



Housing Services Notice

Date: December 7, 2021

HSN#: 2021-16

This applicable legislation/policy is to be implemented effective this date by the housing provider(s) under the following programs:

Please note if your program is **not checked**, this change is **not applicable** to your project.

- Federal Section 95 Non-Profit Housing Program
- Federal Section 26/27 Non-Profit Housing Program
- Federal Urban Native Non-Profit Housing Program
- Private Non-Profit Housing Program (Provincial Reformed)
- Municipal Non-Profit Housing Program (Pre-1986)
- Local Housing Corporation
- Rent Supplement Programs
- Affordable Housing Program (AHP)/Investment in Affordable Housing Program (IAH)/Social Infrastructure Fund (SIF)
- Housing Access (Centralized Waiting List Services)

Subject: Ontario Not-for-Profit Corporations Act, 2010 (ONCA)

Reference:

Province of Ontario News Release:

<https://news.ontario.ca/en/release/1000749/province-launches-new-modern-ontario-business-registry>

Province of Ontario Rules for not-for-profit and charitable corporations

<https://www.ontario.ca/page/rules-not-profit-and-charitable-corporations#section-0>

Province of Ontario Not-for-Profit Corporations Act, 2010 – Transition Considerations

<https://www.ontario.ca/page/not-profit-corporations-act-2010-transition-considerations>

Background:

After many years of development, the Ontario Not-for-Profit Corporations Act, 2010 (ONCA) came into force on October 19, 2021. The ONCA will provide a modern legislative framework for Ontario's not-for-profit corporations previously registered under the rules of the Ontario Corporations Act, 1990. Also on this same date, the Province also launched a new Ontario Business Registry making it easier for businesses and not-for-profit corporations to interact with the government.

Ontario has provided updated rules for not-for-profit corporations under the ONCA, that:

- simplify the incorporation process, making it easier and more efficient
- clarify rules for governing a corporation and increases accountability
- clarify that not-for-profit corporations can earn a "profit" through commercial activities (for example, selling T-shirts) as long as it is reinvested to support the corporation's not-for-profit purposes
- provide allowances for some corporations to use a "review engagement" in place of an audit (see additional consideration for social housing providers below)
- enhance member rights and outlines actions to can take if it is believed that directors and officers are not acting in the corporation's best interest
- gives members greater access to financial records

The Act provides not-for-profit corporations with a three-year transition period from the date ONCA came into force to make any necessary changes to their governing documents (letters patent, supplementary letters patent, organizational by-laws, articles of incorporation, etc.).

The Province recommends that all not-for-profit corporations, previously governed under the Corporations Act, should review and consider updating their documents by the end of the three-year transition period after ONCA comes into force (October 18, 2024), as appropriate.

Additional Considerations:

The DNSSAB recommends that any providers considering changes to their governing documents seek their own legal opinions regarding appropriateness of the changes.

Housing Providers are also reminded that along with the requirements of the ONCA, they also have requirements under the Housing Services Act and/or their Federal Operating Agreements. Under those requirements, no changes to governing documents can be made without the expressed approval of the Service Manager (DNSSAB).

Similarly, although the ONCA allows for some corporations to use a "review engagement" in place of an audit, all Housing Providers that are subject to a year-end financial review are reminded that the DNSSAB requires that they must continue to provide signed audited financial statements along with their signed Annual Information Return (AIR).

The DNSSAB requires that the membership of the corporation be restricted to only the directors of the corporation. Accordingly, a housing provider cannot make every tenant a member of the corporation. The DNSSAB does allow for tenants to be appointed as directors as long as those tenants are a small minority of the total directors (usually 1 or 2 tenant directors). Tenant directors must not have any arrears for rent, non-rental charges, or damage.

The DNSSAB will endeavor to share any additional resources that might become available to assist housing providers with their review of their governing documents.

Action:

1. Housing Providers should review the “Rules for Not-for-Profit and Charitable Corporations” and “Transition Considerations” (see links above).
2. Housing Providers should seek a legal opinion to any changes that they may be proposing under the rules of the Ontario Not-for-Profit Corporations Act before they are adopted.
3. Housing providers who are considering a change to their by-laws under the rules of the new Ontario Not-for-Profit Corporations Act must ensure that the DNSSAB approves those proposed changes before they are adopted.

If you have any questions or concerns regarding this or any other Housing Services Notice, please contact the Housing Programs Administrator assigned to your portfolio:

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Sincerely,

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