



COOPERATIVE HOUSING BULLETIN

A member service of the National Association of Housing Cooperatives

Winter 2012

Jim Jones credits Voorhis for defining co-op values

November 10, 2011 | James R. Jones

The 2011 winner of the Jerry Voorhis Award was Jim Jones, long time leader in the field of student cooperatives. Below is his acceptance speech given at the NAHC Annual Conference.

I WANT TO THANK the National Association of Housing Cooperatives for this incredible honor. I knew Jerry Voorhis, and I've always held him in great esteem. He was an honest and honorable man and a role model for me and many others. I've had a picture of him in my office for decades, perhaps to remind me of what is possible in human integrity. To receive an award named for him is almost overwhelming.

I've worked for the last forty years with student housing cooperatives and non-student groups that use the same model, a very small sliver of the cooperative housing world, and sometimes we feel that our efforts go unrecognized. We represent only one or two percent of cooperative housing in the United States, and to be recognized does feel good.

Most of you have probably not come in contact with our cooperatives, which are located throughout the U.S. and Canada, but are especially concentrated in the Midwest and California. Student co-ops started as independent groups in the 1930s, with little help or fanfare, as a way for students to remain in school during the Depression years. Our cooperatives are usually group housing, rather than apartments, in order to share costs among as many residents as possible. The members all work about four to five



A vintage photo of Jim Jones with Jerry Voorhis.

hours per week, both to save money and also to create a strong sense of community. We have no individual equity stake, but instead have a "group equity" model that enables our co-ops to grow over time. The Berkeley Student Cooperative, for example, began with a single owned building in the 1930s and has now grown to house 1,200 members in over 22 buildings.

So yes, we're different from most family co-ops, and our members are transient, and we have little help with funding or oversight. It's a wonder that we can exist, but we do. And we are strong because we have struggled so hard to buy our houses and make them what they are.

I began working for student co-ops while I was a graduate student at Michigan State University

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The keynote speaker for NAHC's 2011 Conference held in Puerto Rico last November was Senor Jose Torres, Deputy Commissioner of the Cooperative Development Commission of Puerto Rico. He is a lawyer with a long history of working with cooperatives. He presented an interesting slide show, which has been added to the NAHC website. **Click here!**

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THE NATIONAL ASSOCIATION OF HOUSING COOPERATIVES

About NAHC

The National Association of Housing Cooperatives is a nonprofit national federation of housing cooperatives, other resident-owned or -controlled housing, professionals, organizations, and individuals interested in promoting cooperative housing communities. Incorporated in 1960, NAHC supports the nation's more than a million families living in cooperative housing by representing co-ops in Washington, DC, and providing education, service, and information to co-ops.

Mission Statement

To represent, inform, perpetuate, serve, and inspire the nation's housing co-ops.

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CAHC	California Association of Housing Cooperatives
CHANE	Cooperative Housing Association of New England
CNYC	Council of New York Cooperatives & Condominiums
CSI	CSI Support and Development Services
DVAHC	Delaware Valley Association of Housing Cooperatives
FNYHC	Federation of New York Housing Cooperatives
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See the NAHC website – www.NAHC.coop – for addresses of Associations and Committees.

About Bostrom

Bostrom Corp. is the professional services firm managing the National Association of Housing Cooperatives affairs. Mitch Dvorak serves as NAHC Executive Director.

On the Subject of Ethics...

By Ida Curtis Fisher

Ethical violations unfortunately occur often enough in housing cooperatives that it merits discussion. Breaches are committed by boards, management, committee members, staff and contractors/vendors. This article will focus at the top – with the Board of Directors.

As with any corporation, having the ability to successfully govern requires that the shareholder/member have confidence, respect and trust in their leaders – the Board of Directors.

When a Board member of a housing cooperative tells a friend about the delinquency problem another member is having, it has to cause some concern in the mind of the member being told. This is confidential stuff. Maybe a Board member quietly warns her neighbor about what she learned during a Board hearing regarding a member's son having problems with drugs. Or, a Board member decides to share the information about the pricing on a bid process for work at the Cooperative. What about a Board member repeating another Board member's criticism of another member made during an executive session? It's not pleasant to hear a Board member speak badly about another. Then, there's broadcasting information regarding staffing issues and salaries. These are all inappropriate actions. Such disclosures clearly breach confidences.

Corporate boards must deal with confidential information (secrets). They do share information that is meant to be limited to the Board, its management company, auditor, attorney and not for public consumption. In order to reach decisions, there are discussions that are considered confidential – not for public consumption.

Board members who fail to keep confidences; who discuss personal information about members; who expose the details of a corporate contract; and discusses certain corporate financial information with the membership/public is exhibiting bad conduct. These actions can be harmful to other members, create distrust in the leadership, and cripple the Board's ability to govern.

Is there ever a time when a Board member breaches a Board confidence and it is NOT unethical? A situation when breaching a confidence and repeating discussions that took place during a Board meeting is morally acceptable? In fact, it's the ethical thing to do?

What if the Board or a Board member is planning to undertake an inappropriate act that could be harmful, to the Cooperative?

