

Michigan Cooperative Housing History and Case Law (1934-2011)

By David J. Williams

I. Introduction

Owning a home is the quintessence of the American dream. A home purchase will be the largest purchase most Americans ever make. According to the United States Census Bureau 66.4 percent of Americans own their own home.¹ Of this group, 1.2 million live in cooperative housing.² First-year law students learn about traditional home ownership, titles, deeds, and mortgages in their property courses, but spend little or no time learning about this unique form of home ownership.³ Real estate professionals, mortgage brokers, and attorneys are often equally oblivious to the benefits and opportunities that cooperative housing offers Michigan homeowners.

The following comment will provide Michigan cooperative board members, real estate professionals, and attorneys with an introduction to the cooperative form of home ownership and a history of substantive Michigan case law involving housing cooperatives. Part II explains what a housing cooperative is, lays out their history, presents their current role in providing homes in Michigan and throughout the United States, explains how they operate, and dispels a common misconception. Part III provides a detailed analysis of all reported substantive cases involving Michigan housing

¹ *Homeownership Rates for the U.S.*, U.S. CENSUS BUREAU (First Quarter 2011), <http://www.census.gov/hhes/www/housing/hvs/qtr111/q111ind.html>.

² See *infra* note 46 and accompanying text.

³ Perhaps a business organizations or corporate law course would be better suited for teaching law students about cooperative housing. See *generally infra* notes 55-57, 68-74 and accompanying text.

cooperatives.⁴ After reading this comment the reader will possess a better understanding of Michigan cooperative housing, including its history and benefits, and the current state of the law governing this unique form of homeownership.

II. Background

A housing cooperative is a “common interest community” in which the property is owned by a corporation called a cooperative association and the owners of the corporation are entitled to exclusive possession of a housing unit by virtue of their ownership interest.^{5,6} Many of the United States’ housing cooperatives are located in

⁴ The author has omitted all unreported cases involving Michigan housing cooperatives and those with decisions based upon procedural issues not unique to housing cooperatives. *See generally* 2nd Mich. Coop. Hous. Ass’n v. Wabeek State Bank of Detroit, 67 N.W.2d 199 (Mich. 1954) (holding that when suit is brought on law side of the court and it appears it should have been brought in equity (or vice versa) it shall be transferred to the proper side); 2nd Mich. Coop. Hous. Ass’n v. 1st Mich. Coop. Hous. Ass’n, 99 N.W.2d 665 (Mich. 1959) (holding that when court in chancery obtains jurisdiction in equity over case for purpose of granting relief it retains the jurisdiction in order to grant full relief, even if that relief would normally come from the law side of the court); 2nd Mich. Coop. Hous. Ass’n v. 1st Mich. Coop. Hous. Ass’n, 107 N.W.2d 905 (Mich. 1961) (holding that “newly discovered evidence” is evidence that could not have been discovered and produced at the trial by the use of reasonable diligence by counsel then engaged in the trial); *Gildersleeve v. River House Coop.*, No. 213388, 2001 WL 755913 (Mich. Ct. App. Feb. 9, 2001) (holding that appellate court will not review claims voluntarily dismissed by the parties); *New England Towne Houses Coop., Inc., v. Roseville*, 2005 WL 43381 (Mich. Ct. App. 2005) (holding that transfer of tenant-owner’s shares to another “triggers the uncapping of the taxable value of the property”); *Branford Townhouses Coop. v. Taylor*, 2007 WL 1160189 (Mich. Ct. App. 2007) (holding that tax tribunal did not err in applying income capitalization approach to determine property’s taxable value).

⁵ 5 MICH. CIV. JUR. *Condos. and Coop. Hous.* § 21 (2008). *See generally* UNIF. COMMON INTEREST OWNERSHIP ACT, 7 U.L.A. prefatory note to the 2008 Amendments (2009) (stating that common interest communities include condominium associations, cooperative associations, and other “planned communities”).

⁶ The IRS defines a cooperative housing corporation as:

[A] corporation (A) having one and only one class of stock outstanding, (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation, (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and (D) meeting 1 or more of the following requirements for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred: (i) 80 percent or more of the corporation's gross income for such taxable year is derived from tenant-stockholders. (ii) At all times during such taxable year, 80 percent or more of the total

Michigan.⁷ To better understand the legal history of Michigan housing cooperatives one must first look at their roots, which can be traced to early European and American cooperatives, and dispel a common misconception.⁸

A. Cooperative Housing: A Brief History

The first known cooperative was formed in Rennes, France in 1720.⁹ This groundbreaking cooperative was formed in response to housing shortages caused by a wide sweeping fire.¹⁰ Although it did not conform to the definition of a housing cooperative, as we know it today, the Rennes cooperative is credited with being the first housing cooperative.¹¹ The Rennes cooperative struck a chord in Europe, and in the mid-nineteenth century cooperatives began appearing in Britain and Switzerland.¹² Later,

square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use. (iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of the tenant-stockholders.

I.R.C. § 216(b)(1)(West 2011).

⁷ See *infra* notes 47–50 and accompanying text.

⁸ See *infra* notes 9–22, 75 and accompanying text.

⁹ Richard Siegler & Herbert J. Levy, *Brief History of Cooperative Housing*, COOP. HOUS. JOURNAL (National Ass'n of Hous. Coops.), 1986, at 12, available at http://www.coophousing.org/uploadedFiles/NAHC_Site/Resources/nahc%20history%20Siegler.PDF (stating that the first housing cooperative was established in Rennes France in 1720, but signs of shared home ownership have been found in ancient civilizations including Babylon 2,000 B.C., Rome, Paris 1180–1200 A.D., and that of the Pueblo Indians 2,000 years ago); see also Chester C. McCullough, Jr., *Co-operative Apartments in Illinois*, 26 CHI.-KENT L. REV. 303, 304 (1948) (stating that cooperative housing's roots can definitely be traced to the Rennes, France development).

¹⁰ Siegler & Levy, *supra* note 9, at 12. See generally RENNES FRANCE TOURISM WEBSITE, <http://www.rennet.org/tourism/guideng/historik/boring.htm> (last visited July 1, 2011) (stating that, the “Great Fire” occurred in December of 1720, lasted six days, gutted the city center and destroyed almost 900 buildings).

¹¹ Compare Siegler & Levy, *supra* note 9 (stating that residents of Rennes cooperative individually paid for their own apartment unit and collectively owned the building), with 5 MICH. CIV. JUR., *supra* note 5 (defining a modern cooperative as a housing development in which members purchase shares of corporation and lease their housing unit from cooperative association).

¹² See Siegler & Levy, *supra* note 9.

housing cooperatives began appearing in many more European countries “including Denmark, Germany, Switzerland, Finland, Holland, Spain, Italy, and quite extensively in Sweden.”¹³ The early European housing cooperatives provided their residents with affordable and austere home environments.¹⁴

The first American cooperative, dubbed the Randolph, appeared in New York City in 1876.¹⁵ Several cooperatives, modeled after the Randolph, were built in New York City in the following years.¹⁶ These early cooperatives were referred to as “home clubs.”¹⁷ Unlike their European cousins, these home clubs provided a luxury lifestyle for their residents.¹⁸ These luxury cooperatives were developed to provide their well-to-do owners with a carefree lifestyle, free of home maintenance and security concerns, and allowed them the freedom to travel and return to a home ready to occupy.¹⁹ According to authors Richard Siegler²⁰ and Herbert J. Levy,²¹ these luxury cooperatives were strictly an American phenomenon.²²

Between 1885 and 1918 there was little cooperative housing development in the United States.²³ However, during the post-World War I economic boom, homes located

¹³ McCullough, *supra* note 9.

¹⁴ Siegler & Levy, *supra* note 9, at 14.

¹⁵ *Id.*

¹⁶ *See id.*

¹⁷ *Id.* (stating that the word “cooperative” was not used until after the turn of the century).

¹⁸ *See id.*

¹⁹ *Id.*

²⁰ Richard Siegler is currently of counsel at Strook & Strook in New York City where he specializes in cooperative and condominium housing law. *Richard Siegler Biography*, STROOK & STROOK, <http://www.stroock.com/rsiegler> (last visited July 13, 2011). Siegler also serves as a columnist for the New York Law Journal where he writes articles focusing on developments in cooperative and condominium law. *Id.*

²¹ Herbert J. Levy is the former Executive Director of the National Association of Housing Cooperatives. *See* Siegler & Levy, *supra* note 9, at 1.

²² *Id.* at 14.

²³ *See id.*

in major cities became increasingly expensive and city dwellers turned to housing cooperatives as a way to obtain affordable home ownership.²⁴ During this time period, forward thinking states, such as New York, enacted statutes that incentivized the development of cooperatives.²⁵ By 1925, cooperatives had made their way into sixteen cities in the United States including Detroit.²⁶ By 1930, all of the cooperatives in United States were collectively valued at over \$500 million.^{27, 28}

Housing cooperatives were becoming a major economic player until the Great Depression²⁹ brought their development to a virtual standstill.³⁰ During the Great Depression more than seventy-five percent of the luxury housing cooperatives in Chicago and New York failed.³¹ Although it looked like the end of housing cooperatives in the United States, it proved only to be the beginning.

In 1942 the federal government adopted what is currently Section 216 of the Internal Revenue Code, which provides tax deductions to cooperative housing owners for real estate taxes and mortgage interest paid.³² These deductions gave cooperative housing the ability to compete with other forms of ownership, which were already

²⁴ *Id.*

²⁵ In 1927 the New York Legislature enacted the Housing Act of 1927, which provided for special tax exemptions for housing cooperatives. *Id.* Thirteen cooperatives were built under the act. *Id.*

²⁶ *Id.* at 15.

