POLICY GUIDELINES

IN PLAIN LANGUAGE

FOR CO-OPS UNDER THE

FEDERAL CO-OPERATIVE HOUSING PROGRAM WITH INDEX-LINKED MORTGAGES (“ILMS”)

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FOREWORD

The Agency for Co-operative Housing (“the Agency”) has drawn up these easy-to-read guidelines for the use of housing co-op members and managers. The guidelines explain

- how the Federal Co-operative Housing (ILM) Program works
- a co-op’s rights and duties under its operating agreement with Canada Mortgage and Housing (CMHC).

There is text in brackets next to many of the titles in the guidelines. It shows the related clause in the operating agreement. Where there is no such text, the rule is not in the operating agreement. Instead it comes from a CMHC policy. Some co-ops signed a shorter version of the operating agreement. The short version has nine pages instead of 14 and 22 clauses instead of 27. The clause numbers shown in these guidelines are from the longer agreement.

Definitions for many terms may be found at the end of the guidelines. Click on the hot link in the text to go straight to the definition.

These guidelines interpret but do *not* replace CMHC’s policies. CMHC’s policies govern wherever they conflict with these guidelines.

The operating agreement is the legal contract between the co-op and CMHC. If it conflicts in any place with these guidelines, it governs. Note that a co-op with a workout agreement with CMHC will have other duties it must meet. Those may take priority over the operating agreement.

The Agency administers the ILM Program on CMHC’s behalf in British Columbia, Alberta, Ontario and Prince Edward Island. Where these guidelines refer to the Agency, they mean “the Agency, on CMHC’s behalf.”

Special Note for Co-ops Funded after 1990

The operating agreement for co-ops approved by CMHC after 1990 is different from the pre-1991 agreement in several key ways. These include income ceilings, surcharges and the number of rent-supplement units. Please refer to item 21 at the end of this document for more on these subjects.

PURPOSE OF THE GUIDELINES

These guidelines were written to help co-operatives understand the operating agreement they signed with CMHC and related CMHC policies.

GENERAL

1.1 Index-Linked Mortgage *[Introductory paragraph]*

The co-op's mortgage under this program is an index-linked mortgage, or ILM, insured by CMHC. The mortgage lender is a *National Housing Act* (NHA) approved lender.

The mortgage is amortized over 30 years. The monthly payments are set at a rate that will fully repay the loan in this time. However, changing circumstances may mean that the loan is repaid in a little more or a little less than 30 years.

1.2 Contract with Canada Mortgage and Housing Corporation (CMHC) *[Paragraph 2(1)]*

The co-op has signed a Federal Co-operative Housing Program (FCHP) operating agreement. This agreement is a contract between the co-op and CMHC. It sets out what the co-op must do to receive financial help from the federal government. If the co-op does not follow the terms of this contract, CMHC can end that assistance.

1.3 Term of Agreement *[Paragraph 24(1)]*

When the operating agreement ends depends on which version of the agreement the co-op signed.

Some agreements on the *earlier* of

- 35 years after the Interest Adjustment Date on the co-op's mortgage, or
- the date the co-op has fully repaid its index-linked mortgage.

Some agreements end on the *later* of

- the date of the agreement plus 35 years, or
- the date the co-op has fully repaid its index-linked mortgage.

1.4 Overall Intent of the Federal Co-operative Housing Program *[Paragraphs 1(1a) & 2(1); 2(2)(a) through (c)]*

CMHC provides financial assistance to help the co-op meet its costs while it is repaying its mortgage. The agreement requires the co-op to remain non-profit and have as its main purpose housing its members.

1.5 Restrictions on Membership and Occupancy *[Paragraphs 2(2)(d) & (e); 6(2); 11]*

The co-op must be occupied mostly by households where at least one person is a member of the co-op. The member can be away for short periods, but for no more than one year in any two-year period. *[Paragraph 1(2)]*

After Year One, the co-op needs Agency permission to house non-members.

The co-op must fill a certain number of units with occupants who qualify for rent supplements.

Members may not transfer their membership or occupancy rights (the right to live in the co-op) to another person.

The co-op may pay back the original member loan, share or deposit when a member moves out. The co-op can also pay the member the cost of improvements the member made to the unit, but only if the new member pays that amount to the co-op.

The co-op's occupancy agreement or by-laws must say that it can end the membership or occupancy rights of anyone who tries to make money from their membership or occupancy, such as a member asking for "key money."

1.6 Changes to Incorporating Documents *[Paragraph 20]*

The co-op needs the Agency's written approval before making changes to its incorporating documents that would make it ineligible for assistance under the Federal Co-operative Housing Program. (For what makes a co-op eligible, see the definitions section at the end of these guidelines.)

