

For too long, Cooperatives have been perceived as the best-kept secret in affordable housing.



New Board Training

Handout Prepared By Richard Berendson





New Board Training
Program Agenda

I History of Housing Cooperatives

a. History of Co-ops within the United States
b. Principles of Cooperative Identity
c. Types of Cooperatives
d. Cooperative Business

II Organizational Structure of Co-ops

a. Characteristics of Housing Cooperatives
b. Explanation of Co-op Documents
c. Roles & Responsibilities within the Co-op Structure
d. Officers of the Coop
e. Board Responsibilities

III Financial, Legal, and Ethical Responsibilities of the Board

a. Financial Responsibilities
b. Legal Responsibilities
c. Ethical Responsibilities

IV. Member Participation in Co-op Operations

Board member recruitment
Conducting Effective Meetings
c. Working with committees
d. A Director's Code of Ethics

V. Questions & Answers

This means:

1. *A Director who has disclosed a conflict should request that the disclosure be recorded in the official minutes of the meeting.*
2. A *Director may vote on an issue that benefits the Director if the issue is one that is decided for the general good of the cooperative and the members.*
3. *A Director should refrain from voting on a matter when a real or potential conflict of interest might exist.*

Article V

A Director may not divulge or profit from the confidential information learned while performing official duties.

A. A Director may not divulge or otherwise use for personal gain any personal information learned during the performance of official duties as a Director.
B. A Director must hold confidential all matters involving the cooperative until such time as there has been general disclosure of that information.
C. A Director shall not have access to the files and records of a member without the consent of that member.

This means:

1. *A Director must use reasonable care to protect reports and other personal information from being read by unauthorized persons.*
2. *A Director may not use information learned about a member during an official meeting as a topic of conversation with other members.*
3. *A Director does not have authority to peruse files that contain private information about individual members.*
4. *A Director has a duty to protect the confidentiality of information learned in the applicant screening process.*
5. *A Director must have a member's consent to receive confidential information about that member.*

Article VI

A Director has a duty to participate in the operations of the cooperative only as authorized by the full Board of Directors.

A. A Director's primary obligation is to participate in the governance and policymaking process of a cooperative, and not its operations.
B. A Director should not interfere with the enforcement of the occupancy agreement or house rules outside of a meeting of the Board of Directors.
C. A Director should not interfere with the enforcement of policies except during a meeting of the Board of Directors.

This means:

1. *An individual Director is not empowered to provide day-to- day work instructions to staff unless clearly authorized to do so during a meeting of the Board of Directors.*
2. *An individual Director does not have authority to waive compliance with any policy of the entire Board of Directors.*

This means:

1. *A Director is expected to make a diligent effort to become trained and skilled in the business of cooperative housing in such areas as finance, membership sales values, house rules, governance and oversight.*
2. *A Director is expected to obtain a working knowledge of laws that regulate the cooperative such as fair housing and minimum code restrictions that affect the cooperative and its operations.*
3. *A Director is entitled to rely upon information and reports presented by officers or other employees of the cooperative whom the Director reasonably believes to be reliable and competent.*
4. *A Director is entitled to rely upon legal opinions, financial statements, and other information relating to matters that the Director reasonably believes to be within the expertise of the person preparing the information.*

Article III

A Director has a duty to act within the boundaries of his or her authority.

A. The authority of a Board of Directors is defined in the charter and bylaws of the cooperative.
B. A Director's authority is limited to those acts that are transacted during the course of a duly called meeting of the Board of Directors with a quorum present.
C. A Director may not act in an official capacity except in the context of a meeting or the Board of Directors unless specifically empowered to act by a majority of Directors present and voting in the affirmative at a duly called meeting.
D. A Director serving in official capacity may not violate government laws that regulate the operations of the cooperative.
E. A Director serving in official capacity may not violate the cooperative's charter.
F. A Director serving in official capacity may not violate the cooperative's bylaws.

This means:

1. The Corporate Charter received from the State defines the business that the corporation can conduct. Its bylaws describe how the cooperative will be operated.
2. A Director of a housing cooperative has a duty to provide oversight that leads to compliance with government laws.
3. The Board of Directors is obligated to comply with the bylaws of the cooperative. Members who may have been wronged by the failure of the Board of Directors to comply with the bylaws may have a case of personal liability against the Directors who violate the bylaws.

Article IV

A Director has a duty to disclose every personal conflict of interest to the cooperative.

A. A Director is required to make a prompt and full disclosure of any material personal interest, either direct or indirect, he or she may have in a transaction to which the cooperative is a party.
B. A Director shall not vote on or participate in discussions or deliberations on matters when a conflict is deemed to exist other than to present factual information or to respond to questions presented.
C. . A Director shall assure that the minutes properly record his or her abstention on any votes on matters for which a conflict may exist.

Cooperative Start

Legend suggests that the initial structured cooperative business in the United States was the Philadelphia Contribution ship for the Insurance of Houses from Loss by Fire, a mutual fire insurance company established in 1752. This association's reputation is likely based on two factors. First, Benjamin Franklin was the organizer. Second, the business has been conducted so efficiently over the years that it is still operating to-day.

Writers trace the origin of cooperatives from the Rochdale Equitable Pioneers' Society, an urban, consumer cooperative organized in England in 1844. It sold consumer goods such as food and clothing

This list became one of the first sets of cooperative principles, characteristics that distinguish cooperatives from non-cooperative businesses.

- Open membership
- One member, one vote
- Cash trading
- Membership education
- Political and religious neutrality
- No unusual risk assumption
- Limitation on the number of shares owned
- Limited interest on stock
- Goods sold at regular retail prices
- Net margins distributed according to patronage



I. Forms of Homeownership

What is a Housing Cooperative?

In the United States, more than 1.5 million families of all income levels live in homes owned and operated through cooperative associations. People of varying needs and desires have found several ways to apply cooperative concepts in meeting their housing needs.

Cooperative housing is not a new concept, The first housing cooperative in the nation was organized in New York City in the late 1800's Today, there are over 1,500,000 units in cooperative housing communities throughout the United States, with large numbers located in major urban areas such as New York City, Washington, D.C., Chicago, Miami, Minneapolis, Detroit, Atlanta, and San Francisco.

Cooperative members own a share in a corporation that owns or controls the building and/or property in which they live, Each shareholder is entitled to occupy a specific unit and has a vote iii the corporation. Every month, shareholders pay an amount that covers their proportionate share of the expense of operating the entire cooperative, which typically includes underlying mortgage payments, property taxes, management, maintenance, insurance, utilities, and contributions to reserve funds. There are many benefits to cooperative ownership. Some of these include personal income tax deductions, lower turnover rates, lower real estate tax assessments, reduced maintenance costs, resident participation and control, and being able to prevent absentee and investor ownership.

Housing cooperatives come in many shapes and sizes; cooperatives include town-houses, garden apartments, mid-and high-risk apartments, single-family homes, student housing, senior housing, and mobile home parks. The purchase price of cooperative membership can be left to the market or the price can be maintained at below market in order to preserve affordability. All cooperatives share a common set of principles adopted by the International Cooperative Alliance.

The key aspect in any cooperative is democratic control by the members in order to achieve an agreed upon common objective. Democratic control is typically accom-plished through governance by volunteer boards of directors elected from the entire membership. In addition to the board, co-ops often have many committees, such as a membership committee, maintenance committee, activities committee, and newsletter committee. Most co-ops hire a manager or management company to perform management functions; smaller co-ops will often have no paid staff or management but will have members handle all the maintenance and operations responsibilities.

A Director's Code of Ethics

Article I

A Director has a duty of good faith and loyalty to the cooperative.

A. Director owes allegiance to the cooperative and must act in the best interests of the
B. cooperative while acting in his or her official capacity.
C. Director should be diligent to ensure that the cooperative's interests are pursued during the meetings of the Board of Directors.
D. Director may not use the position for personal profit, gain, or other personal advantage over other members of the cooperative.
E. Director is accountable to the members of the cooperative for his or her official actions and can be held personally liable for fraud or breach of fiduciary duty in the conduct of the cooperative's affairs.
F. A Director shall conduct his or her private life in a manner that befits the dignity of a
G. corporate Director.

