

Affording a Home of My Own: Model Agreement with Family Lenders

GSA's model allows parents to provide all or part of the capital to buy a home, in several options, and to have the peace of mind with safeguards for a good sustainable life in a home that revolves around their family member with a disability. The GSA model gives families the opportunity to invest capital and other resources so their son or daughter with a disability can live in their own home with the support of Aroha friends and with rights and means to express themselves and make their own choices. GSA offers to do all in its power to sustain the person's occupancy into the future, beyond the death of parents. GSA registers the amount contributed by a family as a Collateral Mortgage on the property and families are entitled to eventual repayment in various circumstances.

How do we translate dreams and hopes into realities? It's hard enough for able-bodied people to become homeowners. A home of one's own seems unattainable by a person whose only income is a disability allowance way below the poverty line. Anyone dependent on such an allowance is forbidden to accumulate savings and, even when given or bequeathed a home, may find it impossible to pay for all the costs of maintenance. In times when social housing funds are very scarce, it's vital to think creatively of private-public partnerships.

In one such option, parents with the means might provide funds for a separate property to be the individual home of a son or daughter from early adulthood. This contribution is recognized by GSA in a formal agreement that safeguards the family investment and also gives a family the assurance that a corporate entity has pledged responsibility to sustain the occupancy of their son or daughter.

Parents might already own a property which they then transfer to GSA, or they might provide the cash or securities with which GSA buys the property. It is advisable to have thought through all the implications and to have the Aroha already in place before completing any formal agreement to lend money for the property.

GSA makes a legal agreement with the family funders to recognize the value of such capital as a non-interest-bearing Collateral Mortgage that is formally registered on the property. GSA undertakes to support the successful occupancy of the property by their son or daughter, providing the person has an Aroha entity to take responsibility for quality of life.

In certain circumstances, the family lenders may be entitled to require GSA to repay the amount of the mortgage (adjusted to take account of changes in market value).

1. One would be if GSA fails to support the occupancy of the family member in the home.
2. A second would be if the family member dies.
3. A third circumstance would be if the person chooses to move and GSA is not able to support him or her in a different property.

Assuming the autistic person outlives the parents (or other family lenders), the agreement provides for the value of the property eventually to revert to the estate, to be disposed of under the parents' will.

Variants of this agreement are possible in other situations. Parents may continue to support their autistic son or daughter in the family home until they are no longer capable. They may have made a conditional agreement to

deed the family home to GSA at that future date, when the various agreements in this book should become effective. GSA might also take the lead in a cohousing or co-op project involving several families with their sons and daughters, some of whom might lend capital. A modified version of this agreement might be made between GSA and a foundation or other corporate benefactor that might sponsor a home for a person who is without family resources.

“I have my own home and it revolves around me”

Endorsement by GSA’s first active member, June 2003

People should know what a wonderful home I have and the things I do every day. I have my own home and it revolves around me. I know everyone who comes here is friendly to me. I’m sorry more people can’t have this. I have this because my parents are good advocates and they also paid for my home. My parents, my Aroha and GSA listen to me and respect my decisions.

I think I am comfortable and safe here. My garden is heaven on earth. It is a friendly neighbourhood. I get out a lot and they see me. I like to greet people when they greet me. I try to smile. My dog is my friendmaker. I love to walk with her.

In my home, I have space to do things like music, art and the computer, and my bedroom and bathroom are private. There are sensors on the bedroom and bathroom doors if I need to get help. There is an apartment in the basement and more bedrooms upstairs and many bathrooms. It was a real adult accomplishment when I first used my electronic key to open the front door.

I’m happy with our progress. Well planned and not stressful. I grow into each step. I like to be a pioneer but it is too slow and scary sometimes. I might get the wrong people. I am interested in interviewing people to support me. It is most important that I get a say. I have lots of good people in my life.

My Aroha and GSA have promised to go on supporting me after my parents die.

