

Lambton County Community Services Housing Services Department Policy and Procedure Manual

SUBJECT: Projects in Difficulty		INDEX NO.: 1.013
EFFECTIVE: Nov. 1, 2003	APPROVED: Feb. 4, 2004	REVISED: April 2006

Policy:

Identification, management and resolution of a project in difficulty (PID) is a key objective of the Service Manager. A PID is a housing project that is experiencing a difficulty that has a material adverse effect on the housing project's governance, financial and/or operational effectiveness.

Procedure:

The following describes the procedure for identifying, managing and resolving the triggering events that lead to any housing project being in difficulty.

Identification

Identification of a project in difficulty can be by means of correspondence, written or verbal form, internal or external sources, operational reviews, and/or financial statements.

A project is considered to be in difficulty, which may form part of the Service Manager's opinion if one or more of the following are evident and / or material:

- mortgage and / or tax arrears
- evidence that the Board of Directors is unaccountable for decisions, which includes an inactive Board
- financial mismanagement
- alleged fraud
- property management problems such as technical or capital repairs problems
- conflicts of interest
- significant accumulated deficit.

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“Triggering events” (*SHRA, 2000* s. 18(2)) that can be indicative of any social housing project in difficulty and which require the service manager to notify the Minister are as follows:

- mortgage guaranteed by the Province of Ontario or Ontario Housing Corporation is in default;
- in service manager’s opinion, mortgage described in clause (a) is likely to go into default within 12 months after the end of the current fiscal year of the housing provider;
- in service manager’s opinion, housing provider is likely to fail to meet a material financial obligation within 12 months after the end of the current fiscal year of the housing provider; or
- in service manager’s opinion, the housing provider has failed to comply with an obligation under this Act and that failure is material.

The Program Administrator will notify the Manager, Housing Services Department, if such a triggering event occurs. The Manager, Housing Services Department, with concurrence of General Manager, Community Services Division, assumes responsibility for notifying MMAH if any of the above situations occur (refer to Release #19: Guide to Risk Management for Projects in Difficulty page 13, Section 2.4) Notification is done through the Provincial Risk Management Centre.

“Triggering events” (*SHRA, 2000* s. 115) that can be indicative of a project, subject to Part VI of the Act, in difficulty and which require the service manager to take action, but do not necessarily require notifying the Minister are as follows:

- housing provider contravenes the Act or the regulations;
- housing provider becomes bankrupt or insolvent, takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors;
- steps are taken or proceedings are commenced by any person to dissolve, wind up or terminate the existence of the housing provider or to liquidate its assets;
- the housing provider ceases or threatens to cease to carry on business in the normal course;
- a trustee, receiver and/or manager or similar person is appointed with respect to the business or asset of the housing provider;

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- housing provider makes a bulk sale, other than a bulk sale made under the *Bulk Sales Act*, in conjunction with a transfer approved by the Minister;
- any assets of the housing provider are seized under execution or attachment;
- housing provider is unable to meet its obligations as they come due;
- housing provider incurs an expenditure that is material and excessive, having regard to the normal practices of similar housing providers;
- housing provider incurs an accumulated deficit that is material and excessive, having regard to the normal practices of similar housing providers;
- housing provider has failed to operate the housing project properly, having regard to the normal practices of similar housing providers;
- where a housing project on land in which the housing provider has a leasehold interest under a ground lease, the housing provider contravenes the ground lease;
- in the case of a housing project comprising one or more buildings in which the housing provider has a leasehold interest under a lease, the housing provider contravenes the lease.

The Program Administrator will notify the Manager, Housing Services Department, if such a triggering event occurs. The Manager, Housing Services Department, with concurrence of General Manager, Community Services Division, assumes responsibility for deciding if “triggering event” warrants notification to the Minister.

“Triggering events” for federal projects that can be indicative of a project in difficulty and which require the service manager to take action, but do not necessarily require notifying the Minister, are as follows:

- failure to submit financial statements within requested timeframes;
- sales made without prior approval by the Ministry;
- not following agreed-to tenant selection process;
- failure to make timely mortgage payments;
- inability to pay debts;
- encumbrances made without prior approval by the Ministry;
- inefficient management;

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- refusal to allow examination of books, contracts, records;
- refusal to allow inspection of the property;
- lending or borrowing project funds;
- allowing rental units to be sublet;
- using subsidies for purposes other than housing;
- loss of charter;
- failure to provide Annual Project Data Report (APDR).

There is an additional clause in the mortgage documents for these programs that states that a breach of the Operating Agreement is a breach under the mortgage. Subsequently, the mortgage would be in default as well, which would result in the project being considered a PID despite the nature of the breach.

The Program Administrator will notify the Manager, Housing Services Department, if such a triggering event occurs. The Manager, Housing Services Department, with concurrence of General Manager, Community Services Division, assumes responsibility for deciding if “triggering event” warrants notification to the Minister.