This means:

1. *Director should not discuss personal business during a meeting of the Board of Directors nor advance his or her personal interests while in official session at the expense of the*
2. *cooperative.*
3. *Director should not make personal attacks on other Directors, staff, or members while performing official duties. Disagreements should be directed to the disagreement, not the person who raises an opposing point of view.*
4. *Director may not accept commissions or rebates that belong to the cooperative for his or her personal gain.*
5. *Director who exercises honest and reasoned judgment and acts reasonably and in good faith for the best interests of the cooperative will be protected by the business judgment rule governing his or her actions or omission and will be fulfilling his or her fiduciary*
6. *obligation of loyalty to the cooperative.*

Article II

A. A Director has a duty to use care, skill, and diligence when carrying out official acts.
B. Director is required to act honestly and in good faith, in a manner reasonably believed to be in the best interests of the cooperative, and with the care that a prudent person in a similar position would use under similar circumstances.
C. Director should use his or her best efforts to keep apprised of legislation or regulations that affect the cooperative.
D. Director should seek the advice of experts when making decisions on behalf of the cooperative in areas of competence in which the Director has not been trained.
E. Director must serve the interests of all members impartially and without bias.
F. A Director must advocate that the cooperative comply with applicable laws, codes, contacts, and agreements to which the cooperative is bound.



Working with Committees

All committees report to the Board of Directors and should work strictly within the charges given them by the Board of Directors. Each committee will have a board member assigned to them as a liaison.

Committee members play a supportive role to the board by doing research, gathering information, tabulating data, making comparisons, determining cost options, and presenting recommendations to the Board. Committees contribute to productive board meetings and facilitate the co-op's orderly operation.

Committees enable the Board of Directors to receive more resident input. Their suggestions and recommendations to the board are intended to represent the cooperative owner's point of view and to offer different viewpoints from those of the manager or a contractor.

Committees do not set policy. Committee members must understand that it is their duty to recommend, and that it is the duty of the Board to consider and enact. Members who understand the proper role of the committee are less likely to become disillusioned if their recommendations are not followed. The committee may be concerned with but one segment of the co-op, while the Board must consider what is best for the development as a whole, both for the present and for the future. The responsibility for making decisions rests with the Board of Directors.

Committees are an excellent place to for developing leaders to learn the cooperative and can be a future board member. Committee members work on bits and pieces of the huge job of making the cooperative work. Committee members are an excellent place to look for new board members to replace a board member who is moving away.

Depending on the committee's task, from three to ten members form a group of workable size. Committee members should, insofar as possible, represent all elements of the co-op population with regard to age, race, religion, and sex.

The Development of US Housing Cooperatives – A Summary of Events

YEAR	EVENT
900 AD	Pueblo Bonito/Pueblo Indians built cooperative homes
1827 (approx)	New Harmony of Robert Owen, Indiana
1881	Barring Apartments, NYC
1926	Amalgamated Housing Corporation, N YC—the first large, new construction-housing cooperative
1939	Internal revenue Code/Section 216
1950(approx)	United Housing Foundation, NYC 1951 Mitchell-Lama Act, NYC (tax abatement) FHA Section 213 of National Housing Act Foundation for Cooperative Housing (1952) National Association of Housing Cooperatives was formed
1952	Conversion of Greenbelt Homes, MD
1960	National Association of Housing Cooperatives was incorporated.
1961	FHA Section 221 (d)(3) and "BMIR"
1968	FHA Section 236
1974	FHA Section 8, GNMA Tandem Programs 25,27 FHA Section 203(n)
1978	Section 11(b) FHLBB Authority The National Cooperative Bank was created
1978-1979	FHLMC Authority Bates Act, California
1980	FNMA Authority
1989	Resolution Trust Corporation (RTC) created
1990	HOPE/HOME created Preservation/Prepayment created

Principles of the Cooperative Identity

Purposes

The primary purpose of a cooperative housing corporation and association is to provide its members with housing under mutual ownership, or control, at costs they can afford, based on a need to satisfy common economic, social, and cultural needs and aspirations, cooperators volunteer to jointly own and democratically control the enterprise. By mutual effort, it is possible for people organized as groups of consumers to pool their resources and provide themselves with good housing through non-profit, non-speculative cooperatives.

Values

Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, and solidarity. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibility, and caring for others.

Principles

The cooperative principles listed below are guidelines by which cooperatives put their values into practice:

1. Open membership without restriction.
2. Democratic control by member-owners-occupants.
3. Members contribute equitably to, and democratically control, the capital of their cooperatives.
4. Cooperatives are autonomous, independent organizations controlled by their members.
5. Cooperatives provide education and training for their members, elected representatives, managers and employees so that they may contribute effectively to the development of the cooperative.
6. Cooperation among cooperatives.
7. Concern for Community.

Adopted by the *International Cooperative Alliance* Congress *in Manchester, England. on September 23, 1995.*

CONFIDENTIALITY OF THE BOARD

The moral code of the co-op says, "Let it stay at the Board table."

Many highly confidential matters cross the table, concerning members of the cooperative, bids taken for products and services, special requests by members or Directors, action taken on pending lawsuits, and performance evaluations. The Board must understand the requirement of confidentiality in all these matters. To act otherwise is not only unprofessional, but a violation of the trust placed in the position of Director.

As a general rule, any matter discussed during an executive session or closed Board meeting must be kept confidential by all those present unless a determination otherwise is made by the group. Any matters discussed at a Board meeting which is open to the public may be treated as public information.

Despite all precautions, occasionally a Board member will be unable to resist the temptation to gain "status" with the neighbors by gossiping about confidential matters. When this gets back to the Board and it nearly always does, it should be treated as a severe violation of Board standards by the offending Director. .Repeated violations call into question a person's fitness to have access to confidential information by continuing to serve as an Officer or Director.

Some Boards have an unfortunate tendency to the other extreme they close all meetings to the membership and invoke "confidentiality" as a god to hide what they are doing from the membership. As a general rule, it is only necessary to conduct three types of business behind closed doors:

1. Matters dealing with individuals (applicants, members, staff);
2. Legal matters that are pending;
3. Some business dealings that may be pending.

In a cooperative, members should have access to all information that will not interfere with the rights of individuals to privacy or the rights of the cooperative Board to conduct its affairs in the best interest of the membership.

All Directors should remember that it's one thing to gossip with the neighbor about the horrible color of the new play equipment. It's quite another to talk about the membership application of the people across the court.



Conducting Effective Meetings

The board conducts its business in meetings, which generally are held at least once a month. Directors may conduct co-op business only while meeting as a board, and only at official meetings. As an individual, a director has no more authority to make decisions for the cooperative than any other member. Once a decision has been reached by the board, all the directors are obliged to support it.

Board meetings are generally open to the co-op members, and by being open they offer the board an opportunity to communicate its decisions and policies. Scheduling time for members to voice their concerns at board meetings is a good idea, for it increases their involvement.

There are times, however, when every board will need to meet in private executive session in order to protect the members' privacy. The board meets in closed session, for instance, to discuss disputes between members, or particular cases of delinquencies in payment of money due the co-op. The board will deal with many sensitive issues, and directors must keep such matters strictly confidential, discussing them only when meeting officially as the board.

Each time the board meets, directors should know what they need to accomplish. The agenda, which lists the things that must be done and the order in which they will be worked on, is a most useful tool for giving order and purpose to a meeting.

Preparation of the agenda is often the job of the board president, who has the important responsibility of keeping the directors' attention focused upon their common objectives.

The agenda must be complete. It will be most useful if each item on it includes some indication of why it is to be discussed--whether it is presented for information only, or for some decision. Normally, the most important items should come first, while the directors have the most interest and energy. Items that only convey information and do not require decisions should come last. It is also helpful to schedule a time for beginning to discuss questions that require decisions. This helps people keep their objectives in mind and avoid spending time and energy on less important matters. The agenda may state the time for ending the meeting as well as for starting it. Two hours should allow enough time for the board to get its business done. Meetings that run any longer are apt to become increasingly unproductive.

The agenda should be circulated to directors two or three days before the meeting, along with any other background papers they are to receive, such as management reports and members' written complaints. Making these materials available ahead of time allows directors to think about the issues and come to the meeting on time, prepared to make decisions.

Types of Housing Cooperatives

Market-Rate Cooperatives

In market-rate cooperatives, shareholders may buy and sell their shares at full market value.

Limited-Equity Cooperatives

Limited equity co-ops limit the resale value of shares. The maximum resale value is predetermined by a formula established in the cooperative's bylaws. Generally targeted at low-and moderate-income people, the purpose of limited-equity cooperatives is to prevent speculation, encourage long-term residency, and preserve the "affordable" character of the co-op for a wide variety of future residents. Many limited-equity cooperatives were developed by nonprofit organizations with government assistance.

