Guide to the new Model Occupancy By-law for co-ops (Second edition)

Look for these symbols throughout this Guide. They're used to alert people to important points:

➔ This needs action, like filling in a blank.

☑ Check this, because co-ops sometimes want something different.

ⓘ For your information. It does not have to be changed unless your co-op wants something else. It can affect how the co-op does things in the future.

Eviction law reform in 2014 resulted in amendments to the *Co-operative Corporations Act* and the *Residential Tenancies Act* that changed how co-ops handle evictions. In addition, the last Model Occupancy By-law was written in 1992. There has been a lot of experience since then and there have been other legal changes—and changes in co-ops as they move towards the end of their mortgages. To help co-ops and members manage this, the Ontario Region and the Co-operative Housing Federation of Toronto prepared a new Model Occupancy By-law in 2014.

A second edition was posted in 2017 to reflect

- two years of experience with the Landlord and Tenant Board eviction process for co-ops
- the potential effect of AirBnb and social media on co-ops
- new laws and procedures to deal with the effects of domestic violence, and
- other changes to improve on the first edition.

Updating to the second edition of the new Model Occupancy By-law

If your co-op has passed the first edition of the new Model Occupancy By-law, it can update to the second edition. A separate Guide on how to do this and amending by-laws are posted in the Resources section of CHF Canada's website (www.chfcanada.coop).

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Adopting the new Model Occupancy By-law

The new Model Occupancy By-law will replace your co-op's old Occupancy By-law and Occupancy Agreement.

Your board or a committee should review the new Model Occupancy By-law, carefully figure out if they want to recommend different policies on any of the things stated in it and make adjustments so it fits together with the other co-op by-laws.

There are a lot of places your co-op can make choices. They are not highlighted or flagged in the Model By-law because that would make it confusing. The major ones are explained in this Guide.

For more information about adopting by-laws, you can read *How to adopt a by-law*, which can be found in the Resources section of CHF Canada's website (www.chfcanada.coop).

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Using this Guide

We suggest you go over each section of this Guide. The sections are:

1. **Major features of the by-law:** This explains two absolutely major features that all co-ops have to know about.

2. **Where to get eviction law reform information**: This tells you where to look for information about the new system, especially after the co-op's internal eviction process is completed.

3. **Formatting the by-law**: The by-law has been set up to avoid problems that can happen with word-processing software. This section gives suggestions on how to format the by-law with any changes your co-op wants.

4. **What do we have to fill in**: This states where there is a blank to fill in or a choice that has to be made. There are not too many of them.

5. **What does the new by-law replace**: This states the areas covered by the by-law. It explains what to repeal so the co-op can make sure there is no conflict. This is important because the new by-law covers more than the old Model Occupancy By-law.

6. **What's new and different section-by-section**: This goes over the by-law and states some major changes from older versions. It flags things that will help your co-op use the by-law and the new and changed tools that it gives you.

7. **Summary of legal requirements**: This states the legal requirements in places where co-ops sometimes wish to consider different rules than in the Model.

8. **Time periods and time limits**: There are many time periods and time limits in the by-law. Some of these are government requirements and some can be changed. The Time Limits Table explains the ones where there are government requirements that co-ops have to follow

9. **List of cross-references**: This list is to help co-ops that want to change the numbering in the by-law.

10. **What about the SHRA or HSA By-law**: If your co-op was developed under a provincial program and funded by the municipality, it probably has an HSA or SHRA By-law. This section explains how to make sure there is no conflict between that By-law and the new Occupancy By-law.

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1. Major features of the by-law

Federal funding, municipal funding and no funding

The Model By-law can be used by all Ontario non-profit housing co-ops, no matter what program they were funded under and also where the funding program is over. The only difference is that municipally-funded co-ops may have to make some changes in the Attachments to the Occupancy Agreement. This may be different, depending on the requirements of the co-op's municipal service manager. Also, some co-ops have gotten other subsidy funding and that may have other requirements.

To save the co-op from having to amend the Occupancy By-law to meet these changes, the Model states that the board is authorized to change the Attachments to the Occupancy Agreement to meet the requirements of government or other subsidy providers.

Other by-laws included

The new Model By-law includes things that many co-ops used to have in an Arrears By-law. This is because eviction law reform creates a new basis for collecting arrears. The Landlord and Tenant Board process will involve additional notices of arrears to the member and an additional opportunity for an agreement (called a mediated settlement agreement). This suggests a more streamlined approach to internally dealing with arrears at a co-op.

The new Model also includes a section about director arrears. Unfortunately, this has become an important issue for many co-ops and seems to be common for co-ops that have financial trouble. The section in the Model could be the first time your co-op adopts rules about good financial standing for directors or it could replace existing rules. Some of the options are explained later in this Guide.

2. Eviction law reform information

The Model By-law sets the co-op's internal rules to fit with eviction law reform of 2014. But many of the eviction law reform changes happen after the internal process is over. For information on this you can check the Ontario's eviction system section in the Resources on CHF Canada's website (www.chfcanada.coop). You can also check the Landlord and Tenant Board's website (www.ltb.gov.on.ca) for detailed information on their processes and procedures.

The changed *Co-operative Corporations Act* and *Residential Tenancies Act* can be found on the Ontario government's e-laws website (www.e-laws.gov.on.ca). The section of the RTA that deals with co-op evictions is Part V.1.

