COOPERATIVE GOVERNING DOCUMENTS

Like any other corporation, the cooperative is structured by its legal documents. Many of these documents, though signed years ago, bind the cooperative to other entities for extended periods of time. Some of the documents govern how the corporation will operate throughout its existence

While it is not necessary that the documents be "memorized", it is necessary that the members, board members, and staff members are thoroughly familiar with their content.

There are generally three categories of legal documents:

1. Those that establish and define the existence and operation of the corporation.

   Articles of Incorporation
   By-Laws

2. Those that establish the relationship between the cooperative and the member, or guide the conduct and behavior of the members. These are, in effect, the covenant made between the cooperative and its members.

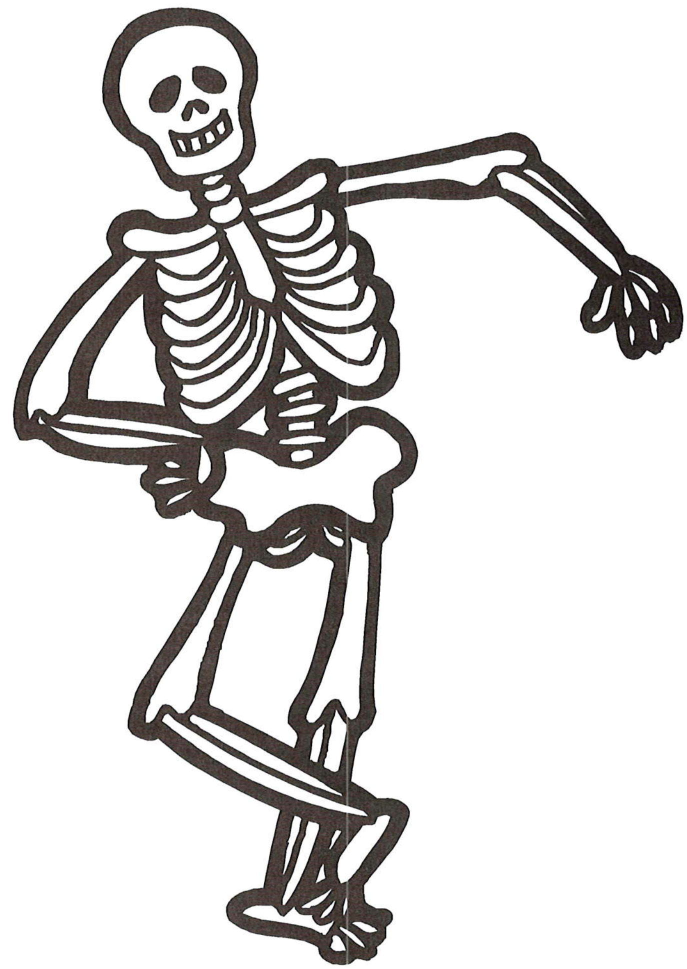
   Purchase/Subscription Agreement
   Membership (Stock) Certificate
   Occupancy Agreement
   Rules & Regulations

3. Those that define and describe the relationship between the cooperative and outside services.

   Mortgage
   Regulatory Agreement
   HAP Contract
   Management Agreement

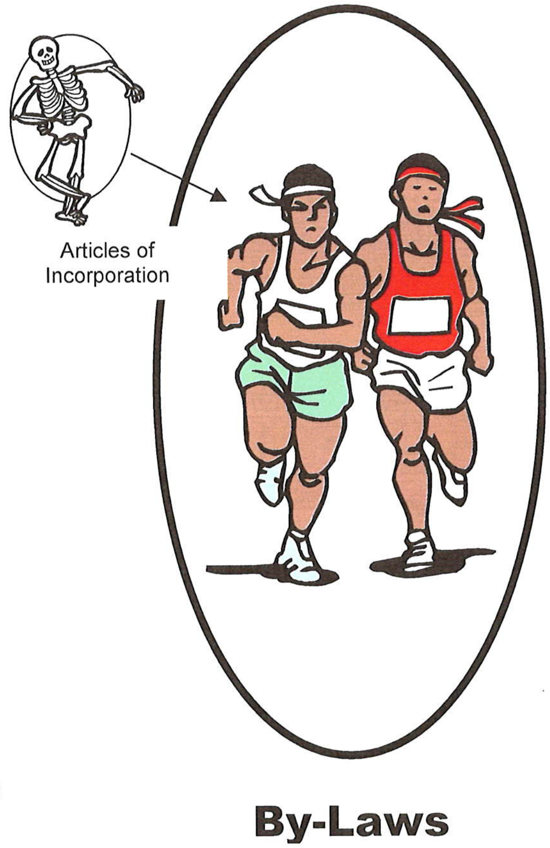
ARTICLES OF INCORPORATION: The legal document issued by the state, which establishes the existence of a corporation. The Articles generally contain:

