

A board of directors' guide to HSA rules



The CO-OPERATIVE HOUSING FEDERATION *of* Canada

Why you should read this

This guide is for directors of Ontario co-ops that operate under the *Housing Services Act 2011* (HSA). These co-ops are called HSA co-ops.

Here we provide information on HSA rules that you will need to know about to meet your obligations under the Act. We have organized the guide to work as a supplement to CHF Canada's online *Board Basics* course and used many of the same headings found there.

If you have not taken the *Board Basics* online course, you can sign up on the Online Learning page on CHF Canada's website (www.chfcanada.coop).

Note: This guide just gives a summary of rules. Often we highlight only the most important rules rather than listing them all. You should keep a copy of the HSA, regulations, RGI service agreement and local rules in your co-op office and refer to them when you need to. Your staff should also check the Resource Centre on CHF Canada's website regularly for changes to the program rules.

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What makes a good board?

Governance and management

Selecting, supervising and evaluating management

Your service manager may have local rules about using an open and competitive process when hiring staff. For more information about service managers, see the section below on “Getting the legal framework right.” The service manager’s hiring rules might include

- advertising the position
- reviewing resumés
- interviewing applicants
- documenting the board’s selection.

If you are hiring a co-op management company, your service manager’s rules might include

- preparing a tender package
- getting bids from management companies
- evaluating the bids
- documenting the board’s selection.

Your service manager likely wants you to have records showing you used a competitive hiring process. During an operational review, your service manager may ask to see these records. You should keep

- detailed minutes
- copies of advertisements
- notes from interviews
- the resumé of the person hired or the bid from the successful management company.

Your service manager may also have local rules about your contract with a co-op management company. These rules might be that the written contract must

- have a term that is no longer than three years
- not be automatically renewable
- allow you to end the contract with 30 days’ notice with cause
- allow you to end the contract at any time with 60 days’ notice
- identify services to be provided and how much they will cost
- say that the contract cannot be assigned to another company or individual.

Check to see what your service manager’s rules are.

Core management standards

Managing the finances

Budgeting

You can get lots of advice about what the board should do to stay on top of the co-op's finances through CHF Canada's Board Basics online learning course and other training opportunities. This section deals with some added responsibilities that you have as a director of an HSA co-op.

Under the *Housing Services Act* (HSA) rules, you do not submit a budget to the service manager. Instead, you must submit a Subsidy Estimate.

This estimate must set out what you expect in the year ahead for:

- the total market housing charges on RGI units
- the total housing charges that RGI households will pay
- property taxes
- mortgage payments.

Usually, co-ops must send the Subsidy Estimate to the service manager at least 90 days before the start of your fiscal year. Check with your service manager to find out what their deadline is.

If your co-op has been in financial difficulty, your service manager can require you to submit an annual operating budget for its approval for a period of time.

Even though your co-op does not have to submit its budget to the service manager, you should prepare an operating budget each year. This is important because most co-op by-laws require that boards present an operating budget to the members for approval each year.

Making and approving the budget is also an important part of the democratic process in your co-op. And an operating budget is a good planning tool.

In addition, it is good practice for the co-op to prepare an annual *capital* budget that sets out planned spending on capital items (such as roof or furnace replacement) in the year ahead.

Check to see if you are required to submit a capital budget to your service manager for their information.

Long-term financial plans

Under the HSA, your service manager can require you to have a long-term financial plan. Long-term financial plans could include

- a capital plan including a building condition assessment and a reserve fund forecast
- a deficit reduction plan if you have an accumulated deficit
- a general financial plan covering more than one year.

Check with your service manager to find out what their rules are. CHF Canada has tools to help you prepare these plans.

Keeping the co-op in good repair

The *Housing Services Act* makes your board responsible for keeping the co-op in good repair and making sure that the units are fit to live in.

Capital reserves

HSA co-ops must put money into a separate capital reserve fund each year. They must do this within five months of the end of their last fiscal year. The amount that the co-op must put in goes up each year, based on an index set by the Province. Co-ops must also re-invest all the money earned from the reserve.

