

Cooperative Housing Legal Update
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“Co-op Law for Dummies [and a refresher course for the rest of us]”

Overview

This class will teach [or remind you] of the answers to the following dozen issues:

1. Know why a housing cooperative is a superior form of housing.
2. Know what documents govern a housing cooperative.
3. Know who governs a housing cooperative.
4. Know how to manage the cooperative's employees
5. Know how to hire professionals
6. Know how to protect the cooperative & get the most out of vendors
7. Know how to deal with members
8. Know how to deal with HUD
9. Know how to deal with your City Government
10. Know the answers to "What happens when the mortgage is paid off?".
11. Know whether refinancing makes sense.
12. Know how to get share loans for your members.

Many cooperatives have reached a critical cross roads, and face a multitude of challenges that have converged to threaten the future of the housing cooperative form of home ownership. Now, more than ever, Board members must be prepared and equipped to respond to questions that are being posed to them. This course will prepare Boards to face these challenges, and to turn them into opportunities.

1. Know why a housing cooperative is a superior form of home ownership:

- I. Background: Cooperatives in the Midwest are under attack from opportunists who see a chance to convert to condominiums or to sell out to a developer. Members are often enticed with the lure of significant cash payments, thinking that they will get a huge windfall if they buy into the notion that condominiums are inherently worth more than a cooperative membership.
- II. Comparisons:
 - A. Maintenance
 - B. Screening applicants
 - C. Nonpayment cases
 - D. Disturbances by neighbors
 - E. Adapting rules to new situations
 - F. Sense of community
 - G. Purchase money - share loan solution

2. Know what documents govern a housing cooperative:

I. Introduction: Who cares? Why is it important?

These are the tools of corporate control. They set the ground rules within which the shareholders and board must operate. They are the standards by which courts will judge issues. Ignorance of them and how they work among themselves will leave you defenseless to those who do know how to use them. It is the difference between winning and losing.

II. An Inventory of the Cooperative's Governing Documents

Here, we provide a survey of the governing documents of the Cooperative. It is not as simple as one would expect. The governing documents include what you normally think: articles and bylaws. But it is really much more expansive than that; to fully understand your governing documents, you need to recognize that there is a much larger universe of documents which govern the cooperative. This list is an attempt to alert you to the general contours of the universe of documents but it is not exhaustive.

A. The Cooperative's Own Documents

1. Articles of Incorporation

- I. Filed with the State
- II. Public Document
- III. Usually broad and general
- IV. Amended by the Members only
- V. Important Clauses:
 - I. Purpose of the Corporation
 - II. Amendment Procedure
 - III. Board of Directors

2. Bylaws

- a. Not filed with the State
- b. HUD should have the bylaws
- c. Under the Regulatory Agreement, HUD is to approve them
- d. Usually detailed and descriptive
- e. Amended by the Members only
- f. Important Clauses:
 - (1) Quorum
 - (2) Authority of Board
 - (3) Amendment Procedure
 - (4) Who can call a Special Meeting of the Members

3. Board Policies

- a. Not filed with the State

- b. Adopted and amended by the Board
- c. While relatively easy to change, if ignored it can create a basis for overturning an inconsistent board decision

Example: Policy on Fines & Rule Violations

B HUD Environment

- 1. Regulatory Agreement
 - a. Contract between Coop & HUD
 - b. Not filed with the State
 - c. Limits the authority of the Board

Example: Requires HUD approval to sue

 - d. Duration: exists while original HUD-insured mortgage in effect
- 2. HUD Handbook
 - a. Incorporated through the Regulatory Agreement
 - b. May be amended by HUD
 - c. Duration: expires when Regulatory Agreement ends
- 3. National Housing Act
 - a. Incorporated through the Regulatory Agreement but sometimes the Articles will incorporate the Act
 - b. May be amended by Congress
 - c. Duration: depends on how it is incorporated:
 - (1) If only through Regulatory Agreement: it ends when the Regulatory Agreement expires
 - (2) If through the Articles: need to check that language; it may affect the scope or operation of the Coop inadvertently
 - d. Code of Federal Regulations for HUD are created under the Act, as a supplement to the Act, as a means of “fleshing out” the Congressional intent of the Act.

