



MAHC Messenger

Applicability of the MMMA In Multi-Family Housing Facilities

Randall Pentiuk

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In 2008, the Michigan legislature enacted the Michigan Medical Marijuana Act (MMMA), which legalized the use of medical marijuana in the State of Michigan.¹ Specifically, Michigan residents who obtain a valid medical marijuana identification card are permitted to possess up to 2.5 ounces of marijuana and/or 12 live marijuana plants.² Numerous other states have enacted similar measures regarding medical marijuana, and some states have gone so far as to legalize marijuana for general recreational use.

However, despite the recent development in this area of law, legislative change has been limited to the laboratory of state legislatures. As it pertains to the federal government, marijuana remains a Schedule I controlled substance with “no currently accepted medical use in treatment in the United States.”³ Naturally, there is some conflict in this corner of the legal world; numerous states have chosen to legalize marijuana in various contexts despite the federal government’s steadfast identification of the drug as a Schedule I controlled substance.

For federally subsidized housing facilities, the question marks surrounding the legality of marijuana present an interesting dilemma. Housing facilities may encounter a scenario where a resident wishes to possess and/or use medical marijuana within his or her unit. If the resident possesses a valid medical marijuana identification card, his or her possession of marijuana on the premises of the housing facility is entirely legal under the MMMA. Even more significant, a resident may demand to use medical marijuana within his or her unit as a “reasonable accommodation” under the Fed-



eral Housing Act (FHA). Specifically, under the FHA, discrimination in the sale of rental of public housing on the basis of disability is prohibited.⁴

In the context of the FHA, discrimination includes a facility’s refusal to make reasonable accommodations to afford a disabled person equal opportunity to use and enjoy a dwelling.

This dilemma was addressed by the United States District Court for the Eastern District of Michigan in *Forest City Residential Management, Inc v Beasley*.⁵ In *Forest City*, Beasley was a resident in a public housing who possessed a medical marijuana card and had been smoking marijuana in her apartment.⁶ Beasley requested that the housing facility allow her to smoke marijuana in her apartment as a reasonable accommodation under the FHA.⁷ The housing facility (Forest City) sought a declaratory judgment to the effect that Beasley could not seek protection from eviction under the MMMA based on her possession of a medical marijuana card.⁸ Beasley suffers from multiple sclerosis, and she possessed a medical marijuana card during

(Continued on page 10)

*“Talent wins games,
intelligence wins
championships.”
Michael Jordan*

**THE SUCCESS OF
TEAMWORK**
*“Coming together is a
beginning, keeping
together is a progress,
working together is
success.”
Henry Ford*

2015 Cruise Conference Interviews—Perspective...

The MAHC Messenger caught up with a few attendees from this year's conference to find out what their opinions were on some interesting topics. We spoke with MAHC Member, Fred Gibbs who is a Managing Agent with FK Gibbs Company in Kansas City, MO, and Ted Dowl of Town Square Cooperative in Detroit, and Linda Asim from Retreat Cooperative in Indianapolis, IN. The interviews are as follows:

What did you like most about MAHC Conference 2015?

Fred: LOCATION of course! Well and the reduced 2-day format of the classes seem to be more concise.

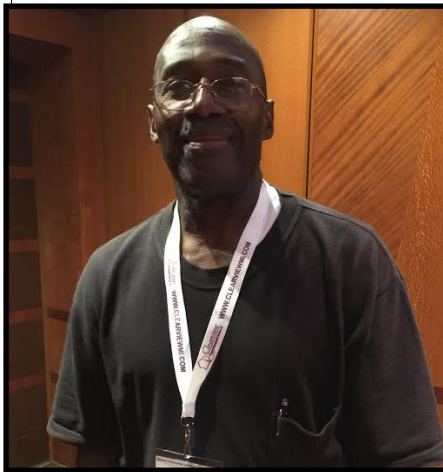
Ted: Definitely the more condensed class format the two-day program offered attendees more freedom. Another thing that seems better is the subject matter and the fact that they offered more classes than before.

