

End of Operating Agreements and Mortgages in Community Housing

Purpose

This backgrounder is intended to provide community housing providers and Service Managers with a better understanding of what happens at the end of a housing project's operating agreement and/or mortgage. It is not intended to provide analysis on the impacts that the end of operating agreements and mortgages might have on housing providers or Service Managers. The Ministry of Municipal Affairs and Housing is working to better understand these impacts and put in place an improved framework for community housing as part of its Community Housing Renewal Strategy.

Community Housing Renewal Strategy

This backgrounder complements the Ministry of Municipal Affairs and Housing's Community Housing Renewal Strategy, launched in April 2019, which outlines the government's approach to preserving Ontario's community housing assets. To learn more about the Strategy, please visit: www.ontario.ca/page/community-housing-renewal-strategy

Issue Summary

Many community housing providers (private and municipal non-profits and cooperatives) are reaching the end of their original program obligations and/or mortgage. The end of operating agreement / end of mortgage issue has different implications for projects and units depending on what funding program they were originally developed under.

Projects that were entirely funded by the federal government have an operating agreement with a set end date. The agreement ends when the project's mortgage matures, at which point the

Key Facts:

- Legacy agreements to provide community housing between government and housing providers were time-limited, for 35 to 40-year periods. Many are now coming to an end
- Some housing providers are no longer required to provide affordable or subsidized housing once their agreement expires or mortgage matures. So far, this has resulted in a loss of roughly 6,500 community housing units
- Over the next three years, 289 community housing providers with 41,000 units will reach the end of their legacy agreements
- By 2027, the number of units reaches 106,600

Disclaimer:

Information in this document is general in nature and intended for consultation purposes. Housing providers, Service Managers and community housing residents with questions about their specific circumstances should seek advice from independent legal counsel as needed.

housing provider no longer receives any guaranteed government funding and the housing provider's obligations to provide subsidized housing concludes.

Rent supplement agreements are also coming to an end. No stock was created under these agreements. Instead, the government agreed to fund a provider to provide subsidized units until a date specified in their rent supplement agreement. The provider's obligation to provide subsidized units concludes with the end date of these agreements.

The Housing Services Act, 2011 does not specify an end date for the obligations of projects that were either partially or entirely funded by the province (called "provincial reform" projects). This means that provincial reform projects must continue to provide affordable housing – including rent-geared-to-income housing – after their original mortgage matures, until they are actively removed from the Housing Services Act (at the Minister's discretion). In exchange, they continue to receive a subsidy from their Service Manager, calculated with the funding formula set out in the Act.

For some provincial reform projects, once the mortgage has matured, the total Service Manager subsidy calculation could result in a negative number (because the mortgage costs are no longer included in the subsidy calculation). A negative total Service Manager subsidy calculation does not result

What is Community Housing?

"Community housing" is community based housing owned and operated by non-profit housing corporations, housing co-operatives and municipal governments or district social services administration boards, and provides subsidized or low-end-of market rents (includes housing sometimes referred to as "social housing" and "affordable housing")

O. Reg. 369/11 prescribes the subsidy formula for Part VII housing projects. For most projects, the subsidy formula is made up of three components:

➤ **Operating Subsidy** = Project Indexed Benchmark Operating Costs + Actual Mortgage Payments – Project Indexed Benchmark Revenues.

+

➤ **RGI Subsidy** = Lesser of *Indexed Benchmark* or *Actual Market Rent* for RGI units – Actual Rent paid from RGI units.

+

➤ **Property Tax Subsidy** = Actual Property Taxes for the project.

- For example, if the operating subsidy is \$10, RGI subsidy is \$15, and property tax subsidy is \$5; the Service Manager subsidy is \$30.

in an amount owing by the housing provider to the Service Manager. This result means that the total subsidy a provider receives from the Service Manager will be nil (\$0).

A mortgage payment is one of the components of the operating subsidy calculation. When a mortgage payment becomes \$0, the operating subsidy component can become a negative amount. When this happens, the total subsidy calculation may also result in a negative amount.

- For example, if the operating subsidy is -\$23, RGI subsidy is \$15, and property tax subsidy is \$5; the total subsidy is -\$3.
- In this scenario, the total Service Manager subsidy to the housing provider becomes nil (\$0).

End of Operating Agreements and Mortgages

“Community housing” is a general term that includes legacy social housing projects that were developed through federal and/or provincial funding programs from the 1950s to 1995. Ten different programs provided some combination of time-limited capital funding, mortgage subsidies and/or operating subsidies to provide low-income Ontarians with stable housing.

Each legacy program was designed with its own funding formula and program guidelines, leading to a patchwork of complex requirements over time. Some community housing projects have rents set at low-end of market rates, while others have rents that are geared to the income of residents (sometimes called “deeply affordable” or “subsidized” rents). Many projects include both types of units.

In the mid-1990s, the federal government stepped back from direct involvement in community housing, transferring responsibility to the provinces and territories. No new housing has been constructed through legacy housing programs in Ontario since 1995¹, although both the federal and provincial governments have funded the development of new affordable housing.²

¹ Some community housing providers have developed additional housing under affordable housing programs; however, this number is modest.