C. State Corporate Law Environment

- 1. Nonprofit Corporation Act
 - a. The Act defines the parameters of corporate affairs
 - b. Of importance:

- (1) It contains mandatory provisions that all corporations must place in their articles or bylaws
- (2) It contains permissive provisions that corporations may take advantage of by placing them into the articles or bylaws

Example: Liability Limitation of Directors

c. If the articles and bylaws are silent, the Act may furnish direction

a. Other mandatory requirements are found in Act

Example: Filing of Annual Report with State in order to maintain corporate status. Failure to do so in Michigan results in loss of corporate status. If sued, you do not have a corporate shield to protect the individual members from personal liability. In addition, some one else may take your corporate name.

2. Cooperative Statute: In Michigan, attached to the end of the Nonprofit Corporation Act is a chapter that deals specifically with cooperatives. It allows a housing cooperative to “opt in” in order to take advantage of its provisions. Thus, it is important to know whether your cooperative did so, because it has provisions that are inconsistent with the other sections of the Nonprofit Corporation Act.

D. Robert’s Rules of Order: while not normally thought of as a “governing document, it has this status since the Bylaws often make it the “fall back” resource to supply parliamentary procedure when the articles and bylaws are silent.

Examples:

Motion for reconsideration [may be made by one on the prevailing side]

Motion to adjourn [always in order and not debateable]

E. Federal, State & Local Regulatory Framework: again, it is important to recognize that cooperatives operate within the broader body of law and even though this is not generally regarded as “governing documents” the articles, bylaws, etc. can be preempted by changes in these laws.

Example: Effect of Michigan Elliot-Larsen Civil Rights Act

upon proxies that limit the right of a married member to appoint only his or her spouse - violation of marital discrimination prohibition

F. Contractual & Covenant Framework: As with federal, state & local laws, the cooperative must operate within the parameters of its contracts and covenants. Contracts can be breached but exposes the cooperative to liability for damages.

Example: covenants which run with the land, which limit the cooperative as to its use of property; thus, you may not be able to build or use an adjacent lot owned by the cooperative.

Example: if the cooperative refinances, the lender may impose some conditions that must be honored to avoid a default and foreclosure of the mortgage

III The Hierarchy of Governing Documents:

A. The interplay between the governing documents require legal expertise.

B. With the foregoing caveat, the general hierarchy is:

1. Federal, state & local law, including corporate law
2. The HUD Regulatory Agreement and associated HUD laws
3. Covenants & contracts
4. Articles
5. Bylaws
6. Roberts Rules
7. Board Policies

IV How to Change the Governing Documents

To amend the articles or bylaws, the cooperative must follow the process described within these documents themselves. If HUD is still involved, it must approve of them. If these documents do not proscribe the process, then you must resort to the state corporate law for direction.

V. When HUD is no longer involved

A. Two Schools of Thought

1. The “Do Nothing School”
Rationale: By operation of law, the obsolete references in the articles and bylaws are void; thus, it is unnecessary to amend them.

2. The “Avoid Confusion School”
Rationale: 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.

B. Matters that may be addressed:

1. Remove references to HUD, the Regulatory Agreement, FHA Commissioner.
2. Consider cleaning up problems that have occurred over the years:
 - a. Quorum
 - b. Voting Procedure
 - c. Proxies
 - d. Any other concerns unique to your cooperative
3. 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

VI. When a Coop is transformed from Limited Equity to Market Rate:

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. Qualified legal assistance is strongly recommended. Note: We are not recommending this but merely mention it as an option to consider. It is beyond the scope of this class and requires much due

diligence including an analysis of your members' economic status and the market for coop units in your surrounding area.