²⁷ *See id.*

²⁸ Adjusted for inflation, \$500,000,000 in 1930 dollars is roughly equivalent to \$6,465,787,086 in 2010 dollars. *The Inflation Calculator*, WESTEGG, <http://www.westegg.com/inflation/infl.cgi> (last visited on July 19, 2011).

²⁹ The Great Depression began on Thursday, October 29, 1929 (known as “Black Thursday”) with a record-setting rapid-sell-off of stocks. STANLEY SCHULTZ, *THE GREAT DEPRESSION: A PRIMARY SOURCE HISTORY 8* (Gareth Stevens Publishing 2005). The sell off began again five days later, on a day now known as “Black Tuesday,” spiraling the U.S. economy into what is now known as the Great Depression. *Id.* The Great Depression lasted from 1929 through the early 1940s. *E.g.*, ROBERT S. MCELVAINE, *THE GREAT DEPRESSION: AMERICA 1929-1941* 5 (Three Rivers Press 2009).

³⁰ Siegler & Levy, *supra* note 9, at 14.

³¹ *Id.*

³² *Id.* at 16. *See generally* I.R.C. § 216 (West 2011).

afforded the deductions.³³ This legislation, along with other state legislation, which was designed to encourage new non-profit housing projects helped pave the way for the next wave of cooperative housing development.³⁴

As World War II came to a close, housing cooperatives began to take off again.³⁵ Siegler and Levy refer to this period as the “Cooperative Housing Revival.”³⁶ During the war, home building had practically ceased.³⁷ This stagnation in home building and the tax incentives implemented by both federal and state governments, in conjunction with all of the soldiers who wanted to start families and buy homes returning home from the war, led to this next wave in American cooperative housing development.³⁸ According to Siegler and Levy, this wave lasted from 1942 through 1961.³⁹

In 1950, Section 213 was added to the National Housing Act with the purpose of encouraging the development of middle-income cooperatives.⁴⁰ Section 213, which is codified as 12 U.S.C. § 1715e,⁴¹ provides for federally insured mortgages for cooperative associations.⁴² By 1958, the effects of the program could be seen.⁴³ According to Siegler and Levy, about 45,000 cooperative units out of the 100,000 that existed at the time were financed using Section 213 federally insured mortgages.⁴⁴ Although the “Cooperative

³³ See Siegler & Levy, *supra* note 9, at 16.

³⁴ *Id.*

³⁵ See *id.* at 15.

³⁶ *Id.*

³⁷ *Id.* at 12.

³⁸ *Id.* at 12, 16.

³⁹ *Id.* at 15.

⁴⁰ See *id.* at 16.

⁴¹ 12 U.S.C.A. § 1715e (West 2001 & Supp. 2011).

⁴² Siegler & Levy, *supra* note 9, at 16. See generally 12 U.S.C.A. § 1715e.

⁴³ See Siegler & Levy, *supra* note 9, at 16.

⁴⁴ *Id.*

Housing Revival” ended in 1961, cooperative housing has continued to grow in popularity throughout the United States.⁴⁵

B. Cooperative Housing Today

Today, over 1.2 million families in the United States reside in homes owned by cooperative housing associations and thirty percent of all housing in New York City is provided by cooperatives.⁴⁶ Ninety percent of the housing cooperatives in the United States are located in just ten states and the District of Columbia.⁴⁷ Many of these housing cooperatives are located in Michigan, which is home to 165 housing cooperatives, with the largest concentration being located in the Detroit metropolitan area.⁴⁸ Clearly, housing cooperatives play a major role in providing affordable housing for Michigan families and in Michigan’s overall economy.⁴⁹

The Distribution of Housing Cooperatives map below shows heavy concentrations of housing cooperatives in Detroit, Chicago, Minneapolis, Seattle, San Francisco, Los Angeles, and along the east coast.⁵⁰

⁴⁵ See *id.* at 19; see also *infra* notes 46–48 and accompanying text.

⁴⁶ Ilan Bracha, *Condos vs. Co-ops*, ACTIVE RAIN, <http://activerain.com/blogsvieview/2305303/condos-vs-co-ops-> (last visited July 2, 2011); see, e.g., *What is a Housing Cooperative*, NAT’L ASS’N OF HOUS. COOPS., <http://www.coophousing.org/DisplayPage.aspx?id=48> (last visited July 2, 2011) (stating that 1.2 million American families currently reside in cooperative housing developments) [hereinafter NAHC]. Ilan Bracha is a New York City realtor specializing in cooperative and condominium housing and commentator on activerain.com, a New York Real Estate Blog. Bracha, *supra* note 46.

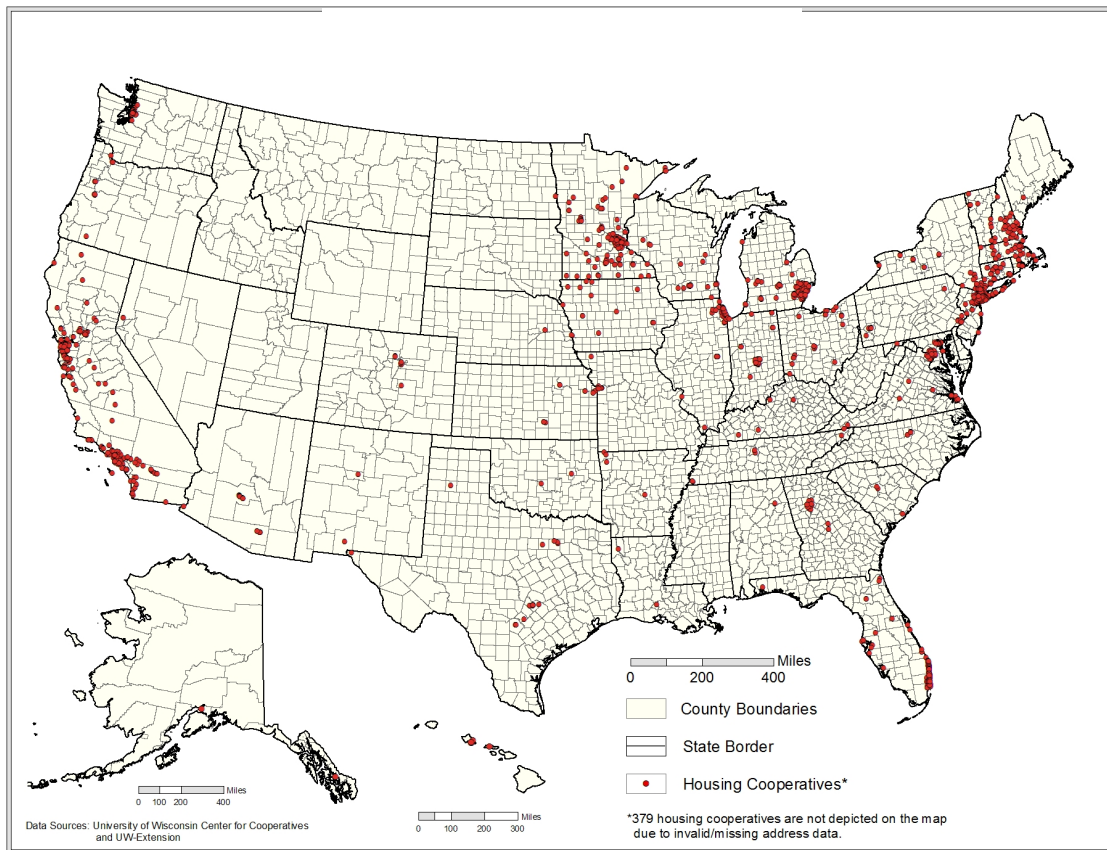
⁴⁷ *Housing*, UNIV. OF WIS.–MADISON CTR. FOR COOPS., <http://reic.uwcc.wisc.edu/house/> (last visited June 25, 2011) [hereinafter CTR. FOR COOPS.].

⁴⁸ *Michigan Housing Cooperatives*, MICH. COOP. LAW CTR., http://michcooplaw.com/michigan_cooperatives.htm (last visited June 25, 2011) (providing directory of all Michigan housing cooperatives). The Michigan Cooperative Law Center is a service provided by the attorneys of the Wyandotte, Michigan based law firm of Pentiuk, Couvreur & Kobiljak. *Id.*

⁴⁹ See generally *id.*

⁵⁰ The Distribution of Housing Cooperatives Map was created by the University of Wisconsin–Madison Center for Cooperatives. CTR. FOR COOPS., *supra* note 47.

Distribution of Housing Cooperatives Map⁵¹



Cooperative housing provides Michiganders with an opportunity to participate in a unique form of home ownership unlike more traditional housing models.⁵² Although the owners of housing cooperatives may be referred to as “homeowners,” they do not hold title to their homes, as does the owner of a traditional single-family dwelling or condominium unit.⁵³ The cooperative association owns the cooperative’s property,

⁵¹ *Id.*

⁵² RANDALL A. PENTIUK, THE MICHIGAN COOPERATIVE LAW PRIMER 2 (Pentiuk, Couvreur, & Kobiljak 2007), available at <http://www.michcooplaw.com>.