Leasing Cooperatives

In a leasing cooperative, the cooperative does not own the building or property. Instead, the cooperative leases the properly from its owner, usually the cooperative has a long-term lease, sometimes with an option to buy. The residents manage and operate the housing on a cooperative basis.

Senior Housing cooperatives

Senior housing cooperatives are housing communities designed for senior citizens, A number of different types of senior housing cooperatives exist. Cooperative Services, Inc., is a senior mutual housing association with over 40 buildings in 4 states, housing over 5,000 seniors of modest means. The Senior Cooperative Network helps develop senior housing cooperatives in rural areas. In addition, retirement oriented communities have been developed using the cooperative form of ownership, most notably in popular Sunbelt locations.

Manufactured Housing Communities (also known as Mobile Home Parks)

A growing number of manufactured housing communities own the land comprising the community on a cooperative basis. Cooperative ownership gives manufactured home residents control over management and operating costs of the park, while owning a manufactured home of their own.

Housing Cooperatives For People With Special Needs

In addition to co-ops for seniors, some cooperatives have been developed for individuals with disabilities. For example, Silent Cooperative in Illinois is designed for hearing-impaired people. Another example is Co-op Initiatives, a nonprofit organization in Connecticut, which develops cooperative housing with some units reserved for developmentally disabled individuals. Their mission is independent living opportunities for persons with all types of disabilities.

Student Housing cooperatives

Student housing cooperatives exist at a number of college campuses across the United States. They provide affordable housing to college students in dormitory, house, and apartment settings. The North American Students of Cooperation (NASCO), an association of student cooperatives throughout the U.S. and Canada, maintains a comprehensive listing of student cooperatives.

Artist Cooperative

Typically organized as leasehold or limited-equity cooperatives specifically for artists and art studios, artist cooperatives are a method of ensuring permanently affordable combined workspace and housing for artists since often artists' communities experience gentrification. Artspace in Minneapolis has been one of the main groups involved with developing artist cooperatives.

Mutual Housing Association

A mutual housing association is a nonprofit corporation set up to develop, own and operate housing. Mutual housing associations always involve substantial resident participation in the community and are often also owned and controlled by the residents of the housing produced. As in leasing cooperatives, there is no equity accumulation for members, or credit for mortgage principal paid.

Cooperative Business

A cooperative corporation is also a state-chartered business. Organized and operating under its laws. Attributes of cooperative corporations include:

Control.

Management is controlled by a board of directors who are elected by the members. One unique feature of a cooperative is that each member usually has only one vote in selecting directors, regardless of the amount of equity that member has in the cooperative. Another is that all or most of the directors must be members of the cooperative. Thus, the leaders are regular users of the firm's products or services.

Capital.

Equity comes from the members, rather than outside investors. It is obtained by direct contributions through membership fees or sale of stock, by monthly caring charges,

Life.

A cooperative usually has a perpetual existence. Members can routinely join or resign without disrupting ongoing operations.

How Will We Recruit Members for the Board?

Prior to the Annual Meeting (preferably several months before the meeting), the Board should decide on a slate of candidates--based on the gaps/needs of the group-- they would like to recruit to run for the Board. Current Board members should volunteer to meet one on one with the candidates to discuss the benefits and responsibilities of serving on the Board, and to recruit the Member to run for the Board. Some tips:

- Stress vision, achievements, momentum, development. (Not tasks, problems, recurring crises.) Be enthusiastic. Stress the positive.
- Give the Member a realistic overview of the expectations in terms of time required, responsibilities, etc.
- Let the Member know what strengths you think they would bring to the group, and why you're enthusiastic about having her/him on the board specifically.
- Offer to answer any questions they have. Ask them how you can help.
- One last tip: Sometimes the best way to recruit new members to the Board is to commit to not running yourself! If you've been on the Board for what seems like forever, perhaps it's time to step down and create space for someone else to take leadership. The change may be refreshing--to you and the co-op. And you can always run in the future!

Who Will Recruit These Fine Candidates to the Board?

Board recruitment is every Board members responsibility. All Board members should see it as their responsibility to identify and meet with potential candidates. However, you may want to establish a subcommittee of the current Board (perhaps 3 Board members) who will act as the nominating committee. The nominating committee takes organizing responsibility and leadership for the following:

- Plans strategy for Board recruitment
- Establishes qualifications that should be represented in the Board as a group
- Identifies gaps in composition of the current Board
- Identifies potential candidates
- Presents recommendations to the full Board
- Coordinates recruitment interviews
- Orients new Board members to the Board (this is a whole other hand-out!)
- Conducts exit interviews with outgoing Board members: this helps provide positive closure, solicits constructive criticism and positive feedback, and gives the outgoing Board member an opportunity to get out their gripes, so that they don't go public with their gripes, damaging the credibility of the Board.



IV Member Participation

Board Recruitment

Recruitment is a year-round activity that requires ALL Board members participation. Every Board member should keep their ears & eyes open for potential candidates. The final action of an effective Board is to make sure that when Annual Meeting time rolls around; there are some great new Board members ready to take over where parting Board members left off!

What are the Qualities of an Effective Board?

Before recruiting individuals for the Board, think about what the Board as a group is charged with, and what will make the Board as a group most able to fulfill its leadership responsibilities in ways that will benefit the entire co-op. The Board must be able to work together as a group to fulfill its job description responsibilities, while representing the diverse interests of the co-op. First figure out what qualities and skills you want this group to have. Then take a look at what qualities and skills are lacking overall in the group. Target your recruitment based on filling these gaps.

Who is a good candidate for the Board?

Some members will jump out to you as good candidates for the board. Others will have more subtle qualities that identify them as a potentially excellent contributor to the Board. Remember that the Board as a group has a leadership role--the individual Board members must provide the pieces that fit together to form an effective group, but no individual Board member is required to have every skill or leadership quality necessary to the group as a whole. Depending upon the needs of the group, a good candidate will be one person for one board, and a very different person for another board! Remember that the goal is to build an effective group: each individual is only a piece of this! In any case, some sources of good Board candidates may be:

- People who have participated actively at co-op (or other group) meetings or events.
- People who have shown initiative, diplomacy, knowledge, and judgment in ad-dressing issues facing your co-op or another group.
- People who are demanding change, and will take on responsibility to effect change
- People who help a meeting simply by being there---through their people skills,
- organizational skills, sense of humor, or positive spirit.
- People who inspire trust or are seen as Team Builders

Who is a Good Candidate for the Board? Some Questions to Consider

- What gaps would this person fill in the current Board?
- Why would this person make a good Board member? What will s/he contribute?
- Would this person be interested in serving on the Board? Why or why not?
- Would this person have time for the commitment required? This is important!
- Is this person willing to share power and work constructively with the group?
- Is there any reason this person should not be on the Board?

II. Organizational Structure of Housing Cooperatives

Characteristics of a Housing Cooperative

The structure of housing cooperatives may vary, but they have many common characteristics. These include

Corporate Ownership

Whether it is a limited-equity cooperative, a market rate cooperative, a mutual housing association, or a leasing cooperative, each structure involves at least one corporation that owns and operates the housing complex. This requires the residents to work with and understand corporate responsibilities, limitations, operations and inter-actions; state laws; federal securities requirements; state reporting requirements; and income or franchise taxes. The majority of low-income residents of rental developments have had little experience with the complexities of corporate business,

Non-profit Operations

All cooperatives operate on a non-profit basis. An annual budget is prepared, which projects expenses and income, If there is a surplus at the end of the fiscal year, it is returned to the residents either through a rebate or through a lower budget for the coming year. Underlying blanket mortgages, combined with speculative real estate market, thus preventing any windfall profits from the conversion.

Combined Social and Business Purposes

The goal of resident-controlled housing is to meet basic shelter and shelter-related needs. This is a social goal. The means to achieving this goal is through a business operation. Achieving the social goal requires that the business operate well. If it does not, sooner or later the social goal will no longer be achievable. Conversely, the business only functions well when it is achieving its goal — meeting the housing arid community needs at its “clients” or service group.

A Formal Community Structure

All forms of resident-controlled housing, including cooperatives, have a formal organizational structure of the residents. Corporate by-laws should require a board of directors, comprised primarily of residents and operational committees.

Democratic Participation

Residents participate in decision-making through a democratic process. This may be on a one-member, one-vote basis, or proportional to the size of the unit.

Voluntary Membership

Residents are not forced to become members of the corporation. Once minimum required levels of membership are attained, arrangements can be made to allow a portion of rental units on a lease basis. Likewise, there is no discrimination for illegal reasons. There is, however, discretion used in selection of residents, based on people’s demonstrated willingness to assume the responsibilities of living in a cooperative community, in addition to the more standard underwriting criteria, such as credit worthiness and references.

