

# Chapter 1

## LEGAL REQUIREMENTS

Your operations are governed by several legislative acts and legal agreements, based on the housing program that funds your development, and whether your organization is a non-profit society or housing co-operative. These documents govern the organization's decisions and affect how you do business, and should be viewed as a package.

---

You can download copies of the Acts from the Internet sites listed in the Resource Directory on [page 23](#), or purchase copies from Crown Publications in Victoria at 250-386-4636 or 1-800-663-3007.

---

## Legislation

### 1) NATIONAL HOUSING ACT

The National Housing Act was drafted to give Canada Mortgage and Housing Corporation (CMHC) the authority, in part:

- To arrange cost-shared housing programs with provincial governments.
- To advance subsidies on jointly funded programs to BC Housing and other provincial housing agencies.

The National Housing Act does not explain how the programs work, but it assigns section numbers to the programs. Both BC Housing and CMHC use these numbers in our paperwork, so you need to know the section number that applies to each of your developments:

Section 27      CMHC Mortgage Assistance

Section 82(1)(a) Non-Profit Housing for the Disabled

Section 82(1)(b) Non-Profit Housing for Seniors

Section 95      **Post-1985:**

Non-Profit Regular Program

Non-Profit Special Facilities Program

Non-Profit Special Purpose Program

Non-Profit Rent Supplement Program

Co-operative Housing Rent Supplement Program

**Pre-1985:**

Provincial Rental Assistance Program for Seniors (PRAP-S)

Provincial Rental Assistance Program for the Disabled (PRAP-D)



The following section numbers were changed when the National Housing Act was amended in 1985:

<b>Previous Section Number</b>	<b>Current Section Number</b>
Section 15.1	Section 27
Section 44(1)(a)	Section 82(1)(a)
Section 44(1)(b)	Section 82(1)(b)
Section 56.1	Section 95

When the National Housing Act was amended again in 1999, sections 27 and 82 were repealed. Although these sections still apply to groups that developed housing under them, you won't find the sections or information listed in the new version of the NHA. As a result, it's a good idea to keep a copy of these sections from a previous version of the Act.

## **2) HOUSING CONSTRUCTION (ELDERLY CITIZENS) ACT (HCECA)**

This legislation was repealed in 2001, which means that housing built with HCECA grants are no longer bound by these regulations, and do not have to pay one-third of the fair market value to government if the property is sold. Societies now have greater autonomy to redevelop or re-mortgage these properties without seeking provincial government or BC Housing approval.

BC Housing and the BC Non-Profit Housing Association can provide information and advice to societies wishing to redevelop or use their properties to create additional affordable housing.

You can contact BC Housing's Manager of Program Analysis at 604-439-4711 for more information about the repeal.

## **3) SOCIETY ACT**

Non-profit societies are incorporated under the provincial Society Act, making them corporate entities. The Registrar of Companies approves the registration of new societies, their constitutions and bylaws.

If you decide to change your constitution or bylaws, the organization's name, or the number of directors, you need to pass a special resolution. The Society Act requires that eligible voting members be given 14 days notice of a meeting for a special resolution. The approval of 75 per cent of the members present at the meeting is required to pass the resolution, and there must be a quorum to hold the vote. You also have to file the changes with the Registrar. In addition, under the Society Act, you're required to:

- Forward a list of new directors and officers to the Registrar following an election.
- File an annual report that includes a copy of your approved annual financial statement.
- Keep a current register of members.
- Maintain corporate records. For a list of these records, refer to the records management section on [page 16](#).

---

For more information on the Society Act, contact the Registrar of Companies at 604-775-1046 or 250-356-8673. You can download forms required for filing from the Registrar of Companies, at [www.fin.gov.bc.ca/registries/corppg/crforms.htm](http://www.fin.gov.bc.ca/registries/corppg/crforms.htm). Chose Society from the Popular Topics listing on the right hand side of the page.

---

#### 4) COOPERATIVE ASSOCIATION ACT

Housing co-operatives are incorporated under the Cooperative Association Act. The Registrar of Companies approves the registration of a new co-operative, its Memorandum and Rules.