⁵³ See, e.g. 5 MICH. CIV. JUR., *supra* note 5. See generally 15A AM. JUR. 2D *Condo. & Coop. Apartments* § 62 (2000) (stating other titles for cooperative owners include tenant-shareholder, tenant-owner, proprietary lessee, and co-operator).

including the land and buildings.⁵⁴ In Michigan, housing cooperative associations are usually formed as non-profit corporations under the Michigan Non-Profit Corporation Act.⁵⁵ Much like a traditional corporation, the association is spurred into existence through the efforts of a “promoter.”⁵⁶ When the promoter, who is usually a developer, sells all of the corporation’s shares, he or she is no longer in the picture and the cooperative’s members run the association.⁵⁷

The shareholders’ or “tenant-owners” shares in the corporation entitle them to exclusive possession of their unit through a proprietary lease.⁵⁸ Despite obtaining legal possession of their unit through a lease, the tenant-owners are not protected by the

⁵⁴ 15A AM. JUR. 2D, *supra* note 53.

⁵⁵ 5 MICH. CIV. JUR., *supra* note 5 (stating that housing cooperatives in Michigan are normally formed under the state’s non-profit corporation act, but that they may also be formed pursuant to the state’s General Corporation and Consumer Housing Corporation Acts). Some states, such as Ohio, will not allow housing cooperatives to be formed as non-profit corporations because they confer a direct benefit on their members. *See* 15A AM JUR 2D, *supra* note 53, § 65; *see also* Russell v. Sweeney, 91 N.E.2d 13, 16 (Ohio 1950) (holding that housing cooperatives may not be considered non-profit corporations because a “[p]rofit does not necessarily mean a direct return by way of dividends, interest, capital account, or salaries. A saving of expense which would otherwise necessarily be incurred is also a profit to the person benefited.”).

⁵⁶ 15A AM. JUR. 2D, *supra* note 53, § 63. A “promoter” is “[a] founder or organizer of a corporation or business venture; one who takes the entrepreneurial initiative in founding or organizing a business or enterprise.” BLACK’S LAW DICTIONARY 1333 (9th Ed. 2009).

⁵⁷ *See* 6 MICH. CIV. JUR. *Corporations* § 26 (2008); 15A AM JUR 2D, *supra* note 53, § 63. When the promoter, usually a developer, has sold all of his or her shares to cooperative housing member he or she is no longer in the picture. *See generally* 15A Am. Jur. 2d, *supra* note 53, §§ 69–72. This arrangement has lead to problems with developers seeking to maximize profits by providing substandard workmanship. *Id.* No Michigan cases have addressed this issue, however, it has been addressed in other jurisdictions. *See id.*

⁵⁸ 15A AM JUR. 2D, *supra* note 53; *see also* UNIF. COMMON INTEREST OWNERSHIP ACT, 7 U.L.A. § 1–103(26) (2009) (defining a proprietary lease as “an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.”). Although Michigan has not adopted the Uniform Common Interest Ownership Act, the act does provide us with indications of how Michigan courts may define key terms. *Id.* (stating that only Delaware, Connecticut, and Vermont have adopted either the 2008 or 1994 Uniform Act).

Michigan Landlord and Tenant Relationships Act,⁵⁹ because by the Act's very definition these tenant-owners are both tenants and landlords.⁶⁰

Cooperatives provide many advantages to homeowners unavailable in other forms of home ownership.⁶¹ Housing cooperatives provide their members with a sense of community, an ability to affect change in the cooperative, and freedom the home maintenance normally associated with home ownership.⁶²

Randall Pentiuk, a leading Michigan Cooperative Housing Attorney, contends that cooperative housing "like no other form of housing ... gives [a] sense of 'community' to its members."⁶³ This sense of community is derived from the members working together for the good of the cooperative and their ability to participate in the cooperative's governance.⁶⁴ According to Pentiuk, unlike other forms of common interest community housing,⁶⁵ cooperatives do not create an "us versus them" attitude between the board and the members, because in a cooperative "it is simply 'us.'"⁶⁶ This attitude could, in part, stem from the fact that cooperative members are both the landlord

⁵⁹ Mich. Landlord and Tenant Relationship Act, MICH. COMP. LAWS ANN. § 554.601 (West 2005).

⁶⁰ See *Penokie v. Colonial Townhouses Coop.*, 366 N.W.2d 31 (Mich. Ct. App. 1985) (holding that cooperative associations and tenant-owners do not come under the Landlord Tenant Relationship Act).

⁶¹ See generally PENTIUK, *supra* note 52.

⁶² See *id.*

⁶³ *Id.*

⁶⁴ See *id.*

⁶⁵ See UNIF. COMMON INTEREST OWNERSHIP ACT, 7 U.L.A. Prefatory Note to the 2008 Amendments (2009) (stating that common interest communities include condominium associations, cooperative associations, and other "planned communities.").

⁶⁶ PENTIUK, *supra* note 52.

and the tenant . . . after all, how could you be mad at the landlord when the landlord is you?⁶⁷

Cooperative members also have the ability to affect change in their cooperative association through their right to vote as a voting member-shareholder.⁶⁸ The members' voting rights are conferred on them by the cooperative's governing documents.⁶⁹ The cooperative association derives its authority from these documents as well.⁷⁰ Randall Pentiuk refers to these documents as the "tools of corporate control."⁷¹ These tools of corporate control include the articles of incorporation, bylaws, regulatory agreement, and proprietary lease.⁷² As with any other corporation in Michigan, the cooperative's articles of incorporation are public documents, which are filed with the state.⁷³ Only the cooperative's members may amend this document.⁷⁴

C. Clearing up the Confusion: Cooperative vs. Condominium

Cooperative housing is often associated with condominiums; however, the two forms of ownership are vastly distinct.⁷⁵ The distinctions are both practical and legal.

The first distinction is based on ownership. As noted above, the members of a cooperative do not hold title to their individual housing unit.⁷⁶ Instead, they own shares

⁶⁷ See *id.*; see also *Penokie v. Colonial Townhouses Coop.*, 366 N.W.2d 31, 34-35 (Mich. Ct. App. 1985) (holding that because cooperative housing member was both a landlord and a tenant under Michigan's Landlord and Tenant Relationship Act, therefore, the act does not apply).

⁶⁸ 15A AM JUR. 2D, *supra* note 53, § 84.

⁶⁹ PENTIUK, *supra* note 52, at 6.

⁷⁰ 15A AM JUR. 2D, *supra* note 53, § 63.

⁷¹ PENTIUK, *supra* note 52, at 6.

⁷² See *id.* at 6-10 (listing and explaining governing documents). Pentiuk also refers to the silent governing documents, which are statutory laws which supersede any of the aforementioned governing documents. *Id.*; see also 15A AM JUR. 2D, *supra* note 53, § 73.

⁷³ PENTIUK, *supra* note 52, at 7.

⁷⁴ *Id.*

⁷⁵ See *id.* at 2.

in the cooperative association and obtain exclusive possession of a housing unit based on their proprietary lease.⁷⁷ The owner of a condominium, on the other hand, does hold title to his or her unit.⁷⁸ The condominium owner does not hold title to a piece of land and a building as does the owner of a typical home, rather, he or she holds title to the “airspace” occupied by the unit.⁷⁹ This may seem like a purely legal distinction, but it has some very practical implications. Namely, the condominium owner is responsible for the home maintenance and repairs which occurs within his or her unit’s four walls; whereas, the cooperative association is chiefly responsible maintenance and repairs of the units within the cooperative.⁸⁰

Another key distinction is that cooperative associations may screen prospective members to be sure they are desirable neighbors.⁸¹ A condominium co-owner, on the other hand, has no say in whom his or her neighbor chooses to sell his or her condominium unit, and therefore could end up residing next to a convicted felon with no remedy but to move.⁸²

The last key distinction is that cooperative associations may invoke the Summary Proceedings Act to evict members who fail to pay their monthly carrying charges or have

⁷⁶ 15A AM JUR. 2D, *supra* note 53.

⁷⁷ *Id.*

⁷⁸ 5 MICH. CIV. JUR., *supra* note 5, § 1 ; *see* NAHC, *supra* note 46.

⁷⁹ NAHC, *supra* note 46.

⁸⁰ PENTIUK, *supra* note 52, at 3 (stating that “the cooperative takes care of removing snow, fixing garbage disposals and leaky toilets, replacing roofs, and everything else that the property needs.”).

⁸¹ *Id.* at 4 (stating that some cooperatives screen applicants to be sure they have demonstrated an ability to pay the monthly carrying charges and do not have a criminal history). It is important to note that all screening must comply with the Michigan Elliot Larsen and Federal Civil Rights laws. *See generally* Elliot-Larsen Civil Rights Act, MICH. COMP. LAWS Ann. §§ 37.2501-2507 (West 2001 & Supp. 2011); Fair Housing Act, 42 U.S.C.A. §§ 3601-3619 (West 2003 & Supp. 2010) (prohibiting discrimination on the basis of (1) race, (2) color, (3) religion, (4) national origin, (5) handicap, (6) familial status, or (7) sex in matters pertaining to residential housing).

⁸² PENTIUK, *supra* note 52, at 4.

otherwise violated the cooperative's rules.⁸³ This right does not exist for condominium associations.⁸⁴

Having discussed what a housing cooperative is, their history, how they operate, and cleared up some common misconceptions people have regarding cooperatives the reader should have a good understanding of housing cooperatives. The next section will provide an analysis of some watershed case law that has shaped the law governing housing cooperatives in Michigan.

III. Analysis

Eleven cases involving Michigan housing cooperatives decided on substantive grounds (i.e. not procedural) have been reported by Michigan's courts and only one case involving a housing cooperative has been reported by the United States Supreme Court. This relatively small number of cases, in-and-of itself, reveals that the tenant-owners and directors of housing cooperatives are not a very litigious group.⁸⁵ Some of these cases have provided definitive answers to questions surrounding housing cooperatives while others have left only questions. The following analysis will provide practitioners and cooperative board members with a better understanding of the case law involving and directly applying to Michigan housing cooperatives.