GSA’s Model Agreement with Family Lenders

This Agreement made as of the _____ day of _____, 2_____

BETWEEN:

_____, a charitable non profit corporation (The “Corporation”) AND-

_____, on joint account,

with right of survivorship (the “Lender”)

WHEREAS:

1. The Corporation wishes to borrow moneys from time to time from the Lender; and
2. The indebtedness represented by such borrowing is to be secured by a collateral mortgage (the “Collateral Mortgage”) registered in the real property owned by the Corporation and known municipally as

NOW THEREFORE in consideration of the covenants and agreements herein contained and for other good and valuable consideration (the receipt and adequacy whereof is herein acknowledged) the parties hereto agree as follows:

1. Interpretation

1.01 **Definitions.** For the purposes of this Agreement and where the context does not otherwise require, the following terms shall have the following meanings:

- (a) "Corporation" means _____ [name of housing trust] and any successor corporation.
- (b) "Indebtedness" means all principal and premium, if any, payable pursuant to the provisions of this Agreement from time to time outstanding and all other moneys for the time being and from time to time owing pursuant to the provisions hereof;
- (c) "Lender" means _____ [names of family lenders] on joint account with right of survivorship
- (d) "Real Property" means the property municipally known as _____
- (e) "this Agreement", "hereto", "herein", "hereof", "hereby", "hereunder", and similar expressions refer to this Agreement and not to any particular paragraph or other portion hereof, and include any and every instrument supplemental and ancillary hereto or in implementation hereof.

1.02 **Plurality and Gender, etc.** Words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and the neuter gender.

1.03 **Headings.** The headings of the articles, paragraphs and sections hereof are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

1.04 **Applicable Law.** This Agreement shall be construed in accordance with the laws of the Province of Ontario.

2. Representations and Warranties

2.01 Representations and warranties

- (1) Except as otherwise disclosed herein the Corporation hereby represents and warrants to the Lender and acknowledges that the Lender is relying on such representations and warranties in entering into this Agreement and in making advances of the funds provided hereunder to the Corporation, as follows:
 - (a) Status of corporation – The Corporation is a valid and subsisting corporation under the laws of its jurisdiction or incorporation and has full capacity and power to carry on its business and further has the power and is duly authorized to enter into, execute and deliver this Agreement.
 - (b) Violation of other instruments and authorization—
 - (i) The entering into of this Agreement by the Corporation does not conflict and will not conflict with, and does not result and will not result in a breach of the letters patent or the by-laws of the Corporation or any of the covenants contained in any agreement to which the Corporation is a party or by which the Corporation is bound or to which any of its property is subject.
 - (ii) All corporate steps and proceedings necessary to authorize the entering to of this Agreement and all other security for the Indebtedness have been duly taken or held.
 - (c) Compliance with by-laws – The Corporation is not in breach of any by-laws, laws, statutes, regulations, rules or orders of any government or agency thereof which would materially impair its ability to carry on its mandate or materially affect the value of its assets.

(2) The foregoing representations and warranties shall be regarded for all purposes as having been made on each date on which the Lender advances funds pursuant to Section 3.01 hereof and shall survive each advance of funds pursuant to section 3.01 hereof and shall continue in full force and effect for the benefit of the Lender.

3. Advance of Funds

3.01 Advance. The Lender has or shall make available the loans provided for herein to the Corporation.

3.02 Use of proceeds. The Corporation shall use the proceeds of any advance made by the Lender pursuant to Section 3.01 hereof for the purposes of the mandate and objects of the Corporation.

4. Amount and Payment of Indebtedness

4.01 Schedule A. The principal from time to time outstanding hereunder shall be evidenced in Schedule A attached hereto, which may be amended from time to time by mutual agreement of the parties.

4.02 PROVISIO. Notwithstanding the amount(s) listed on Schedule A, in the Event of Default as herein described in Section 6 below, the Corporation shall owe to the Lender the greater of the total of the amounts listed on Schedule A or [.....per cent, depending on the amounts advanced] of the then current appraisal value of the Real Property.

5. General Covenants

5.01 Covenants.

The Corporation hereby covenants and agrees with the Lender that so long as any of the indebtedness remains unpaid:

- (a) To maintain existence—The Corporation will at all times maintain its corporate existence.
- (b) To insure its assets, and specifically the Real Property
- (c) Further assurances—At any and all times the Corporation will, at its expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and every such further acts, deeds, conveyances, mortgages, security agreements or instruments, transfers and assurances as the Lender shall reasonably require.
- (d) To register—The Corporation will co-operate at its expense to the extent necessary to register the Collateral Mortgage without delay.
- (e) Expenses of Lender—The Corporation shall pay all reasonable costs, charges and expenses (including legal fees and disbursement) of or incurred by the Lender in connection with this Agreement and all ancillary documents.

5.02 Lender entitled to perform covenants . If the Corporation shall fail to perform any covenant on its part herein contained, the Lender may, in its discretion, perform any such covenant capable of being performed by it and, if any such covenant requires the payment or expenditure of money, the Lender may make payments or expenditures with its own funds, or with money borrowed by or advanced to it for such purposes, but shall be under no obligation to do so; and all sums so expended or advanced shall be added to Schedule A hereto, and shall be payable out of any funds coming into the possession of the Lender in priority to the Indebtedness but no such performance or payment shall be deemed to relieve the Corporation from any default hereunder nor shall the right of the Lender under this subsection impose any obligation upon the Lender to perform any covenant of the Corporation.