Say a proposed kickback was secretly offered to the president during a bid process and a Board member finds out about it from another Board member. The bid price may or may not be slightly higher to cover the kickback. Should the Board member keep quiet; let it happen and not disclose that information? Or should the Board member tell - expose the information and break the bond of confidentiality. Who would she/he report it to? The full Board? Management? The attorney? The auditor? The membership? An examination of his/her conscience should provide the answer quickly. Report it to as many of the above as needed to stop the violation and recommend the contractor be removed from the bid process.

But what if a Board member finds out that a contractor took the president aside and tells him that he knows his bid is the highest, but if he can get the contract – he will provide a new refrigerator and stove for the community room at no cost and no one would have to know? This would benefit the Cooperative. The community room could use new appliances. And the president's daughter is having her 10th birthday party in the community room next month – this would be great. By failing to disclose this information – no one gets hurt and the cooperative wins. Or does it?

The bid process has been contaminated. The Cooperative will be paying more. It is unethical. It is an undercover deal. It is not an appropriate way to do business and it opens the door to future unethical practices. The Board member should report what she/he knows to the full Board and, if necessary to the management company and the Cooperative's attorney. That contractor should be disqualified from the bid process.

Ethics is about having values that guide your day to day life and conduct. You know when something is right and when something is wrong. You can recognize your motives and determine if they are good or bad.

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Board members who fail to keep confidences; who discuss personal information about Members; who expose the details of a corporate contract; and, discusses certain corporate financial information with the Membership/public is exhibiting bad conduct.



Ida Curtis Fisher, CEO Preferred Property Services of Illinois, Chicago. Inspiring, organizing and managing housing co-ops since the 1960s.

The responsibility of a member of the Board of Directors of a housing cooperative is no less important than that of a Board member of Microsoft. Shareholders rely and depend on their Board to be honorable and honest. Thank goodness, in general, Cooperative members make good voting decision when electing their Boards.

Not that a code of ethical conduct could be

enforced. By-laws don't require it. However, having a code of ethical conduct pledge available for all Board members to sign that states they will respect and protect the Cooperative, at least, puts the subject matter on the table. The expectation is there.

Check with NAHC for sample ethic code and watch for future articles on ethics as it relates to management agents. [CHB](#)

► Jerry Voorhis Award [continued from page 1]

in 1971. I was the first manager for a group that I helped to start, earning \$200 per month plus room and board. It was a crazy time when the youth of America yearned to control their own lives, and cooperatives were almost ideally suited to meet that need. Over time, I learned not only the technical skills of accounting, property development and management, but also the importance of education and training. Our members want involvement and real control, and a strong educational program is key to making that happen.

In fact, it was through a shared interest in education that I first got to know Jerry Voorhis. In 1977, our national association called the North American Students of Cooperation, or NASCO, decided to hold a conference in Austin, Texas. At the time I was working for a student co-op in Austin called College Houses, and we were a member of NASCO. Since we locals were asked to do the legwork for the conference, we told NASCO that we wanted to do more than the usual "how to" workshops.

So instead, we held a symposium on WHY people become involved with cooperatives, and WHY they remain involved over time. We called the conference the "Wind Through the Pines."

We brought in cooperative philosophers and educators from across the United States and Canada, and Jerry Voorhis agreed to be our keynote speaker. It was an inter-cooperative effort of the housing and food co-ops in Austin, and we received enough financial support that we only charged five dollars for registration. We wanted to include everyone.

Jerry gave a stirring speech, drawing on his experience in both government and cooperatives. We loved him, and he loved us. A couple of weeks after our conference, I received a letter from Jerry saying that he liked what we were doing, and that he wanted to be a member. He included a check for \$50 for his membership. We were startled – and honored. We had no category of membership that fit, but we weren't about to turn down the money, so we created a new category of Community Members just for Jerry.

I learned a great deal from that experience, and now I often join co-ops in other places. Just two days ago, I became a lifetime member of the Public House, a cooperative bar in Milwaukee. I like what they're doing, building community and educating people to the many ways that the cooperative approach can be used. And I think they'll appreciate the moral support that I can give them, much as Jerry Voorhis gave his support to our small efforts back in Austin.

And I'm not alone in learning from my cooperative experience and "paying it forward." Living in student housing cooperatives can be intense, and those who experience that living sometimes go on to do great things in other cooperative efforts. Ernie Eden and Tom Stitt were early Executive Directors of NAHC, and both had their start in the student cooperatives in Austin. Virginia Thornthwaite, who with her husband Fred built the senior housing of Cooperative Services, started in a student co-op at Antioch. Jonathan Klein, a skilled housing attorney in Boston who has had a lot to do with NAHC over the years, and Richard Dines, who has long worked with the National Cooperative Bank and the credit union movement, were members of the Ann Arbor student co-ops. There are many other examples.

