

Guidance Note

Subcontracting by a Community Housing Provider

Purpose of this guidance note

To provide information on the Community Housing Regulatory Authority's (the Authority's) requirements regarding contractual arrangements between community housing providers (CHPs) and subcontractors. This includes guidance on which organisation will be held responsible for meeting the prescribed Performance Standards.

Introduction

The subcontracting of services by CHPs can be complex. Increasingly, we are dealing with applications where organisations seeking registration as a CHP wish, for a variety of reasons, to subcontract tenancy management, property and/or asset management services.

In this Guidance Note, we outline our position on how we view subcontracting arrangements in terms of satisfying the initial and ongoing registration requirements.

Is subcontracting allowed?

Yes – to a certain extent.

A CHP *can* subcontract the functions of tenancy management, property and/or asset management services, but it must have the operational ability and resources within the organisation to manage those contracts and monitor service delivery in accordance with the Performance Standards. We refer to this as being an organisation of enduring substance i.e. not a shell company.

However, a CHP *cannot* delegate accountability for meeting the eligibility criteria and Performance Standards to another organisation, even if that

organisation is also a CHP.

What does this mean?

In practice, this means the CHP will be held accountable for meeting the Performance Standards regardless of any subcontracts in place.

The CHP must:

- have its own policies and procedures in place that meet the Performance Standards, and these must be in the name of the organisation seeking registration (not in the name of the subcontractor)
- advise the Authority of its intention to subcontract via a Change and Disclosure report
- report to the Authority on an annual basis on how they and the subcontracted party are meeting the Performance Standards
- have an executed agreement in place (this could include term sheets) that specifies:
 - what core functions have been subcontracted, and which party is responsible for specific activities related to these functions
 - the financial arrangements in place between the parties to cover the costs of the delivery of those functions
 - the delegations and lines of reporting between both parties, including advising each other of complaints and the procedures for dealing with them
 - how the subcontracted party is complying with the Performance Standards and following the policies and procedures of the CHP that have been approved by the Authority
 - enforceable remedies for any

breaches of the agreement, particularly following a breach of the Performance Standards

- transition clauses in respect of actions that must be taken if the agreement is terminated by either party
- ensure those contracts are actively managed by suitably skilled staff within the CHP's organisation, to ensure compliance with its own policies and procedures
- respond to any problems with subcontractors that could result in a failure to meet the Performance Standards
- comply with all applicable New Zealand legislation.

The CHP is the entity that engages directly with the Authority and the Ministry of Housing and Urban Development's Housing Supply, Response and Partnerships team. It is the only entity that can receive Income Related Rent Subsidy payments for those properties that are the subject of the executed agreement.

Why does the CHP need its own policies and procedures?

We register organisations that have demonstrated the capacity to meet the prescribed Performance Standards. The policies and procedures provided by the organisation seeking registration are the ones we have assessed, and the ones we will hold the CHP accountable to for compliance purposes.

A CHP that subcontracts functions may, for any reason, change its provider at any time. If the policies and procedures belong to the subcontractor, this organisation could take these policies and procedures with them when the contract is terminated or expires. Our focus, should a change of subcontractor occur, is to minimise the disruption to tenants. Therefore we require the policies and procedures to be in the name of the CHP that

is subcontracting its functions. That way, if there is a change in subcontractor, a new one can be brought in and held to the same policies and procedures that the Authority has assessed as meeting the Performance Standards.

What happens if you change your subcontractor?

To ensure registration is maintained, the CHP that is subcontracting its functions must have a suitable transition plan in place to minimise disruption to tenants. It must also ensure any new subcontractor brought in delivers the contracted functions in accordance with the Performance Standards.

A [Change and Disclosure Report](#) would need to be submitted to the Authority regarding the change of subcontractor. We will likely also request a copy of the transition plan to ensure disruption to tenants is minimised.

Further information

We recognise this is a complex issue, and there can be different variations when it comes to subcontracting tenancy, property and asset management services. If your organisation is thinking of entering into an agreement to subcontract services, we encourage you to talk to us as soon as possible to discuss your proposed approach. Contact us at chra@hud.govt.nz.