



Questions and Answers Agency's Model Management Services Agreement



THE AGENCY
FOR CO-OPERATIVE
HOUSING

L'AGENCE
DES COOPÉRATIVES
D'HABITATION

What is the Model Management Services Agreement?

The Model Management Services Agreement is a contract the Agency has drawn up for housing co-operatives hiring 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 how it will be paid. It includes schedules that list the core property-management services, extra services that housing co-operatives with a financial workout may need and extra member services co-ops without workouts may wish to purchase. Some useful reporting forms are attached. The Agency also has a form for boards to use when evaluating their manager's services.

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

Clients with financial workouts that contract with a management company will use the agreement. Other co-ops are welcome to use it, but do not have to do so.

The model agreement is meant only for federal-program co-ops that hire a company to manage their property. It is not intended for co-ops that hire their own employees nor for co-ops in Ontario that are under municipal oversight.

What is the manager paid to do?

The model agreement requires the property manager to perform "all duties that are normal or necessary for a manager of a non-profit housing co-operative similar to the Co-operative" (Clause 6). This includes the things listed in Schedule B: Core Property Management Duties, but isn't limited to that. The manager must work as few or as many hours as it takes to get the work done. Its fee does not vary with the hours worked. This is the main difference between contracting with a company and hiring an employee.

Under the model agreement, the manager must meet certain standards of performance. These include delivering "the Services in a faithful, diligent, efficient and honest manner using its best skill and judgement." For example, the manager must take "all reasonable steps to meet a high standard of management and

maintenance of the Property and to maintain full occupancy” (Clause 11).

In working to a high standard, the manager has fixed turnaround times for a specific list of tasks (Clause 12). These are called “service levels” and are set out in Schedule B-1. For example, the manager must acknowledge members’ service requests by the next business day. It must produce monthly financial statements by the 15th of the month.

Will the manager have fixed on-site hours?

Staff in the company’s own back office can do much of the work—jobs like bookkeeping, taking calls and responding to e-mails from members, writing reports to the board, and planning maintenance and capital replacements. Of course, some tasks must take place on site, such as meeting members, meeting with the board, inspecting and showing units, managing parking and getting occupancy agreements signed. The manager will have to come on site as often as necessary to perform these tasks.

The agreement requires the manager to “make a member of its staff available to meet with Members on site as needed...” (Clause 13). The Manager agrees with the board on a fixed time and number of hours each week when the Manager will have a person on site for this purpose and cannot charge extra for this service (Clause 13).

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, ready to deal promptly with any maintenance or operational emergency (Clause 13).

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

The agreement sets out regular reports the manager must present to the board. These include reports on vacancies and unit turnover, arrears and any rental incentives given (Schedules B-4, B-5 and B-6). Schedule B-1 also sets clear standards for the timing of all routine tasks, e.g., when a notice must be sent to a member who hasn’t paid. All this, and the list of tasks in Schedule B itself, should give the board confidence that the management company knows what its duties are.

How is the management company paid for its work?

The co-op pays the management company a fixed share of revenue collected every month, plus taxes (Schedule A, clause 4). The agreement calls this revenue “Effective Gross Income” or EGI. See clause 1(i) of the agreement for details about what is and what isn’t in EGI. The manager 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 30). 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 37).

If a household is being evicted, the Board may choose to hire the manager to provide paralegal services through an affiliated company. The manager would receive an additional fee for this (Clause 35).



A co-operative may also decide it wants to hire the manager to provide Additional Member Services for an extra fee, although this option is not available to an Agency client with a workout. These additional services comprise various forms of support for members and residents, as well as assistance in organizing member involvement (Schedule E).

Where the management company provides the workout-related services listed in Schedule D, a premium is charged (Clause 34). 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 39). The manager cannot make a claim for travel to and from the property, but can charge for mileage and parking expenses while travelling in town on co-op business (Clause 38).

When is the manager paid?

At the start of this agreement and the end of the co-op's fiscal year, the management company submits an estimate of its monthly fee, using the form in Schedule B-2. The estimate is based on the co-op's operating budget. On the last day of the month, the manager will present an invoice for this estimated fee and acceptable expenses. Payment is due when the invoice arrives (Clause 40). The manager may choose to be paid by pre-authorized withdrawals from the co-op's account (Clause 42).

Every three months, the management company will compare what it has billed with the co-op's results, using the form in Schedule B-3. If there is any difference, the manager will either present an invoice or repay the co-operative.

No more than one month after the co-op files its Annual Information Return (AIR) with the Agency, the manager will reconcile its charges against the AIR. Any

under- or over-payment must be settled within 15 days (Clause 41).

Who pays the site staff's wages?

That depends on what they do. The wages for maintenance staff hired by the manager to look after the property are paid from the co-op's operating budget (Clause 44).

