

Refinancing at the end of your operating agreement: A legal overview

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Overview – Different Phases of Refinancing

- 1. Negotiating the Deal**
- 2. Getting Authorization**
- 3. Closing the Deal**

Commitment vs Loan Agreement:

- A commitment or terms sheet sets out the key terms that have been agreed upon. Be satisfied with those terms before you sign.
- The Loan (Credit) Agreement is the document that governs the loan. In addition to incorporating the key terms from the terms sheet, it sets out other important provisions.

Authorizing resolution:

- You will need authorization from the board of directors to enter into a loan agreement
- The resolution would give:
 - Permission to enter into the loan agreement
 - Authorize individuals to execute loan documents
 - Authorize execution of documents required under the loan agreement
- Resolution must be passed in compliance with by-laws of the housing provider and legislation

Does anyone else need to consent?

- Does the housing provider own its property or is it a long-term lease?

Closing Documents:

- The lender will send their form of closing documents to your legal counsel for review
- The closing documents that must be signed are dictated by the terms and requirements of the Loan Agreement
- There will be a lot of them

What is Security:

- Security is what the housing provider offers to the Lender as collateral to ensure repayment of the loan
- If there is a default under the Loan Agreement, the Lender can enforce its security
- There are many different things a housing provider can offer as collateral

Types of Security:

- Mortgage:
 - Registered on title to the real property, it shows the Lender's interest in the real property and gives it priority over anyone else
- Assignment of Rents:
 - An interest that is also registered on title to the property. This security means that the housing provider assigns to the Lender the right to collect housing charges from members or tenants if there is a default under the loan agreement

Types of Security:

- General Security Agreement
 - This type of security gives the Lender a security interest in the personal property of the Housing Provider. This is registered under the *Personal Property Security Act*.
- General Assignment of Contracts
 - Under this document, the Housing provider assigns its rights and interests in all existing and future contracts. This allows the Lender to step into the housing providers shoes if there is a default and get the benefit of the contracts.
- Assignment of Insurance/Proceeds
 - This document gives the lender the right to benefit from the insurance policies and proceeds of those policies as they relate to the housing provider.

Warranties and Representations:

- A Bring down certification
 - Claims or Litigation?
 - Contracts in good standing
 - Environmental Warranties

Corporate Documents

- Certified resolution: a copy of the authorizing resolution signed by the secretary or other authorized signing officer of the corporation
- Incumbency/Officers' certificate: confirms the directors and officers of the corporation.
- Certificate of Corporate Status
- Solicitor's Opinion: delivered by the housing providers lawyers confirming that the corporation has all the necessary powers and has take all the necessary steps to enter into and perform its obligations under the Loan Agreement.

Other Documents

- Undertaking re holdbacks
- Directions regarding funds
- Statutory declaration re taxes
- Undertaking to discharge existing security
- Standard Charge Terms
- Acknowledgments and Directions

Questions

