

Chapter Two: Comparisons to Other Forms of Home Ownership

The Michigan Cooperative Law Primer

Much has been written and is available on the web that compares the various types of home ownership with cooperatives. Some of the more important differences are explained here. A more exhaustive list may be found at www.MichCoopLaw.com.

Responsibility for Repairs and Maintenance

One of the most significant advantages to being a cooperative member flows from the fact that the corporation owns all of the property. When something wears out, needs fixing or replacement, or is damaged, the coop member is not called upon to take care of it, or to personally pay for it. Rather, it rests with the cooperative to take care of it.

Thus, the cooperative takes care of removing snow, fixing garbage disposals and leaky toilets, replacing roofs, and everything else that the property needs. In the case of a condominium, the owner has to take care of everything that goes wrong within the four walls of his or her unit. A single-family homeowner is responsible for everything - inside and outside.

For busy or older cooperative members, this is a great relief. They do not worry about maintenance issues. If something needs to be fixed, a work order is filled out and filed with the office. A trained maintenance employee or contractor comes out and fixes the problem at no cost - directly - to the member.

Screening Prospective Members

Another major advantage is the cooperative's right to screen applicants. This means that before a person is allowed to acquire a membership in the cooperative and the corresponding right to live in a unit, he or she must submit to financial and other scrutiny. There must be a demonstrated ability to pay the monthly carrying charge; and certain cooperatives may have income limitations. Some cooperatives go even further and investigate an applicant's criminal history. Applicants may also be subject to interviews. All of these measures help protect the cooperative community from a financially or otherwise unstable person becoming a member.

This stands in sharp contrast with every other form of home ownership. A co-owner of a condo unit may freely sell his or her unit. The condo association has no right to look into the new person's background. You, as a condo owner, may end up living next to a sex offender - with no recourse, except to move out.

Regulating the Conduct of Members

A cooperative board has an unique ability to adopt rules and regulations, in addition to those contained in the occupancy agreement, to address issues that arise within the cooperative community. Once promulgated and distributed to each member, these rules can be enforced through the summary proceedings act, with a violator being subject to eviction. This does not require approval by the membership.

In contrast, the condominium association is bound by the master deed and bylaws. This presents a dilemma when an unanticipated problem occurs: changes are up to the co-owners to approve. Thus, a meeting of the co-owners must be convened and the matter voted upon. Assuming this hurdle is overcome, the remedy is foreclosure through a cumbersome, time-consuming process that can be expensive.

Policing the Rules

Whether it is the regulations that govern a member's conduct, or the requirement that financial obligations be paid, the cooperative has a huge advantage over a condominium association. Under Michigan law, a cooperative has the right to invoke the "Summary Proceedings Act" which is the ability to use the landlord-tenant laws to evict a member who does not pay or creates a disturbance, or otherwise fails to abide by the rules.

No such right exists for a condominium association. Its recourse - in the event that monthly payment is not made, is to place a lien on the unit of the defaulting co-owner and to exercise foreclosure rights. The problem with this remedy is that it is much longer and costly. It could take thousands of dollars and more than half a year to achieve the same result as a cooperative can obtain in a matter of weeks.

While more is written below on the specifics of the cooperative's remedies for dealing with members who fail to pay or violate the rules, suffice it to say at this juncture that a clear and distinct advantage exists here for cooperatives.

Financing Availability

Since a cooperative owns the entire property, it is in a much better position to obtain loans. This becomes important when major expenditures are needed, such as interior renovations, roof repairs and the like. Lenders want collateral, and the property serves as a nice way of providing security for mortgage loans. This is usually not available to condo associations, since they typically do not own extensive amounts of property - as the condo co-owners own their units. Thus the condo association has little to offer in the way of collateral.

On the other hand, at present time, a condo co-owner does have an advantage over a coop member, in terms of the ability to finance the acquisition of his or her unit. A condo co-owner may use his or her unit as collateral for a loan by which the loan proceeds are used to purchase the unit. In the case of a coop, a member does not have legal title to his or her unit and, therefore, is unable to offer it as collateral.

Over time, and as our efforts to educate lenders on the intricacies of coop law continue, we expect them to start making share loans. Indeed, there are certain lenders willing to do so now. But the practice is not yet widespread, unlike in New York where some of the more expensive housing is in the form of a coop unit and lenders there are quite familiar with the ins and outs of share loans.

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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