

## Debentures 101

A "debenture" is defined in *Black's Law Dictionary* as: "A promissory note or bond backed by the general credit of a corporation and usually not secured by a mortgage or lien on any specific property."

Debentures were used to fund the public housing stock in Ontario. Before social housing was transferred to Service Managers, public housing was administered by the Ontario Housing Corporation (OHC). Over a 20-year period spanning 1960 to 1980, OHC entered into various arrangements to build or purchase townhouses and apartment buildings to provide social housing. CMHC and the Province of Ontario financed the related cost of the Ontario housing projects, with a small portion of the projects being financed by private sector financial institutions. For the government-financed projects, CMHC provided 90 percent and the Province provided 10 percent of the funds. The CMHC loans generally had 50-year terms and varying interest rates, with maturity dates ranging from 1996 to 2025.

In 1985, CMHC agreed to consolidate and replace approximately 1,200 loans with debentures. All the loans were organized according to maturity dates into 29 groups. The debentures maintained the original 50-year term and maturity dates; however, the varying interest rates were reduced to one rate called the "weighted average". The annual payment and the outstanding balance were established as of January 1, 1985 for each group of loans. At the same time, the Province forgave all loan balances owing to it by OHC.

In 1987, the loan agreement between CMHC and OHC was finalized. It listed the details of the 29 debentures and set out the terms for repaying the debt, disposing properties, and the penalties for breach of the agreement. Annual principal and interest payments were due on January 1<sup>st</sup> each year, and as each debenture matured, the annual payment would be reduced accordingly.

In 1993, the loan agreement between CMHC and OHC was amended to reflect changes in interest rates of seven of the 29 debentures that were consolidated in the 1987 agreement.

At the time of transfer in 2000, SMs with the largest amount of outstanding debentures were Toronto, Ottawa, Hamilton, Windsor, and Niagara. In October 2000, there were 50,221 units in Local Housing Authorities across the province funded by debentures. The outstanding loan amount was \$631,718,989, with an annual payment of \$58,566,141. Projects covered by debentures are typically noted with an "OH" reference. Federal funding covers 50% of the cost, with municipalities funding the remaining 50%. Many different public housing projects are funded under the same debenture. To determine the share of outstanding debt for a given project on a given date (e.g., December 2013), the share of the debenture to which the project has been assigned is calculated.

If selling or disposing of debenture-funded units is being contemplated, SMs should exercise their due diligence and consult all legal documents that support the ownership and obligations of the project.

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With respect to prepayment privileges, Clause 11 of the 1993 agreement between CMHC and OHC makes the following provisions:

OHC shall not have the privilege of prepaying any amount owing...at any time prior to its maturity date...except as is permitted by the following clauses:

(i)...in the event of a whole or partial sale, other disposition or demolition of a project...OHC shall, prior to selling or otherwise disposing or demolishing such a project or part of such a project, obtain the written consent of CMHC, which shall not be unreasonably withheld.

(ii) In the event that such a sale, other disposition or demolition of a whole or partial project relating to one of the debentures...is approved by CMHC, OHC shall have the right to prepay, provided that the amount prepaid shall not exceed the principal amount outstanding of the debenture multiplied by the ratio of the amount outstanding with respect to that project as at January 1, 1985 to the balance of the debenture outstanding as at January 1, 1985...however, the prepayment shall not be more than the actual net proceeds of such sale, other disposition or demolition.

(iii) Except during the last year of the current term, the prepayment privilege set out in Clause 11(ii) above is further subject to the payment by OHC, by way of bonus, of an additional three months interest on the amount being prepaid.

In addition, if the project ceases to operate as public housing, or if the project is sold in whole or in part on terms not acceptable to CMHC, CMHC reserves the right to request the remainder of unpaid monies to be returned to them.

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