

**A MICHIGAN COOPERATIVE LAW PRIMER
FOR NEW COOPERATIVE BOARD MEMBERS**

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Members

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Welcome Aboard!

Congratulations on being elected to serve on the Board of Directors of your Cooperative. The mere fact that you were selected by your fellow Cooperative Members speaks well of your character and should be a source of pride to you and your family. You are now entrusted with the responsibility of leading a corporation worth millions of dollars. Beyond the economics, though, is a whole lot more. You now have the awesome duty to care for the welfare of the Members and their families, who depend on you to make the right decisions. After all, this Cooperative is their home. This is where they live and sleep, and raise families. Many look forward to making this their residence for the rest of their lives. They have invested their hard earned dollars in this place, and deserve to have it protected and preserved. Indeed, the quality of their lives now rest with you.

Even more staggering than all of the foregoing is your duty to carry on the tradition of a way of life and philosophy known as the Cooperative movement. This form of home ownership did not happen by accident: it was deliberately conceived as a conscious effort to create a special sense of community and cooperation among people seeking to meet one of life's most basic needs - having a home. Through the years, it found its way into the National Housing Act as Congress determined that it was a special and important form of home ownership that ought to be fostered and encouraged. Thus, a national policy was created to encourage its development, and the United States Department of Housing and Urban Development ("HUD") was given charge to create programs to promote it.

Consequently, a number of Cooperatives were formed throughout the country, supported by low interest mortgages insured and backed by HUD. Many were built to provide homes for low and moderate income families, with support of federal funds. A whole regulatory scheme was adopted to oversee these fledgling new Cooperatives.

You now are elected to carry on the way of life and home ownership known as the Cooperative. In doing so, you help fulfill the dream of those who preceded you on your Board and those who labored in the housing field to make this a reality. You help create a community for families; a common bond that unites them; and a democrat form of home ownership which ensures a safe and secure environment.

As you begin your new role as a Director on the Cooperative's Board, this primer attempts to give you the essential tools to do your job well. The goal here is to get you started with the basics as well as pointing you in the direction where you can learn more. Realize, though, that this is just the first step in equipping you to be an effective leader that can be proud of your service to your community.

This Primer is intended to point you in the right direction and give you some pointers that you might not otherwise get in your early days as a Board member. It does not pretend to replace other resources, including those discussed later on in this Primer. Your fellow Directors, especially those who have some seniority, can be great mentors - assuming they have been doing things correctly. Your Management Agent, the Cooperative's Attorney and the Auditor can help you understand things within their respective disciplines.

And note that this Primer is not intended, nor should it be used, as legal advice. You need to consult with your Cooperative's own attorney or hire a competent, experienced one. Each situation needs to be evaluated on its own facts, so avoid taking general information as necessarily applying to your particular facts. Know enough to get professional help.

This Primer is brought to you as a free service of the Michigan law firm of Pentiuik, Couvreur & Kobiljak, P.C., serving all the legal needs of Cooperatives throughout the State. Committed to the Cooperative movement, we welcome the opportunity to serve your Board. If we can help your Cooperative, please contact Randall Pentiuik at 734-281-7100 or rpentiuk@pck-law.com.

Chapter One: First Steps

In order to know and understand the job that lies ahead, it is vital that you have a working knowledge of the laws that govern the Cooperative. For that reason, you must obtain the current legal documents. Request of your Management Agent or Cooperative Attorney the following:

1. The Articles of Incorporation, which is the legal instrument that was filed with the State in order to create the corporation that launched the Cooperative. It is a foundation document upon which everything else is based upon. Make sure you receive all amendments to it.
2. The Bylaws, which goes into greater detail on the rights and responsibilities of the Members and the Board. Like the Articles of Incorporation, the Bylaws may have been amended over the years, so be sure to get the current set of Bylaws.
3. The Regulatory Agreement or Use Agreement, if your Cooperative is still subject to HUD's control.
4. The Management Agreement, which spells out what the Management Agent is responsible for, and governs the relationship between the Cooperative and its management team.
5. The Cooperative Rules and Regulations, together with any Cooperative Policies, which defines a code of conduct for the Members.
6. The Occupancy Agreement that is currently in effect. Together with the Rules, Regulations and Policies, spell out in detail what the Cooperative requires of its membership and becomes important when there are complaints or controversies within the Cooperative community with Members.
7. Contracts, including any agreements with lenders, which may limit the Cooperative or impose certain duties upon it.