VII. Managing Your Documents

A. Why is this important?

B. How to manage your documents:

1. Safeguard the documents in a vault
2. Create clarity
 - a. Date the documents
 - b. Get rid of unadopted versions
 - c. Place notations on approved documents that tie back to meeting minutes
 - d. Have the President and Secretary attest to authenticity

VIII. Summary: the 7 lessons of Knowing Your Governing Documents

A. Although many cooperatives have “boilerplate” clauses, this is misleading and every cooperative must be viewed within its own environment, taking into account the entire universe of applicable governing documents. Do not assume that your cooperative is governed in the same manner as others.

A. The universe of governing documents consists of the “visible” - articles; bylaws; and HUD regulatory agreement - as well as the “invisible” - the state corporate statute; federal, state & local law; Roberts Rules, etc.

A. Make sure you keep your governing documents protected; one of the worse things that can happen is to not have certainty in this area. Follow the procedures of safeguarding and keeping them in order.

A. To be effective, you must recognize the interaction of the various governing documents we have identified. Qualified legal assistance is required for more sophisticated issues, as it can become quite complex.

A. There is a hierarchy that must be considered. For example, if state law prohibits some act, then it preempts bylaws that allow that act.

A. HUD plays a dominant role while the original mortgage is still in effect; once it is gone, so goes the Regulatory Agreement. This provides you with an opportunity to address problems of the past, eliminate confusing language that will then be obsolete, and consider other options

such as moving from limited equity to market rate - if it makes sense for your cooperative [this is a rather involved decision that is beyond the scope of this class, and requires an analysis of your members' economics as well as the market conditions of the surrounding area].

- G. From time to time, amendments are desirable. Make sure you comply with all requirements, including HUD approval if it is still in the picture.

IX. Finale: Discussion of strategic moves to lock the cooperative into remaining a cooperative in the future.

- A. Amendments to bylaws: require large percentage of members to approve; restrict authority of board, etc.

- B. Covenants running with the land; place title into a trust

- A. Amendments to articles

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Know who governs a housing cooperative

I. Background: You may be surprised to hear the answer given by even experienced Board members. Thus, it bears repeating what may be obvious to some.

II. Answer:

A.. It is not HUD - although many cooperatives still are subject to a Regulatory Agreement [and some aggressive HUD officials like to act as though they are empowered to dictate to the Board - which is why you need experienced legal counsel and management that are capable of challenging HUD directives].

Example: Detroit HUD demanded that refinancings must be approved by the membership. We said “no.” and demanded that they present authority for their position. They had none and backed down. This is a decision that is vested with the Board in most bylaws.

B. It is not Management, the Cooperative Attorney, or the Auditor. While professionals serve important roles and their advice should be sought and given due weight, they were not elected by the membership. Accept their advice, consider it carefully, but do not feel bound to follow it unless there is solid legal reason that makes it mandatory upon you.

C. It is not the membership. While the members elect the Board, typical bylaws limit the role of the membership.

D. It is the Board of Directors. Typical bylaws vest the operating and policy decisions to the duly elected Board. The law looks at the Board as fiduciaries and imposes the duty to act in the best interest of the membership. You are authorized to hire professionals and to rely on their advice. You may ask the membership what they think. But the ultimate decision rests with the Board.

Know how to manage the cooperative's employees:

I. Best Advice: Don't have employees

Shift the legal liability to another party - such as Management Agent
Let it be someone else's headache

II. Second Best Advice: Play defense

A. Have policies

1. In writing
2. Acknowledged receipt in writing

B. Deal with issues with policies

1. Employment at will
2. Internet & computer policy
Note: Employer may be liable for copyright violations if
employee downloads and distributes copyright materials
3. Harassment

C. Get insurance if you can

D. Create a paper trail

E. Conduct performance reviews

F. Equal treatment guideline

Note: You can be mean, but be mean to everyone

G. Learn the "ABC's" of employment law, or hire lawyers & managers that do

FMLA
COBRA
ADA
HIPPA

I. Premises to Operate by:

A. Cooperatives are not well understood; Make sure you hire professionals that are experienced in Cooperative law, accounting & management

B. Wolves in Sheep's Clothes: Not every professional respects the board and its role, or the rights of members. Some professionals believe that they know what is best for your Cooperative