This legislation applies to all types of co-operatives in the province, not just housing co-ops. The Act governs areas such as how to elect or change the Board of Directors, directors' duties and standard of care, conflict of interest rules for directors, membership, membership shares, voting at members' meetings, and what must be covered in a co-op's Rules. It also covers the dispute resolution procedure, audit requirements, records and reporting requirements. A housing co-op can adopt Rules and policies that best suit the particular needs of the co-operative. You should read the Co-op Act in conjunction with a co-op's Rules, because the Act:

- Explains particular requirements not covered in the Rules, such as reporting requirements.
- Lists matters the Rules are meant to define, such as the number of directors and how the co-op can change the number of directors. For example, a co-op may set three directors as the minimum number.
- Enables co-ops to add other provisions, if they choose, such as allowing people to share memberships.

When looking for information about how the Act applies to a particular co-op, consult the co-op's Memorandum and Rules. To change your co-op Memorandum or Rules, you need to pass a special resolution. The Co-op Act requires that members be given 14 days notice of a general meeting for a special resolution. The approval of 75 per cent of votes cast is required to pass the resolution, and there must be a quorum to hold the vote. Your co-op's Rules can set a lower majority to pass a special resolution, but it must be at least two-thirds of the votes cast. Any changes to the Rules must be compliant with the Act. The change becomes effective when filed and registered with the Registrar of Companies.

In addition, under the Co-op Act, you're required to file:

- Any changes to the directors with the Registrar on the proper form, within 15 days.
- An annual report on the prescribed form.
- A change of your co-op's registered office with the Registrar.



---

You can download forms for filing from the Registrar of Companies at [www.fin.gov.bc.ca/registries/corppg/crforms.htm](http://www.fin.gov.bc.ca/registries/corppg/crforms.htm). Chose Co-operative from the Popular Topics listing on the right hand side of the web page.

---

You are also required to:

- Keep a current register of members.
- Maintain corporate records. For a list of these records, refer to the records management section on [page 16](#).

For more information on the Co-operative Association Act, call the Co-operative Housing Federation of BC at 604-879-5111 or 1-866-879-5111, or the Registrar of Companies at 604-775-1046 or 250-356-8673.

The CHF BC:

- Holds workshops on directors' rights and responsibilities, members' rights and responsibilities, meetings, termination of membership and other topics covered under the Act.
- Maintains a manual on the Act for non-profit housing co-operatives.

### **Handling Terminations in a Co-op**

Under the Co-operative Association Act, a co-op can move to terminate someone's membership if the member:

- Has not paid housing charges, following a written notice.
- Has not responded to a written request to correct a material breach of their lease.
- Has engaged in conduct detrimental to the housing co-op.

The co-op's Rules must include a provision for member termination. Co-op directors must call a meeting to vote on the termination, and all of the directors have to vote in support. You have to give the member seven days written notice of this meeting, and a statement outlining the grounds for terminating the membership. The member is entitled to make a submission to the meeting, and the co-op should employ the principles of justice in terminating a membership.

If the termination is approved, the member has seven days to deliver a notice of appeal for the next membership meeting. Unless the co-op's Rules call for a greater majority, a simple majority of votes cast by members can confirm termination of a membership for non-payment of housing charges or breaching a material condition. Members must pass a special resolution with a three-quarters majority to terminate a membership on the grounds of conduct detrimental to the co-op. The co-op's Rules may set a lesser majority required for a special resolution, but it must be at least two-thirds of the votes cast.

The process for terminating a membership in a housing co-operative is explained in more detail in the Co-operative Association Act and in a co-op's Rules. Before starting the termination process, a housing co-op should seek advice from its legal advisor or consult with the Co-operative Housing Federation of BC. In addition, the CHF BC has prepared a manual on the Co-op Act, which includes termination of membership. To obtain a copy, call 604-879-5111 or 1-866-879-5111.

### **Residents as Co-op Members**

Housing co-operatives require people to become members to live in co-op developments. When people join, they are expected to:

- Buy a share in the co-op.
- Pay a monthly housing charge.
- Attend member meetings.
- Participate in the operation of the co-op.