I am like these and other incredibly idealistic and dedicated people, except that I've worked for my entire career with the student co-ops. And I guess it's true that honor goes to those who stick around. But in accepting this award, I'd like to do so in recognition of all of us who have gone on to use the skills we've learned as students to advance the cooperative movement. Sometimes we are members of food co-ops or credit unions, and sometimes we become members of co-op boards of directors. Some of us may join co-housing groups, and some may labor to create worker cooperatives. But wherever we are, we bring with us a vision of what is possible, a vision that helps to advance the cooperative spirit. With this award, you honor all of us, and I thank you for that from the bottom of my heart. [CHB](#)

Housing Cooperatives Need to Confront the Use of Social Media by Employees

By Lewis H. Silverman

The fact that housing cooperatives are employers in their own right is often not fully appreciated by co-op boards or managers. Indeed, many board members are themselves employees in their private lives and, therefore, do not focus on their role as an employer. One important issue that housing cooperatives need to face is the increasing use of social media by employees of the cooperative. Workers are using the Internet all day long for both business and personal use. A recent survey found that almost 50% of employees access social media sites such as Facebook, LinkedIn and Twitter during the work day. The use of handheld smart phones enables employees to access social networking sites at all times. While there are legitimate business uses for social media at some companies, employers like housing cooperatives have to deal with the intersection of social media and workplace policy/practices.

When hiring, an employer may not use information learned on the Internet if it relates to applicant's protected status under federal, state or local equal employment opportunities laws.

As social media continues to explode, so do its legal implications. Employers are becoming increasingly mindful of the need to protect their reputation from social networking defamation, publication of confidential information or other harm. From hiring to terminating, there are many legal issues that an individual's social media profile or account might create.

For example, when hiring, may an employer use information learned on the Internet about applicants? The answer is "no" when the information relates to applicants' protected status under federal, state or local equal employment opportunities laws. When hiring, an employer may not use information learned on the Internet if it relates to applicant's protected status under federal, state or local equal employment opportunities laws. When considering discipline or termination, may an employer take action against an employee based on statements in social media sites without running afoul of developing law in the area? The answer is "sometimes." An employer, for example, has a right to protect its trade secrets and truly proprietary information, stop discrimination and sexual harassment that impacts its workplace, avoid defamation, preserve its electronic

information, and maintain its trademarked brand.

Perhaps a lesser known issue is how an employee's online social activity is affected by the National Labor Relations Act ("NLRA"). The National Labor Relations Board ("NLRB") is seeing a growing number of cases on this topic. An August 5, 2011 analysis by the U.S. Chamber of

Commerce, Labor, Immigration, and Employee Benefits Division found that the NLRB reviewed 129 cases which involved social media in some way. The fact that the NLRA applies to social networking by employees may be news to some. Section 7 of the NLRA protects employees' right to "engage in...concerted activities for the purpose of collective bargaining or other mutual aid or protection." Employees hold these protections – called "protected concerted activity" – regardless of whether there is a unionized workforce.

An August 18, 2011 report released by the NLRB's Acting General Counsel provided guidance by describing the most recent social media cases before the NLRB. The report summarized social networking cases addressed by the NLRB's Division of Advice as part of the Acting General Counsel's efforts to develop a consistent policy to apply to issues involving these online tools. Following the pattern uncovered by the U.S.



Lewis H. Silverman is a senior partner in the law firm of Jackson Lewis LLP which specializes in labor and employment law on behalf of management. Mr. Silverman is a frequent speaker at the NAHC annual conference and represents numerous housing cooperatives in labor and employment matters.

Online postings are “protected” when they address terms and conditions of employment by involving staffing and workload issues.

Chamber of Commerce earlier in the month, the Acting General Counsel’s report primarily addressed two types of situations where the NLRA intersects with social media: (1) employee discipline following social networking conduct and (2) workplace policies addressing social networking conduct.

In terms of employee discipline, for example, the Labor Board addressed a case in which an employee who posted a critical comment on Facebook regarding the sufficiency of assistance coworkers provided to the employer’s clients. The employee’s comments also solicited feedback from coworkers. The employer terminated the employee who made the Facebook posting and the four coworkers who responded to it. The Division of Advice found this was “concerted” activity because the comment appealed to coworkers for input. Further, the postings were “protected” because they addressed terms and conditions of employment by involving staffing and workload issues. Online postings are “protected” when they address terms and conditions of employment by involving staffing and workload issues.

On the other hand, the Division of Advice found that a reporter who Tweeted critical remarks about his employer’s editors and other local news outlets did not engage in protected or concerted activity. Unlike employees in the first example, the reporter’s Tweets did not involve discussion on the terms and conditions of employment or solicit responses from other employees.

What do we learn from those cases? A housing cooperative, which becomes aware of an employee sending disloyal or critical comments about the cooperative or management, should make sure those comments do not involve terms and conditions of employment and if they do, they do not involve a dialogue with other employees. If the individual is acting on his own and not seeking discussion with other employees, such comments may not be protected.

In terms of employer policies, the Division of Advice continued the trend of the NLRB under President Obama to broaden its interpretation of the NLRA’s coverage. As applied to protected concerted activity, that trend results in the NLRB considering as overbroad employer policies and rules which curtail employee rights to engage in various activity covered by the NLRA. This interpretation requires employers to narrowly tailor workplace policies so that employees cannot reasonably construe them to prohibit activity protected by NLRA Section 7. Often, this standard

will require that the policy state specific examples or limitations of how the policy may apply for it to be lawful. With this legal requirement in mind, an employer’s social media policy still can ensure that certain conduct is prohibited, such as: (a) unlawful discriminatory conduct which violates a valid equal employment policy; (b) disclosure of proprietary information or trade secrets; (c) use of the company name, trademark, logos, or other copyright-protected materials; and (d) harassment or abuse of other employees, member/shareholders or other parties, provided that such policies are properly drafted. What an employer cannot do, however, is prohibit a discussion disclosing wage or other terms and conditions of employment among its employees.

