

## **Chapter Seven: Effective Cooperative Boards**

### **The Michigan Cooperative Law Primer**

A successful board requires an understanding of the principals discussed in this chapter by each director. There must also be a commitment by all of the board to adhere to them. Thus, it is essential that new board members be given the necessary training in order to understand these concepts.

First, there needs to be an understanding of the roles of the various players. The board must understand clearly that it is the final authority, subject to HUD if it is still in the picture, and further subject to the governing documents. It must make the policy decisions. While member input ought to be sought on important matters, the board should not abdicate its jurisdiction. For example, most bylaws say that the decision to refinance rests with the board.

This also applies to the professionals of the cooperative. The roles of the attorney and management agent are to support, inform and guide the board. However, the board is the ultimate word. Too often we learn of boards which are dominated by the management agent, even to the extent that the directors must beg for funds to plant flowers. This is wrong. The board needs to view itself as the head of the organization.

For this reason, it is imperative that the board seek out professionals which understand these roles and respect the board's authority. If a professional has the proper commitment to the principal of cooperative governance, that management agent or attorney will have joined and become active in the two leading organizations of the cooperative movement: the National Association of Housing Cooperatives [[www.coophousing.org](http://www.coophousing.org)] and the Midwest Association of Housing Cooperatives [[www.mahc.coop](http://www.mahc.coop)]. Check with these associations for a list of professionals from which you should seek proposals and interview them to determine their experience, expertise and philosophy.

When a cooperative board has the right team of professionals assembled, it can make great progress. Without the right management agent or attorney, little can be expected. Thus, it is advisable to take the time necessary to make the hiring decision.

Once the board has engaged good professionals, it must work at communicating well with them. The management agent needs to be involved with the day to day operations, and has the duty to keep the board well informed. The attorney needs to be brought into discussions with the board at the outset of any matter which could lead to a legal dispute. It is always better to get the proper advice before a mistake is made.

In Michigan, there is a doctrine known as the "business judgment rule." This shields a board and individual directors from liability when it relies on

professional advice. Protect yourself and the board by always seeking legal opinions before you make major decisions. Require such advice to be in writing and make certain that it is filed with the minutes.

The types of issues that require legal input include significant contracts, and anything that binds the cooperative by large amounts of money or for a long period of time. Moreover, if there is any question or doubt as to the board's authority or the meaning of any governing document, professional legal advice is warranted. Any time it appears that there may be a lawsuit, involve the attorney. Remember that it is less costly in the end to bring the attorney into the situation early on so the matter can be properly handled at an early stage.

The board reserves to itself the right to engage the auditor. This is a vital decision that must not be abdicated. The financial integrity of the information contained in the audit reports must be relied upon by the board. The annual audit is the way the board is supposed to satisfy itself that the financial records and affairs of the cooperative is being properly handled. Thus, you must choose the auditor you trust. While the management agent can furnish names of qualified and experienced certified public accountants, do not let the selection to be made by any one other than your board.

Always insist that the auditor present a written letter that identifies any issues he or she discovers during the course of the audit. Make sure you read it, and require the auditor to attend a meeting to discuss it. This is your duty. Find out what the records disclose.

Another rule is to insist that the operations rest with the management agent. The board sits as a policy maker. It leaves it to the management agent to implement the board's decisions. Make sure that the board does not interfere with that performance.

Next, be sure to review the management agent's performance at least annually. Give feedback on what is being done well, as well as the shortcomings of the management agent. Also, keep the length of the contract short or have the right to cancel when you are unhappy. The same holds true of the attorney. In fact, we advise that the relationship with the cooperative attorney be terminable at will since if the board has lost confidence in the attorney, it is counter-productive to keep the attorney.

Board members only have power when assembled as a board. While it is common for officers such as the president to make decisions and give direction outside the board room, the rule for other directors is that they are ordinary members of the cooperative when they are not in the board meeting. Do not tolerate directors to exceed their authority.

Successful boards also have a working relationship with all of its directors. While it is not necessary to become fast friends, it is essential that each director be kept in the information loop, be treated with respect and have a role in each meeting. Sometimes a board retreat is needed to improve upon the interpersonal relationships and there are cooperative consultants that will assist in facilitating such events.

Finally, it is important to realize that directors are fiduciaries. This means that you must act in the best interests of the cooperative as a whole. Directors should avoid conflicts and the appearance of impropriety. You must strive to be beyond reproach as you make decisions. Your personal interests must be subordinate to the good of the cooperative community.

#### 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.

Copyright©

The contents of this booklet is copyrighted by the law firm of Pentiuk, Couvreur & Kobiljak, P.C. Any reproduction of it or any part of it is prohibited without the prior express written permission of the Randall Pentiuk. Requests for permission to reproduce it or any portion thereof should be addressed to Randall A. Pentiuk at 2915 Biddle Avenue, Suite 200, Wyandotte Michigan 48192, or by calling him at 734 281 7100, faxing him at 734 281 7102 or emailing him at [rpentiuk@pck-law.com](mailto:rpentiuk@pck-law.com).