### **Co-op Share Purchase**

New co-op members must purchase membership shares to join a co-op, which normally range in price from \$1,000 to \$3,000. Shares also serve as the co-op's assets. A share is similar to a security deposit, because members get the money back when they leave the co-op, unless there's damage to the unit or other debts to the co-op, in which case the share can be used to cover these costs. Many co-ops do not pay interest when returning shares, and most require two months notice before moving out.

Co-ops can give applicants information about programs that provide financial assistance for purchasing shares. As well, applicants who receive BC Benefits may be eligible for some assistance to pay for the co-op share purchase. For more information, applicants should contact their Financial Aid Worker.

## **5) RESIDENTIAL TENANCY ACT**

The *Residential Tenancy Act* (RTA) covers BC residents living in subsidized non-profit housing. Under this legislation, landlords and residents of subsidized housing developments have the same rights and responsibilities as their counterparts in the private market.

Your directors and staff need to be familiar with this legislation. The Residential Tenancy Office has produced a *Guide for Landlords and Tenants in BC* that explains:

- Circumstances under which you can enter a resident's home.
- Your responsibility to provide access for residents and their guests.
- When you're responsible for repairs and services and when residents are.
- Residents' responsibility for paying rent on time.
- The arbitration process for handling landlord-resident disputes.
- Notice a resident is required to give before moving out.
- Reasons you can ask a resident to move out and how much notice you have to give.



---

You can obtain a copy of the *Guide for Landlords and Tenants in BC*, or more information about the RTA, by calling the Residential Tenancy Office at 604-660-3456 or 1-800-665-8779. Or you can download a copy from the Internet at [www.pssg.gov.bc.ca/rto/adobe/guide.pdf](http://www.pssg.gov.bc.ca/rto/adobe/guide.pdf)

---

### **Notice of Rent Increases**

You do not have to give people paying a tenant rent contribution (TRC) three months notice of a change in the TRC, because their rent is limited to 30 per cent of household income. However, you are required to give tenants paying non-RGI rents three months notice of a change in their market rent. In addition, all tenants should be notified when market rents are increasing, in case someone currently receiving a subsidy later becomes ineligible and has to pay the market rent.

The rents you charge are also subject to the rent protection provision in the RTA, which requires rent increases to reflect increased costs to the landlord.

### **Giving Notice to Enter Suites**

Under the Residential Tenancy Act, landlords are required to give residents at least 24 hours written notice that you need to enter their suites. The notice should explain the reason for access, the appropriate time of entry, and how long the work will take. Plan to complete work between 8 am and 9 pm, unless residents agree to another time. In addition, notice should not be given more than 72 hours in advance. The RTA also permits you to enter a unit without notice if:

- There's an emergency such as a fire, flooding, or burst pipes.
- People are at home and agree to let you in.
- Residents have abandoned the unit.
- The residents agreed to let you in for a particular reason, not more than a month earlier.
- You have an arbitrator or court order to enter the unit.

Giving 24-hour notice to enter and allowing emergency entrance without notice are common practices at most housing co-operatives as well.

### **Ending a Tenancy**

The most common reasons for ending a tenancy include:

- Rent has not been paid.
- Rent is habitually paid late.
- Someone refuses to submit the Proof of Income form used to calculate rent.
- Someone causes serious social problems.
- Someone causes excessive damage to the unit.

If the rent is not paid or a resident continues to pay the rent late, you can deliver a *Notice to End Residential Tenancy* form. (The Residential Tenancy Office has copies of this form.) For example, if someone says the rent cheque is enroute but usually pays late, you can deliver the notice anyway, and explain that it is automatically invalid if the rent is paid within five days of receiving the notice. People usually pay the rent when they get the notice and that's all it takes to resolve the problem.

If someone disputes a notice to end their tenancy, you will be required to attend a hearing with an arbitrator of the Residential Tenancy Office. If social problems are the reason, you must have written complaints from residents or others who have been involved—such as the police or community agencies—to prove the problem is legitimate, or the arbitrator will not rule in favour of your case. The arbitrator will expect the people who have laid complaints to speak at the hearing. Include any documentation of your efforts to resolve the situation. You need copies of any letters you sent to the resident, which point out the problem, outline steps for remediation, and state that, if not resolved, you will take action to end the tenancy.