II. Applying these Premises

A. Develop list of professionals in your region that are experienced in Cooperatives

1. Ask your other professionals
2. Network with other boards
3. Check out the MAHC website

B. Send out "Requests for Proposals" to this list

C. Interview those you are interested in [make sure there is "chemistry"]

D. Check references

E. Make a selection and document the relationship

F. Periodically, evaluate the relationship & communicate concerns & issues

I. Document the Deal

- A. Scope of work
- B. Time for performance [use of liquidated damages or bonus for early completion]
- C. Schedule of payments; clarity of amount & means of computing
- D. Assignability of work by vendor
- E. Warranties & Representations
- F. Force Majeure

II. Protections

- A. Injuries to third parties or property
 - 1. Insurance
 - a. General Liability
 - b. Automobile
 - c. Special coverages for high risk work

NB: Make sure the insurance company is a good one [financial; history of claims; location within U.S.; registered with State]
 - 2. Indemnification - shift the risk
- B. Injuries to workers
 - 1. Workers compensation coverage [guess who pays if there is none?]
 - 2. Contractual coverage
- C. Avoid paying twice for labor & materials
 - 1. Get sworn statements
 - 2. Post required notices under state construction lien laws
 - 3. Get waivers from subcontractors
- D. Use of surety bonds to make sure contractor performs [cf cost]
 - 1. Performance bond
 - 2. Payment bond

I. Membership Relations

A. Periodic Open Meetings

B. Communicate - newsletter

C. Informational Meetings - example of refinancing [even though not required, it allays concerns & reduces rumors, criticism]

II. Member Problems

A. Adopt clear rules & standards of conduct [with legal counsel]

B. Strict enforcement; uniform enforcement

Example: some have 3 late payments within year as cause for termination, but do not follow it

Example: some have excessive legal fees for evictions, but do not screen new members carefully

C. Create evidence

1. Have a paper trail if going to court
2. Require written complaints
3. Use camera or video to document visible problems
4. Seek independent sources
 - a. Nonresident member:
 - Postal search
 - School records
 - Maintenance staff testimony re snow - footprints
 - Security firm re parked vehicles
 - Utility records
 - Tax returns - where is refund mailed?
 - Employment records
 - Driver's license
 - b. Disturbances
 - Police reports
 - 911 tapes

I. Is HUD really the Expert?

Reference: Micki Williams' training of HUD servicers & questions asked

Reference: Erroneous opinion re mortgage refinancing authority

II. Dealing with HUD's bureaucracy

- A. Don't be antagonistic
- B. Do rely on your professionals to interact and advocate on your behalf
- C. Do ask for references to HUD's authority
- D. Do not hesitate to go higher up the ladder if necessary
- E. Do use appeal rights [& make sure you follow letter of the law exactly]

III. Ultimate solution: get rid of HUD as soon as possible

Rationale: Cost savings associated with end of REAC and other administrative burdens that eat up your staff and professionals' time

I. Early Warning System: You need to be aware of what is going on & what they are thinking about at City Hall

A. Under FOIA, request copy of agendas to be mailed to you in advance

B. Attend or watch on cable meetings of Council

II. Make City Hall Your Friend: LBJ said it is better to bring the camel in the tent

A. Host events that make your Coop known to the elected officials
Invite them to Coop picnics and parties

B. Keep a friendly demeanor at all times

C. Get involved: volunteer

1. Community Block Grant Advisory Committee

2. Planning Commission

III. Mobilize & Make Your Voice & Power Known

A. Voter registration

B. Election day - promote voting at the Coop

C. Show of Force at Council Meetings where issues affecting your coop will be discussed

Example: Georgetown, Branford & Westminster - inspection ordinance

Excitement is growing as cooperatives that were developed over three decades ago look ahead to the day when their original mortgages are finally paid off. Boards everywhere are asking that lies ahead, and how they should prepare. This article gives valuable guidance on how to look at the issue and to plan properly for the mortgage burning (and its corresponding HUD regulatory agreement termination) event.