- The legal name of the corporation
- The term of the corporation's existence
- The purpose of the corporation
- The names of the incorporators



Articles of Incorporation

BY-LAWS: These are the written rules and regulations which govern the operation of the cooperative. The By-Laws will define:



- Membership:
    1. Eligibility
    2. Certificates
    3. Transfer of membership
    4. Transfer value
    5. Membership termination
    6. Equity limits

- Membership Meetings:
    1. Date and place
    2. Voting rights
    3. Notice requirements
    4. Quorum
    5. Special meetings

- Directors:
    1. Number and duties
    2. Powers and Duties
    3. Election and term of office
    4. Removal of directors
    5. Board meetings
    6. Special meetings
    7. Officers

- Amendments:
    1. Who can propose amendments
    2. How amendments may be proposed

- Fiscal Management:
    1. Books and accounts
    2. Annual Audit
    3. Inspection of financial records by members
    4. Authorization for board to execute notes and contracts

SUBSCRIPTION (PURCHASE) AGREEMENT: This is an agreement that is signed by prospective members. It signifies their intent to join the cooperative (purchase a membership) and that the cooperative is reserving a membership for the family.

Most cooperatives have discontinued the use of the Subscription Agreement because of its obsolescence. The document was designed for use during the development process, to secure memberships for existing residents and for non-residents who wished to fill vacant units. Once the original memberships were sold the By-Laws provided for elimination of the subscription fund account, and allowed those funds to be transferred to the cooperative operating account.

A high number of cooperatives skip this step altogether once in full operation and go straight to membership through the Occupancy Agreement after the member has been approved. There are a lesser number of cooperatives have implemented the use of a Purchase Agreement in lieu of the Subscription Agreement.

Use of a Purchase Agreement must be done carefully to avoid misleading the prospective member. A membership is being purchased, not a unit. It is also advisable to have the document reviewed by an Attorney to make sure the agreement complies with the cooperatives practice/method of selling memberships (e.g. is the "seller" the outgoing member or the cooperative?).

OCCUPANCY AGREEMENT: This is the lease between the cooperative (as the owner of the property) and the member (a shareholder in the corporation). The occupancy agreement describes the member's rights and duties, the cooperative's rights and duties, and the rules which provide for satisfactory community living.

MEMBERS RIGHTS:

- Occupancy of a specific unit
- Peaceful possession
- Timely maintenance
- Use of the cooperative's community property

MEMBERS OBLIGATIONS:

- To pay monthly housing charges on or before the first of each month.
- To comply with the cooperative's rules and policies.
- To use the premises for residential purposes only.
- To take personal responsibility for repairs and maintenance at their expense for repairs to their units made necessary by their own neglect or misuse, for interior decoration, and for repair or replacement of items not furnished by the cooperative. The agreement also allows the cooperative to make such repairs if the member fails to do so, and to add the costs to the member's housing charges.
- Not to make any structural alterations without written permission of the board.

COOPERATIVE'S OBLIGATIONS:

- To furnish necessary management for the cooperative.
- To provide and pay for all maintenance required except that due to members' negligence or misuse.
- To obtain and maintain in force all necessary insurance for the cooperative, but not for the members personal property.
- To pay all taxes and assessments levied against the cooperative.
- To provide utility service (may be limited to common areas)
- To determine whether compensation is to be paid to members in case of loss or damage of a unit due to fire or other casualty.

The Occupancy Agreement lists procedures for giving notice of an intended termination or transfer, and describes the circumstances under which a member will be considered in default, as well as what remedies the cooperative may seek.