There are many indicators that a Service Manger may need to investigate the operation of a project to determine if there is a problem. Some common indicators or warning signs are as follows:

- complaints
- irregularities found in reviewing the Annual Information Return (high vacancy, deficits)
- annual budget not balanced
- project deterioration
- violation of building, fire, health & safety requirements
- rental arrears and no collection action/strategy
- request for extraordinary expenses

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Management

If a triggering event is identified:

1. Contact Housing provider to open dialogue.
2. Contact Provincial Risk Management Centre for support and advice, if necessary. The centre is the point-of-contact for ministerial approvals.
3. Notify Housing Provider in writing. (see Exception to Rule) Notice must include:
 - particulars of a triggering event;
 - activities housing provider must carry out or refrain from carrying out or the course of action that the housing provider must take or refrain from taking in order to cure the situation that gave rise to the triggering event;
 - specify a period within which the housing provider must comply with the notice, which may not be less than 60 days from the date the notice is given; and
 - if the notice provides for the submission of a plan by the housing provider, specifying the matters that must be addressed in the plan.
4. Notify Ministry, if required, under Sec 18(2) or as determined by the Housing Services Manager. The notice must include the following: (O. Reg. 368/01)
 - full name of Housing Provider and project name;
 - description of situation and how it meets one of the criteria set out in S. 18 of Act;
 - name of person, in County of Lambton, designated as a point of contact for the provider and how to get in touch with that person;
 - if the provider has not been given a Notice and the reasons why; and
 - a copy of the Notice sent to the provider.

Exceptions to Rule (SHRA, 2000 s. 117 (3)):

Notice is not required if it is apparent that a delay could make the situation worse, and includes:

- housing provider becomes bankrupt or insolvent, takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors;
- steps are taken or proceedings are commenced by any person to dissolve, wind up or terminate the existence of the housing provider or to liquidate its assets;
- the housing provider ceases or threatens to cease to carry on business in the normal course;

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- a trustee, receiver and/or and manager or similar person is appointed with respect to the business or asset of the housing provider;
- housing provider makes a bulk sale, other than a bulk sale made under the *Bulk Sales Act*, in conjunction with a transfer, approved by the Minister;
- any assets of the housing provider are seized under execution or attachment;
- housing provider is unable to meet its obligations as they come due;
- housing provider has sold, leased, or otherwise disposed of or offered, listed, advertised or held for sale, lease or other disposal, the housing project or any part of it in a manner contrary to the Act;
- there is an emergency situation and notifying the provider may materially worsen the situation;
- a report of an audit or investigation of the provider has been (or circumstances identified in such a report have been) referred to a law enforcement agency (e.g. alleged fraud, alleged theft).

Remedies

If the housing provider meets the requirements laid out in #3 and there is resolution to the PID, a remedy shall not be exercised.

Section 117(2) of *SHRA* states that if the triggering event is mortgage default, possible mortgage default or possible failure to meet material financial obligations, the service manager must get ministerial consent prior to exercising any remedy against the housing provider.

A service manager shall not exercise a remedy unless it gives written notice specifying

- particulars of a triggering event;
- activities housing provider must carry out or refrain from carrying out or the course of action that the housing provider must take or refrain from taking, in order to cure the situation that gave rise to the triggering event;
- specify a period within which the housing provider must comply with the notice, which may not be less than 60 days from the date the notice is given; and
- specifying the matters that must be addressed in the plan if the notice provides for the submission of a plan by the housing provider; and

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the housing provider does not, within the period specified , comply with the notice or, fir the notice provides for the submission of a plan, the plan submitted does not address the matters specified of the service manager is reasonably of the opinion that the plan is not acceptable.

If remedies are to be exercised, one or more of the following options may be imposed. (*SHRA, 2000* Section 116)

- Suspending/Discontinuing/Reducing Subsidy – Service Manager must be of the opinion that the triggering event is material and substantial *and* the provider has not diligently proceeded to comply with notice given by Service Manager. Evaluate whether there would be a greater risk of eventual mortgage default or other financial implications resulting from imposing this remedy,
- Paying Creditors Directly and Reducing Subsidy Accordingly – Service Manager pays essential obligations (e.g. mortgage, utilities, taxes), and subsequently reduces subsidy by an appropriate amount.
- Performing Duties and Exercising Powers of Housing Provider under the Act – Service Manager assumes the supervision of management agreements either by direct management or by hiring property management firm. Refer to *SHRA, 2000* Section 1119(1), (2), (3) and (4).
Note: If this option is chosen, legal advice should be sought regarding indemnification of staff.
- Appointing a Receiver/Manager and/or Requesting Superior Court of Justice to Appoint Receiver/Manager – This option is usually used in circumstances such as suspicion of fraud, significant financial problems or other serious events. Refer to *SHRA, 2000* Section 120 re: circumstances that must occur prior to the appointment of a Receiver.
Note: The initial appointment of receivers cannot extend beyond a one-year period. After one year, the Service Manager must make an application to the Superior Court Justice asking for the Court to appoint a Receiver.

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- Removal of some or all of the Directors of the Housing Provider – This step may be taken only with prior written consent of the Minister. Refer to *SHRA, 2000* Section 121.
- Any other remedy Service Manager has in law or in equity – This could include appointment of supervisory manager for an interim period, obtaining an Anton Pillar Order to seize assets or involving law enforcement agencies.
- Training – Refer to Section of the Act – Service Manager may impose a requirement on the housing provider to ensure that a director, employee or agent receive training in respect to the triggering event [117(4) of the Act]. This option may be used in conjunction with other remedies. Sector organizations are possible sources for training.

There is no Statute of Limitations on the time a Service Manager may take action. Section 116 of the Act states that should a Service Manager delay in imposing a remedy, the delay does not waive the Service Manager’s right to impose one at a later time.

Resolution

To determine that a Housing Provider is no longer a project in difficulty:

- review compliance with terms of notice or action plan according to established time frames;
- engage in compliance reviews as per established time frame to ensure triggering event has been rectified; and
- review financial statements to ensure triggering event has been rectified.

The Manager, Housing Services Department, with concurrence of General Manager, Community Services Division, will notify, if necessary, MMHA of change in status of project in difficulty.