A 2011 survey by the Health Care Compliance Association and the Society of Corporate Compliance and Ethics revealed that while 31% of companies reported having a specific policy to address social media, 21% of respondents relied on a general workplace policy to address such issues. The survey also found that 45% of respondents had no policy that addressed social media use by employees outside of the workplace. Whether or not employers had a policy, 42% of companies reported that they disciplined an employee for the employee’s behavior on a social media site – nearly doubling from 24% in 2008.

To address NLRA concerns, housing cooperatives should develop and uniformly enforce policies to address employee conduct on social networking sites during working hours (and can cover non-working hours to the extent the activity impacts the employer in certain ways such as by disclosing proprietary information). If you already have a social media policy, now is the time to review whether it still complies with the law.

Housing cooperatives should develop and uniformly enforce policies to address employee conduct on social networking sites.

All signs indicate that employees will continue to rigorously use social networking sites. Employers must take care that they do not impede employees’ Section 7 rights under the NLRA when either proactively or reactively addressing such conduct. Between the general principles outlined above, there is a wide range of detailed nuances that the housing cooperative must follow. Consulting a lawyer who is experienced in these issues – to provide advice on how to draft strong policies and appropriately discipline employees when necessary – will help avoid being one of the employers subject to NLRB scrutiny. **CHB**

Atkinson Housing Cooperative: Canada's First-Ever Co-op Conversion of Public Housing

By Charles Daas

Alexandra Park was initially constructed as a 410 unit housing project in downtown Toronto. The 18 acre project, part of the City of Toronto's urban renewal, was built in 1968, and includes 140 apartments in two medium rise apartment buildings and 263 townhouses. The cooperative was named after the late Sonny Atkinson, a long time president of the Alexandra Park Residents' Association (APRA) who led Alexandra Park's residents to convert from public housing to co-op housing.

APRA was established in 1990 to provide residents with more input on the management of the public housing in which they reside. Cooperative ownership would take this evolution a step further, as the cooperative's members would own the building in common, elect a board of directors accountable to its members and provide a path for the members to be more involved in their community. Atkinson ("Sonny") had found a housing system that would allow Alexandra Park's residents to realize their goal of tenant self-management, "the co-operative housing model, which has become one of the more successful ways of providing affordable housing for low-income earners as it involves active member involvement."¹

When the cooperative conversion met with government opposition, Sonny turned to a 1995 referendum among residents of the cooperative. As the cooperative idea began to take root, the Metropolitan Toronto Housing Authority provided funds to educate residents in the benefits of cooperative ownership. By 1998, the Minister of Municipal Affairs and Housing announced that the provincial government had approved the conversion plan. Alexandra Park was to become Atkinson Housing Cooperative.

Throughout the conversion process, "residents and government officials raised important questions about whether the board of directors could become familiar with the intricacies of managing a multi-million-dollar property. Were public housing residents responsible and knowledgeable enough to

maintain the property as a public asset and protect the interests of the residents?"²

In order to respond to these potential pitfalls, Co-operative Housing Federation of Toronto (CHFT) (which had developed over 55 new and rehabbed housing cooperatives) was invited by APRA to provide educational support for the conversion and to ensure compliance. In 1999, Atkinson Co-op elected its first board of directors, passed its organizational by-laws and completed a draft operating agreement with the Metropolitan Toronto Housing Authority. Three years later, the co-op membership had grown to over 500 members and five working committees, and completed its formal conversion in 2003.

Nearly a decade later, the Atkinson Cooperative has been struck by a youth movement – the so-called "Atkinson revolution." At 21, Board chair Domanique Grant is the face of the youth movement. She has long been deeply involved with community work, clocking in over 2,000 volunteer hours before she graduated high school. She credits her close family — mom, two brothers and one sister who all taught her that "nothing is impossible" — and experience growing up in the Atkinson co-op, a 2,000-member community, with helping to shape her into the enthusiastic activist she is.³

"Co-op housing is so important," not just because it provides affordable housing to people with low to moderate incomes but "You get to have a say in what happens where you live," says Grant, who served as secretary last year on the elected 10-member Atkinson Co-op board of volunteers. It currently



Charles Daas is the Principal of the Chicago-based consulting practice City Solutions and serves as adjunct faculty to the University of Illinois-Chicago School of Urban Planning and Public Policy. Daas also served as the former Director of the Chicago Mutual Housing Network (1999-2004) where he was the co-developer of the \$4.3 million, 31-unit Nuestro Hogar (Our Home) Cooperative.

1 Source: Jorge Sousa and Jack Quarter, *Converting a public housing project into a tenant-managed cooperative: a Canadian Case Study*, 2004 Journal of Housing and the Built Environment.

2 Source: Jorge Sousa and Jack Quarter, *Converting a public housing project into a tenant-managed cooperative: a Canadian Case Study*, 2004 Journal of Housing and the Built Environment.