First, it is important to debunk certain myths. First, there are many members who hold the belief that they will somehow automatically own their units when the mortgage is discharged. This is simply false. The legal structure of the cooperative is unaltered, regardless of the mortgage. The member will still be a member on the morning after; and he or she will still have a proprietary lease (known as an occupancy agreement). The very same board will run the cooperative as the day before. In essence, there is no change except the removal of debt from the balance sheet, and expiration of the HUD regulatory agreement.

This leads to the second myth. Many believe that the cooperative must take some action at the time the mortgage is paid off. Nothing is farther than the truth. Cooperatives are corporate entities, with perpetual existences. This means that they will continue on and on, and theoretically forever. Therefore, no rush to take some action is needed.

We do not mean to imply that the board should not evaluate its options. As fiduciaries, board members need to be ever vigilant and consider opportunities. But our point is that the cooperative does not have to do something - rather, it may choose to do so. The difference lies between “must” and “may.”

So what does it mean to discharge the mortgage? Simply an end to payments to that lender, and the end of HUD’s close oversight of the cooperative through its regulatory agreement. And while there is no need to join the “herd” of cooperatives in a headlong rush to the future, it is advisable for boards to inform themselves of opportunities and options in the post-HUD era.

We recommend that the board undertake careful and deliberate study. It must be ready to debunk myths. It needs to have answers for members who suddenly want to convert the cooperative into condominium units in an attempt to get rich quick. It ought to be ready to lead.

As aids to the board’s study of the post-HUD era, organizations such as Midwest Association of Housing Cooperatives and National Association of Housing Cooperatives hold frequent classes. Also, a group of professionals in southeastern Michigan have held a series of forums to facilitate study and discussion on the options. We suggest that boards - or committees formed to advise the boards - take advantage of these resources, as well as consulting with the cooperative’s own professionals. Beyond the expertise of these professionals, there are networking opportunities with other similarly situated cooperatives that are wrestling with identical concerns, allowing the exchange of experiences.

A library should be amassed from the literature obtained in this quest for guidance within

the board records. Written opinions should be requested of the cooperative's professionals on the question. This is an important proactive measure to protect the board from lawsuits brought by members, since it creates evidence that the board relied on expert advice - thus invoking the business judgment rule, that can be used to defeat challenges to the ultimate decisions made.

As noted above, the cooperative - regardless of whether it is a limited equity or a market rate type - need not take any action simply because the mortgage is paid off and HUD is gone. Beyond doing nothing are a few options that need to be understood in order to fulfill the boards' role as fiduciaries.

For the limited equity cooperative, it may consider transforming itself to a market rate. The obvious reason for doing so is to unleash the captive equity, and allow the market to determine what an outgoing member can sell his or her membership for. While this may sound appealing and a clear choice, it is not so simple. If a cooperative is located within a depressed market area, memberships may not be so marketable and capable of commanding a significant sum from buyers. This may result in vacancies and those members who remain get saddled with covering the costs of empty units.

Moreover, the membership may believe in the goal of providing low and moderate income people with affordable housing options. Thus, as a matter of policy, the cooperative may wish to remain limited equity.

Another choice, which we do not embrace, is the conversion to condominiums. While we oppose this option, it still must be studied and considered. Members will raise it because it is commonly felt that it represents a pot of gold for those who remain at the cooperative through the conversion process and then sell their condo units for significant returns. A board needs to know of the pros and cons of condo versus cooperative, and be ready to explain why the cooperative form of ownership is preferred.

As an aside, we oppose the condo option for two reasons: one is philosophical and the other is pragmatic. We believe that the cooperative form is vastly superior because it allows for pooling resources and taking care of the needs of the membership through a democratic process, engendering a mindset that promotes the community as a whole. Condos, on the other hand, promote an "us versus them" attitude.

Pragmatically, cooperatives are superior in how the law allows problems to be dealt with. We are allowed to use summary proceedings to evict problem members. We can screen applicants and keep out criminals. Our boards can promulgate rules and regulations to deal with evolving issues such as pets, parking, and people problems. Condos cannot deal effectively with any of these matters.

