

# ONTARIO'S NEW COMMUNITY HOUSING REGULATORY FRAMEWORK

FREQUENTLY ASKED QUESTIONS 3.0



ONTARIO NON-PROFIT  
HOUSING ASSOCIATION

[www.onpha.on.ca](http://www.onpha.on.ca)

# ABOUT THIS DOCUMENT

The purpose of this document is to provide ONPHA membership with information, insight, and tools to support their journey through the regulatory, policy and sector transformation ahead. This document has been developed through a partnership between ONPHA, StrategyCorp and Robins Appleby LLP to provide members with a more detailed understanding of what the path forward could look like for providers approaching End-of-Mortgage (EOM) or End-of-Agreement (EOA).

As changes are announced and introduced, ONPHA has been working to understand and interpret the immediate and long-term impacts on the community housing sector. ONPHA is here to support all members and sector partners navigate this new reality by providing information and case-by-case advice/consulting.

ONPHA's role is to ensure its membership and other system stakeholders have a clear understanding of housing regulation changes. It provides support and advice to those seeking to navigate this change, based on insights gathered from government decision makers. This document is a living document that will evolve in response to feedback, and/or if more information and change is introduced that must be accounted for. It is also part of a broader suite of EOM/Regulatory change considerations, advice and publications ONPHA will provide to its members.

## PURPOSE OF THIS DOCUMENT

The purpose of this document is to introduce ONPHA's five-stage process for provider transition into the new system environment and begins the process of describing relevant details of the process. This document includes initial readiness questions members can ask themselves as they begin this journey to transition.

## WHO SHOULD USE THIS DOCUMENT?

This document is designed to help ONPHA members who are thinking about what steps to take to move forward.

The regulatory changes ahead are complex and are expected to result in fundamental changes in how services are funded and ultimately delivered across the province. As a result, ONPHA strongly recommends a collaborative partnership with the Board of Directors and Senior Management Teams on this journey. The expertise of each group will play an important role in negotiating effective and informed legal agreements with funding partners that will have implications for ten (10) years or more.

## ABOUT THE ONGOING TRANSFORMATION OF THE COMMUNITY HOUSING SECTOR:

In April 2019, Ontario released the Community Housing Renewal Strategy outlining government’s plan to work with partners to stabilize and grow the community housing sector.

In 2020, enabling legislative amendments were made to the Housing Services Act, 2011 (HSA). These changes were intended to:

- Create a streamlined framework for Service Managers and Housing Providers to continue delivering community housing;
- Modernize accountability approaches by broadening the types of housing assistance that can be counted towards required service levels; and
- Require Service Managers to have an access system for forms of housing assistance in their service areas.

The Ministry of Municipal Affairs and Housing (MMAH) has implemented changes to O. Reg. 367/11 intended to address key roadblocks and opportunities within the system. These changes are intended to “work together to create the foundation for mutually beneficial service relationships between Service Managers and Housing Providers, modernize accountability approaches to put people first, and update rules for Service Managers to improve access to housing assistance for people most in need”.

For most providers in Ontario, the transformation is most impactful at the EOM or EOA period. Over 600 existing mortgages and agreements are expected to expire over the next number of years in Ontario, which will trigger a newly-developed process between Service Managers and providers to negotiate a service agreement as the mechanism to remain within the HSA (including its funding regime). The remainder of this guide is designed to provide ONPHA members with information, insights and tools that can be used to navigate the transformation, as well as individual negotiations for new service agreements.

*The remainder of this document provides answers to Frequently Asked Questions (FAQ) related to the transformation and its key details. This FAQ is the third version ONPHA is publishing – the original draft was published in summer 2022.*

### QUESTIONS? COMMENTS?

If you have any questions or comments about the information in this guide, please contact [policy@onpha.org](mailto:policy@onpha.org)

# QUESTIONS AND ANSWERS

## TOPIC #1: OVERVIEW

### **1.1 Will ONPHA provide advice/consulting to its membership who require major assistance in negotiating with their Service Manager or funding partner to ensure they make effective and informed decisions on these rather complicated legal documents? On a case by case basis?**

Yes, ONPHA is actively in the process of launching a program for members that provides access to third- party consulting and advisory services. Included in the service will be strategic, assessment and implementation support through ONPHA's Community Housing Transformation Initiative (CHTI Hub) and ONPHA's Sector Transformation Enterprise Program (STEP). This program is expected to launch in the Summer. If members have an immediate need (e.g. an impending expiry/negotiation with the Service Manager), they can reach out to [policy@onpha.org](mailto:policy@onpha.org) to identify their immediate support needs.