3 July 29, 2011 *Toronto Star*, "Young Activist Carries On Atkinson Revolution" by Valerie Hauch.



At 21, Domanique Grant is the youngest-ever president of the Atkinson Housing Co-op, which is a member of the Co-operative Housing Federation of Toronto.

has six members under the age of 25, all of whom oversee a budget of \$1.2 million and meet monthly. “There are too many people who’ll tell you, you can’t. But you can. You tell them you can. There are so many young people in this community and we bring a valuable perspective,” concludes Grant.

As the first conversion of public housing into a tenant-managed cooperative in Canada, Atkinson Cooperative members agreed to some provisions with Metropolitan Toronto Housing Authority, including drawing the cooperative’s members from existing waiting lists, capping the monthly rent (carrying charges) and assigning responsibility for capital improvements

(and a reserve fund) to the public housing authority. Through its operating agreement, the Cooperative Housing Federation of Toronto continues to provide technical assistance and resources to the cooperative to ensure its stability. As the first public housing project in Canada to convert to a co-op, Atkinson Housing Co-operative has experienced considerable public support for its model. One of over 160 affordable cooperatives in Toronto, Ontario, housing advocates are now interested in whether the model of a tenant-managed cooperative will not only reduce turnover endemic to public housing but build a stronger community. Stay tuned. **CHB**

News

GRETCHEN OVERDURFF, CMCA, AMS, RCM, who began her career with Greenbelt Homes, Inc. in Greenbelt, Maryland, as its first female general manager retired in December after 17 years of service. During Overdurff’s tenure, she oversaw the development of the 1,600 unit’s first mission and vision statements, a strategic plan, and a replacement reserve study. She also encouraged advances in technology, which included developing a website and adding social media.

Concerned about the elderly, Overdurff, in conjunction with the city, developed a retiring-in-place program, assisting members to remain in their homes. She then focused the co-op’s efforts at being member-oriented, and as a result, recruited and led a senior staff that has become adept at handling conflict and finding solutions to difficult problems such as mold remediation, lead and asbestos abatement, and snow storms, fires, and hurricanes.

In addition to her official duties, Overdurff hosted

guests interested in the various co-ops that comprise Greenbelt, gave workshops at NAHC national conferences and taught RCM courses. Eldon Ralph, now assistant general manager, will succeed Overdurff.

Greenbelt was one of three planned communities built as a federal venture into housing in 1937. When Congress voted to sell off the greenbelt towns in 1952, its residents sponsored a cooperative (Greenbelt Veterans Housing Corporation, later Greenbelt Homes, Inc.) and purchased the then 1,579 family community with help from FCH, the newly created subsidiary of the Foundation for Cooperative Housing. When NAHC was organized by the Cooperative League of the USA in 1960, with Jerry Voorhis bringing together the cooperatives in the United Housing Foundation and those being organized by FCH, the Greenbelt Co-op was one of the two membership sponsored Cooperatives that joined the new NAHC. www.GreenbeltHomes.net and www.greenbeltmd.gov.

What Happens When A Member Dies

By Herbert H. Fisher, Esq., Chicago, Illinois

CHB: When a member/shareholder dies, doesn't the membership or share certificate just revert to the Cooperative?

FISHER: No, it does not. The Cooperative membership or shares, which carry with it the right to occupy a cooperative dwelling unit, is property, just like one's jewelry, automobile or shares in the local utility. It represents an undivided ownership interest in the cooperative's equity. That, together with the value of occupancy in the specific dwelling unit, gives it value. General principles of law do not permit forfeiture of an ownership interest.

CHB: Can the member leave the membership/shares to any person they wish?

FISHER: Yes, a member can make a Will and designate who should inherit the membership. However, until the will is proven in a probate proceeding, the Will is just a piece of paper and it does not control what the Cooperative has to do to protect itself. If not admitted to probate, the will is not binding and only a directive to the heirs if they choose to abide by it.

CHB: What estate planning can the member/shareholder then do?

FISHER: The member/shareholder can place the ownership in a living trust which is under the control of the member/shareholder with occupancy restricted to the member/shareholders as the living trust's beneficiary with appropriate provisions to protect the cooperative's rights with respect to occupancy and transfers of memberships/shares.

Or, can give a joint interest to the person(s) intended to inherit provided that person(s) is an occupant or desires to become an immediate occupant. The member needs to know that this act is irrevocable and should not be considered only in the later stages of life.

CHB: What happens when a probate estate is opened?

FISHER: The Will is filed with the court, a hearing is held to prove up the Will, i.e., that it was properly and voluntarily executed; and, upon hearing, court determines who are the heirs. The executor named in the Will is appointed by the court and the executor then secures a court order distributing the estate, including the membership/

shares to the person designated by the deceased member, or seeks to sell them.

CHB: What happens when an estate is not opened or there is no will?

FISHER: The membership/share is then inherited by the closest heirs as described under the state's laws of descent. State law dictates the procedure for using a properly prepared and executed statutory form small estate affidavit upon which the cooperative can rely and be protected from the claims of other relatives and other persons. Someone with personal knowledge of the facts identifies the party to inherit in the affidavit. An original certificate of death is usually required to be delivered with the affidavit.