You must invest your capital reserve in the Social Housing Investment Funds set up by the Housing Services Corporation (HSC). For more information about HSC, see the section “Getting the legal framework right”. The HSC set up a separate corporation, called SHSC Financial, to run its investment funds.

Your co-op owns and controls its capital reserve. You decide how to divide your investments among the three investment funds offered. And you decide when to withdraw money to pay for capital work. To help your board decide how to invest its capital reserve, you should have a capital plan including a building condition assessment and a reserve fund forecast. The plan will tell you what condition your co-op is in and when you will need to spend money to fix things. You can invest money that you will not need for several years in one of the funds designed for longer-term investments.

Your co-op should have an investment by-law to guide the board’s investment decisions. You should also get investment advice from SHSC FI or another external investment manager.

Each year, you must report spending from your capital reserve to your service manager in the Annual Information Return (AIR). This is just for information. Your service manager does not approve capital spending unless your co-op has been in financial difficulty or has received extra funding for capital spending from the service manager.

Meeting legal requirements

The *Housing Services Act* sets out these duties of the board:

- Maintain the co-op's corporate status under the *Co-operative Corporations Act*.
- Operate the co-op as a non-profit organization under the *Income Tax Act*.
- Keep records and provide information to the service manager as required.
- Use the central waiting list to select RGI members and follow the regulations and local rules about selection.
- Follow the RGI subsidy rules.
- Use the Province's mortgage renewal process.
- Invest capital reserve funds in the HSC's Social Housing Investment Funds.
- Follow the co-op's target plan and mandate.
- Prepare plans for
 - training staff and volunteers involved in the operation of the co-op
 - board of directors succession
 - educating members about co-op governance.
- In addition to housing charges, have only reasonable charges that have been approved in a by-law.
- Collect housing charges and administer occupancy agreements.
- Ensure that the co-op is well managed, maintained and in a satisfactory state of repair and fit for occupancy.

Reporting to the service manager

Each year your co-op must send its audited financial statement and its Annual Information Return (AIR) to your service manager within five months of the end of your fiscal year. Your service manager can reduce your subsidy if the AIR is late.

The AIR includes

- questions about how the co-op is managed and operated
- financial information, including an income and expense statement and a balance sheet
- the calculation and reconciliation of subsidy for the year
- statistics about the people who live in the co-op
- information about the number of RGI and market units
- a statement about capital reserve spending.

In addition to the AIR, service managers may require other reports if they think they need them. Some service managers require quarterly reporting about vacancies and arrears. Check with your service manager to find out their rules about reports.

Corporate record keeping

The Act, regulations and local rules set standards about keeping corporate records. For example, co-ops must keep

- members' files for five years after they have moved out
- a record of refusing an RGI or special needs applicant for seven years
- all financial records for seven years.

When your co-op has kept records for the required time, you can destroy them. Be sure to do this in a way that protects privacy.

Collection of personal information

All co-ops in Canada must follow the *Personal Information Protection and Electronic Documents Act* (PIPEDA). It deals with how personal information is collected, used and shared. Co-ops must make sure that directors, officers, employees and volunteers follow these rules.

In addition to this, HSA co-ops must follow rules about personal information set out in the *Housing Services Act* and its regulations. The Act says that a co-op can only collect personal information that it needs to carry out its duties under the HSA. When your co-op collects personal information, you must explain the following in writing:

- why the co-op is collecting the information
- that the information may be shared to determine eligibility under the *Housing Services Act*, *Ontario Disability Support Program Act*, *Ontario Works Act*, or *Day Nurseries Act*
- who can answer questions and handle complaints about the collection of personal information.

Triggering events

Under the HSA, service managers monitor how co-ops operate and make sure they follow program rules. If your service manager feels you are not operating well or following the rules, they can take certain steps.

The Act and its regulations list a number of breaches or “triggering events,” such as

- running an accumulated deficit that your service manager thinks is substantial and excessive
- not fulfilling your obligations
- missing a mortgage payment
- breaching the HSA or regulations
- becoming bankrupt or insolvent
- taking steps to wind up the co-op’s business
- failing to “operate the co-op properly”
- making an expenditure that is excessive in the opinion of your service manager.