The User-Control Principle

As owners, a cooperative's members control its activities. This control is exercised through voting at annual and other membership meetings, and indirectly through those members elected to the board of directors. Members, in most instances, have one vote regardless of the amount of equity they own or how much they patronize the organization.

Only members can vote to elect directors and to approve proposed major legal and structural changes to the organization. The member-users select leaders and have the authority to make sure the cooperative provides the services they want. This keeps the cooperative focused on serving the members, rather than earning profits for outside investors or other objectives.

Limited Return on Equity Capital

Members form a cooperative to get a service— source of supplies, market for products or performance of specialized functions—not a monetary return on capital investment.

Limiting returns on equity supports the principle of distributing benefits proportional to use. It also discourages outsiders from trying to wrest control of a cooperative from its members and operate it as a profit-generating concern for the benefit of stockholders

It is estimated that the 9,471 housing cooperatives represent 1 million units of housing, with nearly 600,000 of the units in New York City. New units are being developed in many other areas, including senior citizen communities, manufactured housing courts, low-income housing complexes and student housing near college campuses.



Duty of Care

Board members must act honestly and reasonably, focusing on co-op business and making responsible, ethical decisions when called upon to do so.

Duly of Loyalty

Board members must place the interests of the cooperative above all other interests, especially their own, when making board decisions.

Ethical Responsibilities

A director of a housing cooperative holds a position of prestige and authority within the cooperative community. When acting in concert with the entire Board of Directors he or she

Here are a few pointers in discussing the possibility of running for the board with potential members:

- Stress the positive and be enthusiastic!
- Stress the co-op vision, recent achievements, on going momentum of the board to continue the co-op's development.
- Give the member a realistic overview of the time commitment, responsibilities and general expectations of board members.
- Let the member know what strengths you think they would bring to the board and why you arc enthusiastic about having them on board.
- Offer to answer any questions or concerns that they have. (Answer these questions as openly and honestly as possible without interjecting much of your personal issues which may deter them from being open minded about the situation,)

Important Tip:

Sometimes the best way to recruit new members is to commit to not running your-self if you have been on the board for quite a long time, perhaps it is time for you to step down and allow some new faces to join the ranks. You can still get involved in the co-op in many others ways but this may be a welcomed change for you and give the board a fresh look at old issues.



Budget Information

The yearly operating budget considers the income needed to cover all of the necessary expenditures of the cooperative. Budgeting is not an exact science, but an "educated guess" based on historical data and planned activities. It is important that the Board work with the budget committee and management agent to investigate all of the items noted on the "wish list" of the cooperative and make appropriate additions to the reserves for long-range planning.

The income portion of the budget is derived by considering what the current carrying charges are and the current anticipated collection of other receipts. The expenditure portion of the budget should be based on historical data and include the last three year's actual operating history Information can he gathered from previous budgets, audited financial statements and previous monthly financial reports, which include annual income and expense reports. Historical data should be reviewed and information should be gathered regarding the expected increase for each item for the year for which you are budgeting. Reserves should be analyzed by completing long-range planning forecasts to determine if the amount of reserves currently being funded will assist the Board in the future to achieve the co-ops goals.

Budgets are prepared for each co-op with the intention of meeting operating expenses with operating income for the next fiscal year. One of' the first steps in preparing budgets is to compile necessary information to determine the upcoming fiscal year's expenses. This should include, but not be limited to;

1. Planned major improvements, with bids increases
2. Mortgage interest and principal
3. Tax and insurance information for escrow
4. Proposed utility increases.
5. GOR and Replacement Reserve funding
6. Payroll costs plus anticipated
7. Subsidy analysis
8. PBE data, if applicable funding
9. Current contract prices and estimates
10. Utility increase, if available
11. Special projects or a "Wish List" needs

Legal Responsibilities

Duty of Obedience

Every cooperative is subject to a number of laws and regulations covering matters from employment law and licensing requirements to zoning restrictions, and contract obligations. Each board and staff person must comply with all local, state, and federal laws, which apply to the cooperative. This may require assistance from the cooperative's legal representative or other professionals to ensure that all laws are understood, so don't hesitate to consult with counsel when necessary.

DOCUMENT	PURPOSE	EFFECTS
Articles of Incorporation	Establish the existence of the cooperative.	Makes the organization (as opposed to the individual members) the operative entity. Limits the purposes for which the organization can act. Defines the basic structure of the cooperative.
Bylaws	Regulate the internal workings of the cooperative.	Defines membership (eligibility and rights). Delineates powers, operations, and officers of the Board of Directors. Provides for Annual Meeting of Members and elections of directors. Establishes maximum transfer value. Subordinates all of the above to the Regulatory Agreement.
Subscription Agreement	Create a conditional agreement to purchase and sell a membership.	1. Gives prospective members a limited right to buy a membership from the cooperative in exchange for a small payment, which secures the cooperative against default.
Occupancy Agreement	Define the rights and duties of the member as tenant and the cooperative as landlord.	1. Same as any residential lease, except that the term is, essentially, perpetual.
Regulatory Agreement	Control the operations of the cooperative so that they meet the purposes of the (federal) government program under which the cooperative was finance/ insured/ subsidized.	Restricts the (initial) membership of the cooperative to members of the target population. Regulates the resale of memberships as to both price and membership in the target population. Regulates the financial operations of the cooperative (occupancy charges, reserves, contracts, borrowing, investments). Regulates the maintenance and repair of the structures and grounds. Provides means for enforcement.
Recognition Agreement	Mutually exclusive agreement, which sets forth obligations of share lender and cooperative.	1. Cooperative guarantees the truth of certain statements regarding the status of the cooperative as owners of the real estate and the borrower as a member of the cooperative. 2. Cooperative consents to member's pledge of cooperative interest (membership certificate plus occupancy agreement) as security for loan. 3. Cooperative agrees to notify lender of any threat to the borrower's status as a member in good standing of the cooperative or of any impairment in the cooperatives financial status. 4. Gives lender rights to cure certain defaults by member or by cooperative. 5. Requires cooperative to terminate membership it borrower defaults on share loan obligations. 6. Sets out priorities between cooperative, lender, and borrower upon foreclosure and resale of borrower's cooperative interest.

Corporate Charter/Articles of Incorporation

Purpose —

Establishes the existence of the cooperative. Establishes the corporation.

Effects -

Makes the cooperative (as opposed to individual members) the operative entity

Limits the purposes for which the cooperative can act

Defines the basic structure of the cooperative.

Elements

Official name of corporation

Laws under which incorporated

Authorized duration (usually perpetual)

Business purpose (authorized activities)

Name and address of incorporator (s)

Names and addresses of original Board members at time of filing.

How does it regulate cooperative operations?

The corporate charter, often called the *Articles of Incorporation,* is the most basic document of corporate existence. It is issued by the State to *create the legal entity of the corporation.* It is the charter that gives birth to the corporation. Although there may be variations from one state to another, the charter generally defines basic characteristics of the corporation, as listed above.

For cooperatives initially financed under a HUD program and depending on the state of incorporation, the Articles may also fix the number of Board members.



13. Understand the committee structure, and support the committee in all planning activities.
14. Be involved in the co-op newsletter so that information is distributed in a written form that is clear to all or your members.

Monthly Financial Statements

Financial statements should be completed by the management agent on a monthly basis to provide financial information to the Board. The financial report should include a complete detailed report of income received and expenses incurred to indicate the monthly profit or loss. The report should also include:

- Accounts payable listing showing all vendors currently being owed money;
- Accounts receivable listing members who currently owe the corporation money;
- Check register indicating all the checks written during the month;
- Monthly cash flow report indicating the income and expenses; and
- Budget comparison report

Long-Range Capital Expenditure Planning

The co-op grows with age, and an increasing number of large capital expenditure projects will be needed in order to keep the co-op in good condition. As you consider the capital expenditure program, you must look at the sources of income the co-op can capitalize on in order to plan for this program. It is suggested that you do a ten year reserve forecast, to identify reserve balances, the current funding, the future funding, and how the reserves can be used to benefit the co-op.

Audits

Audited financial statements are completed by your Certified Public Account each and every year in order to certify the monthly financial reports of the co-op. the audited financial statements will detail a balance sheet, income and expense statement, profit and loss statement, member's equity, and specific information regarding the financial position of your corporation. The audit is a very good reference tool to understand the financial position of your corporation. and to provide the Board with reserve and financial projections. Your CPA should review the audited financial statements with the Board on a yearly basis, and be able to answer any questions board members may have as they use the audit as a financial tool.

