

## Chapter Six: The Things that the Board Does

One of the most important functions performed by the Board is hiring its professionals. There are three primary appointments. The first is the Management Agent, or where the Cooperative is self managed. The Board hires, evaluates, and fires when appropriate, the entity or person it charges with the responsibility of running the Cooperative on a day to day basis.

Typically, the Management Agent has a contract that runs for three years or longer. There should be an early termination clause in the contract, in the event that the relationship fails to work. Other significant matters should be addressed, such as insurance requirements, spending authority, who hires the on-site staff, fee arrangement, and the scope of duties imposed on the Management Agent. Since it is a crucial document, the Cooperative Attorney must be involved in the creation of the contract to protect and advise the Board.

Evaluating the Management Agent periodically is another vital function. Too often, the Board fails to do this step. By neglecting it, though, the Board is doing a great disservice to all concerned. The Management Agent needs feedback and the opportunity to share matters of mutual concern. If done properly, it is not an adversarial event but rather a positive and open dialogue with both sides sharing how each can perform better. We suggest that this evaluation be part of the Board's calendar of events and done at least annually.

Should the Management Agent fail to meet the Board's expectations, it is incumbent on the Board to search for a replacement. The Cooperative Attorney plays an important role in guiding the Board through this to minimize the risk of litigation. Often we are asked for recommendations and help in finding a new Management Agent. We respond by providing a list of competent companies. The Board should request proposals from those companies, short list them based on what is submitted, and then interview until it finds a suitable replacement. At that point, the Cooperative Attorney works out a contract with the successor Management Agent, for approval by the Board.

Another critical function of the Board is to analyze the audit report and the management report prepared by the Auditor. The audit report is an official document that states the financial condition of the Cooperative. It is usually delivered several months after the close of the fiscal year and is the final accounting tool for that preceding year. It contains the official and final report of revenues and expenses as well as the assets and liabilities of the Cooperative. Although dated information, it provides an insight into the financial health of the Cooperative.

More important, but often not requested or considered by the Board, is a report that the Auditor prepares on issues discovered during the audit. Shortcomings and concerns that the Auditor has relative to the way the books are kept and internal controls are disclosed here. Careful review should be given to this report since it is your professional's opinion on how the financial system actually operates. If used properly, it can help prevent sloppy bookkeeping or worse, such as embezzlement.

Engaging the Auditor is, therefore, an important function of the Board. As noted above, this is a key engagement, and the Board ought to take great pains to select an experienced Auditor that has the independence and experience to provide the reports discussed above. Never should the Board delegate this responsibility to the Management Agent; it is the Board's job to hire the Auditor and it defeats the purpose if the Auditor does not have a direct relationship and access to the Board should he or she discover weaknesses in the Cooperative's financial systems.

In essence, the Auditor is your expert financial watchdog. It is recommended that the engagement be limited to one year terms, in case the depth of the work done is not satisfactory. Experience in the unique nature of Cooperatives should be a major factor in selecting the Auditor.

Another important professional is the Cooperative Attorney. This position, too, needs to be independent of the Management Agent. The Attorney serves the Board directly and must be given free access to discuss concerns without interference or influence. Again, it is crucial that the Attorney specialize in the field of Cooperative law because of its unique nature.

Your Cooperative Attorney serves as advisor to the Board. He or she also oversees any litigation, and handles eviction actions when Members do not pay their carrying charges or violates the Cooperative's rules. Drafting contracts, occupancy agreements, bylaw amendments, rules and regulations and similar documents are standard practices performed by the Attorney. Assisting in conducting smooth Board meetings, preparing opinions and guiding the Board in all aspects of its business are additional duties. Many times the Attorney will play a key role in the annual meeting process to ensure that all the rules are followed and that clean elections take place.

Budgeting is a time consuming but vital task of the Board. Although the Management Agent may prepare the proposed budget, it is up to the Board to make the final decision. Once a budget is adopted, the Board should obtain timely reports on its performance throughout the fiscal year, and make adjustments as necessary.

In the course of preparing and overseeing the implementation of the budget, the Board indirectly is setting policy for the Cooperative. It is deciding how its money will be spent: the extent of capital improvements, the on-going repairs of its assets, and other expenditures to maintain or enhance the Cooperative's property. Much time needs to be devoted to this on a monthly basis, and the Board should demand timely and accurate financial reports in order to do its job properly.

Often overlooked or delegated to the Management Agent is the Cooperative's insurances. Yet this is just as important to the future of the Cooperative as any other task the Board performs. We strongly suggest an insurance audit be prepared annually and presented to the Board, to ensure that the risks of lawsuits are covered, and that if the property is damaged or destroyed, funds to repair or rebuild are available.

The insurance audit should evaluate the policies to be certain that your premium payments are going to a viable and licensed insurer with a history of paying claims without being compelled to do so by litigation; that the scope of coverage is adequate for the exposures inherent in operating the Cooperative; that the Board is covered against claims and lawsuits against the Directors individually; and that the deductible levels are appropriate. Failure to maintain proper levels of insurance can be devastating if there is a fire, tornado, a lawsuit or other calamity.

Another important role of the Board is dealing with Members. Unless it has delegated the task to a committee or to its Management Agent, the Board makes the decision on admitting new Members. This is a serious matter which has significant legal consequences and must be handled cautiously to avoid litigation. It is important to have solid, objective reasons to deny an application for membership. There are many federal and state laws that prohibit discrimination, and there are privacy rights involved. Your Management Agent and Cooperative Attorney should always be involved when the Board is thinking of rejecting an application. The potential for a lawsuit is rather high in this area unless handled properly.

The Board also will deal with problems among Members of the Cooperative. Sometimes the issues are petty; other times you may be dealing with a volatile and violent problem. Hard decisions, like evicting a Member, have to be made by the Board. Moreover, the Board makes the rules and upon distribution to the Members, it then oversees implementation of them by the office staff and Management Agent. In a sense, the Board is like Congress in making the laws - or rules; in another sense, it sits as a Court, in deciding how to handle violations of the rules; and it is like the Executive Branch in seeing that the rules are promulgated and then enforced.