If a notice to end tenancy goes to arbitration, send a complete package of documentation to the arbitrator and to the tenant, before the hearing. The documentation must prove the reasons you've stated for serving the *Notice to End Residential Tenancy*, whether it's unpaid rent, harassment, or excessive noise that disturbs other residents. The arbitrator will ask one side to present its case. For example, you may be asked to prove the resident did not pay rent, and will have to show the rent account. Then the resident has an opportunity to speak. The arbitrator may ask whether you would be willing to let the resident stay if the rent is paid, and it's up to you to decide. At any point in the process, you can change your mind and not proceed with ending the tenancy if you believe the situation can be resolved.

After hearing the evidence, the arbitrator will make a ruling, and the ruling is binding on both parties. If the ruling is to end the tenancy, the arbitrator will issue an order of possession that you take to the resident, which gives the resident a certain number of days to move. The resident is not required to move if they have applied for a review of the decision. If the resident does not move out and has not appealed the decision, you then have to go to Supreme Court to obtain a Writ of Possession, which can be given to a bailiff to remove goods from the unit. You will be required to pay a fee, before the bailiff will act on the Writ.

---

For more information on the arbitration process, contact the Residential Tenancy Office at 604-660-3456 or 1-800-665-8779. In addition, the BC Non-Profit Housing Association offers a workshop for non-profit societies on handling the arbitration process. Call 604-527-8859 or 1-800-494-8859.

---

## Security Deposits

The RTA allows you to collect a maximum of 50 per cent of the monthly market rent from residents as a security deposit, even if they will be paying rent-geared-to-income. Under the RTA, you must let people know if you will charge a security deposit at



the same time you sign the tenancy agreement, and people can't be asked to pay separate deposits for keys or other items.

To ensure security deposits are not a barrier to housing for people with lower incomes, you can develop an affordable payment system for residents who cannot pay the entire deposit in one lump sum payment. One option is to arrange twelve monthly instalments, where the combination of the instalments and rental payments do not exceed 33 per cent of someone's income. Or you can develop another system that works for your organization. Tenants receiving BC Benefits are eligible for assistance with the damage deposit, through their Financial Aid Worker.

Payment terms over time are consistent with the Residential Tenancy Act. Although the RTA says a landlord *may* issue a *Notice to End Tenancy* if security deposits are not paid within 30 days of entering the tenancy agreement, there is no requirement that the landlord *must* issue a notice within 30 days. If the amount of the security deposit and instalment terms are stated in the tenancy agreement, and someone does not pay the instalments, they have breached the terms of the agreement. The RTA says the landlord can issue a *Notice to End Tenancy* at *any time* for failure to pay the security deposit. However, you first need to notify residents they have breached the terms of the agreement, and allow a reasonable period for them to comply.

When a resident moves out, you are required to return the deposit within 15 days, with interest. However, you may be able to use the security deposit to cover the cost of any unpaid rent, damages caused by the resident beyond normal wear and tear, or bills and costs you have to cover if someone moves out without giving proper notice. If the resident does not approve spending the security deposit to cover these costs, you will have to apply for arbitration to keep the money. Refer to the *RTA Guide for Landlords and Tenants in BC* for information on:

- Retaining or returning security deposits.
- Interest rates to pay when you return a deposit.
- Handling disputes over deposits.

## **6) EMPLOYMENT STANDARDS ACT**

If you employ people, this legislation sets out minimum standards for staff wages, benefits and working conditions. The Act defines standards for minimum wage, public holidays, vacation pay, overtime pay, pregnancy leave, notice of termination, severance pay and the maximum hours of work for employees. There's also a section with minimum rates for caretakers, based on the number of units rather than an hourly wage.

## **7) WORKERS COMPENSATION ACT**

This legislation requires most employers in BC, including non-profit societies and co-operatives, to provide workers compensation coverage for employees and contractors.

You must register with the Workers Compensation Board and pay assessments before hiring people or contracting work out. The cost of coverage varies by industry and payroll amount. The WCB will provide a quote when you register.

