After the Mortgage is Paid Off: Changes to the Governing Documents

By Randall A. Pentiuk

When HUD is no longer involved, there are two schools of thought as to whether the governing documents should be amended. There is the ADo Nothing School.@ The rationale given is that by operation of law, the obsolete references in the articles and bylaws are void; thus, it is unnecessary to amend them.

Then there is the AAvoid Confusion School.@ The rationale for this position is that few people, including members, judges and future boards understand cooperative law; thus, it is best to eliminate unnecessary confusion where possible. In addition, when the mortgage is paid off, most members are excited and expecting to address the future of the cooperative, and are usually receptive to change.

Matters that may be addressed if you ascribe to the AAvoid Confusion@ position include remove references to HUD, the Regulatory Agreement, FHA Commissioner as these are now obsolete and will simply confuse and mislead people in the future.

Consider cleaning up problems that have occurred over the years, while you are making changes. These include issues involving quorum, voting procedures - such as allowing for absentee ballots and day-long voting, proxies - such as eliminating the marital discrimination that is prohibited by the Michigan Elliot Larson Civil Rights Act, and any other concerns unique to your cooperative

You may also consider taking advantage of corporate law benefits that have been made available since the original incorporation of your cooperative, such as the liability limitation for officers and directors

Many cooperatives, when they have paid off the original mortgage, and no longer have to abide by HUD restrictions, opt to move from limited equity to market rate - allowing members to transfer their memberships for whatever a buyer is willing to pay. In such case, modifications will be necessary to the bylaws - such as the equity table for transfer values. We are not recommending this for all limited equity cooperatives but merely mention it as an option to consider. It requires much due diligence including an analysis of your members' economic status and the market for cooperative units in your surrounding area.

Even if a limited equity cooperative is not moving to market rate, there usually is a need to amend the equity table in the bylaws. This table usually covers forty years only, leaving open the question of what happens after that. Litigation is likely if this is not addressed.

A word of caution: qualified legal assistance for any of these amendments is strongly recommended. And if you amend the bylaws, remember to evaluate whether the articles and occupancy agreement, as well as the board policies,

should be amended in order to maintain consistency.

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