Overall Corporation Finances-

A monthly report should be provided to the Board that indicates the overall corporation's finances on a monthly basis. This report should include:

- Reserve funding
- Mortgage escrow funding
- Mortgage principal balances
- Secondary financing product balances
- Accounts payable
- Accounts receivable
- Any other financial balances

The management agent should provide you with an ongoing detailed report of any capital expenditures, replacement reserve items, or other large expenditure items that should be considered, Financial planning is an important tool for the co-op, and for the corporation as a whole. Your CPA is the best resource to answer any and all questions the board has regarding the co-op's finances,

lll Financial, Legal, and Ethical Responsibilities of the Board

While the financial and legal responsibilities of the board members should be explained during the orientation process for new members, it is not a bad idea to review the cooperative's financial position once or twice a year to make sure that everything is on track and that all board members understand what steps must be taken to maintain the current position or improve upon it.

Financial Responsibilities

Some say that money is the root of all evil, but like it or not money is what helps to create a cooperative and it is also what will aid in the success of that cooperative. Having said that, it is important for board members to fully understand their financial and legal responsibilities in the management of the cooperative. It is not necessary to ensure that every member of the board be a financial expert or a lawyer, but it is definitely important that each member understand the financial position of the cooperative, and be willing to make tough decisions in order to adhere to the cooperative's budget.

The board members of the cooperative corporation should understand the importance of their position on the board in relation to management of the corporation and its financial future. As a hoard member, you should look at the following materials:

1. Determine the potential gross income for the cooperative by multiplying the average monthly carrying charge by the number of months by the number of units in your co-op
2. Understand all of the corporation's documents, to include Articles of Incorporation, By --Laws, Occupancy Agreement, Membership Fee Agreement, and all other corporation documents,
3. Understand the management process of the cooperative, and understand that you are ultimately responsible for the management of the cooperative.
4. Understand the management contract that has been signed between the manage-ment agent and the board of directors,
5. Work with your members to determine their wishes and needs when working on the annual committees budgets.
6. Establish to work with management members in developing a long range plan to complete capital expenditure needs.
7. Hold training classes for members upon request so that the members can understand how the co-op is run and how decisions are made, -
8. Always consider the affordability levels of our membership and work towards keeping your co-op an affordable place to call home.
9. Consider the levels of all reserves and compensate for additional funding on an as needed basis,
10. Work towards understanding the audited financial statements, which are important pieces in the financial planning area, as well as the monthly financial reports so that you can make correct decisions. -

II Understand all regulatory and or mortgage requirements that are currently pending on your co-op.

12. Understand the Board's role, and how the members can be involved in working with the Board to make decisions.

Bylaws (how cooperative will be run)

Purpose —

Details how the co-op will be governed, and spells out the rights of members.

Effects —

Defines membership (eligibility and rights)
Delineates powers, operations, and officers of the Board of Directors
Discusses and defines the annual meeting of members and elections of Directors
May establish maximum transfer value and usually provides a schedule of calculation for the determination of the transfer value. Subordinates all of the above to the Regulatory Agreement

Elements —

Number of Directors, their terms of office, and how they are elected Powers, privileges, and any restrictions upon the Board of Directors Resignation and removal of current Board members Appointment of replacement Board members Selection of corporate officers Meeting requirements Voting procedures Restrictions on membership or stock sales and transfers.

How does it regulate cooperative operations?

The bylaws are defined in a document created by the incorporator or members to define *how the corporation will function.* It usually contains provisions for amendments by the members as needs and expectations change. This single document serves to protect individual members by limiting the powers of the Board of Directors and specifying how certain basic functions of the corporation are carried out.

Bylaws also describe when and how annual meetings will occur and how the Board of Directors will be elected and serve. They describe the qualifications for Directors as well as their terms of office, how they can be removed, and how vacancies will be filled. The by-laws also describe the Officers of the corporation, how they are selected, rights, duties, privileges, and restrictions on their authority, and how they can be removed from office.

An important provision, unique to cooperatives, describes how membership transfers or resales will occur, and any restrictions associated with the transfer or sale.

Finally, the bylaws:

- Describe how amendments can be made
- State the corporation's fiscal year, and
- Discuss auditing and reporting requirements, and the rights of individ-ual members to inspect the books and records of the corporation.

Regulatory Agreement (lender institution or regulatory agency)

Purpose —

Controls the operations of the cooperative so that they meet the purposes of the federal government program under which the cooperative was financed/ insured/ subsidized .

Effects —

Restricts the (initial) membership of the cooperative to members of the target population.

Regulates the resale of memberships as to both price and membership in the target population.

Regulates the financial operations of the cooperative (occupancy charges, reserves, contracts, borrowing, investments).

Regulates the maintenance and repair of the structures and grounds!

Provides means for enforcement.

Elements —

Describes reserve requirements.

May require mortgagee (regulatory agency's) consent of budget changes.

Prohibits additional encumbrances on the property without mortgagee (regulatory agency's) consent.

Prohibits commingling of funds with another cooperative or entity.

Prohibits payment of compensation to Directors and officers without mortgagee (regulatory agency's) consent.

May require annual financial statements prepared by an independent certified public accountant.

May require periodic certification of member household and income for subsidized households.

May require the cooperative to comply with published HUD policies and regulations, if HUD insured.

How does it regulate cooperative operations?

A regulatory agreement is an agreement between the cooperative and a government entity that requires the cooperative to comply with government regulations that pertain to the program. In exchange, the cooperative receives government–sponsored mortgage insurance and/or government subsidies.

A mortgage based regulatory agreement normally runs for the term of the mortgage or until the mortgage is paid in full. A subsidy-based regulatory agreement runs for the length of the subsidy agreement.

Although HUD or another regulator may be influential over the cooperative, unless specifically contracted to HUD, the obligation to ensure the proper operations of the co-operative rests with its Board of Directors and the Management Agent it has employed.

<u>Supervise your Contractors and Staff</u>

- Always select your contractors through a "Request for Proposals".
- Consultants should have contracts.
- Remember that you are the boss - Large decisions should be yours. At the same time, you hire a contractor because you trust them. You shouldn't need to check every little thing they do.
- All consultants, contractors and staff should know exactly who is supervising them, whether a single person or the Board. Other Directors or Members should not attempt to direct that contractor or staff person.

<u>Keep records..</u>

- Keep meeting minutes and notices and sign up sheets.
- Keep monthly financial records
- Contracts and other binding documents

<u>Build the Organization</u>

- Resident Selection
- Orientation of new Residents
- Recruitment of active members for Association
- Committees
- Leadership Development

<u>Education</u>

- For new members
- For new directors
- Refresher courses

Coopnet update

Board Secretary:

To take minutes of all board and membership meetings.

They are a record of the actions of the corporation. The minutes are the official record, required by law, of what took place at every board meeting. They show that decisions were made by a majority in a business-like fashion.

They can be used in defend the board in court, explain actions to shareholders (And future boards).

Board Treasurer:

The Treasurer is to make sure that proper check and balances are implemented, such as purchase orders, work orders and time cards. There are items the treasurer should be asking for every month, including copies of the paid bills, bank reconciliations and bank statements.

The treasurer should have an independent professional accountant to help with books and have an annual report given by the professional accountant to the Board of Directors and Membership each year.

Board Responsibilities

Think about the Big Picture:

Deal with issues that people bring to you, but also keep your mind on all aspects of your mission. The buildings, the residents, the neighborhood, the lenders, the management company, and what is not included here.

"Fiduciary" responsibilities

Meaning manage your money well. You are managing the money and the other assets for all the organization's members. So:

- Be honest.
- "Due diligence"
- Manage it for its best return.
- Set annual budget
- Audit once a year

Run organization democratically.

- Adhere to Bylaws
- Hold elections regularly
- Meetings should be open and well-announced. Bring major issues to membership.
- Committees
- Provide plenty of information about what you are doing.

Operate your development

- Supervise your manager at the monthly meetings
- Understand the laws that pertain to your housing
- Make sure the housing is safe and sound and the residents are reasonably content.

Regulatory Agreement (continued)

The regulatory agreement places certain obligations upon the cooperative and also some limitations upon the powers of the Board. These obligations and limitations are not onerous; indeed, they constitute prudent business practice that a wise Board would observe even if it had not contracted to do so.