Linda: The classes because they seemed to have captured things that I hadn't heard before and reinforced some of the things I already knew.

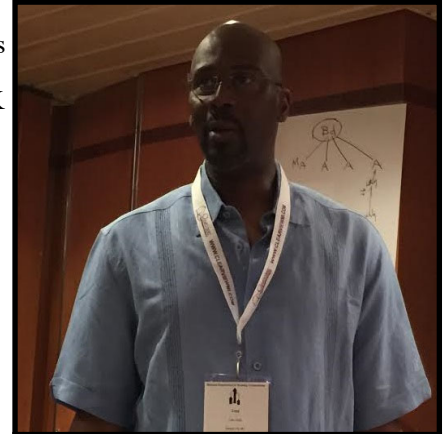
What type of classes did you like the most?

Fred: As a management agent, I like management classes and classes that have to do with that type of equation.

Ted: I found the “Hot Topics” class appealing because it covered issues like smoking marijuana and dealing with pets.



MAHC Member, Ted Dowl



MAHC Member, Fred Gibbs

Linda: Here in this class, “The Roles Of Professionals”, I've learned that my management company isn't giving us great information, I have many questions for my cooperative like; shouldn't we attend our audit? Shouldn't we have access to our insurance information? Is our Management Company bonded?...

What can you take back to your cooperative?

Fred: Well the classes already highlight things I know and reinforce some existing knowledge like who works for whom? The bottom line is that the Board is the party to which all professionals answer. In other words all professionals work for the board.

Ted: There are different problems that each cooperative encounters and it's nice to know who to deal with to resolve these issues.

Linda: I like the information I got from the “You Say Ta-May-Toe I Say Ta-Mah-Toe” class. Conflicts need to be set aside, we need to get through our differences and have a meeting.

MAHC Flashback

Did you know?

The first conference was held in 1963 at Cobo Hall in Detroit, Michigan. Two meetings were held and the suggestion for a formal organization came forth. MAHC—the Michigan Association of Housing Cooperatives. There was an overwhelming response by cooperators to the idea. A formal organization to represent people was established. Ten years later in 1973 the association broadened its scope and changed its name to the Midwest Association of Housing Cooperatives.

MAHC Board of Directors 2014-2015

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Did You Know?



Personal prejudices are not only repulsive to the entire cooperative movement, if they result in discriminatory actions taken or contemplated, they are probably illegal as well. Person prejudice against any category of person should be a disqualification or service on the Board of a housing cooperative.

Dear Co-op Counselor; HELP!

Dear Counselor;

Our Cooperative board has compatibility issues, our meetings are not productive because of the conflict and difficulties we have getting along with each other. I feel that racial tension and personal prejudice may be an underlying factor. How can we address this issue and eliminate this toxic atmosphere so that we can have productive board meetings.

Signed: Board With Drama

Dear Board:

Situations like this occur all too frequently and must be addressed as a top priority to avoid deadlock of the Board and destruction of the Cooperative. The most important thing to bear in mind is that all of the Directors are under a fiduciary duty to put aside whatever baggage they have, and look out for the best interest of the Cooperative's membership as a whole. Many times it is beneficial to bring in an outside consultant who is trained to assist in helping people realize that they don't have to love their fellow Board members – they just have to be able to work with them. Concepts like civility are paramount. In fact, tolerating and learning to listen to divergent points of view often create a better group decision in the end.

In addition to using a consultant to conduct a Board retreat focused on creating a decent working environment, please consider the tools that MAHC offers. You may require Board Members to attend our conferences and encourage attendance at a variety of classes designed to deal with these issues. From a legal perspective, we teach classes on fiduciary duties of Directors which encompasses these issues. In our annual legal update class, we talk about dealing with dysfunctional Boards – the problems and solutions.

A final note: you may want to involve your Cooperative Attorney by having him or her come to Board meetings. First, the Attorney should be asked to speak to the issues and educate the Directors on their individual liability for not abiding by their duties to the Cooperative. Also, we have learned over the years that our presence typically has a positive impact on the atmosphere of the meeting. We will speak up and point out problems as they occur, and usually this helps the Board develop ways to get rid of the toxic waste.