1.7 Federal Co-operative Housing Stabilization Fund *[Paragraph 19]*

Every ILM co-op paid a sum equal to three per cent its eligible capital costs into the Federal Co-operative Housing Stabilization Fund. The fund helped prevent mortgage defaults by lending money to ILM co-ops in financial difficulty.

When the fund closed in 2010, the unspent money went to CMHC. It is to be used only to help ILM co-ops in difficulty.

MANAGEMENT AND MAINTENANCE

2.1 Good Management and Upkeep *[Paragraphs 15(1) through (3)]*

The co-op must keep proper records. CMHC and the Agency have a right to see the records on reasonable notice.

The co-op must provide efficient management of the property and keep it in good repair. It can hire its own staff or a property-management company. It must have written approval from the Agency before signing a contract with a property-management company.

The Agency may suggest to a co-op in financial trouble that it hire a new manager who can find ways to solve the problem.

If the property is not well maintained, the Agency may require the co-op to take specific action, within a specific time period, to correct the situation.

2.2 Professional Management

If the Agency believes the co-op is not well managed, it will ask the co-op to

- hire a manager if it does not have one or
- change managers.

The Agency can do this even if the co-op is not behind with its mortgage payments.

2.3 Property Inspections *[Paragraph 15(2)]*

The Agency has the right to inspect the co-op's property on reasonable notice.

The Agency's normal practice is to inspect co-ops at higher risk every two years.

A normal inspection is limited to a visual study of the building exterior, any vacant units, grounds and building common areas.

The inspector looks at the property's overall upkeep. This includes standards of cleanliness, maintenance and repair. The inspector brings any health or safety concerns to the co-op's attention right away. A short time later, the Agency sends the co-op a report with other findings.

If it has other concerns, the Agency may decide to inspect occupied units or carry out a full physical inspection of the property.

After the inspection, the Agency may require the co-op to complete certain repairs or carry out general maintenance, giving a deadline for completing the work.

2.4 Loan Repayment *[Paragraph 16(1)]*

The co-op must pay its mortgage on time. If the co-op misses a payment, CMHC may stop its assistance payments to the co-op.

FEDERAL ASSISTANCE

3.1 Timing of Federal Assistance Payments *[Paragraphs 4(5) & (6)]*

Federal assistance payments are made directly to the co-op each month. They come on the same day as the mortgage payment is due. The payments apply to the previous month. They continue for up to 35 years, until the ILM loan has been repaid.

3.2 Year One Federal Assistance *[Paragraph 4(1) & (2)]*

In the co-op's first operating year, the assistance from CMHC was equal to

- the co-op's expected revenues, as approved by CMHC
- the co-op's planned costs, as approved by CMHC. These include operating costs, the mortgage payment and contributions to the Capital Replacement Reserve and Security of Tenure Fund.

3.3 Adjustments after Year 1 *[Paragraph 4(3); (4)(4)(a)(ii)]*

The co-op's mortgage payment changes each year. The percentage change is equal to the change in the national all-items Consumer Price Index (CPI) in the 12-month period ending six months before the anniversary of the Interest Adjustment Date, less two percentage points.

The federal assistance changes by the same rate.

If the CPI increases by *less than* two per cent, the federal assistance and the mortgage payment will go down.

3.4 Reduction in Federal Assistance after Year 15 *[Paragraph 4(4); 17(4) & (5)]*

CMHC can reduce the federal assistance after year 15. It will do this if the Regular Occupancy Charges are below 85 per cent of the Market Rent.

- The maximum reduction is an amount equal to five per cent of the year-15 Regular Occupancy Charges. This amount goes up or down each year by the same percentage as the federal assistance goes up or down.
- The reduction is phased in over more than one year, if need be, so that the occupancy charges are never above 85 per cent of Market Rent.
- Each year, until the full reduction is reached, the Agency tells CMHC how the co-op's charges compare to Market Rents.
  - First it looks at the co-op's budget. It takes out any one-time revenues or costs to see what the charges would be without these.
  - Then it looks at rents charged in the co-op's local market and compares the co-op's charges to them.

- CMHC will give the co-op three months' notice of the reduction in federal assistance.
- A co-op can decide not to submit its budgets after year 16 if it agrees to accept the full reduction in federal assistance.

3.5 Information from the Co-op *[Paragraph 17(4)]*

In year 15, the co-op must give the Agency its operating budgets for

- year 15 and
- at least the first nine months of year 16.