Additionally, the experience with converting to condos in Michigan is very limited. A number of legal issues, ranging from property taxation and assessment, to fairness among the membership, can and probably will give rise to expensive litigation. Why rush into a situation that is nearly certain to place the cooperative in financial jeopardy as it undergoes months or years of lawsuits and appeals? Thus, if for no other reason, we have urged caution and

deliberation to our clients. We think it best, even for those who want to convert to condos, to go slow and let others pave the legal trail through a morass of issues.

One more point is important to bear in mind: HUD has stated adamantly that no cooperative funds are to be expended to undertake the condo conversion while the regulatory agreement is still in effect. This fact may be useful to slow down those who are promoting the condo conversion approach.

Beyond the issues of condo versus cooperative, or limited equity versus market rate, is the option to refinance. This move achieves several goals: eliminates the original mortgage and replaces it with a new mortgage that allows for cash infusion to get some improvements done; and it eliminates the burden of operating under HUD. We discuss refinancing in greater detail elsewhere. But there is a side effect that is important to note for this discussion: the new lender will not let the cooperative to convert to condo so long as the refinancing mortgage is in place.

A large number of cooperatives are contemplating refinancing their existing mortgages. Several reasons exist for this. First, interest rates are at an uncommonly low level which makes it rather advantageous to take out a loan. While the existing mortgages are typically low, the rates now are extremely attractive and may not last much longer. Thus, there is a window open now to get great interest rates. Second, many cooperatives complain that HUD has been more unreasonable in its demands than in the past. They seek to get rid of the Regulatory Agreement with HUD by eliminating the mortgage that was subsidized by it. A third reason is the need to amass a sufficient sum of money to undertake repairs, renovations and enhancements of the property. Many cooperatives would prefer not to do these tasks over an extended number of years but, instead, do it all at once.

Boards ask us what steps are involved. The initial step is to determine where the authority lies to borrow money. Most bylaws give that authority to the board. However, we do not recommend that the membership be excluded from the process. Information ought to be shared so the members know and understand what is being done and why. The most common question is what impact will this have on carrying charges, and you should have an answer. Many cooperatives have refinanced with no increase in carrying charges because of the low interest rates, and the amount borrowed. Informing the members is an important part of the process and is a “politically correct” thing to do, but their approval is not required. Again, typical bylaws allow the board to decide such matters.

It should be noted here that HUD initially demanded a vote of the members. When challenged to point to the law or bylaw provision that mandated that, HUD backed off and simply requested evidence that the members had been informed. While we do not agree that HUD can require it, boards that we represent agreed to furnish information to the members. To do otherwise is an invitation to a disgruntled membership.

The next step is to see what rates are currently available. A quote should be requested from the National Cooperative Bank in Washington, D.C. But the inquiry should not stop there. Many lenders are interested in competing for your business and they should be asked to provide a proposal.

Once these are obtained, the board should get professional assistance in analyzing the proposals. It is not as simple as looking at the various interest rates, although that is an important component. Other issues include the amount of the closing costs and requirements demanded by the lenders. These are not alike.

We recommend that the board “short list” the lenders and negotiate with the lenders with the best two or three proposals. We have found a lot a flexibility and willingness to compete when this process is used. Do not accept proposals at face value. Try, instead, to press the lenders for better deals. Unless expertise exists on the board, this task should be done by the management agent and the attorney.

Once a selection is made, the lender will issue a formal letter of commitment. This

outlines the entire deal and the requirements of the lender. The management agent and attorney should be charged with handling these tasks. Among them is securing a full survey of the property, getting a special type of title commitment, clearing up any clouds that may be in the cooperative's chain of title, and providing the lender with financial and other records. The existing lender must provide a payoff letter. HUD needs to be notified of the refinancing.

With respect to HUD, a full discharge and release of the Regulatory Agreement should be obtained. In the case of limited equity cooperatives, such as 221(d)(3)'s, HUD will require a new deal known as a Use Agreement. The Use Agreement is a scaled down version of the Regulatory Agreement that does not contain all of the numerous conditions and terms you are accustomed to, but does require the cooperative to remain affordable housing for the balance of the term of the Regulatory Agreement. Those who paid off early encountered some difficulty in dealing with HUD on this document, and there were different directions given by HUD in Washington and HUD's local offices. This seems to be getting better, but you should allow for sufficient time to handle this negotiation. This is best handled by the attorney for the cooperative.

