in time. Buildings can be rated good, fair, poor, or critical. For more on FCI, check out:

[Facility Condition Index Asset Management Tool \(bchousing.org\)](https://www.bchousing.org/facility-condition-index-asset-management-tool)



- Co-ops have the flexibility to address their capital needs as they arise and fund new development if it is part of their vision.

Setting market housing charges and RGI funding

The full market housing charge should be set at a realistic level as identified in the co-op's asset management plan to meet the long-term capital needs of the buildings as well as the operating expenses and vision of the co-op.

If an asset management plan is not completed, the market housing charge should be set as, up to 85% of average market rent (AMR). RGI funding should make up the difference between what the household can afford and the full market housing charge (set at no higher than 85% of AMR).

Annual increases to the initial housing charges in the agreement should be tied to the rental increase guideline for the length of the agreement. It shouldn't be possible to lower the initial housing charges for the length of the agreement, unless there are extenuating circumstances that adversely affect the co-op (e.g., high vacancy rates). It should be possible for the five-year review to increase housing charges above inflation if there are extenuating circumstances.

Why should market housing charges be set up to 85% of AMR if the co-op does not have an asset management plan?

Without a proper asset management plan (AMP), your co-op will not have a good sense of *how much work* the buildings need, *when* that work is needed, *the best way to do the work* to make the most of the money available, or *how and when* to include energy or green upgrades.

We know most HSA co-ops will need significant capital investment at EOM. If market housing charges are set at 85% of AMR, the co-op will be more likely to be able to afford the capital work necessary to keep the buildings in good condition.



Additional funding and refinancing

It should be possible for the co-op to receive a reduction or forgiveness of property tax on RGI units.

The ability to refinance to pay for capital work identified in the financial plan should be open to the co-op. The Service Manager should not need to approve the new financing.

Any outstanding loans or financing from the Service Manager should be forgiven.

The financial plan should include a provision that surpluses will be directed to capital reserves or a development fund.

The Service Manager and co-op should both be open to innovative additional funding initiatives, including funding for development of new units at the time of negotiation. A new service agreement should provide the flexibility for the co-op to develop new homes, join or form a new entity like a land trust or larger co-operative in the future.

Why should outstanding loans or financing from the Service Manager be forgiven?

It is widely acknowledged that the benchmark-based funding formula in the HSA was deeply flawed and unfair to some housing providers. It meant some providers, through no fault of their own, needed to take on extra debt.

EOM and the service agreement is an opportunity to reset this history and provide a more level playing field for providers going forward.

Why getting the funding right is important

The funding provisions of a service agreement are critical to the long-term financial and building sustainability of the co-op. If the financial plan is sound, the co-op will be able to successfully manage the co-op without ongoing intervention and assistance from the Service Manager, which will be good for both service managers and the co-op's members.

Section 3: Reporting and accountability

The existing HSA regulations have many prescribed reporting mechanisms and give Service Managers the ability to add their own requirements. This has been a source of friction and complaint for both co-ops and Service Managers.

Service agreements should transform this part of the relationship so that reporting and accountability are based on outcomes that can be measured. The reporting and accountability structure should be tangible and useful, helping the co-op improve its operations. Reporting should not be expanded to include items that are not central to the service agreement.

One of the long-term goals should be a partnership between federations and Service Managers to assist co-ops with a strategic plan that complements the financial plan that is required by the regulations. It is common for progress against a strategic plan to be reported on annually and updated every five years. A partnership with the co-op sector could help to transform the housing system and ensure the long-term success of co-ops.

Best practice

Reporting requirements should be focused on RGI funding, which is the basis of the funding under service agreements. We suggest that it is reasonable for a co-op to submit the following reports:

- quarterly subsidy reconciliation;
- annual auditor's report;
- annual proof of sufficient insurance coverage for the property;
- annual report on progress on their strategic plan which may include management and governance initiatives, and
- annual report on progress against the asset management or financial plan.

If additional funding from the Service Manager has been provided for capital or other work, reporting should be focused on the progress of that work. Additional funding grants should have their own reporting requirements and not be tied to the service agreement.

Performance evaluations

As a best practice, periodically a co-op should undergo voluntary performance self-evaluation.

Evaluating your performance as an organization is a common business best practice for both non-profit and for-profit organizations. HSA co-ops and non-profits have traditionally not had sufficient operating budgets to allow this.

As co-ops transition to service agreements, self-evaluation should be part of the strategic plan and budgeted for.

The results of the self-evaluation could be shared with Service Managers.



Co-ops should also commit to measures that support their success and can help resolve any disputes that arise, including:

- Maintain membership in CHF Canada and the regional federation (if applicable);
- Consent to share information with the federations, like the information that federal co-ops share through The Agency. This consolidated information helps the federations in their advocacy efforts with all levels of government;
- Mandatory training for new Board of Directors and annual training for existing Board of Directors (helping the co-op to meet its co-op principle of Education, Training and Independence);
- Mandatory staff/management training each year;
- Opportunities for member training consistently offered, and
- Periodic updating of the BCA and AMP.

Why this is important

The existing rules in the HSA are overly prescriptive and onerous for both the co-op and Service Manager. But some sort of reporting needs to be in place to ensure that the service agreement is being honoured. A simpler annual report based on the agreement can accomplish this.

In addition, it is helpful to have some requirements that will promote the successful operation of the co-op. Provisions such as sector membership, training of directors and staff and updating of BCAs and AMPs help ensure the ongoing success of a co-op and give Service Managers confidence that the co-op will be successful. This reduces the need to have onerous reporting requirements to keep close watch on a co-op.