Signed: Co-op Counselor (CC)

If you are interested in submitting a question (regarding legal policy and procedure) to the Co-op Counselor, please submit your question via email to MAHCeditor@gmail.com, insert the words "Co-op Counselor" in the subject line. If you would like to mail your question please send it to Penttiuk, Couvreur & Kobiljak, P.C., 2915 Biddle Suite 200, Wyandotte, MI 48192 Attention: "Co-op Counselor". While we will do our best to respond to your question please understand that submission of your question to this forum is no guarantee that you will get a published response.



Disclaimer: While we hope this information is helpful in answering some of your questions, please be advised that the answers provided here are for "general" informational purposes only. This information should not be construed as "legal advice" either to the individual or the Cooperative that they represent, the use of this forum does not create an attorney-client relationship between the user/reader and Mr. Penttiuk or his law firm, Penttiuk, Couvreur and Kobiljak, P.C.

For specific legal advice and personalized assistance with regard to your particular issue or problem you should contact a professional cooperative attorney.

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Announcements/Awards



Midwest Association of Housing Cooperatives

Meeting Agenda

Friday June 26, 2015

Conference and Planning Committee 7:00 to 8 PM

Membership Committee 8 PM to 9 PM

Saturday, June 27, 2015

Board Retreat 9AM to 4PM -Map of our past and our future

(Lunch will be a working lunch around 12 noon)

Conference City Selection committee 4 PM to 5 PM

Sunday June 28, 2015

Finance Committee 9AM to 10 AM

Board meeting 10 AM

Re-certification classes on-line

Is it time for your re-certification classes for the CCD, CCM, CCMM. or you did not get enough classes at the conference.

MAHC now offers re-certification classes on line to help you get your 6 hours re-certification need. They are easy to maneuver and MAHC and you will be notified that you have passed that on-line class immediately after you have taken the class.

Our Online self-paced courses offer the ultimate in convenience. Delivered totally online, participants can work anytime, anywhere, 24/7, as their schedules permit. The test is multiple-choice format and covers general course knowledge.

Just contact the MAHC office at 734-955-9516 with your email address, pay your \$25 re-certification fee and let them know what class you want. the classes offered is -

- ◆ Knowing Your Documents,
- ◆ Fair Housing, Coop Law Primer,
- ◆ Cooperative Safety Class,
- ◆ Managing Human Resources
- ◆ Parliamentary Procedures.

This designation carries with it a re-certification process to ensure constant updated education and new industry information to remain active. This re-certification is six (6) hours of approved education before the end of the two (2) year period of the above date. Along with that education, there is a \$25.00 renewal fee that is paid to the MAHC organization. Note there is no fee for any of the education, just the renewal fee. Without the re-certification, the designation can no longer be used by you as a current Certified Cooperative Director.

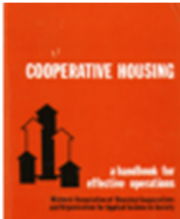
The re-recertification can be achieved in several ways. Classes taught by MAHC at the conference that have been approved for the continuing education can be taken and credit will be given. For every hour of classroom you will receive one (1) credit hour of continuing education. The instructor of that class will sign a form and you will turn it into the MAHC staff for credit. As well, there are six (6) continuing education classes that MAHC offers on-line that you can take and receive one (1) hour of credit for each class taken.



Education is power.

MAHC offers valuable resources such as:

- Cooperative Housing Handbook
 - Serving on The Board
 - Membership Orientation
 - Cooperative Communication
- Parliamentary Procedure Cards



Visit our Website at <http://www.mahc.coop/index.html> to order these titles and find out about the other valuable materials and resources that we offer.