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3. Formatting the by-law

The by-law has a lot of places where one section refers to another by its number. This means that, if you change any of the numbers, you have to change any place that section is referred to. You can deal with this in one of two ways:

➔ **Avoid changing numbers. (RECOMMENDED)**

- For example, if you want to insert a section after 15.1, you can call it 15.1A. Sections 15.2, 15.3 and 15.4 would keep their numbers.
- Or, if you want to remove a section, keep the number and insert "Number not used" next to the number. Later sections keep their original number.

— OR—

➔ Renumber and correct the references. (NOT RECOMMENDED)

- Go through the by-law and renumber the later Articles, sections or subsections.
- Change the number in all places that refer to parts with changed numbers.
- For convenience, a list of places to change is attached to this Guide.

The above applies to Article numbers and Section numbers and to the letters used for parts of Sections.

If you use Microsoft Word, the Table of Contents can be finalized automatically using the Table of Contents command. If that doesn't work or you use another program, you will have to change the Table of Contents manually.

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4. What do we have to fill in:

In some places, the Model by-law leaves a blank, or the co-op has to make a choice. These places are listed in this Table:

Cover page ➔	Fill in the full legal name of the co-op and the by-law number.
➔	Fill in the dates passed by the board and confirmed by the members.
➔	Remove the part in the middle about it being a "Model for Ontario Co-ops" and about "Using this Guide."
Table of Contents ➔	This will not update automatically. You have to check any changes in page numbers based on how you format the by-law. Also adjust this if any Article or section names or numbers are changed.
Page 1 ➔	Fill in the full legal name of the co-op.
Section 1.3, Repeals ➔	Complete the repeals section. See the next section of this Guide about how to do this.
Sections 3.1(b) & (c), What is included and what is excluded from monthly housing charges ➔	It's important to make sure the right things are in the right parts of this section for your co-op. Common problems: • Different kinds of units may pay different utilities, such as apartments and townhouses. Clearly state which utilities are paid by which kinds of units. You may have to include or attach a list. • If cable charges are paid by the co-op, state if these are only basic charges. • When the list is changed, the members have to pass a separate motion. This is because it is such a serious thing.
Section 3.1(b), Other housing charges ➔	Fill in the blank for the membership fee.
Schedules and Attachments ➔	Fill in the name of the co-op at the top and on signature lines where shown. You can also fill in the place where board meetings are held if it is always the same.

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5. What does the new by-law replace?

Section 1.3(a): Repeals

Section 1.3(a) lists things that are repealed when the new Occupancy By-law is passed. It is important to include things that will be repealed, and also to ***exclude*** parts of them that are not repealed.

➔ **Paragraph A, Occupancy By-law:**
The old Occupancy By-law is repealed, but the co-op should decide how to deal with any Policies that are attached to their present Occupancy By-law and are part of it. See the explanation of section 1.3(b) on the next page of this Guide.

➔ **Paragraph B, Arrears By-law:**
The Model is intended to replace the co-op's Arrears By-law. Later sections of the Model cover everything that is usually in an Arrears By-law except things about reports by staff to the board. We suggest that a by-law is not needed for this. The board can pass a motion requiring those reports.

If the co-op does not wish to repeal the Arrears By-law, then it should be removed from the list. If it wants to repeal parts of it, then only those parts should be listed.

An example for the list of things repealed would be:

- Sections 2, 3, 4 and 6 of the Arrears By-law (By-law No. ___).

➔ **Paragraph C, Organizational By-law:**
The blank should be filled in with the Organizational By-law sections about good financial standing by directors if the co-op wishes to adopt the sections in this By-law. See section 11.5 (Directors in Arrears).

Some co-ops have separate by-laws about this. They should be repealed.

Some co-ops refer to directors' good standing in several places in their Organizational By-law. Those should all be checked.

Section 11.5 talks about existing directors who are in arrears. Parts of the Organizational By-law that deal with ***qualifications for election*** to the board of directors should ***not*** be repealed.

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➔ Section 1.3(b): Policies

If your co-op has Policies that should still be in force, then section 1.3(b) (Policies) will preserve them. They will continue as separate By-laws.

It would probably be better to list them in the new By-law. One way to do that would be to **replace section 1.3(b) (Policies)** with a clause like the following example:

(b) Policies

The following Policies that are attached to the Occupancy By-law are not repealed, but will continue as separate By-laws as follows:

- Schedule F Parking Policy will become the Parking By-law, By-law No. 9.
- Schedule G Maintenance Policy will become the Maintenance By-law, By-law No. 10.
- Schedule K Pet Policy will become the Pet By-law, By-law No. 11.

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6. What's new and different section by section?

Section 1.5, Occupancy Agreement	**Standard form for all co-ops**: The Appendixes attached to the Occupancy Agreement are designed to be used by all co-ops—regardless of funding.
Appendixes	The Appendixes have been changed to meet common requirements for municipally-funded co-ops. We also think that they will improve things in general. Please note: • The Appendixes must be signed by everyone who will occupy the unit and is 16 years old or older. • There is a separate Appendix for special needs units.
When to sign	There is no need to sign new Occupancy Agreements. The new Appendixes should be used when the time comes to sign them in the normal way.
Government requirements	Municipally funded co-ops have to follow service manager requirements. These could be different all over the province. They can also change from time to time. Also, some co-ops are reaching the end of normal government programs and getting housing charge subsidy in other ways. This clause permits the board of directors to change the Appendixes to meet government requirements.
Section 1.6 (a), Co-op office	Some co-ops may not have a separate office. This clause allows the board to designate a place to serve as the office.
Section 1.6 (d), Housing charge payment day	This can be different depending on the co-op's preferred timing and how often the co-op office is open. This clause allows the board to set a standard date. Procedures for late payment letters, arrears payment agreements and Notices to Appear run from this date.
Section 1.6 (e), Housing charges	This clause defines regular monthly housing charges and other housing charges to follow the *Residential Tenancies Act*. It also clarifies between full housing charges and subsidized charges.