The co-op must update the year 15 budget if it expects changes in revenues or expenses. The budgets are due at the Agency no later than six months after year 15 begins.

The year-16 budget must include

- an estimate of the maximum reduction in federal assistance for year 16
- the co-op's estimate of current similar Market Rents, if relevant
- any expected reduction in federal assistance for that year.

The co-op can ask for the Agency's help with this.

The Agency may excuse the co-op from submitting its budgets if it knows that the Regular Occupancy Charges are higher than 85 per cent of Market Rent. This is often the case where a co-op has a financial workout from CMHC.

3.6 Reversing the Reduction after Year 16 *[Paragraph 4(4)(b)(ii)]*

The co-op can request a full or partial reversal of the reduction in federal assistance if it believes it occupancy charges are higher than 85 per cent of Market Rents.

OCCUPANCY CHARGES

4.1 Regular Occupancy Charges *[Paragraphs 1(1)(f) & (i)]*

After Year One, the co-op sets the Regular Occupancy Charges each year. The charges must cover the co-op's

- operating expenses
- mortgage payments
- contributions to the Capital Replacement Reserve and
- contributions to the Security of Tenure Fund, less
    - the amount of any federal assistance, and
    - any income from investments, except for income earned on the Capital Replacement Reserve fund.

The Sector Support Levy is not included in the Regular Occupancy Charge.

4.2 **Sector-Support Contribution** *[Paragraphs 5(2) & 6(4)]*

If the co-op made a Sector Support Contribution through its ILM loan, it can require households that do not receive rent-supplement assistance to pay a Sector Support Levy.

Payment of the levy by households with rent supplements must be voluntary. Agreement to pay the levy needs to be secured only once, such as on move-in.

4.3 **Occupant Refuses to Become or Remain a Member** *[Paragraph 5(3)]*

The co-op can set a higher occupancy charge for a household who

- is not receiving a rent supplement and
- includes no persons willing to join or the co-op or stay as members.

The higher charge must not be higher than the Market Rent for the unit.

The extra revenue earned from the higher charge must go into the Security of Tenure Fund. It is on top of the co-op's regular contribution to the fund.

4.4 **Allocating Units when There Is a Subsidy Available** *[Paragraph 5(4)]*

The co-op may not discriminate between members and non-members in allocating units for which a rent supplement is available. However, it can require a non-member who is allocated the unit to join the co-op.

SECURITY OF TENURE FUND

5.1 **Purpose of the *Security of Tenure Fund*** *[Paragraph 8(2)]*

The co-op must maintain a Security of Tenure Fund. The fund is available to help households that do not have a rent supplement and find it hard to pay the co-op's full charge because

- they are paying a higher percentage of their income for housing than when they first moved into the co-op, or
- they qualify for a rent supplement but there is no rent supplement available.

The co-op may use the Security of Tenure Fund for no other purpose.

Two more rules apply to households helped from the Security of Tenure Fund:

- Their reduced charge must not be lower than it would be if they had a rent supplement.

- Their reduced charge must not be a smaller percentage of their income than they paid when they moved into the co-op.

5.2 Contributions to the *Security of Tenure Fund* *[Paragraph 8(1)]*

After the first year, the contribution to the Security of Tenure Fund must go up or down by the same percentage as the mortgage payment and the federal assistance.

5.3 Investing the *Security of Tenure Fund* *[Paragraphs 9(1) & (2)]*

The Security of Tenure Fund investments need not be kept separate from the co-op's other funds. However, the co-op must

- show the fund in a separate account in its books
- keep the fund monies only in
    - a bank, trust company, credit union or caisse populaire
    - provincial or federal government bonds
    - securities guaranteed by the federal government or a province or
    - other investments approved by CMHC.

5.4 Balance in S*ecurity of Tenure Fund* *[Paragraph 9(3)]*

Any money left in the Security of Tenure Fund at the end of a fiscal year must stay in the fund. It can be used only to help households that qualify for assistance.

However, if the mortgage holder or CMHC makes a claim against the co-op for a breach under this agreement or the mortgage, the mortgage holder or CMHC can claim the Security of Tenure Fund as part of any settlement.

RENT-SUPPLEMENT ASSISTANCE

6.1 Number of Rent-Supplement Units *[Paragraph 6(2)]*

At least15 per cent of the units in a co-op approved before 1991 must be occupied by households with rent supplements. At least 30 per cent of the units in a co-op approved in 1991 and 1992 must be occupied by households with rent supplements. No co-op may go below these levels without Agency approval.

6.2 Occupancy Charges for Income-Tested Occupants *[Paragraph 6(4)]*

The charges households with rent supplements pay are set following the rules of the Rent Supplement Program.

