

Chapter Eight: Dealing With Problems

The Michigan Cooperative Law Primer

This chapter addresses many of the problems that confront most cooperatives. Nearly every cooperative has three basic problems: pets, parking and people disturbing other members. As discussed above, an unique aspect of cooperative housing is the authority of the board to promulgate rules which, taken together with the occupancy agreement, serve as an effective means to deal with problems within the cooperative community.

Thus, the board can regulate matters such as parking, pets, improvements to the interior premises, patios and screening fences, and a host of other concerns. The board may give out assigned parking, and may limit the number of vehicles any member may park within the cooperative. Pets may be banned, limited, or licensed.¹ Renovations and upgrades inside the units may be prohibited unless the member first secures a permit from the manager. Likewise, the size and location of screening fences, patios and placement of satellite antennae may also be regulated by the board.²

Once the board settles upon a rule, it needs to be made known to the members before it can be enforced. A written handbook is typically used, and distributed to each member. It is advisable to obtain proof that each member received it. A receipt bearing the signature of each member, or an affidavit of service, provides the evidence necessary to defeat the inevitable claim of an offending member's defense that he or she never saw that rule.

The rules may establish a penalty system that provides fines, and may increase for successive violations. For example, the first time a member fails to pick up his dog's feces may be fined \$25, followed by \$50 for the second, and so on. The rules also may provide for an appeal process whereby the board or designated hearing officer acts as judge or jury in case the fine is contested.

Careful drafting of cooperative rules is essential. It is these rules which will be scrutinized by courts that are asked to issue a judgment that allows the cooperative to take back the unit and terminate the membership. As such, it is really a legal document. Defense attorneys will attack the language in it, and judges will be called upon to interpret. The cooperative attorney needs to be involved in the process of drafting these rules to ensure that they will past muster.

¹ Subject to the American with Disabilities Act.

² Satellite antennae are subject to control by the Federal Communications Commission, so cooperative rules must be consistent with FCC rules.

When drafting and enforcing the rules, it is important that discrimination be avoided. A cooperative cannot single out protected groups of members as

subjects of its rules and enforcement powers. Protection is given by state and federal law to prevent discrimination on the basis of race, gender, marital status, national origin, and age.

It is also essential that the rules not limit themselves to fines as penalties. There should be an express provision that allows the board to decide to take more drastic action. Rules need to refer to the cooperative's right to invoke the Michigan Summary Proceedings Act.

This Act is a state law that is used to evict a member. If a member fails to pay carrying charges or other financial charges, such as fines, the cooperative may issue a notice to quit that allows the member seven days to pay, or a complaint may be filed in the local district court. A summary hearing is scheduled, usually within two weeks. At that time, the cooperative asks for a judgment that grants the member another ten days to pay a sum that now includes court costs and attorney fees, or suffer eviction.³ After the tenth day, the cooperative may ask the court to issue a writ of restitution that directs a court officer to enter the premises of the member, change the locks and throw the member's personal property out to the curb.⁴

³ A member has the right to ask for a jury trial and to contest the allegations. Most judges are good at seeing through efforts to unnecessarily delay the process and will attempt to get the member to admit to the allegations, so the case will proceed quickly through the court. Unfortunately, some judges will accommodate the member and set the matter for a trial on a date sometime later.

⁴ If the member pays the amount of the judgment, the cooperative's efforts to evict are foiled. Many members take advantage of this, and some even play the game each month. To combat this, it is advisable to add a rule that provides that a member who is habitually late may be evicted. A common definition of habitual delinquency is being late more than three times within a twelve month period, or three consecutive months.

Where the member violates the cooperative's rules, the court process follows the same track, but a thirty day period is built in to the notice to quit, rather than seven days. There is also a drastically shorter process available to the cooperative if there is an urgent situation, such as a fire hazard or serious criminal activity that endangers the lives of other members. This can take the form of a seven day notice to quit, or an emergency petition to the judge to accelerate it even faster.

Disclaimer

This primer is intended to provide the reader with a starting point to understand the law of housing cooperatives in Michigan. It should not be used as a substitute for qualified legal advice from a competent, experienced attorney licensed to practice law in the state of Michigan.

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