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Article 2, Members' Rights ⓘ ☑	It is important to remember that this Article only deals with rights that the member gets from the co-op. Everyone has many other rights as a person, but they should not be stated in this Article. Human rights are important at a co-op. If you have not already done so, your co-op should consider and adopt the Model Human Rights By-law available in *Model by-laws, policies and rules* of the Resources section of CHF Canada's website (www.chfcanada.coop).
Section 3.1(b), Other housing charges ⓘ	"Failed payment" charges are added to recognize modern banking methods. See sections 11.3(a) (Failed Payment) and 11.4 (Late Payment and Failed Payment Charges).
Section 3.3(a), Time of payment of housing charges ⓘ	This is related to the arrears provisions. See later in this list under Article 11 (Dealing with Arrears or Persistent Late Payment).
Sections 3.3(b) to (d), How payments are made ☑ ☑	Make sure this follows what the co-op does or will do: • No cash payments are allowed. It is legal to refuse cash payments. Auditors and funders recommend not having cash payments because some co-ops have suffered abuse in dealing with cash. • Pre-authorized payment or debit cards are becoming very common and may eventually replace cheques. These can remain in the by-law even if your co-op does not have arrangements for them now. Things are bound to change.
Sections 3.3(c) and (d), Co-op office ➔	You may wish to adjust how amounts are paid if your co-op does not have an office. Section 1.6 (a), Co-op office states how a place can be designated as the office under the By-law, but your co-op may want payments to be made somewhere else. Sections 3.3(c) and (d) can be amended to state this.

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Sections 3.5(b) and (c), Amount of the member deposit ☑	These clauses set the member deposit: • For members who pay the full housing charges, the member deposit is set at the monthly charges plus 40 percent. • For members who receive housing charge subsidy, the member deposit is set at the monthly subsidized housing charges. There are many possible alternatives to this system. Examples: • Same dollar requirement for members who pay full and subsidized housing charges • Only one month's housing charges without an additional amount.
☑	If your co-op wishes the same amount for members who pay full and subsidized housing charges without an additional amount, you can use the following clauses: "(b) **Amount of the member deposit** Members must pay a member deposit equal to the full monthly housing charges for their unit. The member deposit is rounded to the nearest dollar. (c) **Adjusting the member deposit when housing charges change** The amount of the member deposit will be adjusted by the same percentage as any change in the full monthly housing charges for the member's unit. Members must pay the amount of any increase on a date set by the board of directors unless the members' meeting approving the new housing charges decides on a different date. If there is a reduction, members will get a credit on future charges."
Section 4.1, The Members Set Full Housing Charges ⓘ	This clarifies that there should be a separate motion approving housing and parking charges even though they are included in the budget materials.

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Section 5.1(b), Appliances: ☑	The co-op should adjust this if the stove and refrigerator are not provided by the co-op or if any other appliances are provided. Also, adjust this if different kinds of units get different appliances.
Sections 5.1(i), (j) and (k), Exterior of unit, Common elements and Privacy ⓘ	These sections state that members must get board approval to install things on the exterior of units or keep them in halls or other common areas. They also say that members cannot install cameras that could record other people in common or public areas.
Section 5.4, Members' Insurance ⓘ	The Model By-law leaves it up to each member to decide whether to get renter's or member's insurance.
☑	If your co-op wishes to make this insurance compulsory, you can use the following clause instead of what is in the Model: "5.4 Members' Insurance (a) Insurance compulsory Each member must obtain and pay for personal property insurance and personal liability insurance. Each member must deliver proof of insurance to the co-op office at least once a year by a date set by the board of directors. The form of proof of insurance will be approved by the board. Giving the co-op proof of insurance does not transfer the member's responsibility to the co-op. (b) Co-op not liable The co-op will not have to compensate a member or anyone in the member's household for any loss that would be covered by a normal renter's or co-op member's insurance policy. This applies no matter how the loss is caused. In addition to the co-op itself, none of the co-op staff or contractors, or any other member, will have to compensate for the loss.
Section 6.3, Absence from Principal Residence ⓘ	Rules for absences are clarified.
Section 6.4, Related Uses ⓘ	This allows members to have typical home businesses that do not interfere with others.

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Section 6.4 (b), (c) and (d) No rooming houses or rentals ⓘ	Renting out a unit or parking space is not a related business and is permitted only on the terms stated in the By-law. Advertising on AirBnB or Internet rental services is prohibited. The board can authorize other kinds of advertising for a sub-occupant.
Section 7.2, Human Rights ☑	This clause is important, but it is not enough to deal with human rights issues at co-ops. If you have not already done so, it is recommended that your co-op consider and adopt the Model Human Rights By-law available in the Model by-laws, policies and rules section of the Resources on CHF Canada's website (www.chfcanada.coop).
Removing "Able to Live Independently" section ☑	The 1992 Model Occupancy By-law had section 6.3 "Able to Live Independently". There is grave doubt over whether this clause would comply with the *Human Rights Code* in some situations. Also, some members have expressed anger and embarrassment at being singled out in this way. Therefore, this section has been dropped from the Model By-law.
Section 7.4, Domestic Violence ☑	Deals with domestic violence involving household members who are not members of the co-op. The definition of victim includes anyone living at the co-op. A parent can exercise victim's rights on behalf of children. The board can issue a No Trespass Notice to protect the victim even where the violence was before the victim moved into the co-op. The victim can terminate membership without full notice. Ways to deal with domestic violence are extended.
Section 7.6, Explanations ⓘ	Violence and harassment can take place on co-op property or in other places, including on social media
Section 7.9, Criticism of Board and Staff ⓘ	Constructive criticism of board and staff is not harassment. Gives examples of actions that do constitute harassment.
Section 7.10, No Trespass Notices ⓘ	This permits the board to issue No Trespass Notices against non-members or against members for specific parts of co-op property. It states procedure for review of No Trespass Notices and for long-term evaluation.