Section 4: Dispute resolution process

One of the big changes in the service agreement regulations is the introduction of a dispute resolution process. This means that the HSA process for triggering events and remedies is not used in a service agreement. Instead, a dispute resolution process needs to be set out, to follow when either the co-op or Service Manager are concerned that there has been a breach of the Agreement.

Co-ops have found that the current system is overly prescriptive. The dispute resolution system should be simplified and focus on the basis for the Agreement, not on other issues. For example, the co-op receives RGI funding, so it is appropriate for more oversight in this area.

Best practices for a dispute resolution system

The dispute resolution process should replace the antiquated triggering events and remedies provisions of the HSA. The purpose of the dispute resolution process should be to attempt to ensure the successful implementation of the Service Agreement for the duration of the agreement.

A dispute resolution system should be based on the following principles:

- Both parties make good faith efforts to resolve any dispute.
- Reasonable notice periods should be given at each stage of the process. The notice periods should reflect the co-op governance model.
- An overriding goal of the process is to protect affordable housing and to ensure the long-term sustainability and success of co-operative housing.
- The rights of co-op members will be protected.
- Neutral outside professionals are used when appropriate.

Each party of the agreement should be able to initiate a dispute based on agreed-upon terms in the service agreement, when in their opinion the terms of the agreement are not being upheld. Before a formal dispute resolution process is started, each side should attempt to resolve the issue and provide a potential solution. If these informal attempts to resolve the issue are unsuccessful, either party should be able to initiate a formal dispute resolution process. The service agreement should set out reasonable timelines so that the issue gets dealt with quickly.

Mediation

In case of disagreement on anything about the agreement or how it is implemented, parties should engage in mediation. Mediation should be conducted by a professional mediator with the mediator agreed upon by both parties. If possible, representatives at



mediation will have authority to agree on a binding solution. Each party should pay its own legal or other costs and share the cost of mediation, unless otherwise agreed upon or free mediation services are available.

If either party is not satisfied with the result of mediation, the new system should allow for arbitration. The arbitrator would be restricted to enforcing payment only as agreed to under the Service Agreement and remedies as prescribed in the Agreement.

These remedies should not be simply carried forward from the *Housing Services Act* but reflect the actual terms of the Service Agreement.

Why this is important

A key part of transforming the HSA system through the service agreement process is ensuring that a new system of resolving problems is based on partnership rather than the old compliance and enforcement system. Co-ops and Service Managers should spend some time making sure they get the new system right, so any disputes can be resolved in a helpful way that leads to the long-term success of the co-op and affordable housing in the Service Manager's area.

In the new model, co-ops and Service Managers should both be accountable to each other for fulfilling their responsibilities in a timely manner. Although uncommon, issues can arise at a co-op that are serious, threaten the long-term viability of a co-op, and put members' rights at risk. Many of the remedies included in the HSA such as receivership were extremely expensive for Service Managers. In most cases, the remedies were unsuccessful in returning the co-op to a co-operative governance model; at times, the co-op ended up in difficulties again.

The service agreement, in these rare instances, should preferentially allow for innovative solutions such as requiring the co-op to become part of a larger co-op or entity created by and for the housing co-op sector through transfer of assets, and/or amalgamation so that these co-op homes can be protected.

Section 5: RGI targets

Under the service agreement regulations, it is possible to reset the number of RGI units a co-op provides. Co-ops may be interested in this because a change would better reflect current realities, or a change may be useful to achieve the co-op's goals such as growth. Co-ops that are interested in refinancing as part of their capital and financial plan should check to ensure that the RGI target does not have an unintended impact on their ability to refinance. This should be done early, because many lenders may want to see a longer-term agreement that guarantees RGI funding, especially if the number of households on RGI is high.

Co-ops should also be aware that a decrease in RGI targets might affect their ability to qualify for the Non-Profit HST Rebate. Housing co-ops can claim a non-profit rebate if at least 40 per cent of your co-op's revenue comes from government funding.

Best practice

Service Managers are open to negotiation if a co-op is interested in renegotiating the RGI targets so that they better reflect the vision of the co-op community. RGI targets can be temporarily waived when the rental market makes it difficult to maintain the RGI targets (e.g., when current households no longer qualify for RGI but there is little turnover because of low vacancy rates and high housing costs).

Why this is important

Co-ops want to provide help for those members who need it. The service agreement should protect RGI for members receiving it while allowing the co-op to succeed financially. In the long term, appropriate RGI targets and a strong financial plan will allow the co-op to grow and provide more housing.



Section 6: Interim funding

Negotiating and signing a service agreement will take time. It might not be completed by the time a co-op reaches EOM. This is especially the case for the early co-ops to reach EOM. If an agreement is not signed by the time a co-op reaches EOM, the co-op ends up being penalized financially because the original HSA funding model continues to apply. Co-ops should not be penalized unfairly because of these delays.

Best practice

Full RGI funding continues for any co-op post-EOM until a fair service agreement is signed. In cases where the co-op's fiscal year and EOM date do not line up with the Service Manager's fiscal year, both parties are willing to be creative to arrive at an interim funding solution.

Why this is important

Through no fault of their own, not every co-op and Service Manager will be able to have service agreements in place by the time a co-op reaches EOM. This is particularly the case for early co-ops to reach EOM. The old funding model creates financial difficulties for co-ops if it is applied after EOM. Co-ops should not be penalized by the old funding model because of something beyond their control.

A last word

With the end of mortgage regulations setting out service agreements and exit agreements, there is an opportunity to transform housing under the HSA, ensure the long-term viability of co-ops and grow the sector through innovation and new development.

With a partnership approach to negotiations by co-ops and Service Managers and active support from CHF Canada and regional federations, we think co-ops will end up with a successful service agreement rather than an exit agreement. This is an exciting time of change that can result in positive outcomes for affordable housing across Ontario.