State law requires that estates over a certain amount, such as \$100,000 in Illinois, have to go through probate court proceedings. The cooperative's involvement is the same as discussed immediately above.

CHB: Does the person who inherits get a membership/share certificate and a lease agreement without any other conditions?

FISHER: This can vary from state to state and depends on the cooperative documents. If the documents require that all persons, even current occupants, becoming members be approved, then the heir may only be able to sell the membership and get its value but not move in unless approved by the cooperative.

If the documents are silent on cooperative prior approval, then the heir in occupancy at the time of death has a right to the membership and to continue in occupancy granted by the deceased; but if the heir is not an occupant at the time of death, the membership is inherited with the right to sell it but taking occupancy is dependent on cooperative approval.

CHB: Is this settled statutory or case law as applied to housing cooperative interests?

FISHER: No, but the legal reasoning is sound based upon the underlying right of the cooperative to approve persons who move into the cooperative to be neighbors. This is an example of the role a lawyer to take fact situation for which there is no clear statutory or case law precedent and take what does exist and



Herbert H. Fisher is an attorney in Chicago, IL. He is a former NAHC President and Chairman of the Board. He is the convener of the Attorneys Roundtable at the NAHC Annual Conference and coordinator of the Attorneys Exchange. Attorneys and other members are encouraged to contact him with topics for discussion at the Roundtable at hfhfisher1@aol.com.

what is known and apply it to a given fact situation and come up with a sound conclusion. Sound conclusions may not be indisputable but the lawyer's role is to give an opinion as to what would happen to that fact situation and opinion if tested in court. It is my opinion that this legal reasoning would be sustained in court. The bottom line is that this interview is providing guidance and not specific advice on any one's specific probate matters. It is necessary to consult with a local lawyer.

CHB: Is this what happens if the deceased owned the membership with another?

FISHER: No, then it depends on how it was owned. If it was owned without designating it to be in "joint tenancy", which means the surviving owner would own it all and no one else would have an interest, the joint owner would own a half interest as the "tenant in common" and the deceased's heirs would own the other half interest equally. If the surviving joint tenant is also an heir, then the surviving joint tenant would also get an equal share with the other heir or heirs in the other half owned undivided by the deceased.

If it was held in joint tenancy or as joint tenants then the survivor would own all of the interest in the membership/shares and occupancy agreement (cooperative interest) to the exclusion of anyone else.

CHB: What is best for the cooperative?

FISHER: The cooperative should require all joint memberships/shares be held in joint tenancy, which means that the ownership is

joint and only the survivor then owns. This simplifies the number of people with whom the cooperative will need to deal.

"Tenancy by the entireties" can also be used if recognized in the state in which the cooperative is located. I have only confirmed that, for cooperatives, it is recognized in New York and Illinois. This form of ownership, available only to spouses, exempts the property from creditor attachment entirely. Upon death it operates like a "joint tenancy" described above.

CHB: How should the cooperative handle such matters?

FISHER: They're subtly involved, which depending on

a variety of possible different fact scenarios and relationships could affect how the cooperative should handle such situations. There are legal determinations and judgments to be made in coming to a conclusion that it is OK to cancel the deceased's documents and issue new ones to the person or persons claiming them. The previously discussed legal principles are for introductory guidance and discussion only and should not be taken as legal advice. Giving legal advice in such interviews is prohibited by laws governing laws and are not intended as such and should not be taken as such.

It is always best for the cooperative to have an attorney handle the matter or at least have an attorney review all documents which will be kept in the cooperative's records before taking the final step. **CHB**

The cooperative should require all joint memberships/shares be held in joint tenancy, which means that the ownership is joint and only the survivor then owns.

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Management Representation Letters: What Co-op Boards Should Know

By Stuart Saft

Editor's Note: This article first appeared in *Habitat* magazine and is reprinted here with permission of the *Habitat* publisher.

Co-op board members, and especially treasurers, are too busy with their private lives and jobs to also monitor every action that your building's property manager and accountant take on their behalf. But the members of your board still have a fiduciary duty to members to exercise prudent business judgment, including placing reliance on their professional advisers.

What happens if, despite that reliance, the co-op's accountant is unable to perform a proper audit? Then the system breaks down and your co-op is put at risk.

A rep letter – accounting jargon for a “representation letter” – is an important document. When a managing agent recently abused the rep letter process, I realized that, like so many things, too little is understood about something that is just routinely signed. Co-op boards need to know why rep letters are important and why, except for a limited change, they should not be modified.

Rep Rap

What is a rep letter? It is written confirmation from management to the auditor about the fairness of various financial statements. Its purpose is to emphasize that the statements are management's representations, and thus management has the primary responsibility for their accuracy. It also gives replies to auditor questions regarding matters that did not come to the auditor's attention when the audit was performed.

Some auditors request written representations of all financial statement items. All auditors require representations regarding receivables, inventories, plant and equipment, liabilities and subsequent events.

Frequently, all these representations are included in one letter. The letter is required at the completion of the audit fieldwork and before the financial statements are issued. Management acknowledges its responsibilities for running the co-op and the adequacy of financial policies employed, and confirms both the practices observed during the audit and that management has made full disclosure of all material activities and transactions in its financial records and statements.

