

# Expiry of Operating Agreements Peer Exchange

**INNOVATION FORUM 2017**

APRIL 6, 2017 >> NOVOTEL HOTEL >> TORONTO



# Financing and Legal Considerations

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# OPPORTUNITIES IN AFFORDABLE HOUSING



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# AGENDA

EARLY EXPERIENCE

1

ADVICE & APPROACH TO  
EOA

2

INFORMATION REQUIRED

3

THE PROCESS

4

CASE STUDIES

5



# EARLY STAGES OF EOA

## INITIAL EXPERIENCE

- Uncertainty of the process
- Constant red tape
- Different responses from different regions
- Fear from groups to proceed

## RECENT EXPERIENCE

- Creativity
- Openness
- Communication



# ADVICE FOR EOA CLIENTS



## CURRENT EOA

- Be prepared to discuss your 1-2 year plan
- Communicate your long term goals

## PROACTIVE?

- Optimize business operations before exiting operating agreement



# APPROACH TO EOA CLIENTS

## TOP QUESTIONS FOR EOA CLIENTS

### *TIMING/VIABILITY OF FINANCING*

1. When does your operating agreement expire?
2. Are there any additional rental subsidies or program you are committed to?
3. When are the funds required?

### *DETERMINE FINANCING GOALS*

1. What is the use of the funds?
2. What is your vision for the organization?
3. Is there anything changing with the property after the operating agreement?

### *UNDERSTANDING BUILDING OPERATIONS*

1. Is the organization subsidizing rents from operating budget? Will this continue at the same rate?
2. Does the property need capital repairs?
3. Have you completed any capital repairs to the property in the last 2-3 years?



# MANDATORY INFORMATION: INITIAL ANALYSIS

## 1. Current Rent Roll

- Including all rents paid by the tenant
- Rent subsidies and description of agreement(s)

## 2. Financial Statements

- Previous 2-3 years

## 3. Explanation of any unusual expenses

- Example: Repairs and maintenance is typically around \$800-1200 per unit per year
- Remove one time capital expenditures

## 4. Description of the organization's assets and knowledge

- Experience of the board
- Does the board or entity own any other properties?



# UNDERSTAND THE REFINANCING 5 STEP PROCESS

Step1:  
develop  
strategy

## Step 1: develop strategy

- **Coming to end of operating agreement**
  - capital upgrade strategy
  - budget to continue to provide affordable units
- **Leaving your agreement early**
  - speak with your service manager
  - develop a sustainable plan



# UNDERSTAND THE REFINANCING 5 STEP PROCESS

Step1:  
develop  
strategy

Step2:  
waiver  
application

**Step 2:**  
Waiver  
application

Apply for section  
9(d) waiver with  
your service  
manager



# UNDERSTAND THE REFINANCING 5 STEP PROCESS

Step1:  
develop  
strategy

Step2:  
waiver  
application

Step3:  
CMHC  
application

## Step 3: CMHC application

- Work closely with your lender to determine loan options
- You will need to provide: Rent roll, operating statement, financial statements



# UNDERSTAND THE REFINANCING 5 STEP PROCESS

Step1:  
develop  
strategy

Step2:  
waiver  
application

Step3:  
CMHC  
application

Step 4:  
mortgage  
approval

**Step 4:**  
mortgage  
approval

- Valuation analysis is completed
- Site inspection is completed
- 4-6 week timeline