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Section 8.1(a), Who is part of a household ☑	Sometimes people bring up children of relatives, spouses or others—often without formal adoption. Legal rules have developed over the years since the 1992 Model. The new Model ensures that those children are in the same position in co-ops as they would be in other legal situations. This is stated at the end of 8.1(a). It says that the Ontario *Family Law Act* will apply in deciding if someone is considered a child of a member. The key words in the *Family Law Act* are that the parent has "demonstrated a settled intention to treat" that person as a child of the family. It does not include children in a foster home or similar situation. There are lot of interpretations of those words so it is best to check with your lawyer if there is any doubt in a specific situation.
Section 8.1(b), Guests and sub-occupants ⓘ	This clarifies when someone is a guest and when they are a sub-occupant.
Section 8.5, Casual Guests ☑	Under the 1992 Model there was a separate board approval for casual guests who were staying more than a minimum time stated in the by-law. For most co-ops this worked out to be the same or almost the same as the length of time for a long-term guest. To keep it simpler, the new Model sets the limit for a casual guest without board approval at three months. Board approval is required for longer than three months and the guest is then a long-term guest.
Section 8.6(a), Sub-Occupancy, Housing charge subsidy ⓘ	On a sub-occupancy, households receiving housing charge subsidy may breach government requirements and lose their subsidy. See the comment about this in the part of this Guide on Appendix C (Housing Charge Subsidy Terms).
8.7, Evicted Persons ⓘ	People can't be casual or long-term guests if they were evicted from or left owing money to the co-op or after they were accused of domestic violence.
Article 9: Household Size ⓘ	The 1992 Model By-law had rules for the minimum and maximum number of people who could live in a unit.

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Maximum number of people	The maximum limit raises moral and human rights issues. Different cultures, circumstances and personal preferences lead to widely different ideas of how many people can share accommodation. Attempts to enforce this kind of rule are likely to lead to human rights challenges if the co-op standards are tighter than municipal standards. In addition, enforcement would have to be through the courts, which would be expensive. On the other hand, almost all municipalities have maximum occupancy rules. It is illegal to have more people in a housing unit than is permitted under those rules. Therefore, any breach of those rules can be enforced by a co-op as an illegal act. In addition, there are specific sections of the *Residential Tenancies Act* that refer to this and will permit the co-op to enforce the rules with less expense.
Minimum number of people	All co-ops have benefitted from favourable government treatment because they're co-ops. This includes not only funding programs, but also favourable treatment under some laws. Co-ops should make the best use of their property for the benefit of more people. However, problems do occur: • In some places, housing charges are lower compared to market rent. Co-ops with very low basic housing charges have members that don't want to move to a smaller unit to save money. • The co-op's been told that three people of a new household are moving in, but a few months later the co-op discovers that there is only one person. • Some co-ops with large family units end up with one person occupying a thee-bedroom townhouse after a spouse's death and children leave home. Article 9 is designed to cover all situations where fewer people live in a unit than the minimum standard. It works with section 10.3 (Part of Household Ends Membership and Occupancy) and section 10.4 (Death of a Member).

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☑	Some co-ops have different policies about how to deal with this situation. They have to consider several things: • If someone has lived there many years, it could be thought that they shouldn't be required to move due to a spouse's death and children leaving home. • Perhaps it is acceptable if the parents move out and leave a young member as the sole occupant. • If vacancies are a problem, the rules in the Model could result in financial loss. • It may be considered fair for people to occupy a larger unit if they are prepared to pay extra for it.
➔	Co-ops can consider alternatives to deal with this. Time periods can be adjusted to whatever the co-op decides. **Length of time only**: Insert the following sentence at the end of sections 9.2(d) and 9.4(a): "Section 9.4 does not apply if one of the remaining members has lived in the unit for at least five years." **Length of time for original members**: The following would mean that parents could not leave the co-op and pass the unit on to a child who has become a member. To do this, insert the following sentence at the end of sections 9.2(d) and 9.4(a): "Section 9.4 does not apply if one of the remaining members has lived in the unit for at least five years and is the household member who the co-op originally admitted to membership or that member's spouse."
Section 10.2, Members Ending Membership and Occupancy Rights ➔	The notice requirement is now 60 days under the *Co-operative Corporations Act* (section 178.1). This will have to replace the 65 days period that many co-ops have used. • See the special counting rules for February and March in paragraph 10.2(c). These are from the *Co-operative Corporations Act*