### **1.2 How does an organization confirm if they are a designated Part VII Housing Provider?**

The housing projects under Program Category 6(a) or 6(b) are Part VII housing projects. Look for your housing project in O. Reg 368/11 and what the "Program" column says for that housing project.

### **1.3 How do Housing Providers preserve units in perpetuity?**

This question is very broad and difficult to answer completely, but there are various tools through governance mechanisms (e.g. clauses in articles of corporations), contractual means (e.g. clauses in funding agreements) and other legal means (e.g. restrictions on title) that can be employed.



## TOPIC #2: SERVICE AGREEMENTS

**2.1 If we wish to enter into a new agreement is there a mandate given to the Service Manager to reduce the subsidiary levels from what has been historically provided? In early conversations with our Service Manager, we get a real feeling that the subsidiary will be reduced and that is making us concerned about financial viability.**

Each Service Manager will be developing its own approach to housing projects at EOM/EOA. Service Managers still have to meet the minimum service levels set by the province and it is usually more cost-effective to provide subsidy to affordable housing providers compared to private landlords so there is an incentive to continue providing subsidy to non-profit housing providers

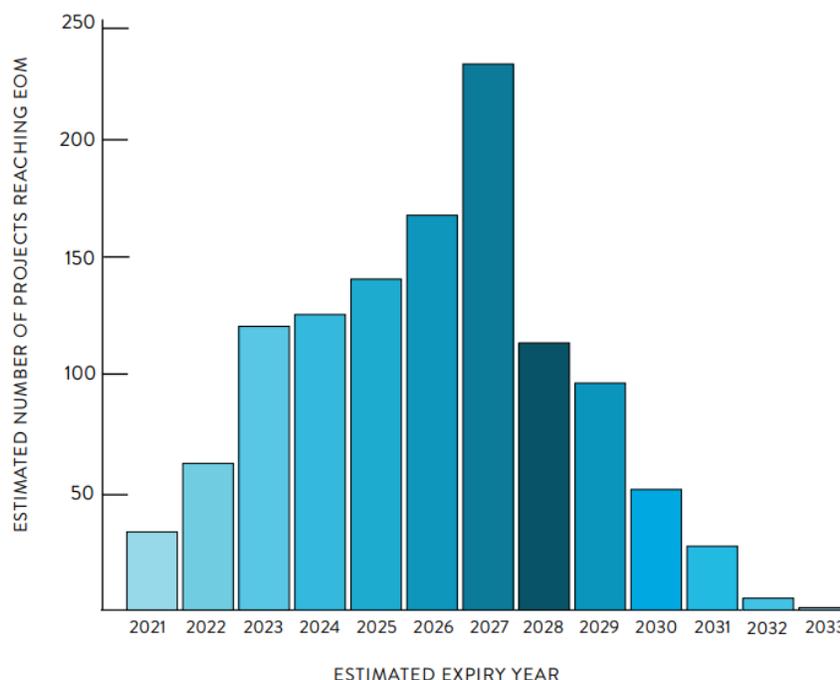
**2.2 When is tenant consent required in the context of a service and/or exit agreement?**

No tenant consent is required if tenants are continuing to live in their unit, receiving RGI assistance and no changes to the lease terms. Consent would be required if they are being asked to relocate or if there are changes to the lease.

**2.3 There are over 2,000 housing projects coming to the EOA/EOM in the next 5 years. Is there an approximate breakdown exiting/negotiating by year, and how will that distribution impact the negotiating environment over time?**

Based on initial research by ONPHA, there is expected to be a curve-like trend in the number of agreement/mortgage expiries expected over the next ten years.

**ESTIMATED EOM DATES IN ONTARIO BY NON-PROFIT PROJECT**





**2.4 How would ONPHA suggest the Providers enter into an agreement when they have 9 projects in which EOM have already occurred to 40% of their units and the remaining will have EOM spaced over the following 5 years?**

Wherever possible, ONPHA is advising providers to take a ‘portfolio’ approach to managing agreement expiries and related negotiations. If there are multiple projects expiring over multiple years, it is recommended that providers take the same steps highlighted in the Transformation Guide so that the appropriate due diligence and readiness work is completed in advance of any negotiations taking place.