² Community housing developed through legacy social housing programs refers to government-assisted housing that provides lower-cost rental units to households with low to moderate incomes. Households living in social housing typically receive rent-geared-to-income assistance and pay 30 per cent of their

While all provinces and territories participated in various legacy housing programs, Ontario is the only province that further transferred responsibility for the administration of legacy housing programs to the municipal level, through the 47 Service Managers. This means Ontario's context is unique among the provinces and territories as it relates to the end of operating agreements and mortgages issue.

In Ontario, community housing is provided through one of the following:

- Municipal governments or district social services administration boards (sometimes called “public housing” or Local Housing Corporations)
- Non-profit housing corporations (both municipal and private) and housing co-operatives
- Private landlords

Key Facts:

- Over 250,000 households currently live in community housing in Ontario
- About 185,000 pay a rent-g geared-to-income rent
- From 1991 to 2016, the number of households in Core Housing Need¹ increased from 11.9% to 15.3% of Ontario households – from 408,000 in 1991 to 748,000 households in 2016

The end of operating agreements and end of mortgages (and associated issues) directly affects approximately 60% of the community housing supply that is owned by non-profits, housing co-operatives, and private landlords. The remaining 40% of community housing supply is owned and operated by Local Housing Corporations, with no operating agreement or mortgage in place. These projects were developed through debentures rather than mortgages.

At the time of transfer from the province to municipalities, a distinction was made between community housing projects that were built under programs funded solely by the federal government (federal projects), and programs that received some form of provincial funding (provincial reform projects). The end of operating agreement and/or mortgage issue has different implications depending on which category a project is in.

It is important to distinguish between the two categories of housing projects and their respective issues. These distinctions are outlined in the following two sections.

gross income in rent. Affordable housing refers to housing for low-to-moderate-income households priced at or below the average market rent or selling price for comparable housing in a specific geographic area.

Category 1: “Federal Projects” and the End of Operating Agreements

Approximately 25% of Ontario’s community housing supply falls under the first category. These projects were unilaterally funded by the federal government and are owned and operated by non-profits, housing co-operatives³, and private landlords. They are governed by the terms of their original operating agreement or rent supplement agreement with the federal government, as required by the Canada-Ontario Social Housing Agreement. With the exception of federally funded housing co-operatives, Service Managers are responsible for overseeing original project operating agreements or rent supplement agreements. This includes providing funding in accordance with the terms of the operating agreement.

Operating agreements and rent supplement agreements are contracts with clear end dates. For a project’s operating agreement, this end date generally coincides with the date of mortgage maturity. At the end date, the housing provider no longer receives government funding to subsidize mortgage payments, operational costs and/or households’ rents. Similarly, the housing provider’s obligations to provide subsidized housing concludes.

Even though providers will no longer have to pay the mortgage once it matures, some of these housing projects may not be financially viable. This may be in part because projects face significant and costly capital repair expenditures as major building systems reach the end of their life cycle.

Some may be viable but may not be able to continue to provide affordable units – especially rent-geared-to-income units -- without ongoing funding after their operating agreement expires. Some providers who will be sustainable in the long-term may be able to continue offering housing at affordable to moderate rent levels and self-subsidize some rent-geared-to-income rents.

After an operating or rent supplement agreement expires, neither the province nor Service Managers have any legal authority over these projects. It is up to the provider to decide how to operate these projects within broader requirements (i.e. Articles of Incorporation, and other legislative requirements such as those under the Residential Tenancies Act, etc.). In some cases, providers may consider raising rents to market rates, or selling or consolidating housing assets. Service Managers and housing providers are free to enter into new contractual arrangements.

³ Federally administered housing co-operatives were not transferred to the Province. They are administered by a federal agency, the Agency for Co-operative Housing.

A significant number of rent supplement agreements – wherein the government subsidized a portion of a household's rents – were made in partnership with private landlords. It is unlikely that private landlords will want to continue to provide deeply affordable rent-geared-to-income rents after their agreement expires, without a further agreement and government subsidy.

Category 2: “Provincial Reform Projects” and the End of Mortgages

Community housing provided by non-profits and housing co-operatives in projects that included provincial funding are distinct from federal projects. These provincial reform projects had their original operating agreements terminated when responsibilities were devolved to Service Managers. The rules and requirements governing operations, including rules for how projects are funded, were taken from the original agreements and transferred into legislation (the Social Housing Reform Act, 2000, subsequently replaced by the Housing Services Act, 2011).

When the original operating agreements were replaced with a legislative framework, the legislation did not specify when the provider's obligations to provide subsidized housing would conclude. However, providers retained their original mortgages for individual projects, which will begin to mature in the year 2021.

Provincial reform projects that are not actively removed from O.Reg. 368/11 under the Housing Services Act, 2011, must continue to provide affordable housing – including rent-geared-to-income housing -- in accordance with the Act. In exchange, they continue to receive a subsidy from their Service Manager, which is calculated according to the funding formula set out in O.Reg 369/11.