Other documents you should request include the most recent financial audit and the current budget, crucial tools to guide you on making fiscal decisions. Prior Board meeting minutes for the last year ought to be furnished to help you get up to speed on pending issues that the Board has dealt with, or is facing.

Chapter Two: Understanding the Board's Role

Of paramount importance is understanding the role of the Board. Many times we have seen Boards attempt to abdicate their responsibilities by looking to the Membership to make decisions for it. While the Members do have a voice in the affairs of the Cooperative, it is a limited one, governed by the Bylaws.

The typical Bylaws contain a clause within the chapter dealing with the Board of Directors. The language usually states that the Board is granted very broad authority, and this is consistent with general corporate law that establishes that governance of corporations is vested with the Directors, with very limited involvement by shareholders.

The reason for this is plain. As discussed below, Directors are fiduciaries that are legally obligated to make decisions in the best interest of the corporation as a whole. Directors are given access to confidential information to assist them in making such decisions. Members, on the other hand, have no legal responsibility to make decisions for the good of all. They are free to act in their own self-interest and do so without any recourse.

For that reason, Members are relegated to a lesser role of electing the Board and, when they deem it necessary, to recalling Directors. They vote on important matters such as amendments to the Bylaws and Articles of Incorporation. But they do not make decisions on whether there should be a carrying charge increase, or whether to borrow money. The law places those matters within the Board's jurisdiction.

Chapter Three: Understanding the Role of the Board Officers

Your first official act is probably to show up at an “organizational meeting” of the Board, at which time you will be expected to participate in electing the Board officers. Many Bylaws provide that this organizational meeting is to take place within ten (10) days of the annual meeting of the members where new Directors are elected. Thus, one of your first decisions will be to decide which of the Directors should hold the various positions that are enumerated in the Bylaws.

Typically, there are four (4) positions: President, Vice President, Secretary and Treasurer. Each office is defined in the Bylaws, and follow the common understanding of those roles. For example, the President presides at all Board and Membership meetings, and signs legal documents on behalf of the Cooperative. The Vice President fills in when the President is absent. The Secretary keeps minutes of all Board and Membership meetings, and is the custodian of the Cooperative records (although as a practical matter, these records are usually kept in a safe place such as the Cooperative office or a storage facility). Treasurers are charged with the fiscal affairs of the Cooperative and typically are signatories on the bank accounts. They also work closely with the Auditor and the Management Agent to maintain the financial statements and audits of the Cooperative.

It should be noted that as a general rule, the Board is free to reorganize itself at any time. This means that the officers can be changed if the majority of the Board so desires. Just because someone is elected President at an organizational meeting does not mean that he or she will stay in that position until the next organizational meeting the next year. Sometimes, an officer does not work out in that position, and the majority may make changes as it deems appropriate.

Chapter Four: Board Meetings

Each Board has developed its own way of doing things. Some are strict and formalistic; others are casual and relaxed. What they all have in common is that they are where decisions for the corporation are made and recorded. As such, they are critically important. We attempt here to provide the fundamentals that apply no matter how informal your Board may conduct its business.

First is the notice of the Board meeting. Unless you consent to waive it, you have a right to be informed, in advance and in writing, of all Board meetings. Your Bylaws will typically define how this notice is to be given and when. The point is that as an elected representative of your Members, you are entitled to know when there are meetings. If the Board meets without giving you notice, its actions may be set aside and voided by a court.

Another key requirement is that minutes be taken. While Secretaries vary widely on the details contained in their minutes, the point here is that essential information must be recorded. These minutes constitute the official record of the corporation. Clarity is vital. Whether motions are passed is essential. They often become important documents in legal proceedings. Accordingly, great care should be given to them. At each meeting, the Board should be approving the last meeting's minutes.