Obligations of the cooperative under the regulatory agreement:

Make mortgage payments

Maintain replacement reserve

Maintain general operating reserve.

Collect carrying charges from members in accordance with budget approved by FHA

Maintain buildings, grounds, and equipment in good repair

Make all property and records available for FHA inspection

Keep the books according to generally accepted accounting principles (GAAP). and the FHA uniform system of accounting; render reports to FHA; answer FHA's questions concerning operations and conditions of the property; send minutes of members' meetings to the appropriate party

Permit no contract that would restrict membership on account of race, color, or creed

Schedule inspections upon request

Observe provisions of the mortgage

Make no petition for bankruptcy, insolvency

Comply fully with federal, state, and local laws, and FHA regulations prohibiting discrimination on the basis of race, color, creed, or national origin.

Limitations

Under the regulatory agreement, the Board is forbidden to perform the following without approval:

Sell the property or part of it

Remodel, reconstruct or demolish the property

Make any exceptions to the approved schedule of carrying charges

Permit non-members to live in the cooperative

Merge with another corporation, liquidate the cooperative, re-organize the corporation, change the capital structure, alter the articles of incorporation or amend the bylaws

Change the reserve for replacement and general operating reserve requirements

Incur liabilities greater than the dollar amount specified in the agreement pertaining to our cooperative

Enter into a contract with a Management Agent

Invest funds of the corporation in any property except government bonds

Use mortgage proceeds for anything except paying construction costs or reducing the amount of the mortgage

Sue anyone for more than a modest specified amount.

Regulatory Agreement (continued)

If the cooperative violates any of these provisions in a regulatory agreement mandated due to HUD mortgage insurance, FHA has the right to demand correction. If correction is not made within fifteen days, FHA may declare a default. If a default is declared, FHA has the power to take possession of the cooperative's project, and operate it until FHA is satisfied that the cooperative can handle its own affairs properly without help. FHA also has the option to institute proceedings and seek foreclosure of the cooperative's project and thus take away the cooperative's title to the project; or, FHA may seek an injunction and appointment of a receiver to operate the cooperative's project; or such other relief as may be deemed appropriate by the Court.

These obligations and limitations are intended to protect the cooperative when unusual situations might jeopardize it and, therefore, might damage FHA's interest as insurer of the mortgage of the cooperative. The prudent Board will find that the regulatory agreement does not require anything contrary to the best interests of the cooperative. FHA's supervision is highly beneficial to the cooperatives and has contributed to the excellent record of housing cooperatives. Indeed, the high standard of housing in our country --cooperative and otherwise -- owes much to the good work of this effective federal agency.

The Management Agreement that you have signed with your Management Agent delegates much of the responsibility for observing the provisions of the regulatory agreement to the Management Agent. The Management Agent you choose must be approved by the FHA.

Mortgage Agreement

Purpose —

Makes purchase of the building possible by pledging the land and buildings to the lender as security against the possibility that the co-op fails to make payment on the loan. Pledges the physical assets of the co-op—the land and buildings-- to the lender as security for a loan that the co-op promises to pay.

Effects —

Creates a large debt for the co-op Will carry with it a regulatory agreement giving the lender certain rights in co-op affairs.

Makes it difficult to borrow more until the debt is paid.

Puts all members' equity at risk if the co-op fails to make timely payments.

Elements —

Co-op promises to pay

Co-op is restricted in certain activities without the lender's approval (bylaw amendments, major capital expenditures, changing management)

Creates an obligation for the co-op to furnish periodic timely financial reports

Gives the lender the right to take the property if the co-op falls behind in payments, or fails to have insurance, or fails to pay property taxes.

Employees, like their manager, can be community boosters by taking part in religious, school or community affairs. Their efforts can positively affect the cooperative image held by members, the general public and other businesses.

OFFICERS OF THE CO-OP

The by-laws of each co-op gives the duties and power of each officer. The following is a brief review of each officer and their duties:

Board President:

The Board President is the only board member authorized to act on behalf of the board between meetings of the board of directors. The most visible part of the job is to chair the board meetings and membership.

The president of an association is vested with all the powers generally given to the chief executive officer of a corporation. While specific by-law provisions may vary the president's duties, it is generally presumed that he or she will preside at all meetings of the board and the membership. The president will execute contracts, orders and other documents in the name of the association as its agent. When signing documents, the president should indicate the capacity in which he or she is signing in order to avoid any personal liability since the president's signature, under most circumstances, will bind the association under a doctrine of inherent powers.

The president also assumes general charge of the day-to-day administration of the association and has the authority to order specific actions in furtherance of the board's policies. The president serves as spokesman for the board of directors in most matters relating to general association business. Like all officers of the association, the president has an affirmative duty to carry out the responsibilities of the office in the best interests of the association. Unless otherwise specified in governing documents, the president serves at the will of the board of directors and can be removed with or without cause at any time by a majority of the full board.

MEETINGS.

The president must know the co-op's bylaws and see to it that they are being followed. If the bylaws call for a certain notice of the meeting to be given, the president should see that the notice has been given and should announce that fact at the meeting. This is just one example of the many duties of the president.

The board president should never permit the bylaws to be ignored, for that could place all actions taken at the meeting in legal limbo. An effective board president will be fair, courteous and friendly, and will call for members to aspire to the highest purposes for which the co-op stands.

Board Vice President (s):

Board of Directors will mostly define the duties of the Vice President. The main job of the Vice President is to fill in for the Board President when the Board President is absent.

- Furnish information needed for long-range planning. This will bring matters, such as fixed asset additions or revisions, to the board's attention for review.
- Represent the cooperative and portray a positive image to members and others in the community.
- Encourage membership and active patronage.
- Communicate developments at the cooperative to members.
- Keep current on local, State, and Federal legislative and regulatory developments affecting cooperatives.

Employees

In many ways, working for a cooperative is similar to doing the same job at a noncooperative firm. But special features of a cooperative— the role of the member-owner as user and the emphasis on service over bottom-line numbers—place unique obligations on the employees.

Understand the purpose and objectives of the cooperative.

Employees need to know how cooperatives are different from other methods of doing business. By understanding cooperative purposes, objectives, operations and their role as employees, they can help improve member relations, the cooperative's image and the general public's understanding of cooperatives.

Fully perform duties.

In many cooperatives, like other business firms, the largest operating expense is for personnel. While the cooperative has responsibility for recruiting and providing training, the employee is responsible for using these opportunities to provide the best possible service to members.

Understand the relationship to member-owners.

All employees have a responsibility to maintain a high level of customer satisfaction and good relations between the cooperative organization and its member-users. Immediate feedback from members should be encouraged to keep the manager informed of problems, needs and customer satisfaction. The employee role is particularly important in larger cooperatives. The only cooperative employees that members may encounter regularly, from annual meeting to annual meeting, may be the individual person answering the phone. To the average member, they are the voice of the cooperative.

Favorably represent the cooperative.

Employees help build the cooperative's image as they serve members and the community— both on and off the cooperative's premises. Employees should keep the premises clean and attractive; make sure equipment and service tools are operating; serve members pleasantly, promptly, and in the order promised and take an extra step to give members satisfactory service.

Cooperative Agreement/Membership Agreement/ Subscription Agreement (rules and regulations, policy statements)

Purpose —

To communicate the rules and regulations that the members must follow, once the member signs the occupancy agreement. The rules and regulations were established at time of the incorporation and the establishment of the occupancy agreement. The rules and regulations can be reviewed and can be amended by the current acting Board. It is a sales contract that also discloses important information.

The membership agreement also states the specific requirements of the member since the member has purchased the membership share and is issued a membership certificate or agreement.

In the case of newly formed cooperatives, a subscription agreement will be available to state the requirements of the future member as they have put a deposit down on a membership share and are in the process of purchasing that share. The subscription agreement will state the rights of the future member and the rights of the cooperative.

Effects —

Identifies the specific rules that must be followed by all members that have executed an occupancy agreement.

The rules and regulations will allow for all members to live in peace and be able to be involved in the quiet enjoyment of their home

Identifies the roles of responsibilities of the new members once they have purchased a membership share as their rights and responsibilities will be stated in the membership agreement or the subscription agreement, if they are reserving a cooperative membership share to be purchased once the cooperative's mortgage has been approved and their articles of incorporation have been filed and approved.

Provides means for enforcement.

Elements —

Describes specific rules and responsibilities of the member as a shareholder

Describes specific rules in regards to the quiet enjoyment of the home

Describes specific rules in regards to the maintenance of the home

Describes specific rules in regards to the people, pet and parking issues associated with living in cooperative

Describes other rules and regulations that protect the member and his/her investment

How does it regulate cooperative operations?