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Article 11, Dealing with Arrears and Late Payment	Arrears problems sometimes result in evictions. Co-ops have procedures and by-laws that were developed under the old legal system. Eviction law reform in 2014 means several changes:
ⓘ	• After an internal eviction decision, the co-op will have to give another notice to terminate under the *Residential Tenancies Act*. • Before the Landlord and Tenant Board makes a decision about eviction, there will be a compulsory session that will often result in a mediated settlement agreement. • If there is no settlement, the co-op will have to prove its case at the Landlord and Tenant Board. That is different from the earlier system where the co-op basically had to show only that it followed correct internal procedures. • The member can pay any time up to actual eviction and be reinstated.
	Because of the steps involved after the co-op's internal process, the Model By-law is intended to streamline what co-ops do before they go to the *Residential Tenancies Act*. It does this by repealing the Arrears By-law and stating a series of steps that would be taken in case of non-payment. All of these steps can be changed or adjusted when the co-op passes the by-law. Some of them can be adjusted to meet specific circumstances when they happen:
☑	• **Step 1**: Late payment letter on housing charge payment day. Section 11.2(b).
☑	• **Step 2**: Notice to Appear issued by staff on the seventh day after housing charge payment day. Section 11.2(c).
☑	• **Step 3**: If member asks for second or later payment agreement, Notice to Appear is issued along with request for payment agreement. Sections 11.6 (c) and (d).
☑	• **Step 4**: Boards often meet in the third week of the month. This would allow the board to decide at that meeting. Section 11.7(a). They could accept the proposed payment agreement or they could decide to evict.
☑	• **Step 5**: The member has ten days to pay before internal decision is effective. Section 11.7(b).

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Membership appeals on arrears evictions ⓘ	The by-law does not have a right of appeal to the membership if the grounds of eviction are arrears or persistent late payment. That was the policy most co-ops followed before 1992. The *Co-operative Corporations Act* was amended at that time to require an appeal in all cases. The new amendments leave it up to the co-op to decide when a membership appeal is available. That is explained later in this Guide.
Section 11.4, Late Payment Charges and NSF Charges ☑	This sets the charges at $25.00 for late payment and $20.00 for NSF. Many co-ops charge $25.00 for NSF. You can change it to use that figure. $20.00 is in the Model, because that is what landlords can charge. There is no requirement to be the same as landlords, but this might make it slightly easier at the Landlord and Tenant Board.
Section 11.4(d), Crediting Payments ⓘ	There is a limit to what co-ops can claim at the Landlord and Tenant Board. Co-ops should credit receipts against amounts other than regular monthly housing charges, so that they can claim the outstanding amount at the Landlord and Tenant Board, if necessary.
Section 11.5, Directors in Arrears ⓘ	Experience has shown that co-ops with serious financial problems often have directors with arrears. It seems to be a hallmark of bad management. It is not fair to members who are in good standing and it is very bad for the co-op's reputation among funders, lenders and anyone else who knows about it. The policy recommended by CHF Canada is that no directors' arrears are permitted. Some co-ops allow up to one or two months of arrears if the directors have a signed payment agreement. Usually those directors cannot participate in decisions about other members with arrears. However, the conflict really affects all decisions involving money, which is most co-op decisions. That is why the recommendation is "no arrears".
Article 12, Dealing with Problems ⓘ	This Article states a system for dealing with problems other than arrears. The Schedules use different forms for the Notice to Appear, Eviction Decision and Notice of Eviction Decision.
Section 12.2, Eviction date in Notice to Appear ⓘ	This clause states 20 days if the by-laws allow an appeal to the membership. This is to allow the member time to decide whether to appeal.

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Section 12.4, Limits of Action by Co-op	It is important for all members to understand that there are practical and legal limits to what the co-op can do to solve problems that members have. Every co-op tries to help with this, but the factors stated in 12.4(a) clarify some of the problems.
Article 13, Eviction Procedures	The procedures are basically the same as before eviction law reform in 2014, but a bit simpler. There are some changes in legal requirements. Also, the by-law tries to clarify some things that have come up: • No taping of board meeting by member. Section 13.1(a). • There are different Board Decision Schedules, depending on whether the Notice to Appear was for arrears and late payment or something else. Co-ops can use Schedule F or Schedule G. Section 13.1(c). • To avoid future reprisals the minutes don't have to state who moved or seconded the motion. Section 13.1(c). • Only the Notice of Decision has to be given to the member. Co-ops can use Schedule H or I. The co-op should include a copy of the decision itself, but it does not have to. Section 13.1(e).
Article 14, Alternatives to Eviction	Co-ops use performance agreements and conditional eviction decisions to try to solve certain kinds of problems. This Article states rules about how they are to be used and what happens if they are broken.

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Article 15, Appeals to Membership	The changes in the *Co-operative Corporations Act* leave it up to each co-op to decide when a membership appeal is available. This has to be stated in the by-laws. The Landlord and Tenant Board process will involve mediation and a requirement for the co-op to prove the case on its merits. Therefore, internal membership appeals may not be needed to protect members in many situations. The Model By-law states one system. However, CHF Canada is not making any recommendation about this (except for no arrears and persistent late payment appeals). Each co-op has to decide. Possibilities could be: ☑ • Allow appeal for everything as in present *Co-operative Corporations Act*. ☑ • Allow appeal for everything except arrears and persistent late payment as in most pre-1992 Occupancy By-laws. ☑ • Allow appeal for everything except arrears and persistent late payment, violence, illegal acts, impairing safety. That is what is in the new Model. ☑ • No appeals to the membership.
Change in grounds ☑	If your co-op wants to change the situations where appeals are permitted, you can change the list in section 15.1. Things can be added to or removed from the list.