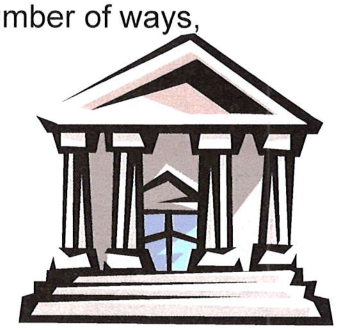
MORTGAGE (NOTE): The agreement between the cooperative and its lender and will formally:

- Pledge property as collateral
- Set forth the terms of re-payment
- Require mortgagee approval for certain acts

REGULATORY AGREEMENT: The agreement between the cooperative and HUD (or State Agency) that regulates the method and manner in which the cooperative does business. Its stipulations require the cooperative to:

- Make payments due under the terms of the mortgage
- Establish and maintain a General Operating Reserve fund and a Replacement Reserve fund
- Set up funds for residual receipts, surcharges, or collections over basic rates
- Establish and collect adequate housing charges to meet all cooperative expenses, but not to charge rates in excess of a HUD approved schedule
- Limit membership to low to moderate-income families (if insured under Section 221(d)(3) or 236)
- Certify and periodically recertify members' family income to determine whether they must pay additional charges
- Maintain the cooperative adequately

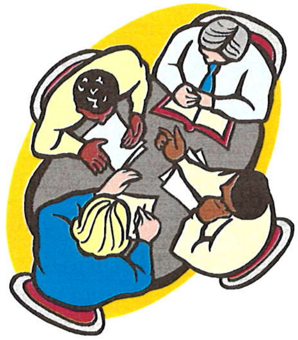
The Regulatory Agreement also constrains owners in a number of ways, requiring that they not, without prior approval of HUD:



1. Sell the property
2. Remodel or demolish any part of the property
3. Merge with another corporation
4. Incur liabilities beyond a maximum amount
5. Enter into any supervisory or managerial contract
6. Withhold any information requested

The Regulatory Agreement requires owners to make periodic reports to HUD. Among these are regular operating reports as requested, annual financial reports prepared by a certified public accountant, copies of minutes of all membership meetings, and other reports HUD may request.

MANAGEMENT AGREEMENT: This is the contract between the cooperative and the management company. It broadly defines the services to be performed.



The Management Agreement will contain common service contract provisions such as:

- Compensationr5
- Length of contract (expiration date)
- Methods of termination other than expiration
- Description of services to be performed

Many cooperatives have management agreement forms that are based on a form used by HUD a number of years ago when HUD was a party to the contracts. HUD ceased being a party to the management agreements in the 1980's, and implemented instead the **"Management Certification**".

The Management Certification document is the Agent and Cooperative's assurance to HUD that certain provisions are included in the management agreement, and that HUD's requirements are addressed in the agreement.

A few clauses of interest, common to most management agreements are:

- Agent must provide a fidelity bond.
- Cooperative must provide Agent with management office space.
- Agent cannot disperse more than a set dollar amount without the prior approval of the board (except in the case of an emergency).
- Agent is not required to advance funds to pay the cooperatives obligations.
- Regardless of who "employs" the staff, the Agent has the authority to hire, fire, supervise and train the employees. (The cost of all site-staff is the sole responsibility of the cooperative)

A **"Management Plan"** is a document (usually appended to the Management Agreement) that more specifically addresses the duties of the Agent and how they will be performed.

It is widely held that a Management Plan is a fluid document that should be periodically up-dated. Though the management agreement may make reference to the Plan, and it is appended to the agreement, the provisions should be developed jointly by the Agent and Cooperative.

The **Management Plan** will include items such as:

- Responsibilities for personnel policies and staffing arrangements.
- A Marketing plan and procedure for maintaining full occupancy.
- Procedure for determining initial applicant eligibility and recertification.
- A detailed program for routine, preventive, and emergency maintenance, and servicing of appliances and equipment.
- Policies and procedures for monthly carrying charge collection, including the handling of delinquencies.
- A program for maintaining accurate records to meet HUD requirements.
- A description of the relationship between members and management.
- A program for training and continuing education of management staff.