# UNDERSTAND THE REFINANCING 5 STEP PROCESS

Step1:  
Develop  
strategy

Step2:  
waiver  
application

Step3:  
CMHC  
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Step 4:  
mortgage  
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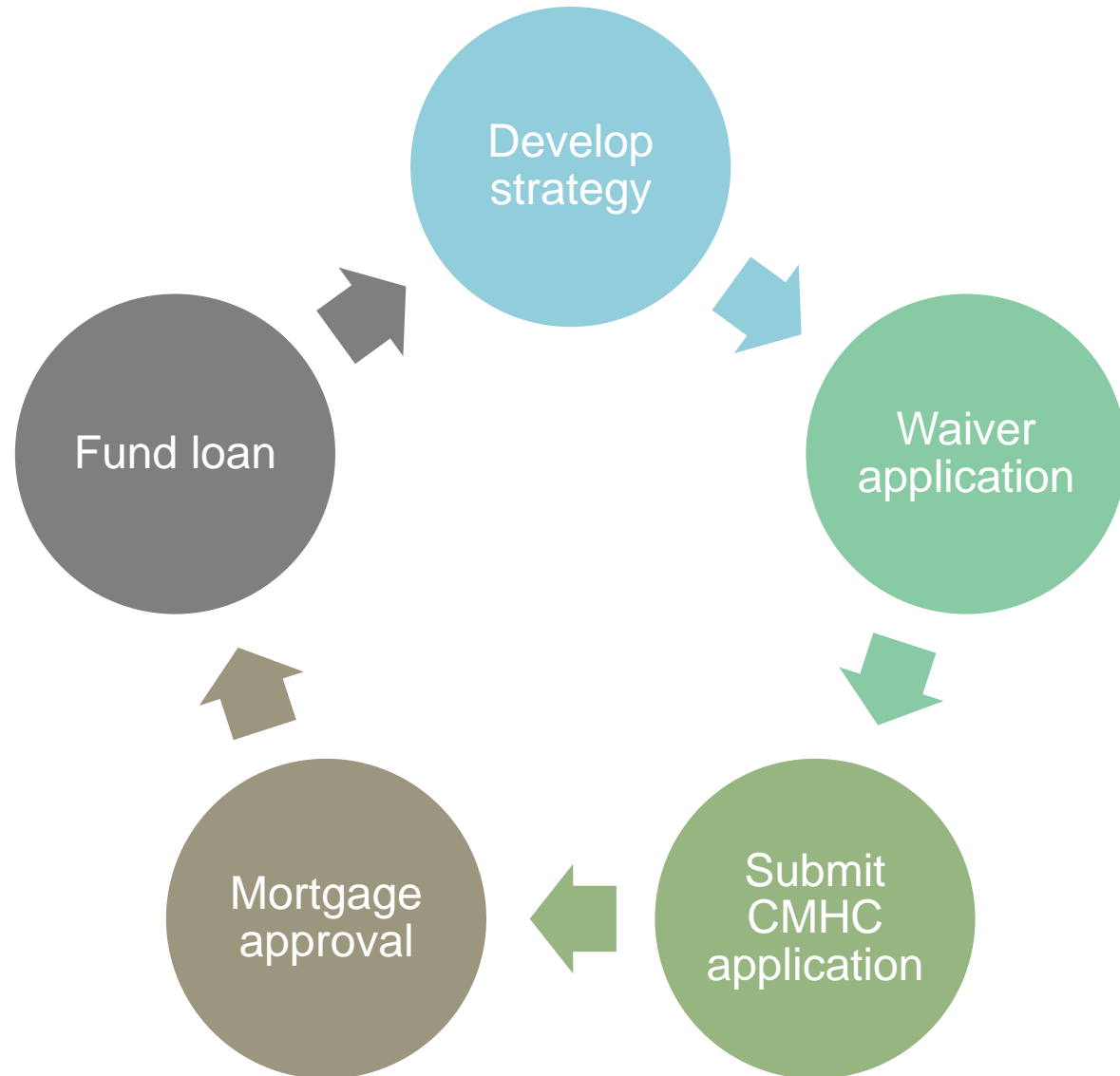
Step 5: fund  
loan

**Step 5:**  
fund loan

Timing is usually 3  
weeks for legal teams  
to close the  
transaction



# RECAP: UNDERSTAND THE REFINANCING 5 STEP PROCESS



# AFFORDABLE HOUSING 2016

## PROCESS: CASE STUDIES



### *EXAMPLE # 1*

- Completed federal operating agreement
- Required a non-course loan
- Loan request \$16-18M
- Progressive 5-7 year capital plan
  - Parking Garage
  - Windows
  - Mechanical Systems/Elevators



### *EXAMPLE # 2*

- Exited federal operating agreement early
- Paid off existing debt and used additional equity to fund construction planning costs
- Goal is to build over 90 units on existing site