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If no appeals	If your co-op does not want to have any appeals to the membership, then several parts of the by-law need to be adjusted. ☑ • **Section 12.2(d), Termination date in Notice to Appear**: The second sentence should be removed. It is about the amount of notice when there is a right of appeal. ☑ • **Article 15**: Remove the whole Article and insert: "Article 15:No Appeal to Membership 15.1 No Appeal Members cannot appeal a board of directors' eviction decision to the membership. If a member does not agree with the decision, the member can wait until the co-op takes the case to the Landlord and Tenant Board or to court and state their case at that time." ☑ • **Section 17.1(c), Personal Information to Membership, Appeal information**: Remove the last sentence of this paragraph. It relates only to eviction appeals and refers to part of Article 15 that was removed. ☑ • **Schedule E, Notice to Appear**: Remove the whole part below the signature. This only applies if an appeal is allowed. ☑ • **Schedule I, Notice of Eviction Decision**: Remove the whole part below the signature. This only applies if an appeal is allowed. ☑ • **Attachment A, Summary of Time Requirements and Examples**: Remove the last box in this Attachment about times for eviction decision appeals.
Section 15.2 and 15.3, Appeal Information process ⓘ	This system is designed to balance between too much disclosure and embarrassment as against the need of the members to have information in order to decide an appeal.
Section 16.2, Membership Rights on Eviction ⓘ	This clarifies when someone's membership rights end and also when they are restored. An example would be if they paid all the arrears before they were physically evicted. The law is that they are once again members of the co-op.

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Section 16.2(d), When new Notice to Appear not needed	Under eviction law reform in 2014, members have the right to correct certain situations and be restored to membership. This can happen until the case is decided by the Landlord and Tenant Board and sometimes later. In those cases, if the member repeats the breach, the co-op can go directly to the Landlord and Tenant Board without a new Notice to Appear. In addition, a co-op could sign a mediated settlement agreement with a member. This is similar to a performance agreement, but also different. The member would be restored to membership under the agreement, but in case of breach, the co-op would not need a new Notice to Appear.
Section 16.3, Interest	Co-ops have always been entitled to interest on money owed by members, but realistically they do not usually try to collect it. The Model moves the interest clause to the legal action section to show how unusual interest will be. At the same time, it increases the interest rate to recognize that members should be discouraged from owing money to the co-op.
Section 17.2, Legal Actions against Co-op	This problem is not mentioned in current by-laws. But it is important that the membership knows if there are problems at the co-op that have resulted in a lawsuit or human rights complaint. The membership needs to know about these things to perform its role in the governance of the co-op. On the other hand, there could be times when it would hurt the co-op's legal position to discuss something at a members' meeting or send members something in writing about it. The board can decide not to disclose something for this kind of reason or other reasons.
Section 17.3, External Complaints	Sometimes people complain to others about the co-op without telling the truth or all the truth. This section authorizes the co-op to respond.

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Section 17.4, Co-op Employees not Members	Co-ops often have problems if staff are members of the co-op. It is hard for those members to keep their views about co-op things separate from their personal interests. The same kind of problem sometimes comes up when one person or one household does the main on-call — especially if they also run for the board. They may do great service for the other members, but they may also make other members feel that they are not welcome to on-call or that they have less of a stake in the co-op. That may not happen often, but some co-ops have had serious problems of this kind. ⓘ This section has rules that are a compromise. They allow part time payment for services, but within reasonable limits.
Section 17.8(a), Serving Documents ⓘ	The *Co-operative Corporations Act* and the *Residential Tenancies Act* have changed the system of serving documents. • **Doesn't matter if member is home**: Unlike the previous system, you do not have to check that the member isn't present before delivery. • **Leave in mailbox**: Co-ops can leave documents in a member's mailbox. This has to be where mail is delivered—not an internal mail box. • **No posting on door**: Co-ops can no longer serve documents by posting on the door of a unit. • **Under door or through door**: Co-ops can slide documents under the door or through a mail slot, but only if there is no mailbox. It's not clear if this will really help some co-ops very much. There will be problems in many situations: • If the mailbox is a typical apartment mailbox, where the post office claims that it is the only one that can put something in the box • If there is no mail slot in the door • If there is no room under the door (because of weather stripping) ☑ Co-ops will have to consider whether they should give notice by mailing things to a member. They are not legally "delivered" until the fifth day after mailing, but often there will be enough time to do this.

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Sections 17.8(d) and (e), E-mail Notices ⓘ	This permits e-mail notices under the By-law that do not relate to eviction. Eviction and membership-related notices are legally required to be on paper.
Schedule A, Occupancy Agreement, Appendixes Changes ⓘ	As stated in section 1.5(c) of the By-law (Occupancy Agreement, Government Requirements), the board can change the Appendixes to meet government requirements. A by-law amendment won't be needed. This recognizes that older co-ops may get subsidy from new sources and rules will have to change. Also, each service manager can change some of the requirements for municipally-funded co-ops in its service area. The Appendixes in the Model By-law meet the requirements that apply to all federally-funded co-ops and most municipally-funded co-ops. They are much shorter than the Appendixes in the Model HSA By-law, but they include everything that is legally necessary for most co-ops.
Subletting ☑	The *Social Housing Reform Act* Regulations had a requirement that every occupancy agreement had to "prohibit the household from renting or subletting the unit". It was not just that people would lose their subsidy. They could also be evicted. That requirement is gone from the *Housing Services Act* Regulations, but some service managers may have imposed a similar requirement themselves. You should check with them. The way to deal with this is to insert a clause in Appendix C (Housing Charge Subsidy Terms). We are not making any specific suggestions because it will depend on the wording adopted by the service manager.
Signing ⓘ	The Appendixes have to be signed by everyone who will occupy the unit and is 16 years old or older. This meets government requirements for municipally-funded co-ops, and is a good idea for all co-ops.
Appendix C, Housing Charge Subsidy Terms ☑	Some of the specifics in this Appendix may not be consistent with the co-op's Housing Charge Subsidy By-law. This should be checked. The Appendix should be made consistent or the Housing Charge Subsidy By-law should be amended.