6. Default and Enforcement

6.01 Events of Default. Each and every one of the following events shall constitute an event of default hereunder (“Event of Default”):

- (a) if the Corporation shall neglect to carry out or observe any other covenant or condition herein contained on its part to be observed or performed and, after notice in writing has been given by or on behalf of the Lender to the corporation specifying such default and requiring that an end be put to the same, the Corporation shall fail to remedy such default within fifteen days of notification or, in the event that such default cannot reasonably be rectified within fifteen days (other than by reason of lack of moneys), then within a reasonable time given the particular circumstances, provided that the Corporation is diligently proceeding to remedy such default;
- (b) if the Corporation ceases, or threatens to cease carrying on business or an order shall be made, or an effective resolution be passed by the Corporation for the winding-up, dissolution or liquidation of the Corporation;
- (c) if the Corporation amalgamates with another organization or a transfer occurs so that there is a change in the control of the Corporation;
- (d) if _____ [named person] no longer resides at the Real Property; and
- (e) if the Corporation ceases to have or maintain control of the Real Property.

6.02 Acceleration on default. Upon the occurrence of an Event of Default, the Lender may declare the Indebtedness to be due and payable and the Corporation shall pay to the Lender the Indebtedness pursuant to the provisions of Article 4 hereof, upon the sale of the Real Property or six (6) months within the declaration of an Event of Default, whichever is sooner.

6.03 Remedies Upon the occurrence of an Event of Default, the Lender may proceed to enforce its rights by any action, suit, remedy or proceedings authorized or permitted by law or by equity, may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have its claims lodged in any bankruptcy, winding-up or other judicial proceeding relative to the Corporation or may enforce its rights under the Collateral Mortgage, all subject to time lines in 6.02 above.

7. Application of Funds on Realization of Security

7.01 Application of funds. Except as otherwise herein provided the moneys arising from any enforcement hereof and of the Security shall be applied as follows:

- (a) firstly, in payment or reimbursement to the Lender of the reasonable expenses, disbursements and advances of the Lender (including the fees and expenses of any receiver or manager or receiver and manager or any similar person appointed in respect of the Corporation) incurred or made in connection with the enforcement hereof or of the Collateral Mortgage,
- (b) secondly, in payment of the amount owing in accordance with Article 4 above, and
- (c) thirdly, to pay the claims of any other person entitled thereto by law, and
- (d) the surplus, if any, shall be paid to the Corporation.

In the event that the proceeds of realization of the Collateral Mortgage are insufficient to pay the full amount of the Indebtedness, the Corporation shall remain liable for such deficiency

8. Notices

8.01 Notices.

(1) To the Corporation. Any notice sent to the Corporation shall be valid and effective if delivered to the Corporation or if sent by registered mail, postage prepaid or by facsimile, addressed to the Corporation at: [full address of the Corporation]

(2) To the Lender. Any notice sent to the Lender shall be valid and effective if delivered to the Lender or if sent by registered mail, postage prepaid, addressed to the Lender at: [full address of the Lender]

(3) **Deemed receipt.** Any notice given by mail shall be deemed to have been received on the fifth business day following the date of mailing unless delivery by mail is likely to be delayed by strike or slowdown of postal workers. Any notice which is delivered by hand shall be deemed to have been received on the date of such delivery if such date is a business day and such delivery was made during normal business hours; otherwise it shall be deemed to have been received on the business day next following such date of delivery. Any notice which is delivered by facsimile shall be deemed to have been received on the date of transmission if such date is a business day and such transmission was made during normal business hours; otherwise it shall be deemed to have been received on the business day next following such date of transmission.

9. Miscellaneous

9.01. Enurement and Assignment. This Agreement shall enure to the benefit of and shall be binding upon the respective successors of the corporation and the Lender and may be assigned by the Lender, in whole or in part, in which event the Corporation shall attorn in all respects to such assignment and the assignee or assignees thereof.

In witness whereof the parties hereto have executed these presents under the hands of their proper officers in that behalf.

Date:

Named Corporation

Per:

Officer. I have authority to bind the Corporation

Signatures of Lender(s)

SCHEDULE A (set out and signed on following pages) states specific details of the Items of Indebtedness and effective dates.