⁸³ *Id.* at 5. A summary proceeding is "a nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner." BLACK'S LAW DICTIONARY 1324 (9th Ed. 2009). *See generally* MICH. COMP. LAWS ANN. § 600.5750 (West 2000 & Supp. 2011). Members of a housing cooperative do not pay a monthly rent, as does a tenant in an apartment building. *See generally* PENTIUK, *supra* note 52, at 2. They do however pay "carrying charges" which covers their portion of the cooperative association's mortgage, property taxes, and upkeep expenses. *Id.*

⁸⁴ PENTIUK, *supra* note 52, at 5.

⁸⁵ The author's Westlaw searches for substantive cases involving Michigan condominiums and apartments returned hundreds of results.

A. 1934—Are tenant-owners treated as homeowners or shareholders when their cooperative is being foreclosed upon?

In 1886, the Barrington Apartment Association, a luxury New York housing cooperative, became the first American housing cooperative involved in litigation.⁸⁶ Approximately forty-eight years later, in 1934, the first significant-reported Michigan case involving a housing cooperative took place.⁸⁷ In this case, the Michigan Supreme Court set out to determine what rights tenant-owners have when their cooperative association's building is being foreclosed on.⁸⁸

Although the causes triggering the stock market crash that led to the Great Depression did not originate there, Detroit was nevertheless hit hard by the depression.⁸⁹ In 1929, Detroit produced more than 5,337,000 vehicles.⁹⁰ Like the stock market, that number had plunged to 1,332,000 by 1931.⁹¹ General Motors and Ford, two of Detroit's key employers, were forced to lay off massive portions of their work force.⁹² The workers fortunate enough to retain their jobs often found themselves with reduced hours and lowered pay.⁹³ It was a tumultuous time in Detroit, and it was during this time that

⁸⁶ Siegler & Levy, *supra* note 9, at 14. In *Barrington Apartment Association v. Watson*, the cooperative housing association sought to enjoin a sublessee from further subletting his apartment to another individual without the association's consent. *Id.*; see also 33 ALBANY LAW JOURNAL: A WEEKLY RECORD OF THE LAW AND LAWYERS. FROM JAN. 1886 TO JULY 1886 (Weed, Parsons & Co., 1886) [hereinafter ALBANY L.J.]. The court granted an injunction, barring the sublessee from subleasing his unit without the association's consent, despite the fact that the lease did not prohibit subleasing, because doing so would violate the cooperative's other rules and otherwise harm the cooperative. Siegler & Levy, *supra* note 9; see also ALBANY L.J., *supra* note 86.

⁸⁷ See generally *Schaffer v. 8100 Jefferson E. Corp.*, 225 N.W. 324 (Mich. 1934).

⁸⁸ *Id.*

⁸⁹ ARTHUR M. WOODFORD, *THIS IS DETROIT: 1701-2001* 115-26 (Great Lakes Books, 2001).

⁹⁰ *Id.* at 121.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

the tenant-owners of the 8100 Jefferson Avenue East Corporation housing cooperative found their building being foreclosed on.⁹⁴

In *Schaffer v. 8100 Jefferson Avenue East Corp.*, the Michigan Supreme Court⁹⁵ ruled that although cooperative housing tenant-owners may enjoy the benefits of the cooperative housing form of ownership, they must also accept the burdens of the form of ownership they have entered into.⁹⁶ In other words, cooperative-housing tenant-owners cannot have the cake of the cooperative form of home ownership while eating the benefits of private home ownership.⁹⁷

In *Schaffer*, a developer who owned four eight-story apartment complexes in Detroit, through his holding company (Alden Park Manor, Inc.), decided to sell the apartments to individual owners.⁹⁸ He elected to do this by converting the apartment complex into a cooperative housing community.⁹⁹ In 1927 he formed the 8100 Jefferson Avenue East Corporation (“the association”), as a non-profit corporation, and conveyed

⁹⁴ See *id.*; *Schaffer v. 8100 Jefferson Ave. E. Corp.*, 255 N.W. 324, 327 (Mich. 1934).

⁹⁵ In 1934 the Michigan Supreme Court was comprised of: (1) Chief Justice Nelson Sharpe, who served on the State’s highest court from 1919 through 1955; (2) Justice Henry Butzel, who served on the Court from 1929 through 1955; (3) Justice Howard Wiest, who served on the Court from 1921 through 1945; (4) Justice Walter North, who served on the Court from 1927 through 1952; (5) Justice Luis Fead, who served on the Court from 1928 through 1937; (6) Justice William Potter, who served on the Court from 1928 through 1940; (7) Justice George Bushnell, who served on the Court from 1934 through 1955; and (8) Justice Edward Sharpe, who served on the Court from 1934 through 1957. MICH. COURT HISTORY, http://www.micourthistory.org/court_chart.php#1920 (last visited on July 14, 2011).

Justice Louis Fead wrote the *Schaffer* opinion. See *Schaffer*, 255 N.W. at 324. Justice Fead was born in Lexington, Michigan on May 2, 1877. MICH. COURT HISTORY, *supra* note 95. He attended Olivet College and received his Bachelor of Laws from the University of Michigan in 1900. *Id.* He held the office of prosecuting attorney for Luce County from 1901-1913. *Id.* He was elected to the Circuit Court of the eleventh district in 1913 holding the position until 1928 when Governor Fred W. Green appointed him to the Michigan Supreme Court. *Id.* He presided on the Court until he was defeated in his bid for reelection in 1937. *Id.*

⁹⁶ *Schaffer*, 255 N.W. at 327.

⁹⁷ *Id.*

⁹⁸ *Id.* at 324-25.

⁹⁹ *Id.*

the property to the association.¹⁰⁰ In return Alden Park received 100 percent of the cooperative association's stock.¹⁰¹ In the process of selling shares to new owners he made several claims, including claims that the association was financially sound, buyers would get thirty-year leases, and that the association had \$2,050,000¹⁰² in capital.¹⁰³ The new owners took their property with notice of a mortgage on the property.¹⁰⁴

In November of 1931, the Union Guardian Trust Company (the mortgagee) began foreclosing on the property.¹⁰⁵ The tenant-owners filed suit claiming that as "joint adventurers" they must be made party to the foreclosure and alternatively that the association merely holds title to the property for them in trust.¹⁰⁶ The court did not agree with either contention for three key reasons.¹⁰⁷ First, the court stated that there was no "community of purpose or trust relationship" between the tenant-owners and the association at the cooperative's inception therefore the tenant-owners had "accepted the corporate form of ownership and operation" which does not establish shareholders as joint adventurers with a corporation.¹⁰⁸ Secondly, the court considered that, because the articles of incorporation specifically stated that the purchasers were lessee's of the corporation, "the project at bar . . . is a far cry from a joint adventure or trust

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Adjusted for inflation, \$2,050,000 in 1934 dollars is roughly equivalent to \$33,024,118 in 2010 dollars. *The Inflation Calculator*, WESTEGG, <http://www.westegg.com/inflation/infl.cgi> (last visited on July 14, 2011).

¹⁰³ *Schaffer*, 255 N.W. at 325.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 326.

¹⁰⁶ *Id.* at 327.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

ownership.”¹⁰⁹ And lastly, the court went on to state that cooperative housing tenant-owners are not at liberty to “don or doff the corporate garb at their pleasure, for their benefit, or to the detriment of third parties” because in doing so “corporate law would become ‘confusion worse confounded,’ because elements of joint adventure appear in most corporate undertakings.”¹¹⁰ For these reasons the court determined that the tenant-owner’s were merely lessees and therefore could not be made party to the foreclosure proceedings.¹¹¹ The tenant-owners of the 8100 Jefferson East Corporation had to accept the form of ownership that they entered into and there was nothing they could do about it.¹¹²

Next, the tenant-owners claimed that they should be granted a lien on the property due to misrepresentations made to them by the developer.¹¹³ The court however did not agree.¹¹⁴ The court reasoned that because the developer does not hold title to the property (title was held by the association) no lien could attach.¹¹⁵ The court further reasoned that even if a lien, benefiting the tenant-owners, was attached to the property, it would not make the tenant-owners party to the foreclosure proceedings because the lien would have been attached after the property entered foreclosure.¹¹⁶

Finally, in a last ditch effort to salvage their investment, the tenant-owners contended that the foreclosure should be enjoined because the mortgagee owed them a

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *See id.*

¹¹² *See id.*

¹¹³ *Id.*

¹¹⁴ *See id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* (citing *Union Trust Co. v. C. H. Miles Adams Ave. Corp.*, 225 N.W. 594 (Mich. 1929)).

duty of due diligence in attempting to collect the mortgage debt, and by failing to perform this duty the mortgagee allowed the misappropriation of association funds to occur.¹¹⁷

Again, the court did not agree with the tenant-owners stating “it would surprise the profession if a rule were declared that a mortgagee owes to persons interested in the premises a duty of collection on peril of losing his lien or impairing its enforcement.”¹¹⁸

The first Michigan case involving cooperatives made it clear that Michigan cooperative housing tenant-owners need to exercise due diligence in purchasing shares of a cooperative from a developer.¹¹⁹ They could not simply believe the developer’s representations without the risk of losing their shares and their homes.¹²⁰ The case provides several lessons which every housing cooperative association and tenant-owner should be aware of: (1) mortgagees do not owe a duty to tenant-owners;¹²¹ (2) although tenant-owners may be able to attach a lien on the association’s property, doing so would be futile after the foreclosure begins;¹²² (3) tenant-owners are not joint adventurers with the housing cooperative;¹²³ and (4) a housing cooperative does not hold title to the property for its tenant-owners in trust.¹²⁴

It is truly unfortunate that the tenant-owners of the 8100 Jefferson East Corporation had to learn these lessons in the midst of the worst economic downturn in

¹¹⁷ *Id.* at 327-28.