Where the mortgage has been paid off, the mortgage component of the operating subsidy will be zero. In some cases, as per O.Reg. 369/11 s.12 which is the total Service Manager subsidy, this may result in the total Service Manager subsidy being calculated as a positive number, or a negative number, or zero.

Service Managers should interpret a negative total Service Manager subsidy calculation for a Part VII housing project to mean \$0 subsidy payable to the housing provider.

A negative total Service Manager subsidy calculation does not result in an amount owing by the housing provider to the Service Manager.

Subsidy overpayments can only be recovered by the Service Manager where a subsidy estimate calculated at the beginning of the year is greater than the actual

subsidy entitlement calculated at the end of the year using housing provider's financial statements and the Annual Information Return.

It is important to note the funding formula in O.Reg. 369/11 under the Housing Services Act is the minimum Service Manager subsidy required for a housing provider. Service Managers have the discretion and flexibility to provide a subsidy over and above these minimum requirements to meet housing needs in their respective communities and to promote the long-term sustainability of housing providers.

Removal from the Housing Services Act, 2011

The Minister can end a housing provider's obligations under the Housing Services Act by removing the project from regulation O.Reg. 368/11. This process occurs on a case-by-case basis and is informally referred to as "de-listing." To date, most examples of de-listing concern federal projects after their operating agreement concludes.

When a housing project is listed in O.Reg 368/11, certain exemptions apply, such as certain exemptions from the Residential Tenancies Act, (i.e. the Rent Guideline Increase) and potential exemption from payment of Land Transfer Tax.

For federal projects (Category 1), their obligations to provide rent-geared-to-income housing conclude at the end of their operating agreement, whether or not they are removed from O.Reg 368/11. However, once they are removed from the regulation, they may no longer be entitled to legislative and regulatory exemptions.

Obligations for provincial reform projects remain in place so long as they are listed in O.Reg 368/11, as mentioned in the previous section. Some provincial reform housing providers believe that their obligations to provide rent-geared-to-income housing ends once their mortgage is paid off, as is generally the case with federal projects. However, this is not the case. Even in situations where a provider's mortgage has matured and/or the provider receives nil (\$0) in total subsidy from their Service Manager, they remain bound by the Housing Services Act so long as they are listed in O.Reg.368/11.

As with federal projects, if a provincial reform project is de-listed from the Housing Services Act, they may no longer be entitled to legislative and regulatory exemptions.

During the transition to an improved legislative framework, announced as part of the Community Housing Renewal Strategy, the province will take measures to protect tenants and their communities. As part of this, the Ministry of Municipal Affairs and Housing will pause the practice of removing housing projects from O.Reg. 368/11 for a three-year period. Exceptions may be considered on a case-by-case basis.

Stewardship of Community Housing Assets

Community housing assets were developed and have been maintained through billions of dollars of government and community investment and tenant rents. A key feature of the Housing Services Act, 2011 is the ability to protect these investments through ongoing oversight of the assets. However, these controls only apply to provincial reform projects (not federal projects). For example, the Housing Services Act, 2011, its regulations and directives:

- Prevent housing assets from being sold without the permission of the Service Manager (or the Minister in certain cases).
- Require the reinvestment of the proceeds of any sale of non-profit / co-operative housing assets back into community housing assets.
- Provide measures for a Service Manager to intervene in the operations of a non-profit or co-operative housing provider if the provider does not adequately manage a project. For example: if a provider contravenes the Act, or becomes bankrupt, the Service Manager has remedies they can apply to address the triggering event (such as removing a board of directors or suspending subsidy payments).

Once a provincial reform project is removed from the Act (de-listed), these protections are no longer in place. This means that the ability of the province and Service Managers to influence the use and disposition of these assets decreases.⁴

Federal projects may have similar types of provisions included in their original operating agreement. For these projects, once their operating agreement ends, these provisions are no longer in place.

Moving Forward with Community Housing Renewal

Ontario's Community Housing Renewal Strategy outlines the government's commitment to create a more streamlined legislative and regulatory environment for

Key Facts:

- Ontario has over 1,000 community housing providers, ranging in size and capacity
- Housing developed under legacy programs includes about 228,000 physical units, which accounts for about 23% of all purpose-built rental housing in Ontario
- The insured replacement value of this housing is over \$30 billion – not including land

⁴ Outside of an operating agreement or legislation, a non-profit or co-operative provider continues to be governed by other legal parameters such as the organization's incorporating instruments, the Corporations Act and the Cooperative Corporations Act, which continues to impact the organization's ability to dispose of assets/generate profits etc.

community housing that will incent non-profit and co-operative housing providers to stay in the system once their original obligations end.

In the coming months, the province will work with its partners to explore changes to the community housing system, and will work with the sector to explore how Ontario's vital community assets can be protected over the long-term.

Contact Information

Service Managers and housing providers can direct comments and questions to the Ministry of Municipal Affairs and Housing at the contact information provided below:

Mail:

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777 Bay Street, 14th Floor, Toronto ON M5G 2E5

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HousingPolicy@ontario.ca