A rep letter clarifies the traditional roles that management and the accountant perform. Moreover, the standards for review engagements require that accountants obtain rep letters from their review clients, making the letter a mandatory part of the audit process.

The American Institute of Certified Public Accountants has deemed that the “management” of cooperative corporations includes off-site management companies, on-site management personnel, and the board of directors, so the board needs the letter to support its statements.

This is important because the manager has access to the most detailed information about the property and has daily, firsthand exposure to transactions and other events reported in the financial statements. A rep letter documents the information relating to the manager's knowledge of the entity and its intentions, and complements other procedures the accountant performs to review the financial statements.

What a Rep Letter Says

A typical rep letter often reads like this:

“We are providing this letter in connection with your audit(s) of the [identification of financial statements] of [name of entity] as of [dates] and for the [periods] for the purpose of expressing an opinion as to whether the [consolidated] financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of [name of entity] in conformity with generally accepted accounting principles. We confirm that we are responsible for the fair presentation in the [consolidated] financial statements of financial position, results of operations, and cash flows in conformity with generally accepted accounting principles.



Stuart M. Saft, chair of Dewey & LeBoeuf's Global Real Estate Department is one of the leading lawyer's in the field of real estate law. He has been the Chair of the Council of New York Cooperatives and Condominiums, a Member Association of NAHC, for more than 20 years and resides in a cooperative in Manhattan. He is currently a member of the board and chair of the National Cooperative Bank.

“Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. We confirm, to the best of our knowledge and belief, [as of date of auditor’s report,] the following representations made to you during your audit(s).”

This is typically followed by such representations as “The financial statements referred to above are fairly presented in conformity with generally accepted accounting principles” and “We have made available to you all: a. Financial records and related data, b. Minutes of the meetings of stockholders, directors, and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared.”

Finally, the opening paragraph usually provides that “we confirm, to the best of our knowledge and belief, the following representations made to you during your audit,” so the letter seeks only what the manager knows. In reviewing the co-op’s books, the accountant is seeking information relating to:

- the extent to which the board of directors monitors and controls the managing agent’s activities related to the co-op
- the use of funds; the manner in which the managing agent is compensated
- the extent, if any, to which the managing agent commingles operating funds, deferred maintenance funds, and replacement funds with other associations under management
- whether the co-op maintains separate records for transactions initiated by the managing agent
- whether the co-op controls funds separately from funds controlled by the managing agent; the policy or board review of managing agent reports
- the frequency of managing agent reports; the control program used by the agent with respect to the co-op
- existence of a conflict of interest or ethics policies, or both, for the managing agent
- professional designations of the managing agent; and
- training and continuing education of the managing agent and agent’s staff.

The rep letter does not reduce the accountant’s responsibilities; it simply affirms a responsibility that already exists.

The rep letter has several benefits for management. It avoids misunderstandings and provides a checklist for important matters that affect the financial statements. It puts in writing the continued appropriateness of the information obtained in discussions with management.

A review of financial statements consists principally of inquiries of company personnel and analytical procedures applied to financial data. As part of a review of financial statements, the accountant is required to obtain a written representation from his or her client to confirm the oral representations made to the accountant.

It is important that questions regarding representations be thoroughly explored and answered to the full satisfaction of all concerned, which is why the accountant cannot issue a report without the rep letter. Without it, the accountant is left to wonder if management has withheld information, which might raise doubts in the accountant’s mind about the reliability and completeness of management’s responses.

The purpose of the rep letter is to provide the accountant with comfort that the audit is complete and accurate. In that regard, the rep letter is as important to the board and to residents as it is to the accountant, because both the audit and the rep letter upon which the audit is based provide board and owners with the comfort they need to make certain that appropriate controls are in place.

So, I become concerned when I see a form rep letter without such required language as “We are not aware of any fraud or suspected fraud affecting the co-op,” or “We have no knowledge of any allegations of fraud or suspected fraud affecting the co-op received in communications from employees, former employees, regulators, or others,” or “We acknowledge our responsibility for reviewing the entries and understanding the nature of any proposed entries and the impact they have on financial statements,” or “We acknowledge our responsibility for having qualified management-level individuals responsible and accountable for overseeing these services.”

And I become even more concerned when, upon asking the manager about it, he replies, “Well, if the accountant isn’t concerned about it, why should you worry?” Now you know why. **CHB**

Compiled by Doug Kleine

Affordable housing preserved with rehab and resident ownership

Long time residents and low-income outside buyers have purchased shares for \$2,500 in 2310 Clarendon Road HDHC, Brooklyn, NY, and are now homeowners. The 27 unit building was taken by the City of New York from the previous owner for non-payment of real estate taxes as part of the Department of Housing Preservation and Development's (HPD) Third Party Transfer Program. The Urban Homesteading Assistance Board (UHAB) served as the developer and interim owner, coordinating rehabilitation of the 80 year old building and permanent financing.

