

Q&A

Questions and Answers about the Agency's Model Management Services Agreement

What is the Model Management Services Agreement?

The Model Management Services Agreement is a contract developed for use by Agency clients in Ontario who hire a company to manage their property. The agreement sets out the property manager's duties, its authority, the standard of performance it must meet and the basis on which it will be paid. It includes schedules that list the core property-management services and the extra services that housing co-operatives with a financial workout may need. Some useful reporting forms are attached.

Do all co-ops with the Agency have to use this agreement?

No. The model agreement is meant only for federal-program co-ops in Ontario that hire a company to manage their property. Clients with financial workouts who contract with a management company and other co-ops who hire a company on the Agency's Vendor of Record (VOR) list¹ will use the agreement.

1. The Agency has created a list of Vendors of Record (VORs)—pre-qualified management companies—through a full public tender process. Any Agency client may use the list, which is posted on our [client website](#), to find a manager. All our VORs are required to use the Agency's model agreement when they contract with our clients.

Co-ops with workouts who have their own management staff will not use it. Other co-ops are welcome to use the agreement, but do not have to do so.

The agreement is not intended for municipal co-ops in Ontario.

How is this Model Management Services Agreement different?

In the past, co-ops have paid their management company a fixed fee each month. Under this agreement, they pay a fixed share of the revenue they collect, month by month (Clause 29). The agreement calls this revenue "Effective Gross Income" or EGI. See clause 1(h) of the agreement for details about what does and doesn't count toward EGI.

The model agreement commits the property manager to performing "all duties that are normal or necessary for a manager of a non-profit housing co-operative" (Clause 7). This includes but isn't limited to the things listed in Schedule B (Core Property Management Duties). There is no obligation for the manager to work a specified number of hours or to hold open office hours on site. This is the main difference between contracting with a company and hiring an employee.

On the other hand, under the model agreement, the manager has to meet certain standards of performance. These include providing “the services of its management organization” and “competent employees for the operation, administration, and management of the Property.” For example, the manager must take steps “to furnish a high standard of management and maintenance of the Property and to maintain full occupancy” (Clause 9).

To help make sure this happens, the manager has to meet specific turnaround times (Clause 10). These are called “service levels” and are set out in Schedule B-1. For example, the manager must respond to members’ service requests by the next business day and produce monthly financial statements by the 15th of the month.

How can the manager do its job without staff on site?

The agreement assumes that expert staff in the company’s own office will do much of the work—jobs like bookkeeping, taking calls and responding to e-mails from members, writing up reports to the board, and planning maintenance and capital replacements—all covered by the management company’s fee. Of course, some tasks do have to take place on site, such as inspecting and showing units, managing parking and getting occupancy agreements signed (and other tasks listed in Schedule B-2), as well as maintenance and repairs. The management company will hire site staff to do this work.

What if there’s a problem when the staff aren’t there?

The management company must supply a telephone number and an e-mail address where the board and members can reach it during normal business hours. For an emergency at the property, the manager must be reachable at any time of the day or night. It must deal promptly with any maintenance or operational emergency (Clause 11).

How will the board know that the management company is doing its job?

The agreement sets out the regular reports the manager must present to the board. These include a monthly operations report (Schedule B-1) and reports on vacancies and turnover, arrears and any rental incentives given (Schedules B-4, B-5 and B-6). Schedule B-1 also sets clear standards for when all routine tasks must be performed (e.g., when an arrears notice must be sent). All this, and the list of tasks in Schedule B itself, should give the board confidence that the management company knows what it has to do. The board can also use these schedules to evaluate the company from time to time.

How is the management company paid for its work?

The management company receives an agreed percentage of Effective Gross Income (EGI), plus HST (Clause 29). It earns nothing on an empty unit or when a member fails to pay. But when a household makes a catch-up payment, it counts as EGI. The idea is to give the manager every reason to keep the co-op full and the housing charges coming in on time.

Is a percentage of EGI all that management is paid?

The management company attends and takes minutes at all board and members meetings,

except when it is itself under discussion (Clause 28). If the board meets more than once a month, or the members more than twice a year, the management company will receive a small extra fee for the extra meetings (Clause 31).

Where the management company provides the workout-related services listed in Schedule D, a premium is charged (Clause 30). Note that Agency approval is needed before the manager is hired for these tasks.

What about the manager's expenses?

The management company can claim reasonable out-of-pocket expenses, such as software licence fees, postage, photocopying, and courier costs (Clause 33). The manager cannot make a claim for travel to and from the property, but can charge for mileage and parking expenses while away from the co-op on co-op business (Clause 32).

When is the manager paid?

The management company bills its monthly fee and any expenses on the last day of the month, using the form in Schedule B-3. Payment is due when the invoice arrives (Clause 34). The manager has the option of being paid by pre-authorized withdrawals from the co-op's account (Clause 36).

At the end of the year, no more than a month after the co-op files its Agency Annual Information Return, the manager's fees are to be reconciled against the return. Any under or over payment must be settled within 15 days (Clause 35).