The management company's fee covers the cost of all staff doing management or administrative work, whether it is done on site or off site (Clause 38). 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, on the manager's recommendation. If they work for the management company, the manager will set their wages, but must keep the cost within the co-op's budget. This decision about the formal employer doesn't change who bears the cost.

Do we have to let go the staff we already have?

Yes and no. If you have chosen to switch to a management company and you already have your own management staff, 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 formal board approval first before letting such staff go, cutting back their hours or giving them lesser duties (Clause 46).



Can the management company hire anyone it wants?

Not exactly. The manager must provide staff who are competent and work to a high standard (Clause 6). 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 44).

Nor can the manager exceed the co-op's approved budget for maintenance staff. On its side, the co-op is required to budget enough money for maintenance staff (Clause 44).

Our co-op has never had an office. If we contract with a management company, would that pose a problem?

As we've said, certain activities normally take place on site, but if your co-op has no office, you do not need to rent one for your manager. However, if your co-op has or can provide office space on site for the manager's use, you are required to do so and to equip it fully for business purposes (Clause 43).

What is the term of the Management Services Agreement?

The agreement runs for the period set out in Schedule A. If the co-op wants the manager to stay longer and the manager agrees, they must enter into a new agreement. If they fail to do so and the manager stays on, the appointment will continue on a month-to-month basis. All other terms and conditions of the old agreement will continue to apply. Either party may end a month-to-month arrangement by giving the other 30 days' written notice (Clauses 3–4).

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

You can end the agreement in certain situations, and so can the manager.

The manager may end the agreement on 15 days' written notice if its invoices to the co-op go unpaid (Clause 56 (a)).

Either party can end the agreement if the other party has not met any other obligation. It must give 30 days' written notice of termination, giving the details of the default. If the party receiving the notice corrects the problem within the 30 days, the termination is cancelled (Clause 56 (b)).

No earlier than 18 months after the manager starts, either the co-op or the manager may end the agreement without offering a reason, but must give 60 days' written notice.

In a limited number of situations, the co-op can terminate the agreement without notice—for example, in a 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 no longer holds all the insurance required under the agreement (Clause 58).

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

Besides paying the manager's 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, the 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 vacant units (Clause 26 (d)). The manager is to be given full access to all parts of co-op property, aside from the units, which its staff may enter in an emergency or on giving the notice set out in the co-op's by-laws (Clause 28). The manager is to have access to all the co-op's



books, records, corporate information, keys, passwords and equipment (Clause 29).

How much authority does this agreement give the manager?

Clauses 21 through 25 set out the manager's authority. The manager has read-only access to the co-op's bank or credit-union account but is not authorized 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 \$5,000, plus taxes, for any single or related series of expenses, such as repairing and redecorating a unit. Spending above this limit must be approved by a board resolution passed in advance at a properly called meeting.

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 24).

What about insurance?

The management company must ensure that the co-operative has fidelity bonding, property insurance, general liability insurance, directors and officers insurance and rental-income insurance (Clause 51).

The manager must also maintain its own insurance at an appropriate level of coverage, including general liability insurance, errors and omissions insurance, and a fidelity bond that will protect the co-op in case of losses through dishonesty on the part of the company's personnel (Clause 53).

In addition, the manager will arrange for provincial workplace safety insurance for all direct employees of the co-op. If legally required, the manager must obtain coverage for its own employees (Clause 52). If it chooses not to insure an employee of its own for whom

coverage is optional, any claim that arises is the responsibility of the manager.

The management company is fully responsible for the honesty of all personnel of the manager who work at the co-op and for any losses that are due to negligence, omission or wrongful acts committed by the manager or staff it supervises. This applies even if the manager's own insurance does not cover the loss (Clauses 48-49). The manager must take prompt action to manage and limit damage from events that could lead to a claim. It must notify the insurers right away when an event occurs, file a claim and assemble any evidence that may explain what caused the event (Clause 54).

Anything more?

The agreement says that the manager and its staff will maintain appropriate professional distance in their work and avoid favouring any group within the co-op (Clause 19). The manager cannot play favourites among the different properties it manages (Clause 17). The manager must maintain an arm's-length relationship from all the co-op's suppliers (Clause 16) and must report and correct any real or apparent conflict of interest it or its staff may have (clause 15).

The manager agrees to respect the confidentiality of co-op documents and protect the personal information of co-op residents and employees, as required by law and the co-op's own policies. It will notify the Board promptly in writing on becoming aware of any failure to comply with privacy requirements (Clause 19).

The manager must put in place and follow a good system of internal financial controls (Clause 32).

If you have further questions about the Agency's model management services agreement, please speak to your Agency relationship manager or contact the Agency at info@agency.coop.





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