

Chapter Nine: Frequently Asked Questions The Michigan Cooperative Law Primer

Election Procedures

One of the toughest challenges of a cooperative board is getting members to turn out for the annual meeting. A cause of this problem is apathy and a lack of understanding by members that they are stakeholders and have the power to control their own destiny by exercising their right to vote and participate. Cooperatives that have a solid orientation program for new members which teach the fundamentals of cooperative living and explain that members are more than mere tenants have less of a problem with this. Others resort to “give-aways” for those who do attend as an incentive, such as drawings for free carrying charges, televisions, and the like also overcome this challenge.

Most boards are tempted to try different approaches to elections. Some seek to use absentee ballots and others want to have day-long voting places. Unless the bylaws permit this, the cooperative is on shaky ground. That is why we suggest that boards think about amending bylaws when the opportunity exists to allow for such flexible alternatives. Another approach is to simply lower the quorum requirement, but we regard this as less desirable because it defeats the purpose of being a cooperative in the first place, and places the power to control the cooperative in the hands of a few members.

A further word is merited here to clarify the difference between absentee ballots and proxies. Most bylaws do allow proxies. This is a grant to authority, made by the member who is not attending, to a member who will be there. It is like a power of attorney – it authorizes the person who carries the proxy to vote on any issue that may come before the membership in any way that he or she sees fit. In contrast, the absentee ballot is a form that lists the questions, such as who should be elected to the board, and is marked by the voting member and turned in to the office before the meeting. Unfortunately, this is not usually allowed by the typical bylaws - unless amended to authorize it.

Freedom of Information Act

Occasionally there is a question of whether a cooperative must furnish information requested by a member, under the assumption that the Freedom of Information Act applies. This is a state law that allows anyone to ask for records from a “public body.” As noted below, a cooperative does not fall within the definition of “public body.” Accordingly, this law does not apply to cooperatives.

The bylaws do, though, allow certain information to be made available to members. The specific language of the bylaws need to be consulted since the type and amount of information turns on the precise language of the specific

cooperative's bylaws. Typically, the financial audit is required to be produced, and sometimes more information is mandated by the bylaws.

Open Meetings Act

Many people assume that cooperatives are bound to follow the Open Meetings Act, and that boards must be open to membership attendance and participation. Because city councils must hold open meetings and can convene into closed sessions for limited purposes, it is believed that cooperative boards must do the same. However, unless the bylaws or articles of incorporation provide to the contrary, this belief is misplaced.

The Open Meetings Act is a state law that applies to "public bodies" which means governmental units such as cities and school boards. A cooperative does not fall within this definition and is, therefore, not required to hold open meetings. Some cooperative boards, even knowing that they are not legally bound to do so, will hold regularly scheduled open meetings so members can attend and speak. This is done for political reasons and designed to promote a sense that the boards have nothing to hide from their membership.

Decision Making Authority

A common question is whether the members can make decisions for the board as a kind of referendum, or direct that the board undertake a certain task. The bylaws provide the power of the board and must be read closely. However, the usual bylaw provision is broadly written in favor of granting authority to the board. The members cannot usurp the discretion of the board by adopting mandates. The board reserves the right and duty to make decisions on how the cooperative is to be run, with limited exceptions found in the State law. The rationale for this power residing in the board is that the directors have special fiduciary duties to act on behalf of the corporation as a whole, without regard to special interests.

Currently, the issue of refinancing is common. Here, a typical bylaw provision makes this decision the exclusive function of the board. While good and frequent communication with the membership is to be encouraged, and even straw votes may be useful as a political matter, the fact remains that the board is the ultimate decision-maker on whether to refinance the mortgage.

Of course, the membership retains the right to remove or elect directors. But this control is indirect. Direct interference by the membership into the board's jurisdiction must be resisted as unlawful.

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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