

Reading and Negotiating Funding Agreements for Purchase of Rental Properties: Tip Sheet

The Canadian Network of Community Land Trusts recently released a guide on *Reading and Negotiating Funding Agreements for Purchase of Rental Properties*. This tip sheet summarizes some practical insights from the guide that you can implement before applying for funding, while applying for funding, while purchasing a property, and while operating a property.

Please note that the following list is not advice specific to your case and is not comprehensive. These are examples to consider that may be relevant to your situation.

Before Applying for Funding

Constitution, Policies, and Contracts

- Set out clear responsibility and authority for negotiating funding agreements in your officer job descriptions, committee terms of reference, and/or employment agreements.
- Investigate what internal policies your likely funders may expect you to have (e.g. conflict of interest, harassment, human rights) and develop them ahead of time.
- Create a reserves policy.
- Create robust consent forms for residents to sign when collecting sensitive information, including permission to share with relevant associated organizations such as funders.

Insurance and Accounting

- When purchasing insurance, check to see whether the policy covers any obligations you may have to indemnify others, such as future funders.
- Learn about health, environmental, and other standards that housing providers are expected to meet to prepare for “uncontrollable” circumstances like pandemics and natural disasters. Be prepared for shocks that may not be in your control but may be considered so typical as to be unexceptional.
- Even if you’re small and it seems overly formal, set up the kind of financial accounting systems your funders are going to expect, to minimize growing pains. In particular, set up mechanisms to allocate global costs across projects (or sites).

Applying for Funding

- Investigate multiple similar properties at a time so you can quickly pivot a negotiation if you are not able to obtain the property you first applied for.
- Be ready with cost estimates for pre-purchase expenses when applying for funding.
- Make sure all your funding agreement obligations are accounted for in your financial planning. For example, be sure to budget the cost and work of registering the agreement on title, as well as any legal opinion requested by the funder.

Negotiating the Funding Agreement

Negotiating Tactics

- Avoid focusing a negotiation on a single item. By having multiple items in play you can trade one off against another and seek more creative solutions.
- Push for longer meetings with funders to allow for a greater sense of time and capacity to tackle issues in the agreement. Bring your own agenda and attach specific objectives to each agenda item.
- Avoid applying for funding you may not really qualify for. This will allow you to be transparent. It will strengthen your hand in negotiating since you can be more confident that you and your funder share objectives. Ultimately it will protect against mission drift.
- For the Notice provision in the funding agreement, provide the funder with contact information that is less likely to change, and notify them if it does.

Some Provisions Worth Negotiating For

- If you're expecting something to show up in the final agreement, make sure it's included in one of the documents referenced in the Entirety of Agreement clause.
- Make sure your plans for how the building will be used, and for whom, align with your funding agreement obligations. Create internal policies as needed.
- Some funders may be very invested in ensuring you continue to break even or run surpluses. It may be important to clarify realistic financial boundaries for your planning with your funder, particularly when it comes to the power to appoint a manager.
- It may be helpful to think through, with the funder, what an audit and investigation would actually look like in practice, and how to set parameters in the agreement that prevent any predictable issues.
- Define vague default provisions. Words like "misconduct" may or may not be defined. Ask yourself: Who decides what constitutes misconduct? Could this label be applied to something our organization would be interested in doing,

such as civil disobedience in protest? Consider asking the funder what they have in mind.

- As appropriate, seek a robust dispute mechanism provision with mandatory language (e.g. “the Parties *will* attempt to resolve disputes in X way before seeking litigation...” as opposed to “the Parties *may*...”).
- Consider whether you are prepared to abide by the funding agreement down to the letter if your relationship with your funder sours. Imagine how things are likely to change in the future and build the possibility of those likely scenarios into the agreement from the beginning, wherever possible.
- If you know that the property has particular issues that will incur perennial costs, it may be relevant to clarify with the funder what state of repair will be considered sufficient.
- Ensure that obligations to acknowledge the funder align with your organization’s public image.

While Purchasing a Property

- Make sure the deadline under the funding agreement to purchase the property is realistic and doesn’t put undue stress on your negotiations with a seller. Seek modifications of the agreement as needed.
- Time your transaction in a way that accounts for the escrow agreement delays as well as for any delays the funder might be entitled to before sending your funding.
- Be careful to keep all receipts and invoices for pre-purchase expenses.
- Communicate clearly with other potential lenders about the relationship they may be required to enter into with your funder. Obtain the funder’s consent, as needed, as early as possible to avoid wasting precious time pursuing lending relationships that are not feasible.

When Operating Affordable Rental Housing Under a Funding Agreement

- When communications with your funder could trigger consequences within your funding agreement, put them in writing and address them to the right office as set out under the Notice provision of your agreement.
- If your funder refuses to give you consent for anything which requires their consent under the funding agreement (e.g. obtaining another mortgage or transferring all or part of the real estate), investigate whether it was really “reasonable” for them to do this and consider pushing back if needed.
- Before you start a major partnership conversation related to the property (e.g. merger, airspace rights, lease), it is a good idea to review the transfer and assignment parts of your funding agreements.
- Educate yourself about the funder’s internal approval process for potential future changes. Time your requests for amendments accordingly.