We often hear frustration expressed by Boards that their Managers do not carry out the directives given during Board meetings. The solution is quite simple: pass a motion that spells out exactly what the Manager is expected to do and include a deadline. This gives a clear message of the Board's will, and a timetable for completion. At subsequent meetings, ask about the status of the assignment. If the Manager fails to carry out the Board's directives, this serves as a legal basis for beginning the process to terminate the Manager's contract. If you have a problem of this nature, the Cooperative Attorney needs to be involved and giving guidance to the Board.

Board meetings are either open to the Membership or closed. Contrary to popular belief, the State of Michigan's Open Meetings Act does not apply to Cooperatives. Still, many Boards find it politically wise to conduct their meetings in the open. This helps, in the opinion of many, to dispel the notion that the Board engages in self-dealing and acts contrary to the interests of the Membership when it meets behind closed doors. Others meet in closed session except for a quarterly open meeting.

Regardless of whether your Cooperative holds this view, there are times when a closed meeting is necessary and appropriate. Such instances include when the Board meets with a Member to discuss complaints that the Member has violated a Cooperative rule; or when the Cooperative Attorney attends the meeting to discuss pending lawsuits. Consideration of an application for membership is another time when a closed session is appropriate so as to protect the private information garnered during the application process.

During the meeting, there may be times when it is important to resort to rules of procedure. Most Cooperative Boards have adopted Robert's Rule of Order, or are governed by them through the Bylaws. It is important for all Board Members to know requirements such as what constitutes a quorum of the Board, which is typically three out of five Directors, as it is a prerequisite to conducting any business.

Since a majority of a mere quorum may, in the case of a five person Board is two Directors, those who did not attend that meeting may want to reconsider decisions made by the two. For that reason, knowledge of the ins and outs of motions to reconsider is important. Bear in mind, though, that third party reliance on the vote of the Board, even if it is just two Directors at a three person Board meeting, may expose the Cooperative to legal exposure. For example, if a contract is awarded at such a meeting, the vendor who relies on it and begins to perform may have a cause of action if that decision is reversed by the other Directors at a subsequent meeting. At times like that, the Cooperative Attorney needs to be involved.

Another essential element of the Board meeting is each Director's right to be heard. What should happen is a Director makes a motion. The motion needs to be clear. It must describe exactly and completely what action is being authorized, how it is to be carried out, when it is to be done, and by whom. Before there is discussion, it must be supported by another Director. If there is no second to the motion, it then dies for lack of support. If it is seconded, then the Chairperson should call for discussion of it. All of the discussion should relate to the motion and it is the Chairperson's job to keep everyone focused on the matter at hand. A vote should not take place until everyone has had a chance to comment. If a Director disagrees strongly, he or she may file a written dissent that becomes part of the minutes. This is important if the Director believes that the Board is undertaking an illegal act, and it serves to protect that Director from liability for the act of the others.

Be aware that there are tools of procedure that serve to cut off either discussion of a pending motion or to bring about an abrupt end of a meeting. A motion to table a pending motion serves to stop discussion and puts it on the next meeting agenda automatically. Since it is not debatable, all that can occur once it is seconded is a vote on it. If it passes, there can be no more discussion or a vote on the motion that was tabled. Similarly, a motion to adjourn is always in order throughout the meeting. It also is not debatable. If supported, it ends the meeting without discussion.

Usually, Board meetings take place without resort to these rules. However, it is good to know how they work in the event you encounter an issue that sharply divides the Board. If the Board knows in advance that it will be facing such a controversial matter, it is prudent to have the assistance of your Cooperative Attorney to guide you through that meeting.

Chapter Five: The Legal Responsibilities of a Board Member

A Board Member is a fiduciary under the law. There are two recognized legal duties associated with this role as a fiduciary. Derived generally from common law, the duties must be always borne in mind in order to properly discharge the office of Director.

The first of these duties, and regarded as the most important, is the duty of loyalty. The concept is simple: the Director is required to put the Cooperative's interests above his or her own. The way to conform to this standard is to avoid conflicts of interest, or self-dealing. Part of this duty is the responsibility to make disclosures to the Board when a conflict of interest exists, and avoiding any form of participation in the decision.