Who pays the site staff's wages?

That depends on what they do. The cost of staff hired to maintain the property and handle the limited jobs set out in Schedule B-2 is paid from the co-op's operating budget (Clause 38). A list of these duties appears at the end of this Q&A.

The management company's fee covers the cost of staff doing management or administrative work not specifically listed in Schedule B-2, even if the work is done on site (Clause 32). The management company chooses both types of staff and supervises their work.

Who is the site staff's legal employer?

The manager and the board will decide this at the beginning of the contract. If the site staff are co-op employees, the board will approve their wages and benefits, in consultation with the manager. If they work for the management company, the manager will set their wages, but must keep the cost within the co-op's budget. The decision about who the employer is doesn't change who bears the cost.

Do we have to lay off the staff we already have?

Yes and no. If you are moving to a management company and you have your own management staff now, you will need to end their employment before the management company starts work. (Check with your lawyer on how to do this.)

If you want to keep your current maintenance staff, the new manager will supervise them but must respect the terms of any employment contracts already in place. The management company will need your approval before letting such staff members go or giving them lesser duties (Clause 40).

Can the management company hire anyone it wants?

Not exactly. The manager must hire staff who are competent and work to a high standard (Clause 9). A co-op resident can't be hired where the co-op's rules or by-laws don't allow residents to work for the co-op (Clause 38).

Nor can the manager hire site staff at a pay rate that will overspend that line of the co-op's approved budget. However, the co-op does have to budget enough money for site staff (Clause 38).

If we contract with a management company, do we need an on-site office at all?

If your co-op has or can provide office space on site for the manager, you are required to do so (Clause 37). The manager may use the space only to deliver services under this agreement. That means it cannot manage other properties from your office.

What is the term of the Management Services Agreement?

The agreement runs for two years. It is extended automatically for a third year, unless the co-op gives the management company 60 days' written notice that it does not wish to renew. (The management company does not have the same right.) If the co-op wants the manager to stay beyond three years and the manager agrees, they must enter into a new agreement. If they fail to do so and the manager stays on, the terms and conditions of the old agreement will continue to apply, but either party may cancel on 60 days' written notice (Clauses 3 – 5).

What if we aren't happy with the management company? Can we end the agreement early?

Only if the manager has broken the agreement. (The manager may also terminate early if the co-op is not meeting its obligations.) However, either party is required to give 30 days' written

notice of termination for default, including the details that justify it. If the party receiving the notice corrects the problem within 30 days, the termination is cancelled (Clause 53).

In a limited number of situations, the co-op can terminate the agreement without notice—for example, in the case of gross negligence or fraud by the manager or its staff, if a fire has destroyed most of the buildings, or if the manager ceases to hold any part of the insurance required under this agreement (Clause 54).

What does our co-op have to do under the agreement?

Besides paying the management fee and expenses promptly, the co-op is expected to co-operate with the management company so that it can do its job. For example, your co-op needs to ensure that its membership-approval process is efficient and does not act as a roadblock when the manager is trying to fill a vacancy (Clause 24). The company is to be given full access to all parts of co-op property, aside from the units, which its staff may enter on giving the notice set out in the co-op's by-laws (Clause 26). The manager is to have access to all books, records, corporate information, keys, passwords and equipment (Clause 27).

How much authority does this agreement give the manager?

Clauses 19 through 23 set it out. The manager has read-only access to the co-op's bank or credit-union account, but no authority to sign cheques. It can make purchases and let contracts in the co-op's name, but must get competitive prices and follow any co-op policy or by-law about spending. Unless previously authorized by the board, its spending authority is limited to \$3,500, plus HST, for any single or related series of expenses. It may not exceed the annual budget line for any category of spending. The decision to approve an expense beyond the spending limit or the budget line

must be approved by a board resolution passed at a properly called meeting.

However, in an emergency, the management company may spend as necessary to preserve the property, protect the residents and keep essential services in place. Prior approval is not needed, but the manager must report the emergency spending to the board as soon as possible (Clause 22).

What about insurance?

The management company must arrange for various forms of insurance and keep them in place. These include a fidelity bond, which protects against any dishonesty on the part of the company's staff, general liability insurance, errors and omissions insurance, and Workplace Safety and Insurance Board (WSIB) coverage for all staff at the property (Clauses 42 – 51). For more on the rules about WSIB coverage, please see the [Agency's e-bulletin for February 2013](#). Both the employees of the management company and anyone directly employed by the co-operative need WSIB coverage.

Anything more?

Besides forbidding unreported and uncorrected real or apparent conflicts of interest (Clause 13), the agreement says that the manager and its staff will maintain appropriate professional distance in the course of their work (Clause 17). This and other provisions call on the manager to avoid favouring any group within the co-op and to be impartial and consistent in dealing with individual residents. The manager also has to avoid non-arm's length dealing when making purchases, signing contracts or encouraging the co-op to do so (Clause 14).

If you have any further questions about the Agency's model management services agreement, please speak to your relationship manager.

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