¹¹⁸ *Id.*

¹¹⁹ *See id.* at 324-28.

¹²⁰ *Id.*

¹²¹ *Id.* at 327-28.

¹²² *Id.* at 327.

¹²³ *Id.*

¹²⁴ *Id.*

this nation's history.¹²⁵ This lesson quite possibly resulted in some of them becoming part of the 223,000 homeless roaming the streets of Detroit, hungry and out of work, during the Great Depression.¹²⁶

B. 1970-71—Are state subsidized and supervised housing cooperatives exempt from paying property taxes? Two cases decided in 1970 & '71.

After deciding that tenant-owners could not be made party to the foreclosure of their housing cooperative, it was time for Michigan courts to determine whether local municipalities could charge state subsidized and supervised housing cooperatives property tax by disregarding their tax-exempt status.¹²⁷ It was 1970 when the Michigan Court of Appeals issued the first of two contradicting opinions on the matter.^{128, 129}

¹²⁵ See generally *id.*

¹²⁶ WOODFORD, *supra* note 89, at 121 (stating that some 223,000 people roamed the streets of Detroit, homeless, during the Great Depression).

¹²⁷ There are three reported cases decided between 1934 and 1970-71 when the tax-exempt cases took place, however, their resolution did not turn on principles unique to cooperative housing. See 2nd Mich. Coop. Hous. Ass'n v. Wabeek State Bank of Detroit, 67 N.W.2d 199 (Mich. 1954) (turning on procedural issues not unique to cooperative housing); 2nd Mich. Coop. Hous. Ass'n v 1st Mich. Coop. Hous. Ass'n, 99 N.W.2d 665 (Mich. 1959) (turning on financial issues not unique to cooperative housing); 2nd Mich. Coop. Hous. Ass'n v. 1st Mich. Coop. Hous. Ass'n, 107 N.W.2d 905 (Mich. 1961) (dealing with newly discovered evidence rule).

¹²⁸ See generally *Colonial Townhouse Coop., Inc. v. Lansing*, 181 N.W.2d 2, 4 (Mich. Ct. App. 1970) (holding that local municipalities have discretion in whether to adopt resolution recognizing a state subsidized housing cooperative as a tax exempt entity) [hereinafter *Colonial*]. *Contra* *Lexington Townhouses Coop. v. Warren*, 189 N.W.2d 138 (Mich. Ct. App. 1971) (holding that local municipalities do not have discretion in whether to adopt resolution recognizing a state subsidized housing cooperative as a tax-exempt entity) [hereinafter *Lexington*].

¹²⁹ *Colonial* was decided by a panel of judges including: (1) Chief Judge T. John Lesinski, who served on the court from 1965 through 1976 and as Chief Judge from 1965 through 1976; (2) Judge Timothy C. Quinn, who served on the court from 1965 through 1977 and as Chief Judge Pro Tem from 1974 through 1978; and (3) Judge James R. Rood, who was a Circuit Judge for the County of Midland and appointed by the Supreme Court for the hearing month of June, 1970. See *Colonial*, 181 N.W.2d at 2; see also MICH. COURT OF APPEALS, <http://coa.courts.mi.gov/court/judges/rctjudges.htm> (last visited on July 15, 2011). Judge Timothy C. Quinn delivered the opinion of the court. *Colonial*, 181 N.W.2d at 2.

In *Colonial Townhouse Cooperative, Inc. v. Lansing*, the Colonial Townhouse Cooperative Association sought writ of mandamus¹³⁰ ordering the City of Lansing to adopt a resolution recognizing the housing cooperative a tax-exempt entity.¹³¹ The trial court interpreted the relevant state statutes as giving the city discretion in deciding whether to treat the cooperative as a taxable entity and therefore granted the city's motion for summary judgment.¹³²

The issue before the Michigan Court of Appeals was whether the statutory provisions found in section fifteen of the State Housing Development Authority Act,¹³³ granting cooperative housing associations meeting the criteria of the act a tax-exempt status, are mandatory or discretionary.¹³⁴ The cooperative claimed that "once the facts which qualify a housing project for an exemption are established . . . the required resolution must be adopted by the municipal authority. Otherwise, the statute grants arbitrary authority to the municipal authority to grant or withhold benefits created by the act."¹³⁵ The court did not agree stating that this discretion "does not constitute a grant of arbitrary authority."¹³⁶

The *Colonial* decision afforded local municipalities discretion in deciding whether to adopt a resolution recognizing a housing cooperative formed under the State Housing Development Authority Act to provide affordable housing as a tax-exempt

¹³⁰ A writ of mandamus is "[a] writ issued by a court to compel performance of a particular act by a lower court or governmental officer or body, usu. to correct a prior action or failure to act." BLACK'S LAW DICTIONARY 1046-47 (9th Ed. 2009).

¹³¹ *Colonial*, 181 N.W.2d at 3.

¹³² *Id.*

¹³³ See MICH. COMP. LAWS ANN. § 125.1415 (West 2006), *repealed by* P.A. 1968, No. 334.

¹³⁴ *Colonial*, 181 N.W.2d at 3.

¹³⁵ *Id.* at 4.

¹³⁶ *Id.*

entity.¹³⁷ It was less than a year before another panel of the same court¹³⁸ issued an opinion reaching the opposite conclusion.¹³⁹ It is clear that many Michigan municipalities were happy with the *Colonial* decision and just as many housing cooperatives were frustrated by it, because this time the case involved eight different parties (four cooperatives and four municipalities) from four different lawsuits and was consolidated on appeal.¹⁴⁰

Judge Peterson, who drafted the *Lexington Townhouses Cooperative v. Warren* opinion, started the opinion by stating that “[t]hese consolidated cases involve the tax exemption provision of the State Housing Development Authority Act . . . which was construed by a panel of this court in *Colonial* . . . and with which decision we are unable to agree.”¹⁴¹ Clearly, this panel of judges was not fond of the *Colonial* decision.¹⁴²

In *Lexington*, the housing cooperatives contended that they were entitled to tax exemptions based on a plain reading of section fifteen of the State Housing Development Authority Act.¹⁴³ The State Housing Development Authority Act stated that a housing

¹³⁷ *Id.*

¹³⁸ *Lexington Townhouses Cooperative v. Warren* was decided by a panel of the Michigan Court of Appeals consisting of: (1) Presiding Justice Vincent J. Brennan, who served on the court from 1969 through 1986 and as Chief Judge Pro Tem from 1980 through 1986; (2) Judge Charles L. Levin, who served on the court from 1966 through 1972; and (3) Judge William R. Peterson, Circuit Judge for the 28th Judicial Circuit, appointed by the Supreme Court for the hearing month of November, 1970. See *Lexington Townhouses Coop. v. Warren*, 189 N.W.2d 138 (Mich. Ct. App. 1971) [hereinafter *Lexington*]; see also MICH. COURT OF APPEALS, <http://coa.courts.mi.gov/court/judges/rctjudges.htm> (last visited on July 15, 2011).

¹³⁹ *Lexington*, 189 N.W.2d at 141. *Contra Colonial*, 181 N.W.2d at 2 (holding that governmental bodies have discretion in deciding whether to recognize housing cooperative’s tax-exempt status).

¹⁴⁰ *Lexington*, 189 N.W.2d at 138 (listing four cooperatives as plaintiffs and four municipalities as defendants). The parties included the following cooperative plaintiffs each suing their respective municipalities: (1) Lexington Townhouses Cooperative (Warren, Mich.), (2) Townhouse Manor Cooperative (Centerline, Mich.), (3) Eastwick Square Cooperative (Roseville, Mich.), and (4) Clinton Cooperative (Clinton Township, Mich.). *Id.*

¹⁴¹ *Id.* at 139.

¹⁴² See *id.*

¹⁴³ *Id.*; MICH. COMP. LAW ANN. § 125.1415 (West 2006), *repealed by* P.A.1968, No. 334.

cooperative formed “to serve low income or moderate income persons *shall be* exempt from all taxes of the state, or any city, village, township or other political subdivision or public body taxing district.”¹⁴⁴ Based on a plain reading of the statute, the court held the local municipalities were not afforded discretion by the state’s legislature, and therefore, housing cooperatives that meet the requirements of the act *must be recognized as tax exempt* by the local governments.¹⁴⁵ This time the court stated, perhaps caustically, that holding otherwise would give municipalities the “arbitrary authority to grant or withhold the exemption given by the legislature.”¹⁴⁶

It may seem quite odd that two different panels of the same court could come to opposite conclusions on an issue. However, prior to the enactment of Michigan Court Rule 7.215(J)(1) in 1990, each district of the Michigan Court of Appeals was not bound by the principle of *stare decisis*¹⁴⁷ relating to decisions rendered by other districts.¹⁴⁸ Today, both *Colonial* and *Lexington* have persuasive value, but neither case is binding precedent on Michigan’s courts.¹⁴⁹ The question of whether local municipalities may disregard a tax-exempt housing cooperative’s tax-exempt status is left for another day. However, the lack of subsequent litigation on the matter seems to indicate that municipalities are respecting the *Lexington* opinion.

¹⁴⁴ *Lexington*, 189 N.W.2d at 138.

¹⁴⁵ *Id.* at 141.

¹⁴⁶ *Id.* at 140. *Contra Colonial Townhouse Coop., Inc. v. Lansing*, 181 N.W.2d 2, 4 (Mich. Ct. App. 1970) (stating that granting municipalities discretion in deciding whether a housing cooperative is tax exempt “does not constitute a grant of arbitrary authority.”).