The second core duty is that of care. Generally, this requires the Director to pay attention to details, ask questions, and try to make the best decision for the Cooperative. It means doing your homework: reading the minutes, preparing for meetings, and educating yourself. Listed below are some resources to help you learn more about running a Housing Cooperative, and include attending educational conferences such as those of the Midwest Association of Housing Cooperatives and the National Association of Housing Cooperatives.

The law allows Boards to rely on the advice of its professionals as part of the discharge of this duty of care. And courts decline to second guess Boards which exercise its duty of care, instead deferring to their decisions so long as there is evidence of the Board acting with care and where appropriate, using its professionals to assist in giving advice.

Part of the duty of care is the responsibility of the Board to comply with the "law." This is sometimes referred to the "duty of obedience" and means that the Board has to stay within the bounds of the rules. It must follow its articles of incorporation, bylaws, and all the other so-called governing documents. That is why it is crucial that the new Director obtain and read these documents, and when necessary, to consult with the Cooperative's professionals for guidance.

Failure to comply with the fiduciary duties imposed on the Board may expose the Directors to personal liability, and may also jeopardize the validity of the decisions made. Thus, it is critical for the Director to always act in strict conformity with these two duties, and to seek professional help in governing the Cooperative's affairs. While it may be tempting to save money by not seeking professional advice, the risk of not doing so is enormous. After all, Cooperatives are multi-million dollar businesses, and in modern society, litigation is common place.

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.

Chapter Seven: Frequently Asked Questions

Open Meetings Act: Many people believe that a Cooperative, since it holds Board meetings and may be involved with HUD, must hold open meetings. While in some states that is true, it is not the case in Michigan. The definition of “public body” does not extend to Cooperatives in this State. It may be advisable from a political standpoint to hold at least some meetings in the open, it is not a legal requirement here.

Remuneration: Board members frequently ask if they can be paid for their service. Sometimes, they ask if they can be reimbursed for lost wages when they attend to Board business. Unless the Bylaws state otherwise, the answer is “no.”

Vacancies: When a Board member resigns or dies in office, the Bylaws typically empower the remaining Board members to appoint a successor, who serves only until the next annual meeting of the membership.

Proxies for Board Meetings: Proxies are not available for Boards. You must be present to vote on Board business.

Selecting Management Agents: As noted above, the Board selects its Management Agent. It is good practice to seek proposals from as many Management Agents as possible, and then conduct interviews, check references and carefully examine the proposed Management Agreement. The Cooperative Attorney and Auditor are useful resources in identifying potential candidates to be contacted. MAHC has a Management Agent Request for Proposal which serves as a starting point for drafting one for your Cooperative.

HUD's role: The United States Department of Housing & Urban Development was instrumental in the development of a large number of Housing Cooperatives several decades ago, and as such, entered into contracts that empowered the agency to regulate Cooperatives. Once the Cooperative has ended its relationship with HUD, the authority of HUD to regulate ceases. It is important to find out whether HUD continues to have authority. This can be learned by reading the Regulatory Agreement, and finding out whether the Cooperative has entered into a Use Agreement or Section 8 Contract with HUD that remains in effect. The Cooperative Attorney can assist in answering these questions.

Awarding Bids & Contracts: The Board is the final decision maker on awarding contracts for the Cooperative. While it is not necessary that the lowest bidder's proposal be accepted, any decision to chose another vendor should be carefully documented and be in the best interest of the Cooperative.

Chapter Eight: Glossary of Terms

What follows is a short list of phrases and terms that are commonly used in the Cooperative field, and every Board member should have knowledge of them. This is not an exhaustive list.

BMIR ("Beemer")

BMIR is an FHA abbreviation for Below Market Interest Rate. This term applies to certain FHA mortgage insurance programs where the mortgage carries with it a subsidized interest rate that is below the market. This reduces monthly cost and makes it possible for low- to moderate-income families to benefit from the cooperative form of home ownership.