If the co-op tells the service manager that there could be a triggering event or the service manager thinks there might be a triggering event, the service manager must help the co-op deal with it though it is not a requirement to contribute extra funding.

If there has been a triggering event in your co-op, your service manager may use one or more of the remedies set out in the Act to get the problem fixed. Remedies include

- stopping or cutting back subsidy payments
- paying the co-op’s bills directly
- appointing an interim receiver or manager or operational advisor
- removing some or all of the directors
- appointing new directors
- requiring directors or employees to get training
- acting as the co-op
- seeking the appointment by the court of a receiver.

In most cases, a service manager must give the co-op notice of the triggering event. It cannot use any of these remedies unless

- the co-op fails to comply with the notice
- the service manager has considered submissions made by the co-op.

The Act does set out some circumstances (such as an emergency) in which the service manager can use remedies before it has given notice.

The notice of the triggering event must say

- what the triggering event is
- what the co-op must do to fix the problem
- when the deadline is for responding (This cannot be less than 60 days from the date of the letter.)
- the steps the co-op must include in its action plan, if a plan is required.

If the service manager is not satisfied with the co-op's response to the notice of the triggering event, the service manager must issue a notice of submissions before taking further action. The notice must

- give the particulars about the triggering event and what remedies the service manager is considering
- inform the co-op that they can make submissions about what the proposed remedies are
- give the co-op at least 60 days to make submissions
- advise the co-op that if no submissions are received the service manager will make a decision with the information it has
- say what powers of the co-op the service manager will use if the proposed remedy is to act as the co-op.

Legal Basics

Getting the legal framework right

Most co-ops in Canada have formal agreements about how they will operate with Canada Mortgage and Housing Corporation (CMHC). These operating agreements are administered either through the Agency for Co-operative Housing or through the co-op's province or territory. Operating agreements set out the program rules that the co-ops must follow.

HSA co-ops do not have operating agreements. The program rules that apply to them are set out in several different places.

The main rules are in the *Housing Services Act* and its regulations. The Act makes municipalities, such as cities, towns, and regions, responsible for program funding and administration. The Act calls them 'service managers'. It lets the service managers set some local program rules.

Most service managers sign agreements with local co-ops to run the rent-geared-to-income (RGI) assistance program for them. These RGI service agreements have rules that the co-ops must follow.

So as a director, you are legally responsible for making sure that your co-op follows all the program rules, including

- the *Housing Services Act* and its regulations
- local program rules set by service managers
- rent-gear-to-income (RGI) service agreements between service managers and co-ops.

Role of the Ontario government (the Province)

Although the Act gives service managers responsibility for HSA co-ops, the Province still plays a big role:

- It can make changes to the Act or the regulations.
- It can change the funding ‘benchmarks’ that fix the amount of operating subsidy co-ops get.
- It watches to make sure service managers comply with the Act and its regulations.
- When it is time for you to renew your mortgage, the Province contacts you and handles the renewal.
- It may get involved if a co-op is in financial difficulty. Service managers must report co-ops in financial difficulty to the Province.

Service manager’s role

The service manager can be a county, city, region or District Social Services Board (DSSAB). Service managers pay the operating, property tax and RGI subsidies for HSA co-ops and non-profits in their area. They also

- monitor how co-ops operate and make sure they follow program rules (through reports the co-op files and operational reviews)
- deal with projects in financial difficulty
- manage the central waiting list
- set local program rules.

Service managers must make annual reports to the Province, based on information from co-ops and non-profits.

Role of the Housing Services Corporation (HSC)

The Housing Services Corporation

- oversees capital reserve investments
- co-ordinates group insurance programs
- delivers group buying programs for natural gas
- helps co-ops and non-profits share best practices
- delivers programs to improve the quality of life of residents of moderate- and low-income housing.