¹⁴⁷ *Stare decisis* is “[t]he doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation.” BLACK’S LAW DICTIONARY 1537 (9th Ed. 2009).

¹⁴⁸ *When Up is Down and Left is Right--and Published Precedent is Nonbinding*, WARNER, NORCROSS, & JUDD APPELLATE SECTION NEWSLETTER (Jan. 15, 2007), available at http://www.wnj.com/published_precedent_is_nonbinding_when_up_is_down_jjb_article/.

¹⁴⁹ *See id.*

C. 1975—Do federal securities regulations apply to cooperative housing shares?

By 1975, Michigan courts had determined what a tenant-owner's rights were when his or her cooperative building was being foreclosed on¹⁵⁰ and provided two contrary opinions on whether local municipalities could disregard a cooperative's tax-exempt status in applying property taxes.¹⁵¹ Next, the United States Supreme Court¹⁵² was tapped to determine whether the federal securities laws¹⁵³ govern a tenant-owner's shares in his or her cooperative association.¹⁵⁴ This was a vital question to settle because the tenant-owners of housing cooperatives make what may be the biggest purchase of their lives (buying a home) through the purchase of shares in a cooperative association.¹⁵⁵ Although the case did not involve a Michigan housing cooperative and was not decided by a Michigan court, it does have an impact on the law governing Michigan's state subsidized and supervised housing cooperatives.

In *United Housing Foundation, Inc. v. Forman*, the United States Supreme Court decided that shares in a state subsidized and supervised nonprofit housing cooperative are not "securities" within the meaning of the Securities Act of 1933 and the Securities

¹⁵⁰ See generally *Schaffer v. 8100 Jefferson Ave. E. Corp.*, 255 N.W. 324 (Mich. 1934).

¹⁵¹ See *Lexington*, 189 N.W.2d at 138. *Contra Colonial*, 181 N.W.2d at 2.

¹⁵² *United Housing Foundation, Inc. v. Forman* was decided in 1975 by the Burger Court. *United Hous. Found., Inc. v. Forman*, 421 U.S. 837 (1975) [hereinafter *United Hous.*]; U.S. SUPREME COURT MEDIA OYEZ, <http://www.oyez.org/courts/burger/burg3> (last visited on July 15, 2011) [hereinafter OYEZ]. The Burger Court in 1975 consisted of: (1) Chief Justice Warren Burger, (2) Justice William O. Douglas, (3) Justice William J. Brennan, Jr., (4) Justice Potter Stewart, (5) Justice Byron R. White, (6) Justice Thurgood Marshall, (7) Justice Harry A. Blackmun, (8) Justice Lewis F. Powell, Jr., and (9) Justice William H. Rehnquist. OYEZ, *supra* note 152. Justice Powell delivered the opinion of the Court with Justices Brennan, Douglas and White dissenting. *United Hous.*, 421 U.S. at 840, 859.

¹⁵³ There are two main federal statutory regimes governing securities; they are the Securities Act of 1933 and the Securities and Exchange Act of 1934. See 1469 AM. JUR. 2D *Securities Regulation—Federal* § 45 (2000). See generally Securities Act of 1933, 15 U.S.C. §§ 77A–77Aa (2006); Securities and Exchange Act of 1934, 15 U.S.C. §§ 78A–78Pp (2006).

¹⁵⁴ *United Hous.*, 421 U.S. at 837.

¹⁵⁵ 15A AM. JUR. 2D, *supra* note 53, § 62.

Exchange Act of 1934.¹⁵⁶ In *United Housing*, fifty-seven members of a state subsidized and supervised nonprofit housing cooperative brought suit in the Federal District Court for the Southern District of New York, on behalf of the housing cooperative's 15,372 members, claiming that the cooperative violated the Securities Act of 1933, the Securities Exchange Act of 1934, and several state laws.¹⁵⁷ The district court granted the housing cooperative's motion to dismiss on the grounds that the federal court lacked jurisdiction because the shares were not securities within the meaning of the securities acts.¹⁵⁸ The 2nd Circuit Court of Appeals reversed and the United States Supreme Court granted certiorari.¹⁵⁹

The Supreme Court determined that the shares were not securities within the meaning of the acts because (1) the emphasis should not be on the fact that the member's ownership interest is called "shares" but on the "economic reality" that the members were truly only seeking a place to live and not an investment; (2) the legislature did not intend the securities acts to govern cooperative housing shares; (3) the shares did not come with a right to receive dividends on profits; (4) the shares are not negotiable, cannot be "pledged or hypothecated;" (5) the shares do not give members voting rights based on the number of shares owned; and (6) the shares cannot appreciate in value.¹⁶⁰

The shares also failed the test of a security from *SEC v. Howrey*, which is "whether the scheme involves an investment of money in a common enterprise with

¹⁵⁶ *United Hous.*, 421 U.S. at 837.

¹⁵⁷ *Id.* at 845.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 846-47.

¹⁶⁰ *Id.* at 848-52.

profits to come solely from the efforts of others.”¹⁶¹ The tenant-owners did not buy shares to realize a profit; rather, they bought shares to occupy the property.¹⁶² For this reason, the United States Supreme Court held that the federal securities laws do not apply and the claim lacked federal jurisdiction.¹⁶³ Therefore, the Court reversed the holding of the Court of Appeals and reinstated the holding of the District Court.¹⁶⁴

United Housing went a long way in answering whether federal securities laws apply to the shares of a state subsidized and supervised housing cooperative. The case however does not indicate whether the Securities Act of 1933 and the Securities and Exchange Act of 1934 apply to shares of a luxury-housing cooperative purchased solely as an investment. Nor does this case, or any other case for that matter, indicate whether Michigan’s Blue Sky laws¹⁶⁵ apply to housing cooperatives. Perhaps this matter will be decided by Michigan’s courts in the future.

¹⁶¹ *Id.* at 852 (citing *SEC v. Howrey*, 328 U.S. 293 (1946)).

¹⁶² *Id.* at 860.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Michigan’s Blue Sky laws are the state laws governing securities. Kathleen M. Wilbur & Frank M. Fitzgerald, *Business Guide to Selling Securities in Michigan*, MICHIGAN.GOV (last visited June 10, 2011), http://www.michigan.gov/documents/cis_ofis_guide_25011_7.pdf. The statutes are called “blue sky” laws because:

State governments wanted to protect citizens from fly-by-night promotions and other fraudulent investment schemes which followed on the coattails of this country's industrial revolution. These laws were, in the words of one commentator, designed to protect the public from "speculative schemes which have no more basis than so many feet of blue sky.

Id. See generally Uniform Securities Act (2002), MICH. COMP. LAWS ANN. §§ 451.2101-2703 (West 2002 & Supp. 2011).

D. 1985—Does the Michigan Landlord Tenant Relationship Act protect tenant-owners?

After deciding *Schaffer*, the Michigan Supreme Court and the Michigan Court of Appeals were not presented with another non-tax-related case involving questions specific to cooperative housing until 1985 when they decided *Penokie v. Colonial Townhouses Cooperative*.¹⁶⁶ Prior to the Michigan Court of Appeals¹⁶⁷ decision in *Penokie*, it was not clear whether Michigan's Landlord Tenant Relationship Act (LTRA)¹⁶⁸ protected the tenant-owners of a housing cooperative.

¹⁶⁶ *Penokie v. Colonial Townhouses Coop.*, 366 N.W.2d 31, 32 (Mich. Ct. App. 1985) [hereinafter *Penokie*]. Between 1934 and 1985 the Michigan Supreme Court decided and reported three cases involving housing cooperatives. 2nd Mich. Coop. Hous. Ass'n v. Wabeek State Bank of Detroit, 67 N.W.2d 199 (Mich. 1954) (dealing with procedural issues only); 2nd Mich. Coop. Hous. Ass'n v. 1st Mich. Coop. Hous. Ass'n, 99 N.W.2d 665 (Mich. 1959) (dealing with issue common board member of two corporations spending one corporation's money on behalf of the other corporation); 2nd Mich. Coop. Hous. Ass'n v. 1st Mich. Coop. Hous. Ass'n, 107 N.W.2d 905 (Mich. 1961) (dealing with "newly discovered evidence" rule). Between 1934 and 1985 the Michigan Court of Appeals decided and reported only two cases. *Colonial Townhouse Coop., Inc., v. Lansing*, 181 N.W.2d 2 (Mich. Ct. App. 1970) (holding that local municipalities have discretion in deciding whether to adopt a resolution recognizing a cooperative housing association formed under the states Housing Development Authority Act as a tax-exempt entity); *Lexington Townhouses Coop. v. Warren*, 189 N.W.2d 138 (Mich. Ct. App. 1971) (holding that local municipalities do not have discretion in whether or not they recognize a cooperative housing association formed under the state's Housing Development Authority Act as a tax-exempt entity).

¹⁶⁷ *Penokie* was decided by a panel of judges including: (1) Chief Judge Robert Danhof, who served on the Michigan Court of Appeals from 1969 through 1992 and was Chief Judge from 1976 through 1992; (2) Donald E. Holbrook, Jr., who served on the Michigan Court of Appeals from 1975 through 2002; and (3) Charles W. Simon, Jr., an 8th Judicial Circuit judge, sitting on Court of Appeals by assignment. MICH. COURT OF APPEALS, <http://coa.courts.mi.gov/court/judges/rctjudges.htm> (last visited on July 15, 2011); *Penokie*, 366 N.W.2d at 32. Chief Judge Danhof wrote the *Penokie* opinion. *Penokie*, 366 N.W.2d at 32.