Excess Income

An FHA/HUD term that refers to income paid by residents who, at certification or recertification, have income over the prescribed limits, thus requiring the payment of a monthly charge above the basic rate. This term is most commonly used in relation to a Section 236 development.

Flexible Subsidy Loan

Loans provided by HUD pursuant to section 201 of the Housing and Community Development Amendments of 1978. In general these loans were provided to assist in financing of capital improvements. Some of the flexible subsidy loans had interest rates at 1% per annum and generally have a balloon payment due upon the maturity date of the original mortgage or upon prepayment of the original mortgage.

General Operating Reserve (GOR)

HUD-related cooperatives are required to maintain a reserve fund at a level specified in the regulatory agreement for the purpose of providing funds in emergency or crisis situations. Many non-HUD related co-ops also maintain these reserves.

Income Limits

Income limits are found in many types of affordable housing. The co-op or sponsor sets certain eligibility requirements for admission or continued occupancy in housing developments designed for low-income people. Certain housing cooperatives, primarily those that have been developed through government subsidy programs for the purpose of providing affordable housing, have income limits on incoming members. However, unlike most rental or public housing with income limits, in a cooperative, if an individual or family's income goes over the limit once they have moved in, they do not have to move out.

Internal Revenue Code Section 216

Section 216 is a section of the U.S. federal tax law that permits individual cooperative members to deduct mortgage interest and property tax on their income tax returns just like other homeowners do. Section 216 allows cooperative housing corporations to pass-through the mortgage interest and real property tax deductions to their stockholders on a pro rata basis.

Limited-Equity Housing Cooperative

A limited equity cooperative is a cooperative where the bylaws limit the resale price of a membership/shares for the purpose of keeping the housing permanently affordable to incoming members. The resale value of shares is not determined by whatever the market will bear as in market rate co-ops, but rather it follows a pre-determined formula in the bylaws that limits that maximum resale value over time. Limited equity cooperatives also usually restrict purchase of memberships to persons below a certain annual income level. This also serves to preserve the property for low and moderate income families.

Market-Rate Housing Cooperative

A market rate cooperative is a cooperative (1) financed with interest rates considered market rates and (2) with no restrictions on membership/share resale prices.

Occupancy Agreement (or Proprietary Lease)

The occupancy agreement or proprietary lease is the contract between the cooperative corporation and the member that sets the conditions for the right to occupy a particular unit. FHA co-ops and some other co-ops call this contract an occupancy agreement; others refer to it as a proprietary lease. It sets forth the rights and obligations of the member and the cooperative to each other. Legally, it is viewed as a lease by the member with the housing cooperative.

Recognition Agreement

A recognition agreement is an understanding between a cooperative and a financial institution that provides share loans to the cooperative's members or shareholders. The recognition outlines the responsibilities between the co-op and the bank and the courses of action that must be taken by each party if a shareholder/member defaults on the loan.

Regulatory Agreement

Co-ops that are have mortgage insurance through HUD or the FHA have certain obligations that are outlined in a document called a regulatory agreement. Co-ops financed by state and local housing authorities often have similar contracts, which are often modeled on the standard HUD agreement. Basically, the regulatory agreement requires the co-op to abide by the regulations of HUD (or FHA), which insured the mortgage in order to induce a lender to finance the development. This document binds the mortgagor (the cooperative) and mortgagee (the financial institution that holds the mortgage until the amount borrowed, plus interest, is paid) with the Secretary of HUD.

Replacement Reserve

A replacement reserve is a reserve fund to provide savings for the timely replacement of major appliances, building components, and structures.

Section 8

Section 8 is a federal assistance program that subsidizes the monthly rents of low-income individuals. Individuals who receive Section 8 assistance must fall under certain income requirements. Individuals benefiting from Section 8 pay only a certain percentage of their monthly income in rent, the government pays the rest directly to the landlord or co-op.

Section 202

Section 202 is a HUD program that provides financing for housing developed for the elderly and disabled. A number of senior housing cooperatives have been developed using this program.