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8. Time periods and time limits

Required Time Limits Table

This Table deals with times, time periods and time limits where there are government requirements. The co-op can make its own decision about things not mentioned in this Table.

Section 1.5(a), Occupancy Agreement and Appendixes:

- We recommend that co-ops do not change these requirements.

HSA co-ops:

- Some of this is a legal requirement for members who receive housing charge subsidy, including that the occupancy agreement must be signed before housing charge subsidy is received.
- This may be a municipal service manager requirement for all members.

Federally funded co-ops:

- Some of this is implied in Operating Agreements under certain programs.

Section 3.5(a), Paying member deposit over time

Federally-funded co-ops:

- No requirement.

HSA co-ops:

- Legal requirement for members who receive housing charge subsidy.

Rent supplement Agreements:

- There is sometimes a requirement that deposit not needed for move-in.

Section 4.4(a), Beginning of changed housing charges: New housing charges begin on first day of third month after members' meeting approve changes.

Section 4.4(b), Notice of change to be given within a reasonable time

Federally funded co-ops:

- No requirement.

HSA co-ops:

- At least 60 days notice is required. Care has to be used.

  Example: Members' meeting on January 31 approves changes to start April 1.
  If notices delivered in evening of January 31, there would be 60 days notice.
  If notices delivered on February 1, there would only be 59 days notice.

  Note: There is no legal requirement for changes to begin on the first of a month. Therefore, members' meeting could vote for changes to begin April 2 to allow time for delivery of notice.

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Section 6.3, Absence from Principal Residence

- There is no government requirement about the maximum absence for the unit to still be considered a member's principal residence.

Federally funded co-ops:
- No requirement.

HSA co-ops:
- Service managers could impose requirements, but we are not aware of any.

Section 8.6(a), Sub-occupancy and absence

Federally funded co-ops:
- No requirement.

HSA co-ops:
- This is explained in section 8.6(a) of the Model By-law.

Section 8.1(a) and section 8.3, Children turning 16

- There is no government requirement about this.
- The reason for these clauses is the rights of other 16 and 17 year olds under the Ontario Human Rights Code.

  The Code says that people who are 16 or 17 years old have the right to equal treatment in housing if they have "withdrawn from parental control". This means that, if the co-op gets applications from 16- or 17-year olds who are living by themselves, they have to treat them like anyone else.

  These sections of the Model By-law are designed to give the same rights to children of members when they reach 16, even though they are still living with their families.

Section 9.5, 10 days to report change in household size

- No general government requirement

Federally funded co-ops:
- No requirement.

HSA co-ops:
- The legal requirement for members who receive housing charge subsidy is 30 days. The service manager can make this period longer, but not shorter.
- The service manager could have requirements for other members.

Section 10.2, Withdrawing from membership: 60 days notice ending on last day of a month. Adjustment for February and March.

- This is a government requirement under Co-operative Corporations Act sections 171.8.1(2) and (3)

Note: There is nothing to stop a co-op and member from agreeing to something else in a specific case, such as if the member asks to give less notice and the co-op agrees.

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Section 10.2(d), Not enough notice: The notice will be effective at the end of the month after 60 days.

- This is an interpretation of the rules about 60 days notice to withdraw. It is not a government requirement. There could be other interpretations, such as that a notice of less than 60 days is not valid and the member must give a new notice.

Section 10.2(f), Members vacate early: Co-op can take possession.

- This is not a government requirement.

Section 10.3(c), Remaining household has 10 days to report when a member leaves

- See comment on Section 9.5 above. It also applies to 10.3(c).

Sections 11.7(a) and 12.2(a), Issuing Notice to Appear: At least 10 days notice.

- The *Co-operative Corporations Act* requirement is that this be not less than 10 days. The by-law could state a longer time.

Sections 11.7(b) and 12.2(d), Termination date in Notice to Appear

- There is no government requirement about this. It is designed to fit with the requirement for giving a member a notice of the decision and also the time for appeal, if applicable. This is explained earlier in the Guide.

Section 13.1(d), Termination date in eviction decision

- The *Co-operative Corporations Act* says that this day could be later than the day in the Notice to Appear, but not earlier.

Section 13.1(e), Giving notice of decision to member

- The *Co-operative Corporations Act* says that this has to be within 10 days. The by-law could state that it has to be delivered in less than 10 days if the co-op wishes to set a shorter time.

Section 15.2(a), Notice of appeal by member

- *Co-operative Corporations Act* says that, if there is a right of appeal, the member has to give notice within 7 days. The by-law could state a longer time if the co-op wishes.

Section 15.2(d), Date of members' meeting

- *Co-operative Corporations Act* says that a meeting to decide an appeal has to be at least 14 days after the appeal notice is received. This is only a minimum. The board could hold the meeting later or the by-law could state a longer time.

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Section 15.4(g), Effective date of decision

- *Co-operative Corporations Act* says that the termination by the board is suspended until the appeal is dealt with. There is no requirement about when it takes effect after that. It could be on the day of the members' meeting.
- Two days is suggested to give the member a bit of time. (Of course, this may not matter if the member just waits for the co-op to go to the courts or the Landlord and Tenant Board.)

Section 17.8(c), Mail delivery of notices: Notices are considered delivered on the fifth day after mailing.

- *Co-operative Corporations Act* requires this and it cannot be changed.

Occupancy Agreement, Appendix C, Housing Charge Subsidy Terms, Section 7: Update of household income and composition annually.