The rules and regulations, as a section of the occupancy agreement, assists the member in understanding the requirements of being a member of and occupying a specific home in the cooperative

Occupancy Agreement/Proprietary Lease (permission to live in a specific unit)

Purpose —

Defines the rights and duties of the member as occupant of the specific home and of the cooperative as landlord. Grants the member permission to live in a specific unit in return for the member abiding by the rules and meeting all of the member's obligations.

Effects —

The occupancy agreement is usually presented in a similar manner as a residential lease, except that the term is, essentially, perpetual.

Elements —

Describes the home (unit) to be occupied

Describes who the approved occupants of the unit will be

Discloses limitations on the use of the home (unit)

Describes how monthly fees will be calculated

Discloses any restrictions on the occupancy of the unit

Discloses restrictions on the transferability of the agreement

Describes broadly the maintenance responsibilities of the parties

Describes how alterations and additions may be made

Describes the conditions of default and remedies thereof

Describes the cooperative's right to impose house rules and policies

Discloses a lender's rights to foreclose upon the property

Describes acceptance of late payments and results thereof.

How does it regulate cooperative operations?

An *occupancy agreement,* also called a *proprietary lease,* is the evidence of cooperative possession. It is an agreement where the member *is required to make a capital purchase of stock in the cooperative and receives a leasehold interest in and right to occupy a dwelling unit.*

The occupancy agreement or proprietary lease creates a legal relationship between the cooperative and the member. It is the document that describes the rights of a member as well as those of the cooperative.

Occupancy agreements or proprietary leases differ significantly from normal lease agreements. They pre-suppose that the member has made an equity investment in the cooperative by first purchasing a membership or share(s) in the cooperative. The investment is not treated as a security deposit, although some cooperatives may require an additional security deposit to cover damage the member may cause to the common areas of the cooperative.

The occupancy agreement often has longer terms than residential leases and often offers the member the right to automatic renewal upon expiration of any term. Longer terms and the member's right to automatic renewal are features that enhance the value of a cooperative occupancy agreement.

In carrying out their responsibilities, directors serve much like trustees, charged with a legal obligation to protect the assets of the members. Directors who act outside the parameters of the law or don't exercise due care in their decision making can be personally liable for the harm they cause the members, the cooperative or third parties.

Board Committees

The board's work may be divided among special or permanent committees, each dealing with a phase of the association's operations, such as finance, purchasing, merchandising, and others.

Each committee studies the problems in its particular field and makes recommendations to the board of directors. In some instances, committees may be given certain powers to act for the board, subject to review by the entire board.

Large associations may select an executive committee to perform general management and oversight duties as authorized by the board.

Managers

Success of a cooperative largely depends on good board/ manager relationships. The working relationship between board and general manager requires respect and an understanding of each other's responsibilities.

The board of directors decides what the cooperative will do; the general manager and immediate staff decide how it can best be done—subject to board review—so as to achieve the basic objective of serving members effectively.

The manager is selected by the board and accountable to it for his/her actions. The manager should therefore not be a part of the board. The manager should, however, attend all board meetings and be an active, nonvoting participant. The manager controls the ongoing activity of the cooperative. Responsibilities of the general manager include:

Supervise and coordinate, under board direction, the business activities of the co-op by managing the people, capital, and physical resources.

- Hire, train, supervise, and set compensation for employees. The manager also needs to review their performance and train, reassign, or replace those employees not meeting acceptable performance levels.
- Oversee the detailed operations of the cooperative, within policies established by the board of directors, such as purchasing inventory and selling commodities, maintaining the general appearance of the co-op, and making sure employees respond to member needs.
- Maintain, and revise as necessary, an adequate bookkeeping and accounting system; develop for board approval a financial budget annually; prepare proper financial reports regularly for board review; and present a report of the cooperative's operational highlights to the membership at the annual meeting.

Directors

Directors in a cooperative occupy a key position between members and hired management. They are both users of its services and representatives of other members who depend on those same services.

Acting as a group, directors set the objectives for the cooperative and make decisions that set the course the cooperative will follow in achieving those objectives. These broad managerial decisions include:

- Hire a competent manager, determine the salary, outline the duties and authority of the position and formally review his/ her performance at least annually.
- Adopt broad, general policies to guide the manager. Topics covered might include credit limits to patrons, expenditures that need prior board approval and general personnel regulations.
- Develop and adopt long-range business strategies.
- Require written monthly financial reports and operating statements for board meetings to be informed of adverse as well as favorable operations.
- Direct the manager to prepare, before the close of each year, an operating budget for the next fiscal year for board approval. This budget should estimate the volume of sales and gross income of various items to be handled, the expenses by account classifications and the net income expected. This constitutes necessary forward planning by the board and management. The budget should be reviewed at intervals throughout the year to determine the trends of the business.
- Employ a qualified auditor to make an independent audit at least once each year to determine the accuracy of the financial records. An audit is the primary method the board uses to verify the financial condition of the cooperative. Many successful cooperatives also use the audit report to evaluate the effectiveness of the policies and budget, performance of the manager and gain insight into the effect of past decisions and the need for new ones.
- With the aid of the manager, plan and conduct the annual meeting to keep the membership informed about the status of their business, including operations, finances and policies.
- Determine the patronage refund allocation and per-unit retain level. Factors to consider include legal requirements, member needs and desires for cash refunds, the desirability of retiring old equities, and current and future capital needs.
- Assure competent legal counsel is available.
- Keep a complete record of the board's actions.
- A cooperative director should not expect to receive special favors from the manager or employees, and a director does not:
- Act independently on matters that should be decided by the entire board. Individual directors have no authority outside of board meetings.
- Represent special interests, factions or political entities. Directors are elected to oversee the business activities of the cooperative, not serve as an agent of these groups.

Additional Documents

There are two other important documents that establish the *management* of the cooperative — the Management Agreement (also called Management Contract) and the Management Plan.

To understand the relationship between the Management Agreement and the Management Plan, we must first clarify the parties affected by these documents and the purpose these documents serve. The only party responsible for the management of the cooperative is a management agent (Management Company), a self- managed Agent party responsible do and what General Manager, or designated person(s) in cooperative. You may be asking yourself, if the Management (Management Company) or a General Manager is the only have we been discussing? Remember, the Board *governs.*

However, to govern, the Board:

Exercises continuous authority over the administration of the cooperative on behalf of the membership

Controls and directs the making and administration of policy affecting cooperative management and operation for the benefit of the membership

Directs and influences the actions and conduct of cooperative operations on behalf of the membership.

None of the above highlighted verbs reads does or manages. The board does not manage the cooperative. The Board governs the management of the cooperative by holding the management Agent(Management Company) or a general manager accountable for managing the cooperative through the implementation of the Management Plan.

The roles of the Management Agent and the Board are separate and distinct, and the Management Agreement or Management Contract and the Management Plan clarify these roles.

Management Agreement (or Management Contract)

The Management Agreement is a contractual agreement between the cooperative corporation and the firm hired to manage the cooperative's property. These contacts outline the firm's responsibilities and compensation. While there are standard forms of such contracts, they are usually adopted to the specific needs of the particular cooperative. The Management Agreement authorizes the Agent to implement the management Plan.

Occupancy Agreement/Proprietary Lease (permission to live in a specific unit)

Purpose —

Defines the rights and duties of the member as occupant of the specific home and of the cooperative as landlord. Grants the member permission to live in a specific unit in return for the member abiding by the rules and meeting all of the member's obligations.

Effects —

The occupancy agreement is usually presented in a similar manner as a residential lease, except that the term is, essentially, perpetual.

Elements —

Describes the home (unit) to be occupied

Describes who the approved occupants of the unit will be

Discloses limitations on the use of the home (unit)

Describes how monthly fees will be calculated

Discloses any restrictions on the occupancy of the unit

Discloses restrictions on the transferability of the agreement

Describes broadly the maintenance responsibilities of the parties

Describes how alterations and additions may be made

Describes the conditions of default and remedies thereof

Describes the cooperative's right to impose house rules and policies

Discloses a lender's rights to foreclose upon the property

Describes acceptance of late payments and results thereof.

How does it regulate cooperative operations?

An *occupancy agreement,* also called a *proprietary lease,* is the evidence of cooperative possession. It is an agreement where the member *is required to make a capital purchase of stock in the cooperative and receives a leasehold interest in and right to occupy a dwelling unit.*

The occupancy agreement or proprietary lease creates a legal relationship between the cooperative and the member. It is the document that describes the rights of a member as well as those of the cooperative.