Section 203(n)

HUD's Section 203(n) single-family cooperative mortgage insurance program insures loans for persons buying a share/membership in a housing cooperative. The loan is made by a lending institution, such as a mortgage company, bank, or savings and loan association, and is insured by HUD's Federal Housing Administration (FHA). (See "Share Loan")

Section 213

Section 213 is a HUD program that insures mortgages only on cooperative housing projects on a market rate basis. Section 213 has been used to insure over 500 cooperative housing projects, totaling over 70,000 units.

Section 216 See "Internal Revenue Code Section 216"

Section 221(d)(3)

Section 221(d)(3) is a HUD/FHA program that insures mortgages for the new construction or substantial rehabilitation of multifamily cooperatives and nonprofit rental housing. Under 221(d)(3), a nonprofit sponsor may receive an insured mortgage for up to 100% of the HUD/FHA estimated replacement cost of the project.

Section 221(d)(3) BMIR

Previously, the Section 221(d)(3) Below Market Interest Rate (BMIR) program provided below market interest rate financing for sponsors of low-income housing projects. Many cooperatives that were developed during the 1960s and 70s used this program. BMIR projects were replaced by the Section 236 Mortgage Subsidy Program under authority of the Housing Development Act of 1968. Presently no new mortgages are insured under the BMIR or the Section 236 programs.

Section 236

Section 236, a HUD program enacted in 1968, provides a subsidy to reduce mortgage interest payments down to as low as 1%.

Share Loan

A share loan is a loan obtained to purchase a share in a housing co-op secured by the shares and occupancy rights (cooperative interest). A member can get an individual loan for that amount from a bank or other lending institution (just as when an individual is buying a house).

Subchapter T

Subchapter T refers to Sections 1381 to 1388 of the U.S. Internal Revenue Code, which cover cooperatives that serve some public benefit. Cooperative housing corporation pay federal corporate income taxes in accordance with the provisions of Subchapter T.

Subsidized Housing Cooperative

A subsidized housing co-op receives a subsidy of some kind from the federal, state, or local government or other sources in order to lower the overall costs of the housing.

Transfer Value

The transfer value is the dollar amount of the membership or share in a housing cooperative as set by the bylaws in event the cooperative repurchases the membership/share. In a limited equity co-op, the transfer value is the maximum amount at which a member's share in the co-op may be sold according to the co-op's limited equity formula.

For additional Cooperative related terms visit the National Housing of Cooperatives (NAHC) web site

<http://www.coophousing.org/glossary.shtml>

Chapter Nine: Resources

Because Housing Cooperatives are relatively uncommon in Michigan, new Board members need to know where to turn for help. Not every management company or lawyer knows how to properly assist. For that reason, this chapter provides you with resources to use when you encounter a problem that requires expertise of those who understand Cooperatives.

As noted earlier, there are associations that are dedicated to helping. The National Association of Housing Cooperatives (NAHC) is a national organization that has a useful website at www.coophousing.org. NAHC also holds annual conferences for Boards which offer great training opportunities with instructors from across the country. Printed materials may also be purchased, and members receive useful newsletters.

Like NAHC, the Midwest Association of Housing Cooperatives (MAHC) offers excellent training and networking opportunities to Boards. It also has a superb website at www.mahc.coop. A newsletter is included in the membership fee, and also offers relevant publications for sale.

These two organizations that provide education and information. It is important to belong to them, and attend their conferences. One of the benefits of doing so is the opportunity to network with other boards and to be able to call upon those you meet there to give their experience.

For Cooperatives operating under HUD's regulatory oversight, this federal agency has a useful website that should be examined. www.hud.gov.

Pentiuk, Couvreur & Kobiljak, P.C. is a law firm in Michigan that has years of experience in helping Cooperatives. Our website is located at www.pck-law.com. We have also established a special website where we make available, at no charge, informative articles that may be useful to you at www.MichCoopLaw.com. In addition, the firm publishes the "Michigan Cooperative Law Journal" on a quarterly basis and is mailed to any Board Member who wants it, free of charge. We also have an electronic Co-op law letter which is sent monthly to those who sign up for it through e-mail to us at firm@pck-law.com. Always seek advice for your specific problem, though. Each Cooperative has its own set of governing documents and they may differ materially in respect to the matter that is affecting your Cooperative.

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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