HSA co-ops:
- Legal requirement under *Housing Services Act*.

Federally funded co-ops:
- Required under most Operating Agreements or Rent Supplement Agreements

Occupancy Agreement, Appendix C, Housing Charge Subsidy Terms, Section 8: Changes in information to be reported to co-op within 10 days.

- See comment in this Table on section 9.5.

Occupancy Agreement, Appendix C, Housing Charge Subsidy Terms, Section 10: Housing charge subsidy ends if household does not occupy for six weeks.

- This is a traditional co-op requirement. It is not a legal requirement. It can be changed by the co-op.

HSA co-ops:
- Separate requirements may also apply.

Schedules J and K, Performance Agreements, Section 10: 10 days notice of terminations of membership and occupancy if there is a breach of the agreement.

- This is a traditional co-op requirement. It is not a legal requirement. It can be changed by the co-op.

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9. List of cross-references

This list is to help co-ops that wish to renumber parts of the Model Occupancy By-law. You should check the numbers that would change against the Table and make sure the cross-reference is changed to its new number.

If you change this Article or Section Number	You have to change the reference to it in these Sections
1.3(b)	1.3(a)
1.6(c)	1.4
1.6(k)	Attachment A 8.5
Articles 3, 4	17.8(d), 17.8(e)
4.1	4.5
4.3	4.5
4.4	4.5
5.2	5.1
5.2(b)	5.1(d)
6.3	6.2
6.3(d)	6.3(a)
7.1	7.9
7.4	10.3, 10.3(d)
Article 8	6.4(c), App B
8.1(a)	8.1(c)
8.3	8.4(d)
8.4	6.4(d), 8.5
8.4(d)	7.4(h), 8.4(b)
8.5	7.5
8.6	6.3(a), 8.6
8.6(a)	6.3(b)
8.7	7.5
9.4	7.4(i), 9.2(d), 10.4(d)
9.5	1.5(a)
10.2	10.3(a), 10.3(b)
Article 11	10.2(g), 10.4(d), 10.5
11.1	11.5(c), Scheds D, F
11.2(c)	11.6(d)
11.3(a)	11.2(d)
11.3(b)	11.3(c)

If you change this Article or Section Number	You have to change the reference to it in these Sections
11.6	11.2(d), 14.6
Article 12	7.4(h)
12.2(c)	Sched E
Article 13	7.4(h)
Article 14	11.6(a)
14.2	14.3
14.5	16.2(a)
14.5(a)	14.5(b)
Article 15	10.2(g), 10.4(d), 10.5, Sched I
15.2(b)	15.3(b), 17.1(c)
15.2(c)	15.3(b)
Article 16	11.6(a)
17.1(b)	15.3(g)
17.4(a)	17.4(b)
17.7(a)	17.7(b)
17.8	Sched J, Sched K
Sched A, Ap-pend's A to D	1.5(a), (b), (c), (d)
Appendix C	8.6(a)
Schedule A	1.5(a)
Schedule B	8.4(c)
Sched B, 8	Sched B, 9
Schedule C	8.6(b)
Sched C, 12	Sched C, 13
Schedule D	11.7(a)
Schedule E	12.2(b)
Schedules F, G	13.1(c)
Schedules H, I	13.1(e)
Schedules J, K	14.3
Attachment A	1.7

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10. What about the SHRA or HSA Bylaw?

HSA co-ops: If your co-op was developed under a provincial program and funded by the municipality, it probably has an HSA or SHRA By-law.

The Appendixes to the Occupancy Agreement in those By-laws were intended to replace the Appendixes in the old 1992 Occupancy By-law. Separate Appendixes are no longer needed under the new Model Occupancy By-law.

We suggest you remove those Appendixes when you pass the Occupancy By-law. You would do this by adding a clause to the list of things repealed in section 1.3.(a).

A sample additional clause for section 1.3(b) would be:

> D. Appendixes A, B, C, D and E and Schedule A of the Housing Services Act By-law (By-law No. ___).

Keeping the existing HSA by-law Appendixes: If your co-op does not want to use the new all-program Appendixes C (Housing Charge Subsidy Terms) and D (Special Needs Housing Terms), you can stay with the corresponding Appendixes under your HSA By-law. Those Appendixes will need some changes. That is why it is best to repeal the old Appendixes.

You would then remove the new all-program Appendixes C and D from the Model Occupancy By-law and insert Appendixes C (Housing Charge Subsidy Terms) and E (Special Needs Housing Terms) from the HSA By-law.

When inserting the Appendixes from the HSA By-law, you should make the following changes:

- **Appendix C, Housing Charge Subsidy Terms:**
  - Change name from "Terms of the Member's Housing Charge Subsidy" in the HSA By-law to "Housing Charge Subsidy Terms" in the Occupancy By-law.
  - Change section 17 to read, "17. No one may occupy the unit except people who were members of the household at the time the Occupancy Agreement was signed and any additional people authorized by the Co-op, as stated in Article 8 (Members' Households and Guests) of the Co-op's Occupancy By-law."
- **Appendix E, Special Needs Housing Terms:**
  - Change Appendix letter from "Appendix E" to "Appendix D".
  - Change name from "Terms of the Member's Special Needs Housing" in the HSA By-law to "Special Needs Housing Terms" in the Occupancy By-law.
  - Change section 12 to read, "12. No one may occupy the unit except people who were members of the household at the time the Occupancy Agreement was signed and any additional people authorized by the Co-op, as stated in Article 8 (Members' Households and Guests) of the Co-op's Occupancy By-law."

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