6.3 Barriers to Occupancy [Paragraph 6(3)]

The co-op must make sure that households eligible for a rent supplement do not face other barriers to occupancy, such as

- membership or other fees and charges
- share purchases
- member loans
- other advances to the co-operative, or
- Sector Support Levies.

The co-op can remove the barrier by allowing payment over a period of time.

DISCRIMINATION

7.1 No *Discrimination* *[Paragraph 18]*

The operating agreement sets out grounds on which a co-op may not discriminate. Provincial human rights laws include all of those grounds and others. The co-op must comply with the human rights law in its province.

7.2 Housing for Special Groups *[Paragraph 18]*

It is not discrimination if the co-op reserves housing for seniors or gives preferential treatment to disadvantaged individuals or groups.

7.3 Occupancy and Other Charges *[Paragraph 2(2)(g);5(3);10(1)]*

The co-op must treat members and non-members alike with respect to its prices, except as noted in 4.3 above or 13.2 below.

EXPENSES

8.1 Normal Operating Expenses

The normal operating costs of housing co-ops under this program include

- property taxes
- insurance
- maintenance and repairs (including cleaning services)
- utilities and services (e.g., water, electricity, gas, oil, cable or satellite TV)
- security services
- interest on mortgages and loans
- amortization of capital assets (usually, but not always, equal to the principal portion of the co-op’s mortgage payments)

- ground rent, if the co-op is on leased land and pays an annual rent
- marketing and advertising
- administration (including management and bookkeeping fees)*
- professional fees (e.g., legal, audit)
- governance, including dues to co-operative housing associations and modest social expenses that encourage member involvement
- collections and bad-debt expense
- GST/HST
- contributions to the Capital Replacement Reserve
- contributions to the Security of Tenure Fund.

The cost of the co-op's meeting and office space is an allowable operating cost.

* CMHC considers six per cent of a co-op's total operating budget to be a proper amount for administrative and governance costs, taken together.

8.2 Ineligible Expenses

The co-op may not treat these expenses as costs of operating the housing:

- the cost of running non-shelter parts of the project (e.g., a daycare centre) *[Paragraph 13]*
- the share of common operating expenses (e.g., taxes) for any non-shelter areas *[Paragraph 13]*
- the cost of non-housing benefits, e.g., vocational training resources
- costs that belong to another phase of the co-op developed under a different program*
- gifts and donations, except for small ones
- the cost of extra housing-related services (e.g., cable TV) for income-tested households
- the portion of the mortgage payment covering the Sector Support Contribution
- It must be covered by Sector Support Levies or other co-op revenues, such as income earned from investing member shares or deposits. [Paragraph 1(1)(i)]

* Where there is more than one phase, the co-op should divide co-op-wide expenses, such as administration costs, among all project phases.

The co-op can recover ineligible expenses through

- surcharges added to the occupancy charges, including Sector Support Levies
- revenue from non-subsidized sources, such as
    - earnings from the investment of member loans, deposits and shares
    - funds raised through social events
- non-shelter revenue, such as laundry and parking income.

CAPITAL REPLACEMENT RESERVE

9.1 Purpose of the Capital Replacement Reserve *[Paragraphs 7(1) & (2)]*

The Capital Replacement Reserve is used to pay for the replacement of worn-out parts of buildings and grounds. Capital items are more expensive things that last longer than one year (see 9.3). The reserve is not meant for normal maintenance or minor repairs.

9.2 Contributions to the Capital Replacement Reserve *[Paragraph 7(1)]*

The co-op must keep a Capital Replacement Reserve and add to it each year. The operating agreement sets out the amount to go into the reserve in Year One. Each year after that the contribution must go up or down by the same percentage as the mortgage payment and the federal assistance.

The Agency and the co-op can agree to change the co-op's contribution to the reserve. If they disagree about the amount needed, the co-op can have a building condition assessment and reserve study done to help the Agency and the co-op reach agreement.

9.3 Spending on Pre-approved Items *[Paragraph 7(2)]*

The co-op can use funds from the reserve to replace the items below:

- stoves and refrigerators
- laundry equipment
- roofs, including coating, flashing, eaves-troughs and downspouts
- plumbing
- heating equipment, such as
    - boilers (hot water or steam)
    - forced-air furnaces
    - radiant-heating components
    - solid-fuel-burning systems
    - chimneys
    - and related equipment
- carpeting
- exterior cladding
- windows
- asphalt.

Advance approval is not needed.