¹⁶⁸ See generally Landlord Tenant Relationship Act, MICH. COMP. LAWS ANN. §§ 554.601-616 (West 2005 & Supp. 2011). The LTRA took effect on April 1, 1973. *Id.* at prefatory note. The Act was adopted by the Michigan Legislature:

[T]o regulate relationships between landlords and tenants relative to rental agreements for rental units; to regulate the payment, repayment, use and investment of security deposits; to provide for commencement and termination inventories of rental units; to provide for termination arrangements relative to rental units; to provide for legal remedies; and to provide penalties.

Id.

The *Penokie* decision made it clear that cooperative associations and tenant-owners do not come under the Landlord Tenant Relationship Act (LTRA).¹⁶⁹ Practically speaking, this means that tenant-owners are not protected by the act and cooperative associations are not burdened by it.¹⁷⁰

In *Penokie v. Colonial Townhouses Cooperative*, a shareholder member of the Colonial Townhouses housing cooperative sought damages under the LTRA when the cooperative association refused to return his membership fee after he moved out.¹⁷¹ The member claimed that his relationship with the housing cooperative was governed by the LTRA and that his membership fee was a security deposit, which pursuant to the act must have been returned when he moved out.¹⁷² The district court held that the fee was not a security deposit under the LTRA and therefore did not need to be returned.¹⁷³ On appeal, the circuit court reversed and ordered the cooperative association to pay damages pursuant to the double damages provision of the LTRA.¹⁷⁴

The cooperative association appealed to the Michigan Court of Appeals, which held that the cooperative association's relationship with the tenant-owner was not governed by the LTRA and that the membership fee in question did not constitute a security deposit.¹⁷⁵ In reaching this conclusion, the court reasoned that because section nine of the LTRA, which governs security deposits, refers only to rental units and the

¹⁶⁹ *Penokie*, 366 N.W.2d at 32. *See generally* Landlord Tenant Relationship Act § 554.601-616.

¹⁷⁰ *Penokie*, 366 N.W.2d at 32.

¹⁷¹ *See id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* (citing § 554.613(2)).

¹⁷⁵ *Id.* at 35.

cooperative is not a rental unit, the fee is not governed by the LTRA.¹⁷⁶ The court further reasoned that if the member was considered a “tenant” under the LTRA he must also be considered a “landlord” under the LTRA, because according to the act, “landlord ‘means an owner . . . and, *in addition*, means a person authorized to exercise *any* aspect[] of management of the premises . . .’”¹⁷⁷ The tenant-owner was a landlord according to the act because he was an owner of the corporation which owned the building as well as a director on the cooperative association’s board, a position authorizing him to exercise management of the cooperative.¹⁷⁸ Because the member was both a landlord and a tenant under the LTRA, the act did not protect him.¹⁷⁹

Penokie has settled a very important issue for tenant-owners and cooperative associations. Although the decision may seem to alienate tenant-owners (the “little guy”) and award the cooperative association (the corporation), one must not forget that it is actually the little guy that owns the corporation (albeit along with a host of other little guys). This ownership interest puts the tenant-owner on both sides of the equation just as the title “tenant-owner” suggests.

E. 1987-1997—How should local municipalities go about valuing cooperative housing properties for property tax assessments?

After deciding that Michigan’s Landlord Tenant Relationship Act does not protect housing-cooperative tenant-owners, the next issue for the courts to settle was how municipalities should go about determining a housing cooperative’s property value for property tax assessments. Between 1987 and 1997 the Michigan Court of Appeals

¹⁷⁶ *Id.* at 34.

¹⁷⁷ *Id.* at 34-35.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

reported three decisions on this issue.¹⁸⁰ In each case the housing cooperative association was appealing a tax tribunal's determination of their property's true cash value. And in each case, for obvious reasons, the cooperative association wanted their taxable value to be lower than the municipality calculated it at. Although they were separate and distinct cases, the lessons learned from them can be summarized briefly together.

The first lesson that can be learned from the Court of Appeals' decisions is that great deference is given to the municipality in determining a cooperative housing association's property value.¹⁸¹ The second lesson is that, although the court may list the three acceptable methods of determining a cooperative's property value in its opinion, it will allow any method so long as it provides a seemingly accurate valuation under the circumstances.¹⁸² And the last lesson to be learned from the tax-assessment cases is that the municipality will not be allowed to factor the housing cooperatives tax subsidy into the property value equation.¹⁸³

Two considerations are very important for cooperative association boards and practitioners to consider prior to appealing a municipality's determination of a property's true cash value. First, determining the true cash value of a housing cooperative can be

¹⁸⁰ See *Pinelake Hous. Coop. v. Ann Arbor*, 406 N.W.2d 832 (Mich. Ct. App. 1987) [hereinafter *Pinelake*]; *Carriage House Coop. v. Utica*, 431 N.W.2d 406 (Mich. Ct. App. 1988) [hereinafter *Carriage House*]; *Georgetown Place Coop. v. Taylor*, 572 N.W.2d 232 (Mich. Ct. App. 1997) [hereinafter *Georgetown*].

¹⁸¹ See *Pinelake*, 406 N.W.2d at 838 (stating that an appraiser or tax tribunal may use any method of determining a properties "true cash value" for property tax purposes so long as it is related to the properties fair market value); cf. *Georgetown*, 572 N.W.2d at 237 (stating that it is a "well established rule that all factors relevant to property value should be considered in the assessment process.").

¹⁸² See *Carriage House*, 431 N.W.2d at 410 (stating that the three generally accepted approaches to determine property value are (1) cost less depreciation, (2) capitalization of income, and (3) market, yet allowing the municipality to use a new approach called the "cooperative sales approach"); *Georgetown*, 572 N.W.2d at 238 (allowing the municipality to use the "market sales comparison" method of determining property value).

¹⁸³ *Pinelake*, 406 N.W.2d at 841-42 (stating that "[t]he interest subsidy is an intangible asset and is not a proper subject to be taxed under Michigan's property tax laws.").

particularly difficult because housing cooperatives are not often sold as going concerns.¹⁸⁴ And secondly, this fact not only makes it difficult for municipalities to determine a housing cooperative property's true cash value but it also makes it extremely difficult for a cooperative association to win an appeal based on the municipality's assessment because the association has the burden of showing the property's actual true cash value on appeal.¹⁸⁵ These cases have provided cooperative boards and practitioners with valuable insights into the proper methods to determining a property's true cash value (which is virtually any method) and two important factors to consider prior to appealing a municipality's determination of a property's true cash value.

F. 2003—Are the tenant-owners of housing cooperatives with shared living spaces entitled to receive a homestead tax exemption?

After attempting to provide municipalities and tax tribunals with some direction on how to assess a cooperative's property value in the late 1980s and throughout the 1990s the Michigan Court of Appeals tackled the issue of homestead tax exemptions for the tenant-owners of housing cooperatives with shared living spaces.¹⁸⁶ In *Inter Cooperative Council v. Department of Treasury*, the court indicated that a housing cooperative with multiple units providing common "sleeping, cooking, or sanitation facilities" for university students does not qualify for a homestead tax exemption.¹⁸⁷

In *Inter Cooperative Council*, a housing cooperative association, which provided housing for college students with shared kitchens and living quarters, appealed to the

¹⁸⁴ See *id.* at 836 (stating that determining true cash value of the Pinelake cooperative was difficult because the parties were not aware of any housing cooperatives that had been sold).

¹⁸⁵ See *Georgetown*, 572 N.W.2d at 236.

¹⁸⁶ See generally *Inter Coop. Council v. Dep't of Treasury*, 668 N.W.2d 181, 187 (Mich. Ct. App. 2003) [hereinafter *Inter Coop.*].

¹⁸⁷ *Id.* at 187.

Michigan Court of Appeals from the tax tribunal's ruling that it was not eligible for the Michigan homestead tax exemption.¹⁸⁸ According to section seven of Michigan's General Property Tax Act, a homestead includes property owned by a cooperative housing corporation.¹⁸⁹ However, because the General Property Tax Act does not provide a definition of a "cooperative housing corporation" the tax tribunal looked to the Internal Revenue Code for a definition to determine whether the cooperative was eligible for the exemption.¹⁹⁰ Based on the IRS definition, the tax tribunal determined that the housing cooperative did not meet the definition of a cooperative housing corporation.¹⁹¹

The housing cooperative contended that the tribunal erred in applying the IRS definition and should have applied the definitions provided in Michigan's General Corporation Act¹⁹² and Michigan's Consumer Cooperative Act.^{193, 194} The court did not agree, because the statutes are not *in pari materia*¹⁹⁵ with the section seven of the General Property Tax Act.¹⁹⁶ When a statute does not define a key word the courts may obtain the definition from a statute that is *in pari materia*.¹⁹⁷

According to the federal definition, a cooperative housing corporation is a corporation in which "each of the stockholders . . . is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes *a house, or an*

¹⁸⁸ *Id.* at 183.

¹⁸⁹ *Id.* at 184; *see* MICH. COMP. LAWS ANN. § 211.7dd(a) (West 2010).

¹⁹⁰ *Inter Coop.* 668 N.W.2d at 183; *see* I.R.C. § 216(b) (West 2011).

¹⁹¹ *Inter Coop.* 668 N.W.2d at 183.

¹⁹² General Corporation Act, MICH. COMP. LAWS ANN. § 450.98-192 (West 2002 & Supp. 2011).

¹⁹³ Consumer Cooperative Act, MICH. COMP. LAWS ANN. § 450.310-3192 (West 2002 & Supp. 2011).