When all these prerequisites are fulfilled, the closing will take place and the loan proceeds will be dispersed. From the loan proceeds, the existing mortgage will be paid off and a discharge will be obtained from that lender, which needs to be recorded with the registrar of deeds. The Regulatory Agreement needs to be released and recorded. The attorney handles these details.

Once HUD is gone, a number of opportunities exist. The cooperative may want to amend its governing documents to remove references to HUD and the Regulatory Agreement. While doing so, you may also want to clear up nagging problems such as quorum issues, as well as liberalize the manner in which voting takes place - such as absentee ballots, day-long voting and the like. Where the law has changed and made bylaw provisions obsolete, such as in the limited proxy area, you may want to take advantage of the opportunity to clean up such matters. The cooperative attorney needs to be involved in these issues.

If the cooperative is going to undertake repairs or renovations with what money is left over, you need to seek proposals from various contractors. Before that can be done, the board must determine with some degree of specificity what it wants to accomplish and develop specifications that are written and sent out to a number of contractors. Proposals should be sought, a "short list" derived by the board and negotiations should be undertaken to get the best deal possible. Your management agent should take the lead in this process. Once that is done, the attorney needs to prepare a contract to protect the cooperative. Make sure that there is adequate insurance and indemnifications, that there are warranties, and consider including liquidated damages for delayed performance and perhaps a bonus for early completion.

Depending upon the magnitude of the project, it may be desirable to engage a construction manager to coordinate the contractors and deal with such issues as partial payments and subcontractor issues. Of course, this adds to the expense but may be merited if you are going to have numerous contractors engaged instead of just a single one. Perhaps your management agent is experienced in this role and can provide assistance.

In sum, refinancing is an option that is worthwhile examining to see if it makes sense to your cooperative. It should be done now while we still have good interest rates. A team approach including the board, management and the attorney, will ensure that it is done properly and in good order. It is not a quick process but if experienced professionals are used, it can be expedited. Once it is complete, it opens up a wide range of opportunities for the cooperative to move forward into the future without the hassle of HUD, and typically with enough money to make the cooperative appearance compete with other housing stock, leading to less vacancies and greater pride among the membership.

With increasing interest, Cooperative Boards are asking us about share loans. These are loans that are made by a third party lender to a member, usually for the purpose of purchasing a membership share in the cooperative. The reason for the deep interest is that it serves as a marketing tool for the cooperative, in order to make acquiring membership more affordable to people. This is particularly true for market rate cooperatives where an incoming member needs to come up with tens of thousands of dollars.

Share loans are necessary for incoming members because lenders want collateral. The typical applicant does not have the financial means to pay the full purchase price to buy into a cooperative, especially a market rate cooperative. Lenders will not accept the member's personal promise to repay the loan without more; and unlike other forms of home ownership, there is no real estate that the member can pledge as security.

Thus, special arrangements are needed in order to make such loans available. Since the member has only the share in the corporation to offer as collateral, the lender needs the cooperative's commitment to aid it in the case of a default. This commitment takes the form of a "Recognition Agreement" in which the cooperative agrees to step in if there is a default by the member and use its special legal standing to evict the member and to resell the share or membership, giving the lender enough of the proceeds to recover its loan.

In Michigan and elsewhere in the Midwest, it has been difficult historically to find lenders who understood cooperatives well enough to feel secure in offering share loans. That is changing and more lenders than ever are finding that these types of loans are safe and secure. While the National Cooperative Bank has been in this field for a long time, there are now others which are willing to compete for this opportunity.

Boards are encouraged to consider this tool as a way to enhance their cooperatives' ability to compete with other forms of housing. Our view is that it creates a "win - win" for all parties:
the cooperative benefits by being more marketable; incoming members get the money they need to buy into the cooperative; and the lender gets the chance to loan money with relatively low risk.

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