*We love to hear
from you!*



Our Mission Statement

To Support and champion
the cause of quality housing
through education, legisla-
tive actions, partnership, an
advocacy for housing
cooperatives

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[MAHC Members - Conference Locations - Training - Forms](#)



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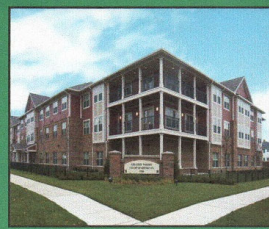
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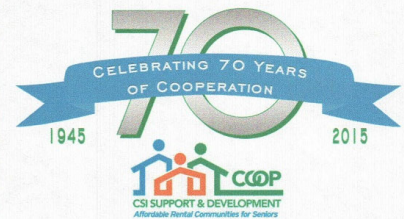


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Conference Education Recap

Dave "Rudy" Rudicil

Is your Cooperative Utilizing The Internet to the Fullest Extent?

The 2015 MAHC Annual Educational Conference provided yet another successful, innovative and informative program, filled with opportunities to build your professional network. Each year this event allows you to learn, reflect and engage with colleagues from around the country. Topics covered included fair housing, ethics, legal structure of cooperatives, policy making, decision making, financial integrity, and battling renter mentality in today's cooperatives. "It was awesome," said a Co-oper who was attending for the first time. "The speakers not only knew what they were talking about, but they were very open to questions and engaged with the audience, which is different from many other conferences I have attended. I was blown away by the amount of knowledge and experience many of the speakers have in Cooperatives. I learned a lot."

Since its inception, the Annual MAHC Meeting has earned a reputation for showcasing excellent faculty and a comprehensive focus on cooperatives. From our opening session where Members were welcomed and the nominees for the 2015 awards for dedication to Cooperative living were recognized, to the Annual Meeting where we elected 8 new board members, information flowed on a free and unobstructed basis. We now are preparing for our annual conference in Orlando Florida in May 2016.

Hope to see you and your family there!

Check out these helpful links...

Legal Links:

[Michigan Nonprofit Corporation Act](#)

[Michigan Cooperative Law Act](#)

[Federal Cooperative Conversion Statute](#)

[Federal Housing Act](#)

[Fair Housing](#)

[HUD Manual](#)

[Michigan Cooperative Case Law](#)

[First Time Home Buyer Tax Credit](#)

Helpful Organizations:

Michigan Alliance of Cooperatives www.michigan-alliance.coop

Center for Cooperative Housing: www.policylink.org/EDTK/LEHC/Resources.html

Midwest Association of Housing Cooperatives: www.mahc.coop

National Association of Housing Cooperatives: www.coophousing.org

Pentiuk, Couvreur & Kobiljak, P.C. www.pck-law.com

Housing & Urban Development: www.hud.gov

National Cooperative Business Association: www.ncba.org

Co-op Housing Coalition: www.chc.coop

University of Wisconsin Center for Cooperatives: <http://www.uwcc.wisc.edu/>

National Cooperative Bank: www.ncb.coop

National Society of Accountants for Cooperatives: www.nsacoop.org

Association for Resident Control of Housing: <http://www.weown.net>

Housing & Urban Development CLIPS: <http://www.hudclips.org>

NAHCFall09CHB RAP Article: ["Do You Know Where Your ESI Data Are?"](#)

Want to see more? Visit <http://www.pck-law.com/mclcl/>.

(Continued from page 1)

her residency at Forest City.⁹ The Lease Agreement between Forest City and Beasley provided that the lease could be terminated in the event of any “drug-related criminal activity” by Beasley.¹⁰ Further, “drug-related criminal activity” was defined as “the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute or use the drug (including commercial drug crimes).”¹¹

At the outset, the Court ruled that the federal Controlled Substances Act conflicts with the MMMA, because marijuana is clearly a prohibited Schedule I drug under federal law.¹² Accordingly, under the doctrine of federal preemption, the MMMA cannot supercede federal laws that criminalize the possession of marijuana. With that conclusion in mind, the Court found that “to require [Forest City] to grant [Beasley] a reasonable accommodation to use marijuana would be to require [Forest City] to violate federal law.” Accordingly, the Court concluded that Beasley was not entitled to a reasonable accommodation for medical marijuana use under the FHA.