¹⁹⁴ *Inter Coop.* 668 N.W.2d at 184.

¹⁹⁵ *See generally* BLACKS LAW DICTIONARY 361 (9th Ed. 2009) (defining *In Pari Materia* as "[o]n the same subject; relating to the same matter.").

¹⁹⁶ *Inter Coop.* 668 N.W.2d at 185.

¹⁹⁷ *Id.*

apartment in a building, owned or leased by such corporation”¹⁹⁸ Because the housing cooperative was comprised of units with shared sleeping, cooking, and sanitation facilities, the tribunal held that it did not meet the statutory definition of a cooperative housing corporation and denied it the homestead tax exemption.¹⁹⁹ The Michigan Court of Appeals affirmed the tax tribunal’s ruling.²⁰⁰

The homestead tax exemption is a major financial incentive in homeownership therefore the court’s decision in *Inter Cooperative Council* makes purchasing shares in housing cooperatives with shared living spaces a less attractive method of homeownership. Practitioners should keep the lesson in mind when advising clients interested in purchasing shares of a housing cooperative with shared living spaces.

G. 2004—Is a cooperative’s taxable property value uncapped when a tenant-owner sells his or her shares?

The Michigan Constitution caps the amount by which a parcel’s taxable value can be increased each year unless the property is transferred “as defined by law.”²⁰¹ In 2004, the Michigan Court of Appeals set out to determine whether a housing cooperative’s property value is uncapped when a tenant-owner transfers his or her shares to a new tenant-owner.²⁰²

In *Colonial Square Cooperative v. Ann Arbor*, the court determined that a cooperative’s property may reassessed in excess of the yearly constitutional maximum; however, the reassessment cannot burden, in excess of the constitutional maximum, units

¹⁹⁸ *Id.* at 186 (citing I.R.C. § 216(b)(1)(B) (West 2011)).

¹⁹⁹ *Inter Coop.* 668 N.W.2d at 186.

²⁰⁰ *Id.* at 187.

²⁰¹ *Colonial Square Coop. v. Ann Arbor*, 687 N.W.2d 618, 619 (Mich. Ct. App. 2004) (citing MICH. CONST. 1963, art. IX, § 3) [hereinafter *Colonial*].

²⁰² *See id.* at 618-20.

that were not transferred.²⁰³ In *Colonial Square*, the city was reassessing the cooperative's entire parcel value in excess of the statutory cap based on a percentage of units transferred each year.²⁰⁴ The city claimed that it could do so because the Michigan Constitution²⁰⁵ stated that the property value could increase in excess of the cap if the property was transferred "as defined by law" and the General Property Tax Act provides that "a transfer of ownership includes '[a] conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.'"²⁰⁶

The Court of Appeals determine that in order for a cooperative's property value to be reassessed in excess of the constitutional limit, the increase must be applied to a particular unit that has been transferred.²⁰⁷ In this case, the city's method of reassessing the cooperative violated the Michigan Constitution because the annual reassessments imposed obligations on cooperative units that were not transferred and the city did not indicate which units were being reassessed.²⁰⁸

Based on the lessons learned in *Colonial Square*, cooperative boards and practitioners engaged in advising cooperative boards should take care to watch for increases in the taxable value of their cooperative's tenant-owners' units, that have not been transferred in a given year, that are beyond the constitutional limit.

²⁰³ *Id.* at 620.

²⁰⁴ *Id.* at 619.

²⁰⁵ MICH. CONST. 1963, art. IX, § 3.

²⁰⁶ *Colonial* 687 N.W.2d at 619-20 (citing MICH. COMP. LAWS ANN. § 211.27a(6)(j) (West 2010)).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

H. 2011—Does a housing cooperative waive its right to damages when it institutes a summary eviction action against a tenant-owner?

Housing cooperative associations have the ability to institute summary eviction proceedings²⁰⁹ against tenant-owners who have failed to pay their carrying charges²¹⁰ or have otherwise violated the association's rules.²¹¹ In 2011, the Michigan Court of Appeals was faced with deciding whether instituting a summary eviction precludes a cooperative association from later obtaining damages from the evicted tenant-owner.²¹²

In *1300 Lafayette East Cooperative, Inc. v. Savoy*, the cooperative housing occupancy agreement provided that the cooperative association could institute summary eviction proceedings against a tenant-owner in breach of the occupancy agreement.²¹³ The cooperative association brought a summary eviction action in district court when a tenant-owner breached the occupancy agreement.²¹⁴ At the summary proceeding, the district court determined the amount that the tenant-owner would have to pay in order to retain possession of his cooperative housing unit and determined that if he failed to pay the association could retake possession—he did not pay.²¹⁵

Later, when the cooperative association brought this action for damages to recover unpaid rent from the tenant-owner, the circuit court granted his motion for

²⁰⁹ A summary proceeding is “a nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner.” BLACK’S LAW DICTIONARY 1324 (9th Ed. 2009). *See generally* MICH. COMP. LAWS ANN. § 600.5750 (West 2000 & Supp. 2011).

²¹⁰ Unlike the tenants in an apartment building, the tenant-owners of a housing cooperative do not pay a monthly rent. PENTIUK, *supra* note 52, at 2. They do however pay “carrying charges” which cover their portion of the cooperative association’s mortgage, property taxes, and upkeep expenses. *Id.*

²¹¹ *Id.*

²¹² *See* 1300 Lafayette E. Coop., Inc., v. Savoy, 773 N.W.2d 57 (Mich. Ct. App. 2009) [hereinafter *1300 Lafayette*].

²¹³ *Id.* at 61.

²¹⁴ *Id.* at 59.

²¹⁵ *Id.* at 64.

summary disposition holding that the association's claim was barred due to the previous summary eviction proceeding in the district court.²¹⁶ On appeal, the Michigan Court of Appeals disagreed, stating that "a party *may* join a claim for damages in a summary eviction proceeding . . . but is not required to do so."²¹⁷

The court further held that a district court summary eviction consent judgment is only *res judicata*²¹⁸ on the issue of who has the legal right to possess the property.²¹⁹ The association contended that the summary eviction consent judgment was *res judicata* on the issue of whether the tenant-owner owed damages for breaching the occupancy agreement.²²⁰ The court disagreed, stating that "although a summary eviction judgment does not bar other claims and remedies, it is 'conclusive on the narrow issue of whether the eviction was proper.'"²²¹

The ability of cooperative associations to evict tenant-owners is one of the major advantages of the cooperative housing form of homeownership.²²² This advantage is equally beneficial to the cooperative's tenant-owners as it is to the cooperative's board because each tenant-owner relies on the others to pay their carrying charges and abide by the cooperative's rules.²²³ When a tenant-owner does not pay his or her portion of the carrying charges, or otherwise violates the association's rules, the others are burdened

²¹⁶ *Id.* at 59.

²¹⁷ *Id.* at 61. *See generally* §§ 600.5739 & .5741.

²¹⁸ *Res judicata* (otherwise known as "former adjudication" or "collateral estoppel") means "an issue that has been definitively settled by judicial decision." BLACK'S LAW DICTIONARY 1425 (9th Ed. 2009). The three elements of *res judicata* are: "(1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties." *Id.* (citation omitted).

²¹⁹ *1300 Lafayette*, 773 N.W.2d at 61.

²²⁰ *Id.*

²²¹ *Id.* (quoting *Sewell v. Clean Cut Mgmt., Inc.*, 621 N.W.2d 222 (Mich. 2001)).

²²² *See* PENTIUK, *supra* note 52, at 4.

²²³ *Id.* at 2.

and the board may seek a summary eviction to rectify the situation.²²⁴ Condominium associations and homeowners associations are not afforded the luxury of summary evictions.²²⁵ This can lead to irresponsible owner's financial burdens being shifted to reliable owners with the reliable owners having no remedy but to move.²²⁶ Practitioners and cooperative boards should not forget the summary eviction option when tenant-owners violate the association's rules or fail to pay their carrying charges.

I. Author's observations going forward.

Although one cannot know what legal issue will be litigated next, it appears that the federal enforcement of Executive Order 13,166,²²⁷ "Improving Access to Services for Persons with Limited English Proficiency," may be on the horizon and could lead to litigation.²²⁸ The executive order, which was signed during the Clinton administration, requires recipients of federal financial aid to "provide meaningful access to their [limited English proficiency] applicants and beneficiaries."²²⁹ The order will likely require Michigan's housing cooperatives to translate their "governing documents such as the Articles of Incorporation, the Bylaws, the Occupancy Agreement, the [Cooperative's] Rules, as well as Meeting Notices and Minutes."²³⁰ According to Randall Pentiuk, the National Association of Housing Cooperatives and other groups have begun to lobby the

²²⁴ See *id.* at 4.

²²⁵ See *id.* at 5.

²²⁶ *Id.*

²²⁷ Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

²²⁸ Randall Pentiuk, *Refinancing: Legal Aspects & Pitfalls*, MICH. COOP. LAW JOURNAL (April 2007), available at <http://michcooplaw.com/PDFfile/Refinancing%20Legal%20Aspects%20&%20Pitfalls.pdf>.

²²⁹ Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

²³⁰ Pentiuk, *supra* note 228.

federal government to pay for these services in order to avoid imposing them on housing cooperatives.²³¹

IV. Conclusion

Housing cooperatives provide Michiganders with a unique and attractive alternative to traditional home ownership. With a better understanding of this form of home ownership and the history of substantive Michigan case law involving housing cooperatives, Michigan's practitioners, cooperative boards, and real estate professionals will be better able to serve their clients and constituents and perhaps more Michiganders will be able to realize the American dream of homeownership.

²³¹ *Id.*