Other Eligible Spending

With the Agency's advance approval the co-op can also spend capital-reserve funds on the items below:

Capital-replacement reserve plans

Major building components

- outside wall finishes with a shorter life than the rest of the building, including exterior painting and stucco
- outside doors and windows
- outside caulking that is hard to reach and hard to replace
- above-ground waterproofing, including vapour barriers

Major building services

- domestic hot-water tanks, booster pumps, circulating pumps and sump pumps found in multiple-unit buildings
- septic tanks and tile beds
- air-handling systems

Basic facilities

- kitchen facilities, such as sink and faucet installations, counter tops and cabinets
- bathroom facilities, such as toilets, sinks, vanities, tubs, and fixtures

Safety features

- fire-alarm systems, such as hardwired smoke alarms and smoke and heat detectors linked to a central alarm
- required fire-fighting or prevention equipment
- emergency lighting
- intercom systems in multiple-unit buildings
- other safety items

Other major facilities, equipment and features

- parking lots, enclosed garages and driveway and walkway surfaces, including multiple-unit garage surfaces and concrete slabs
- garbage-disposal systems in multiple-unit buildings, such as compactors and disposers
- interior floor coverings, including those in common areas and suites
- outdoor fences
- water softeners, where the local water is very hard

Regulated changes

- changes required by the law within a fixed period of time

Other items

The items below are meant to last for the life of the building. Where they fail, replacements can be paid for from the Capital Replacement Reserve:

- foundations or significant sections of foundations
- other structural components, such as walls, floors and roof framings
- brickwork and pre-cast concrete panels
- emergency generators
- retaining walls
- electrical installations, including transformers and emergency generators
- balconies.

9.4 Capital Replacement Reserve Plan

Co-ops should draw up a Capital Replacement Plan. With a good plan in place, a co-op knows how much to put in its reserve each year and when it will need to spend money.

The Agency will approve a capital-replacement plan for up to five years. Before the five years are up, the co-op should update the plan and seek approval for the next five years.

A co-op can spend reserve funds on any item listed in its plan as long as

- CMHC or the Agency has approved the plan
- the plan
  - is a long-term plan (at least ten years)
  - has a complete schedule for replacing capital items
  - includes estimates of how much each item will cost
- the item falls within the current approved five-year period of the plan, and
- the co-op is setting aside at least the annual amount required under the plan.

New technical studies may or may not be needed when the co-op updates its plan. The update must include a refreshed schedule of replacements and a new cash-flow forecast.

Co-ops can contact the Agency or any co-operative housing federation for more advice on capital-reserve plans.

9.5 Emergency Expenditures

Emergency replacements are repairs to capital items that must be done quickly to remove or avoid a health or safety hazard. Examples are replacing a furnace in winter or fixing a structural failure that threatens the members' safety.

The co-op should complete such repairs right away, letting the Agency know as soon as possible. The co-op can pay the cost of emergency replacements from the capital-replacement reserve.

9.6 Accounting for and Investing the Capital Replacement Reserve *[Paragraph 9(1)]*

The co-op must

- show the capital-replacement reserve in a separate account in its books
- keep the fund monies only in
    - a bank, trust company, credit union or caisse populaire
    - provincial or federal government bonds
    - securities guaranteed by the federal government or a province or
    - other investments approved by CMHC.

CMHC allows the co-op to keep the reserve with its other funds. The co-op must allocate a fair share of interest earnings to the reserve.

9.7 Reserve Subject to Claims *[Paragraph 9(3)]*

If the mortgage holder or CMHC makes a claim against the co-op for a breach under this agreement or the mortgage, the mortgage holder or CMHC can claim the Capital Replacement Reserve fund as part of any settlement.

INSURANCE

10.1 Required Level of Coverage *[Mortgage]*

The co-op's mortgage contract requires the co-op to carry enough insurance to protect the mortgage lender.

The co-op should have at the least the following:

- fire insurance to cover the full cost of replacing the building(s) and equipment
- insurance for such risks as wind storms, hail, lightning and floods
- insurance with a "loss-payable" clause stating that the holder of the first mortgage is entitled to the first claims paid out.

Co-ops may insure with any federally or provincially registered Canadian insurance company.

PROPERTY TAXES

11.1 Property Taxes

The mortgage lender and the co-op will decide which one will pay the property taxes.

LENDING FUNDS AND ENCUMBERING PROPERTY *[PARAGRAPH 14]*

12.1 Encumbering Property

The co-op may not add any other mortgage or charge (an “encumbrance”) to any part of its property without CMHC’s written approval. The Agency will review any request from the co-op to encumber its property and will make a recommendation to CMHC.