The no-fault system compensates workers for lost wages from an occupational injury or disease, and provides occupational therapy and vocational counselling to help people return to work. Employers fund the system, and are protected from lawsuits by injured workers. However, if you're not registered and a worker is injured, you'll be charged the total compensation costs of the claim and retroactive assessments.

If you hire contractors who carry their own compensation coverage, get their WCB account number and obtain a letter of clearance from the WCB, which protects you from liability in case the contractor's WCB assessments haven't been paid.

---

Call the WCB Employer Service Centre at 604-244-6181 or 1-888-922-2768 to register by phone, or you can download the registration form at the website [www.worksafebc.com](http://www.worksafebc.com), by clicking on WCB Forms.

---

## **8) FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

The provincial Freedom of Information and Protection of Privacy Act was established to:

- Give people the right to review any information the government and certain government-funded agencies have on file about them.
- Ensure people have the opportunity to correct any inaccurate information in their files.
- Protect individuals' right to privacy, so any information in their files is only used for the purpose it was collected, and access to personal information is restricted to those who require access.
- Give the public access to general government information, as long as no one's right to privacy is violated.

People use the Act to request access to personal files, such as patients asking to see their hospital records, employees looking through their personnel files, or, in your situation, residents or applicants wanting to see their files. The media also frequently apply for access to government files through this type of legislation.

BC Housing is governed by this legislation, which says we have 30 days to respond when someone asks for information. Although the Act does not directly apply to non-profit societies and housing co-operatives, your operating agreement gives the public access to some of your records, through BC Housing. For example, if we receive a request for information you have on file — from the media, a resident, or a contractor working for you — your organization may be required to pass the information to us so we can respond.

This legislation also gives residents the right to review their files. Your staff and Board members need to be familiar with the organization's process for responding to resident requests to see their files. We recommend you provide residents with personal



information they request from your files, rather than having the request go through a formal process at BC Housing. Ensure any third party information remains confidential by severing it from the files before they are viewed, copied or released. In addition, ensure only the appropriate directors and staff have access to resident files, so the personal information you collect about people remains confidential.

The Freedom of Information and Protection of Privacy Act says the information you collect about individuals can only be used for the purpose it was collected, which means personal information about residents may only be used for housing decisions and documentation.

## 9) HUMAN RIGHTS CODE

The Human Rights Code states you cannot discriminate against a prospective resident on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, gender, sexual orientation or age (covering people 19 through 64, with the exception of buildings exclusively for people 55 and older). Some exceptions allow organizations to give preferential treatment to specific groups they were set up to serve, such as a transition house for women.

## Constituting Documents

Refer to the *Governance Guide* in this Housing Provider Kit for information on your constituting documents, which include the society constitution and bylaws, and co-operative Memorandum and Rules.

## Agreements

### 1) YOUR OPERATING AGREEMENT

Each housing program has a different operating agreement, and your organization will have a separate agreement for each development you run. Directors and staff need to be familiar with the terms of the operating agreements you've signed with BC Housing or CMHC, because the agreements set out the terms and reporting requirements for your subsidized housing developments, including the:

- Roles and responsibilities of your organization and the government agency that provides funding.
- Eligibility criteria for selecting residents, tenant rent contributions and rent reviews, housing member charges and reviews.
- Budgets and financial reporting requirements.
- Rent subsidy payments.
- Record keeping requirements.
- Operational review process.
- Minimum insurance and liability coverage.



- Investment and use of rent subsidy funds.
- Dispute resolution, arbitration and intervention procedures (HOMES BC only).

Operating agreements do not allow housing developments to be sold or transferred to another group, without BC Housing approval.

### **Residents as Society Members**

Non-profit operating agreements do not prevent residents from being society members, but membership cannot be a condition for being housed in the development.

## **2) TENANCY AND OCCUPANCY AGREEMENTS**

The Tenancy Agreement Regulation of the Residential Tenancy Act (RTA) says you're required to have written tenancy agreements with residents to outline the terms of the tenancy. Ensure each resident is given a copy of the tenancy agreement no later than 21 days after the tenancy begins.