Occupancy agreements or proprietary leases differ significantly from normal lease agreements. They pre-suppose that the member has made an equity investment in the cooperative by first purchasing a membership or share(s) in the cooperative. The investment is not treated as a security deposit, although some cooperatives may require an additional security deposit to cover damage the member may cause to the common areas of the cooperative.

The occupancy agreement often has longer terms than residential leases and often offers the member the right to automatic renewal upon expiration of any term. Longer terms and the member's right to automatic renewal are features that enhance the value of a cooperative occupancy agreement.

Members

Members are the foundation of the cooperative. They organized it. Their needs are the reason for its existence. Their support, through patronage and capital investment, keeps it economically healthy. And their changing requirements shape the cooperative's future. Statutory law and the basic legal documents of a cooperative — articles of incorporation, bylaws, and contracts between the cooperative and its members — give the members the tools to control the cooperative and the duty to use those tools for their mutual benefit. Legal rights and responsibilities of cooperative members normally include:

- To adopt and amend the articles of incorporation and bylaws.
- To elect and, if necessary, remove directors.
- To decide whether to dissolve, merge or consolidate the cooperative or form a joint venture with other cooperative or noncooperative firms.
- To make sure officers, directors and other agents comply with laws applicable to the cooperative and with its articles of incorporation, bylaws and membership contracts.

<u>Be informed about the cooperative.</u>

To carry out their other duties, members must know what the cooperative is about; what it can do for them; it's purpose, objectives, policies; and the issues it faces. They can obtain information through annual meetings, reports and newsletters, and from talking to the manager, staff, directors and other members. To effectively exercise their right of ownership, a member needs a good understanding of the present situation and projected future operations.

<u>Be conscientious when selecting and evaluating directors</u>.

Although the cooperative is a user-owner, democratically controlled form of business, members can't make all the decisions directly. They select from among their peers individuals with the best judgment and business management skills to represent them in management affairs as the cooperative's board of directors. Loyalty, integrity, the ability to make wise business decisions and willingness to serve are necessary characteristics for board members.

<u>Provide necessary capital.</u>

Members must provide the equity financing their cooperative needs for acquiring inventory, facilities, services and working capital. This is done initially through the purchase of stock or a membership. It continues by paying their monthly caring charges,

<u>Evaluate performance of the cooperative.</u>

Members should examine the annual report and observe whether the cooperative is meeting their needs. If they are dissatisfied with cooperative performance, they should share their concerns with the directors. They should also express support for things the cooperative is doing well. Directors can't effectively represent the members if they don't know the members' true feelings.

Roles & Responsibilities within the Cooperative Structure

A cooperative board of directors safeguards the organizational assets, oversees operations, and ensures that laws and regulations are followed, While this is a commonly know bit of information what may not be clear is what the roles and responsibilities of the other members of the cooperative actually are and how these groups work together to ensure the success of the cooperative. This section will examine each facet of the cooperative structure and leave you with concrete checklists of duties for each on he board positions.

Cooperative Players

Members -	Elect Board, Amend bylaws
Board of Directors	Sets Policy, Informs members, Oversees
Management Agent, Consultant	Implements policies, Advises Board, Gathers Infor-
Professional Services	Advises Board
Employees	Carry out activities
Outside contractors	Provide contracted services
Regulatory Agency	Regulates, oversees, where applicable

Because a cooperative is owned and controlled by the people who use its services, the various persons affiliated with a cooperative must work even more closely together than in a noncooperative firm. Customer service and satisfaction are the driving forces behind a cooperative, not maximizing bottom-line return to investors. These take on a highly personal tone when the owners and directors, in their role as users, have regular contact with management and staff. Cooperatives depend on a coordinated team consisting of four elements — members-owners, board of directors, the manager and other responsible employees. Each part of the team has



Additional Documents

There are two other important documents that establish the *management* of the cooperative - the Management Agreement (also called Management Contract) and the Management Plan.

To understand the relationship between the Management Agreement and the Management Plan, we must first clarify the parties affected by these documents and the purpose these documents serve. The only party responsible for the management of the cooperative is a management agent (Management Company), General Manager, or designated person (s) in a self managed cooperative. You may be asking yourself, if the Management Agent (Management Company) or a General Manager is the only party responsible for the *management* of the cooperative, what does the Board do and what have we been discussing? Remember, the Board *governs.*

However, to govern, the Board:

Exercises continuous authority over the administration of the cooperative on behalf of the membership

Controls and directs the making and administration of policy affecting cooperative management and operation for the benefit of the membership

Directs and influences the actions and conduct of cooperative operations on behalf of the membership.

None of the above highlighted verbs reads does or manages. The board does not manage the cooperative. The Board governs the management of the cooperative by holding the management Agent (Management Company) or a general manager accountable for managing the cooperative through the implementation of the Management Plan.

The roles of the Management Agent and the Board are separate and distinct, and the Management Agreement or Management Contract and the Management Plan clarify these roles.

Management Agreement (or Management Contract)

The Management Agreement is a contractual agreement between the cooperative corporation and the firm hired to manage the cooperative's property. These contacts outline the firm's responsibilities and compensation. While there are standard forms of such contracts, they are usually adopted to the specific needs of the particular cooperative. The Management Agreement authorizes the Agent to implement the management plan.

Management Plan

The Management Plan is a specific plan of operations, generally, provided by a Management Agent to the cooperative, in substantially greater detail then that provided in the management agreement. The plan may be attached to the management agreement as a rider.

Both the Management Agent and the Board of Directors should be actively involved in the development of the Management Agreement, as opposed to a *boiler* plate document the Agent gives to the Board. Both parties should develop, understand, and agree to the plan's substance.

The Management Plan sets forth what the Management Agent (Management Company) or General Manager does. Logically, this clarifies what the Board should hold the Management Agent accountable for. Moreover, it also highlights what the Board should *not* be doing, that is implementing the Management Plan. The Management Agent *implements* the Management Plan; the Board *holds the Management Agent accountable* for implementing the Management Plan. In this regard, the Management Plan helps to establish the difference between management functions and Board functions.

The Management Plan should be a *living guide* that the Board of Directors and the Management Agent lay out as the foundation for the way the property is managed. This guide includes not only the functions of the Management Agent but also the functions of the Board of Directors. The plan should include the nuts and bolts of all aspects of the workings of the cooperative, such as maintenance functions, marketing functions, etc. It should also clarify the way the Management Agent reports to the Board of Directors, the cooperative management chain of command, and the way cooperative employees follow a chain of command.

Some items that may be included in a Management Plan are:

1) The role and responsibility of the member and the relationship and delegations of authority to the Management Agent.
2) Personnel policy and staffing arrangements
3) Plans and procedures for marketing units, achieving and maintaining full occupancy, and meeting Affirmative Fair Housing marketing plan requirements as from the procedure HUD form 935.2.
4) Procedures for determining tenant eligibility and for certifying and recertifying income
5) Tenant leasing policies
6) Rent collection policies and procedures
7) Procedures for requesting and implementing a rent increase
8) Plans for carrying out an effective maintenance and repair program
9) Supplemental services
10) Plans for accounting and bookkeeping
11) Energy conservation measures and practices
12) Plans for member participation in cooperative operations and members' relationship with management
13) Management and training programs
14) Termination of leases and evictions

Management Plan (continued)

15) Security servicing
16) Management Agreement
17) Board of Director relationship
18) Management compensation
19) On-site management.

The Management Plan may address issues beyond roles, responsibilities, and functions. It may also address issues related to the culture of the cooperative. For example, each cooperative may have a certain way they want the Management Agent staff to interact with the cooperative members, such as addressing members as member-owners, members, etc. This may sound unimportant, but clarity around such issues will ensure that the Management Agent, the Board, and the cooperative members are clear on procedure and comfortable with how the cooperative is presented to the members and the public.

In addition to the substance of the Management Plan, the Board has a duty to ensure that the Agent understands and applies the International Cooperative Alliance (ICA) principles to the management of the cooperative.

The Management Plan should not only map out the present workings of the cooperative, but also the future goals of the cooperative and how they affect current operations. The Management Plan should address questions such as When is the mortgage paid off and what will that mean to the operation of the cooperative? How old is the property and do we have a long-range plan to maintain operations and amenities offered to the membership?

Regardless of the size of the cooperative or whether it is self, staff, or Agent-managed, a Management Plan must be a *living guide* on which past, current, and future Boards of Directors, Agents, and members can rely.