12.2 Lending or Giving Away Co-op Funds

Subject to 12.3, except for small gifts and donations, the co-op may not lend or give away any co-op funds, or guarantee any debt of a third party, without the written permission of the Agency.

12.3 Co-op Control of Shares and Loans

The co-op controls members’ shares and loans. It also controls any other non-housing money, such as interest earned on the shares and loans.. Co-operative principles and, in some provinces, the provincial co-op statute, govern the use of these funds.

TREATMENT OF SURPLUSES *[PARAGRAPH 10]*

13.1 Member Involvement Resulting in a Surplus *[Paragraph 10(1) & 2(2)(g)]*

If the Agency agrees that member involvement has resulted in a surplus, the co-op may share the surplus among the members through lower occupancy charges in the future or by providing other member benefits. The co-op is not required to share this benefit with non-members.

13.2 Allocation of Other Surpluses *[Paragraph 10(2) & 2(2)(g)]*

If a surplus is not due to savings from member involvement, the co-op must use the surplus to benefit all co-op occupants, whether or not they are members. The co-op can do this by lowering occupancy charges in the future or by providing other benefits to occupants.

The co-op should share the surplus in a way that does not cast doubt on its non-profit status for income tax and GST/HST purposes (for example, by paying it out to residents).

13.3 Special Rule for Occupants Receiving Rent Supplements *[Paragraph 6(5)]*

If the co-op is using a surplus to provide special benefits to members, the benefit must go to the government agency running the Rent Supplement Program and not to the assisted household.

13.4 No Reduction in Federal Assistance *[Paragraph 4(3)]*

Federal assistance is based on a formula. As a result, the amount does not go down if the co-op has a surplus. CMHC does not recover surpluses or cover deficits.

CHANGING THE MORTGAGE REPAYMENT PERIOD

14.1 Extending or Changing the Mortgage-Repayment Period *[Paragraphs 16(2) & (3)]*

The co-op needs written approval from the Agency before

- extending the repayment period on its mortgage
- prepaying its mortgage

CMHC may approve extending the repayment period by up to five years where a co-op cannot afford its mortgage payments. If the co-op is on leased land, the lease must extend at least five years past the new repayment period.

SALE

15.1 Sale of Property *[Paragraphs 12(1),(2),(4) & (6)]*

The co-op must have CMHC's permission before selling or agreeing to sell all or part of its property. A co-op wishing to sell any property must apply to the Agency.

If the property is sold, the buyer must take on the co-op's operating-agreement obligations.

CMHC will not oppose the sale of the property to another Non-profit Housing Co-op that meets CMHC requirements and is willing to take over the operating agreement.

15.2 Approval Conditions

CMHC will normally consider the sale of a property only in these circumstances:

- the merger of a co-op with another Non-profit Housing Co-op
- the transfer of some units to another not-for-profit owner
- the transfer of all the co-op's property to a non-profit housing provider, where the co-op cannot govern itself properly.

CMHC may also approve the sale of co-op property to ensure the co-op's survival. Any such sale must be at market value.

FINANCIAL RECORDS AND REPORTING

16.1 Financial Records *[Paragraph 15(1)]*

The co-op must keep proper books. CMHC and the Agency have a right to see the books on reasonable notice.

16.2 Reporting *[Paragraph 17(1)]*

The co-op must hire a licensed public accountant to audit its financial statements each year. No later than four months after its fiscal year end, the co-op must send the Agency

- its audited financial statements
- a statement of the percentage of units occupied by members of the co-op
- names and addresses of the current officers and directors of the co-op and
- any other information that the Agency needs to confirm that the co-op is following this agreement.

16.3 Audited Financial Statements

Audited financial statements normally include

- the auditor's report and opinion
- a statement of financial position or balance sheet
- a statement of revenue and expenses (separately for shelter and non-shelter components, if applicable)
- a statement of funded reserves
- a statement of changes in fund balance(s)
- a cash flow statement and
- notes to the financial statements.

The Agency may require the co-op's statements to follow a set format.

16.4 Duties of the Auditor *[Paragraph 17(2)]*

The auditor must confirm

- that the audit has been conducted according to generally accepted auditing standards
- that the statements have been prepared according to Canadian generally accepted accounting principles (GAAP)[1]
- whether or not the financial statements present fairly the co-op's financial position and the results of its operations and cash flows during the year

[1] In practice, CMHC encourages co-ops to account for the cost of assets funded by the mortgage at the same rate as the mortgage principal is repaid. This departs from GAAP.