The HSC board has 15 directors, including

- two co-op housing positions
- three non-profit housing positions
- eight service manager positions
- two positions appointed by the Minister of Municipal Affairs and Housing.

Housing Services Act and regulations

The Act sets out the broad framework for the planning and delivery of housing and homelessness services. The regulations set out the detailed rules.

The main program rules that co-ops must follow are:

- RGI administration
- selecting RGI and special needs members
- capital reserves.

Co-ops can download the HSA and regulations from www.e-laws.gov.on.ca. The Resource Centre on CHF Canada's website (www.chfcanada.coop) has a link to e-laws as well.

The rules in the Act itself do not change often because to make changes, the Province must pass a new law. The regulations are easier to change, so they change more often, based on decisions made by Cabinet or the Minister.

Your co-op must stay on top of regulation changes and follow the new rules. Sometimes that means your co-op will have to change a policy, by-law or way of doing business.

The Ontario Region of CHF Canada will alert co-ops to regulation changes. It also has resources to help you understand and follow the rules.

Local program rules

The Act gives service managers the right to set local program rules in some areas. These include:

- reviews of RGI decisions
- conflict of interest
- hiring co-op management companies
- local waiting list priorities
- reporting changes in RGI information
- surplus sharing.

The *Housing Services Act* places controls on co-ops that have a surplus. The Act says that service managers may require co-ops to share up to 50% of any annual operating surplus with them. Surplus sharing does not start until the co-op has at least \$300 per unit in accumulated surpluses (operating reserve). But once surplus sharing starts, it continues, even if the accumulated surplus drops below \$300 per unit. Service managers do not share operating deficits.

Your service manager may also have set some other local rules. When a local rule is set or changed, your service manager will send a notice to your co-op. Some service managers post local rules and notices of changes on their website.

RGI service agreements

Under the Act, service managers are responsible for administering RGI subsidy. That includes

- managing the waiting list
- income testing
- reviewing eligibility for RGI.

Most service managers sign RGI service agreements with co-ops. These agreements make the co-op responsible for its own RGI administration. They set out what the co-op is responsible for, which could include

- deciding on and reviewing eligibility
- calculating housing charges
- doing reviews of RGI decisions.

The agreements also state

- how long the agreement will last
- how the service manager will audit and review the co-op
- what insurance the co-op must have
- what training may be required to carry out the responsibilities of the agreement.

Each service manager has a different RGI service agreement. It is your duty to understand yours.

Risk Management

Insurance

The regulations say that “prescribed” housing providers must use the HSC’s group insurance program. Co-ops are not prescribed housing providers for this part of the regulations because CHF Canada’s insurance program meets the requirement.

Some RGI service agreements have insurance requirements. You should check yours to see if it requires you to have a certain kind or amount of insurance coverage.

What makes a good director?

Why be a director?

Training

Your board of directors is responsible for making sure that your co-op is well managed. Most co-ops hire staff or a management company to do the day-to-day work of running the co-op, but the board remains responsible for the results.

A solid knowledge of the *Housing Services Act* program rules will help you to meet your responsibilities. In addition to getting standard board training each year, your co-op should get training about the HSA.

Training is offered by:

- local federations
- CHF Canada
- service managers
- the Housing Services Corporation.

You can get other HSA materials from the Resource Centre on CHF Canada's website, specifically the HSA page in the Funding model section.

Director accountability

Conflict of interest

Your service manager may have detailed rules about conflict of interest because they are concerned about

- directors in arrears
- hiring practices
- tendering of contracts
- spending practices.

Some of the key rules may be:

- Directors and employees must not enter into an agreement that results in a conflict of interest.
- Directors and employees must tell the president if they have an actual or potential conflict of interest.
- The board must discuss any reported conflict of interest, whether potential or actual, at its next meeting. There must be a record of the discussion in the minutes.
- The president must tell the service manager about every conflict of interest.

The co-op must resolve conflict of interest in a way that satisfies the service manager.

Check with your service manager about the specific rules for your co-op. If your co-op does not already have a conflict of interest by-law, you should adopt one. CHF Canada has a model by-law that you can use.