**2.5 Should Housing Providers enter into ‘interim’ agreements with their Service Manager to maintain existing conditions before finalizing the finalized service agreement?**

There is no legal mechanism allowing for interim agreements. The ONPHA Transformation Guidebook provides guidance about how to operate in the case of an expiry occurring and no new agreement being in place (e.g. “the status quo”).

**2.6 Is there a legislated timeline to sign a new operating agreement or can “status quo” conditions go on indefinitely? If not, for how long and controls that deadline?**

There are no legislated deadlines. Timelines will likely be driven by housing provider need and the ability of service managers to respond.



## TOPIC #3: SYSTEM EXIT

### **3.1 In the context of an exit agreement, do the proceeds of a sale under need to be used for new units or can they be used for repair or renewal?**

There is no requirement either way. The plan for use of funds will be negotiated with the Service Manager.

### **3.2 In the context of an exit agreement, can a property be sold if RGI tenants are still Insitu?**

Yes, the property can be sold, but you must address the in-situ RGI tenants. One option used is to transfer the tenants elsewhere, which requires tenant consent.

### **3.3 If you exit the operating agreement (and are operating without subsidy), do you still have to offer RGI Units?**

In this situation there would be no obligation to offer RGI assistance to new tenants, however the legislation requires that you continue to address existing RGI tenancies by either continuing RGI subsidies or by providing alternative benefits. If there are changes to the leases between existing RGI tenants and the housing provider, you would need consent from those tenants to change the lease terms.

### **3.4 If a housing provider exits, once the in-situ RGI tenants moveout, is there a requirement to continue offering RGI units in the future?**

Assuming no other agreements that carry affordability obligations (rent supplement agreements, contribution agreements, etc.) then no.

**3.5 Do we have any more information about how the delisting process works? I have seen housing providers who have reached EOA and were not removed from O. Reg. 368/11 before the moratorium and still remain. Who would initiate this process and if the housing provider does nothing will they continue to be exempt from the RTA exemptions on rent setting rules? Technically they do not meet the “continues to operate” criteria in the Section 7.**

The “de-listing” only happens if there is an exit agreement. In other words, a housing provider can reach EOA and not be de-listed. Also, it appears that O.Reg 368/11 is not being updated on a rolling basis to remove units that have signed an exit agreement, but this won't impact the legality of their exit. The process for de-listing can be initiated by either the housing provider or the service manager but ultimately there has to be an agreement between the two.

The RTA exempt status would have to be reviewed on a case-by-case basis. It's possible a housing provider at EOA could still be exempt under Section 7 of the RTA if they are a Part VII housing project or if they have an ongoing agreement with the municipality. However, it would technically be possible for a housing project at EOA to still be listed under the HSA yet not be exempt from the rent control provisions under the HSA.

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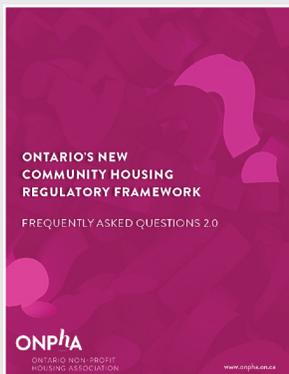
## NEED MORE SUPPORT?

ONPHA is proud to announce the launch of our [Community Housing Transformation Initiative](#)! This hub is designed to help housing providers prepare for the changes to the Housing Services Act that came into effect on July 1, 2022.

The hub provides a comprehensive suite of resources and tools to help housing providers understand the new system environment and make the transition smoother. It includes guidance documents and access to ONPHA's Service Agreement and Exit Agreement Templates. These templates are designed to help housing providers navigate the transition process.

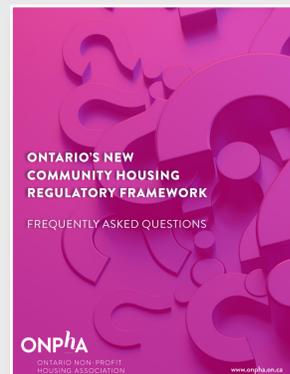
If you need additional assistance, please reach out to [member.support@onpha.org](mailto:member.support@onpha.org).

### ONTARIO'S NEW COMMUNITY HOUSING REGULATORY FRAMEWORK - FAQ 2.0



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### ONTARIO'S NEW COMMUNITY HOUSING REGULATORY FRAMEWORK - FAQ 1.0



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## ONTARIO NON-PROFIT HOUSING ASSOCIATION

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