- that the co-op verified incomes, and collected and paid surcharges to CMHC if required under the 1991 ILM program *[Post-90: Paragraph 17(2)(d.1)]*

The auditor must explain any concerns they have about any of the points above.

16.5 Other Information *[Paragraph 17(3)]*

The Agency may ask the co-op for an explanation of information in the audited financial statements. It may ask for other information the co-op can readily provide.

ANNUAL INFORMATION RETURN

17.1 Annual Information Return (AIR) *[Paragraph 17(3)]*

The co-op has to complete an Annual Information Return (AIR) within four months of its fiscal year end.

The Agency will review the AIR and then issue three reports to the co-op:

- a **Risk Assessment Report;** the report gives the co-op a "risk rating" based largely on whether the co-op will be able to meet its financial obligations on time
- a **Compliance Review Report**; this lists any areas where the co-op is not following the operating agreement and says what the co-op must do
- a **Co-op Data Report**; this shows how the co-op and its peers have done in key areas over the past three years.

ON-SITE REVIEW

18.1 Triggers for On-Site Reviews

The Agency will do an on-site review if a risk assessment, annual compliance review, or something else suggests that the co-op may not be

- managing its property well or
- following its operating agreement.

18.2 On-Site Review

During an on-site review the Agency may

- review the co-op's books and records
- meet with the board, manager or committees
- inspect the property.

The Agency will complete a report after the on-site review. The report will say what the co-op needs to do to improve. The Agency will share the report with the co-op's board of directors. It will follow up to make sure the co-op takes care of the problems set out in the report.

GOVERNANCE

19.1 Governance

The co-op should see to its good governance by electing and training a committed board of directors.

In keeping with the co-op's non-profit nature, members of the board of directors must not receive any payment for their services as directors of the co-op.

If the Agency believes that a co-op is not well governed, it may ask the co-op to

- get training for board members
- require directors to resign if they are in breach of their duty
- hold elections for new directors to fill vacancies on the board
- consider naming temporary directors from outside of the co-op.

The Agency will agree with the board on a plan to replace outside directors with resident directors over time.

19.2 Conflict of Interest

A conflict of interest occurs when a director, officer, employee or committee member takes part in co-op decisions that could give that person, or their relative or business associate, some benefit the rest of the co-op would not have.

Any board member or employee with a conflict of interest must tell the board that they have a conflict. They must withdraw from discussions and decision-making about the matter.

BREACH OF OPERATING AGREEMENT

20.1 Breach of Agreement *[Paragraph 21]*

CMHC has strong remedies if the co-op fails to follow the operating agreement. When it sees a breach, the Agency will tell the co-op. It will explain the problem and say what the co-op needs to do. It will remind the co-op that CMHC may suspend, reduce or stop the federal assistance if the co-op does not correct the problem.

20.2 Remedies *[Paragraph 21]*

If a co-op is not following

- its operating agreement or
- an action plan approved by the Agency to resolve the problem,

CMHC may, on the Agency's recommendation,

- stop federal assistance payments on one month's written notice
- go to court to force the co-op to comply with the operating agreement, or
- appoint a receiver to manage the housing.

The receiver/manager must try at all times to fill vacant units in the co-op with members.

CMHC can use all the remedies set out in the operating agreement at the same time and any number of times. A delay in using a remedy does not prevent CMHC from using that remedy in the future.

20.3 CMHC's Right to Purchase *[Paragraph 22]*

CMHC has the right to purchase the co-op's property and the Capital replacement Reserve if the co-op fails in a serious and continuing way to follow paragraph 2 of the operating agreement. Paragraph 2 says the co-op

- must remain a Non-profit Housing Co-op
- cannot sell the housing or offer it for sale without CMHC's approval
- must be occupied by members of the co-op unless CMHC agrees otherwise
- must not discriminate against non-members in ways the operating agreement does not permit
- must not allow members to profit from their shares or right to live in the co-op
- if approved after 1990, must not purposely fail to follow the rules on income limits and surcharges

The purchase price would be

- the balance on the first-mortgage
- plus one dollar
- plus the actual cost of capital improvements made by the co-op with CMHC's agreement and not financed by the ILM or the Capital Replacement Reserve
- less the cost of correcting a breach of the ILM (e.g., making overdue payments)
- less any other encumbrances on the property.

CMHC cannot act to buy the co-op unless it first uses its best efforts to help the co-op correct the breach of paragraph 2. It must give the co-op three months' written notice of its plan to buy the property.

If CMHC

- decides not to buy or
- cannot buy the property

the co-op must make a payment to CMHC as set out in paragraph 22(d)(i) of the operating agreement. CMHC must give the co-op three months' written notice of the amount due.