Due to the confusion in the MMMA regarding a landlord’s right to ban medical marihuana, On March 10, 2015, the Michigan Senate approved Senate Bill 72 in a 34-3 vote allowing multi-family housing to prohibit the smoking or growing of marijuana. The Bill is headed to the House for further consideration, and requires a three-quarters majority support in each chamber because it would amend Michigan’s voter-approved medical marijuana law.

The Bill would simply codify a 2011 opinion from Michigan Attorney General Bill Schuette, who determined that apartment owners can prohibit the smoking or growing of marijuana without violating the medical law.

In light of Michigan District Court decision and pending legislation in Michigan, one fact is clear: any housing cooperative, whether federally funded or not, is not required to allow medical marijuana on its premises under any circumstances. Although medical marijuana is legal under Michigan law, it is not a right or accommodation that a housing cooperative is required to provide. Furthermore, numerous federal laws specifically provide that marijuana is illegal in all circumstances. Accordingly, a housing cooperative may outright prohibit the use of marijuana on its premises without fear of a lawsuit under the FHA, MMMA or any other federal statutes. Until Congress duly amends the Controlled Substances Act to change the legal status of marijuana, housing facilities simply have no requirement to allow marijuana on the premises. In that context, federally subsidized housing facilities may enact policies and procedures banning marijuana possession or use of any kind by residents and their guests. Further, housing facilities can evict residents who violate such a policy.

¹ MCL 333.26421 *et seq.*

² MCL 333.26424.

³ 21 USC § 812(b)(1).

⁴ 42 USC § 3604(f)(3)(B).

⁵ ___ F Supp 3d ___ (E.D. Mich 2014).

⁶ *Id.* at *1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at *2.

¹⁰ *Id.* at *3.

¹¹ *Id.*

¹² *Id.* at *8-*9.

¹³ *Id.* at *9.

¹⁴ *Id.* at *13.

¹⁵ *Id.*



ROBERT RULES!

He rules! Even if we don't have a clue who he is...

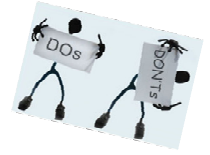
The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

- 1) By Voice -- The Chairman asks those in favor to say, "aye", those opposed to say "no". Any member may move for a exact count.
- 2) By Roll Call -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
- 3) By General Consent -- When a motion is not likely to be opposed, the Chairman says, "if there is no objection ...". The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
- 4) By Division -- This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.
- 5) By Ballot -- Members write their vote on a slip of paper, this method is used when secrecy is desired. <http://www.robertsrules.org/rulesintro.htm#Types>



Cooperative

Dos & Don'ts



Do— Remember that the board is “the boss” of the professionals that provide services for the coop. They work for the cooperative not the management company!

Don't —EVER vote to approve any contract or agreement you do not completely understand or feel you need more information about. Always talk to your legal counsel and have him/her review it first.



MAHC Messenger-

We welcome your article contributions of 500 words or less submitted in MS Word format. Please feel free to forward them to the editor at the address listed below. If you are a Management Company and would like to contribute to the “Cooperative Dos and Don'ts” section of the MAHC Messenger please submit your suggestions to MAHCeditor@gmail.com.

If you are interested in placing an ad in the MAHC Messenger, please contact the editor at MAHCeditor@gmail.com

The views and opinions expressed herein are those of the author(s) and contributors and should not necessarily be reflected as those of the Midwest Association of Housing Cooperatives. The purpose of this publication is to serve as informational only and not to engage in disbursement of legal advice. If you require legal assistance please consult an attorney. If you have questions or comments please submit them to the editor at the email address listed above.

MAHC is Going GREEN!

(at least we're going to try)

But we need **YOUR** help to do this.

If you currently receive the

MAHC Messenger and

you have an e-mail address,

please email

Cynthia Pentiuik @MAHCeditor@gmail.com

First & Last Name

Address, City, State & Zip

Name of Cooperative or Business

Email Address

Thank you for your help in our endeavor to make the world a little greener!



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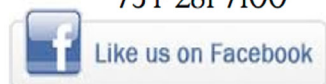
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To support and champion the cause of quality housing through education, legislative action, partnership and advocacy.



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