# ADVICE TO SERVICE MANAGERS

- Try to adopt a similar exit process
- Be mindful of long-term viability (ex. interest rates)
- Determine flexibility and opportunity within current agreement(s)





# THANK YOU!



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# EOA PEER EXCHANGE SHARE INNOVATION EVENT

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# Agenda

- The Basic Framework - HSA and Operating Agreements
- The Before and After Shot
- Key Issues for Service Managers
- Key Issues for Providers
- Preparation for EOA
- Strategies for Providers

# Housing in Ontario

- The Housing Services Act
  - General Duties of a Housing Provider (Part VI)
  - RGI Calculations
  - Minimum Service Requirements for Service Managers
  - Rules relating to provincially funded programs (and a few others)
  - Consent requirements on mortgaging and transferring real property. (Part X)

# The Operating Agreement

- Providers received funding from the Canada Mortgage and Housing Corporation (CMHC) through a Section 56.1 (now Section 95) Operating Agreement
- These generally expire after a 30 year term.
- When the Operating Agreement expires, the provider's relationship with CMHC will come to an end and it will no longer be bound by the Operating Agreement
- At that point, the Provider's, by-laws, rules and policies will continue to govern the affairs of the co-op and it will be "business as usual".



## The Before and After Shot

	<b>With Operating Agreement</b>	<b>Without Operating Agreement</b>
Physical Infrastructure	Aging Building with maintenance and capital repair needs	Aging Building with maintenance and capital repair needs
Governance (NFP)	Compliance with Corporations Act, Articles, By-Laws	Compliance with Corporations Act, Articles, By-Laws
Director Liabilities	Yes	Yes
Other payments (property taxes etc)	Yes	Yes



## The Before and After Shot (Continued)

	<b>With Operating Agreement</b>	<b>Without Operating Agreement</b>
Contractual Obligations under Operating Agreement and Mortgage Repayment	Yes	No
Government Subsidy	Yes	No
Ownership of Land	Current Registered Owner	Current Registered Owner
HSA Applies	Yes	Yes (but depends on who you are)



## The Before and After Shot (Last Word)



on your situation – or how you

## Key Concerns for Service Managers

- As Operating Agreements expire, how do you meet your service goals?
- What kind of new arrangements do I need to come to with providers whose Operating Agreements have expired?
- What is my relationship with Section 95 Providers after the Expiry of an Operating Agreement? That is, to what extent can I enforce Part VI of the HSA against a provider with no Operating Agreement, if at all?
- YOUR THOUGHTS?

# Key Concerns for Housing Providers

- How do I make ends meet after the Subsidy is gone?
- How to I best leverage my new found freedom from the Operating Agreement?
- Can I compete for market rents?
- How do I prepare for life after EOA?
- YOUR THOUGHTS?

## Preparation: Hierarchy of Governance

1. Incorporating Statute
  - Corporations Act (Ontario)
  - Co-operative Corporations Act
2. Letters Patent
3. By-Laws
4. Resolutions and Policies

**Consider:** What needs to be reviewed? Do our governing documents still reflect our mission?

## Preparation: The Board

- Director's fiduciary duty to the organization.
- Directors have personal liability for certain matters (such as unpaid wages)
- Post EOA Strategies may range from property management to redevelopment

**Consider:** Does our board have the skill set to manage our post EOA Strategy?

## Strategies for Housing Providers

- Adjust tenant mix to raise revenue.
- Taking higher rent tenants at turnover (“Vacancy Decontrol”)
- Diversify revenue streams (but don’t mess up your tax status)
- Take advantage of extra space/density
- Shared services agreements

**Consider:** Have you articulated your plan for EOA?

## Strategies for Housing Providers

- Merger or amalgamation
- Land Development Opportunities
  - Review zoning, permits, tax exemptions, etc.
  - Restrictions under the HSA (S. 161 and 162)
  - Partnering – Profit or Non-Profit Partner
- Re-Financing
- Confirm tax consequences
- OTHERS?

**Consider:** Your post EOA strategy may impact on any one of these.




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