If the co-op ends the agreement breach after CMHC gives notice, CMHC will stop its plan to buy the property or require a payment.

CMHC cannot use these remedies if its own failure to follow the agreement caused the co-op's failure and if the co-op fixes its breach after CMHC fixes the failure on its side.

If CMHC buys the property under this paragraph, it has to use its best efforts to sell it to another Non-profit Housing Co-op.

SPECIAL PROVISIONS FOR POST-1990 ILM CO-OPS

21.1 Income Ceilings

CMHC may set an income ceiling for the co-op. A household may move into the co-op only if its income is below the ceiling when it moves in. The co-op must verify the household's income. *[Post-90: Paragraphs 4.1(1),(2),(3) & (5)]*

It is CMHC's practice to set an income ceiling each year for each province. The ceiling remains in effect for that calendar year.

Household income means total income (before tax and net of business expenses) from all sources for everyone in the household who is at least 15 years old. There are no deductions. *[Post-90: Paragraph 1(1)(h.1)]*

21.2 Surcharges *[Post-90: Paragraph 5]*

All households living in the co-op must declare their income each year.

A household with a total income above the income ceiling must pay a surcharge. The surcharge is added to the Regular Occupancy Charge.

The surcharge amount is the lower of

- 30 per cent of the household's income above the ceiling
- the maximum surcharge.

The maximum surcharge is the higher of

- the economic rent or
- the Market Rent

for the unit, less the Regular Occupancy Charge.

The surcharge may need to be reduced to comply with provincial rent controls or guidelines, if they apply to the co-op.

A household that does not declare or give the co-op proof of its income must pay the full surcharge. *[Post-90: Paragraphs 5(2.3) & (2.6)]*

The first time a surcharge is levied, the co-op may give the household six months' notice before it applies. After that, the surcharge is set each year. *[Post-90: Paragraph 5(2.7)]*

21.3 Adjustment to Income Ceiling

If the co-op can show that the income ceiling is causing undue vacancy loss, the Agency may raise the ceiling by 20 per cent.

21.4 Surcharge Fund

All the money from surcharges must be put into a surcharge fund. [Post-90: Paragraph *8.1(1)]*

The co-op must pay the balance in the surcharge fund to CMHC no later than two weeks after the end of each month. CMHC can require the co-op to pay less often, such as once a year. The co-op must reconcile the surcharge fund no later than two months after its year end and pay over to CMHC anything still owing. *[Post-90: Paragraph 8.1(3)]*

21.5 Number of Rent-Supplement Units *[Post-90: Paragraph 6(2)]*

At least 30 per cent of the units must be occupied by households with rent supplements, unless the co-op has Agency approval for a lower number.

DEFINITIONS

Interest Adjustment Date (IAD)

The IAD is one month before the date on which the co-op's first mortgage payment was due.

Market Rent

The rent charged in the co-op's local market for housing of similar age, size and quality.

Non-profit Housing Co-op

Non-profit housing co-op is short for Not-for-Profit Continuing Housing Co-operative. Such a co-operative has these traits:

- It is a legally incorporated co-operative association.
- Its main purpose and activity is to provide housing at cost for its members. If the co-op makes any profit, it must be put toward this purpose.
- There must be no possibility of financial gain for members or any other individuals.
- It is an association in which either
  - members do not buy shares, or
  - if members do buy shares, the shares cannot be sold to anyone other than the co-op. If the shares are sold back to the co-op, the member cannot make money on the resale.
- When the co-op winds up, any remaining assets must go to another Non-profit Housing Co-op in Canada or a Canadian charitable organization.
- The co-op may not pay its directors and officers for their services. It may repay them for reimbursing reasonable expenses that result from their duties.
- Directors are elected at meetings of members, which also approve annual budgets and financial statements. Directors and officers are accountable to the members.

Regular Occupancy Charge (ROC)

The ROC is the amount of income needed from each unit such that the total of the ROCs will equal the co-op's total operating costs, less

- the federal assistance,
- income from the co-op's investments (except for interest earned on the replacement-reserve fund),
- income from Sector Support Levies, and
- any other revenue earned by the co-op.

Sector Support Contribution

A Sector Support Contribution is a payment made to support the co-operative housing sector and funded from the co-op's mortgage. The maximum permitted contribution was one per cent of the co-op's approved capital cost.

Sector Support Levy

The levy is an amount added to the Regular Occupancy Charge to cover the cost of the Sector Support Contribution.

Year One

Year One is the year beginning at the co-op's interest adjustment date (IAD). Each year following Year One is numbered in sequence.