A sample non-profit housing tenancy agreement has been developed for non-profit societies, which contains the mandatory provisions from the RTA and HOMES BC agreement, and is included in the appendix on [page 28](#). You can use this version, or develop your own. Contact the BC Non-Profit Housing Association for additional sample agreements.

Co-op members sign an equivalent form called an occupancy agreement. Contact the Co-operative Housing Federation for samples and a model agreement.

You have some latitude to set conditions, as long as they respect the provisions of the Residential Tenancy Act or the Co-operative Association Act. For example, you can decide whether to allow pets, but you can't control who visits residents. The RTA also states that unreasonable terms cannot be enforced. You can't ask someone to sign an agreement saying they will not use the RTA arbitration process, for instance. Generally, tenancy and occupancy agreements govern:

- Due dates for rent and housing charge payments.
- Amount of rent and security deposit.
- Amount of the co-op share and occupancy charges.
- Period of tenancy.
- Condition and maintenance of the unit.
- Parking.
- Storage.
- Whether pets are allowed.
- Use of common areas.
- How a tenancy can be terminated.
- Moving requirements.



Under these agreements, people living in subsidized housing are not allowed to sublet their units.

The RTA and the Co-operative Association Act do not apply to some group home clients who occupy their homes by license, or other forms of occupancy. In these situations, the contract and common law govern the relationship.

In Homeless/At Risk developments that provide short to medium-term housing—such as second stage transition housing or stays under six months—we advise you to have residents sign a *Fixed Term (Term Certain) Tenancy Agreement*. This type of agreement states the term of the tenancy and contains a clause requiring the resident to vacate the unit at the end of the term.

### 3) LAND LEASES

Some sponsors own the land where their developments are located, but in other cases, a municipality, a Community Housing Land Trust, or the Provincial Rental Housing Corporation (PRHC) owns the land and leases it to a sponsor.

PRHC is a holding company administered by BC Housing, which owns real estate for social housing and leases the land to non-profit societies and housing co-operatives. The Community Housing Land Trust Foundation was created in 1993, as a non-profit society with charitable status, to acquire, create and preserve affordable housing for future generations. The land trust is intended to generate housing through public, private and non-profit developments, and is not restricted to co-ops. You can contact the Co-operative Housing Federation of BC at 604-879-5111 or 1-866-879-5111 for more information.

The land lease is the legal agreement that gives your group the right to occupy land owned by another organization. Land leases contain terms and restrictions that govern the development. A PRHC lease commits you to operating the development in a way that meets housing program goals so people who need affordable housing will benefit. The lease also prohibits selling or sub-leasing the land or buildings to another group without BC Housing approval. And the land lease stipulates that buildings cannot be torn down or rebuilt, except under certain conditions, such as damage to the development.

During the term of the lease, your organization owns the improvements on the land, and has an obligation to repair, maintain and operate the development. You are also responsible for paying the property taxes, utilities for common areas and vacant units, and installation and hook-up charges.

Since 1987, all land leases for subsidized developments have been prepaid in a lump sum, which is part of the mortgage debt that's repaid monthly. Leases established between 1979 and 1986 require monthly or quarterly payments. Leases established between 1976 and 1979 were given the first twenty years for one dollar, with monthly payments required for the last forty years of the lease.

You may occasionally receive third party inquiries about your land. For example, the municipality may want to widen the road, or BC Hydro or Telus may want a right of way for power or phone lines. When the land is owned by PRHC, please refer these requests to Real Estate Services at BC Housing at 604-433-1711. If you receive a notice of a zoning change for PRHC property or a nearby property, please let your PPM know. When the land is owned by the municipality or another agency, refer these requests to the land owner.

#### **4) MORTGAGE**

The mortgage provides the security for the loan borrowed to cover the cost of the development. Many mortgages include the cost of the prepaid land lease. Mortgages may have different terms. For example, some older buildings were financed by loans from CMHC or private lenders, with forty to fifty year terms.

Developments funded by BC Housing since 1994 have CMHC insured mortgages through private lenders. Make sure you know the mortgage renewal dates and interest rates for your organization's loan. In addition, the terms of your mortgage generally require you to tell your mortgage lender about any major repairs or changes to the land or buildings.