Financing for the rehabilitation was provided through New York City's HPD Participation Loan Program which included a loan from NCB Capital Impact for \$763,449, and a loan from HPD for \$2,322,000. The rest of the purchase price was paid by a grant for first time homebuyers from the New York State Affordable Housing Corporation for \$592,500. The residents will be electing a new Board of Directors and taking control of the cooperative in the next few months.

Vermont Manufactured Home Residents Form 14 Home Co-op

After receiving news that their community was likely to be shut down forever, homeowners at Bunker Hill Mobile Home Park in Windsor, VT organized to take ownership of their community. Bunker Hill Community Co-op is the third resident-owned mobile home park in the state and the first new co-op in almost twenty years.

When the park's former owner, Rockingham Community Land Trust (RACLT), sent out a notice of their intent to shut down the community in October, 2010, Bunker Hill residents were given three options: Work with RACLT to obtain relocation money in the form of a state grant, wait and hope for another nonprofit to purchase the property, or look into the feasibility of resident ownership. Intent on saving their homes, Bunker Hill residents investigated the feasibility of resident ownership. Residents enlisted the services of two technical assistance providers, the Vermont-based Mobile Home Project of the Champlain Valley Office of Economic Opportunity (CVOEO) and the Massachusetts-based Cooperative Development Institute (CDI).

RACLT indicated that they believed the costs of running the aging community were too high and cited the location of the community in a flood zone. Under a grant from the Vermont Housing and Conservation Board, CDI completed an independently reviewed feasibility study that showed that a 14 unit residents' cooperative could in fact continue to operate the community affordably. This feasibility study now forms the basis of an operating plan that, combined with the ongoing technical assistance and training provided by both CVOEO and CDI, will ensure that the residents' cooperative will remain successful for years to come.

Financing was secured through Icarus Social Capital LLC of Foxborough, Massachusetts to purchase and rehabilitate the property. Secondary financing was provided by the Vermont Community Loan Fund and the Vermont Housing and Conservation Board.

The CVOEO Mobile Home Project (MHP) is a private non-profit that assist residents of mobile homes throughout Vermont.

CDI, a Regional Cooperative Development Center which has assisted dozens of new and existing cooperatives throughout New England and New York, is a certified technical assistance provider with ROC USA, a national nonprofit organization that works to help residents of mobile home parks form co-ops and buy their parks. CDI is working with the residents of several mobile home communities throughout New England.

"The formation of the co-op has brought everyone closer together, almost like a family. Everyone has been working hard on the grounds, and in the units, taking pride in the community," said Co-op President Dave Furman. [CHB](#)

Call for Papers

As part of the 2012 International Year of Cooperatives declared by the United Nations, a major international event will take place in Quebec City, Canada, from October 8 to 11, 2012: the 2012 International Summit of Cooperatives.

Organizers are calling for empirical or theoretical papers from researchers interested in cooperative issues. Selected papers will be compiled in a volume to be published in advance and made available to 2,000 heads of small, medium and large cooperatives and mutuals who want to discuss their concerns about the current and future challenges they all share, both with one another and with invited international leaders. Researchers will also be able to present their findings at the 2012 Summit.

Solicited research themes

Proposals must be related to the Summit's unifying theme "The Amazing Power of Cooperatives" and to one of the four following sub-themes:

- ▶ The role of cooperatives and mutuals in the global economy
- ▶ The performance of the cooperative and mutualist business model
- ▶ The evolution of the cooperative and mutualist business model
- ▶ The global socio-political influence of cooperatives and mutuals

[Click here for more information on the major themes of the 2012 Summit.](#)

Selected contributions will stimulate discussion and debate and help identify possible solutions to the development and performance challenges of cooperatives and mutuals. Priority will be given to research produced in the past year. The committee is looking primarily for unpublished papers but will also consider works already published in journals with circulation limited to a specific country. This is an opportunity to make local contributions available to an international audience. The volume to be published will contain articles in English, French and Spanish.

Technical information

Proposals must be two pages maximum, presented in Microsoft Word or PDF format, 12 point, and must include the following:

- ▶ Title of proposal
- ▶ Topic
- ▶ Objectives
- ▶ Name of author(s)



- ▶ Reference to one of the four themes
- ▶ Name of affiliated institution or organization
- ▶ Biographical notes of no more than 10 lines

Papers:

- ▶ Including the bibliography, papers may not exceed 30,000 characters, spaces not included.
- ▶ Papers must include a 150-word (maximum) summary in English, French and Spanish.
- ▶ A writing protocol will be posted shortly on the Summit site and sent to researchers whose proposals have been selected.

Submission of proposals and deadline

Paper proposals must be submitted at the latest by March 26, 2012, at 10:00 p.m. (Quebec time - EST), and must be sent to Mr. Ernesto Molina: ernestomolina@coopquebec.coop.

Conditions for publication

A committee of international experts will evaluate the proposals, and researchers will receive notice of acceptance or rejection no later than April 27, 2012. Completed papers must be submitted by July 27, 2012 at the latest.

Deadlines

- ▶ Deadline for receiving proposals: March 26, 2012
- ▶ Notice of acceptance or rejection: April 27, 2012
- ▶ Deadline for receipt of papers: July 27, 2012

Registration fee discount

Researchers whose papers have been selected and who wish to participate in the Summit will receive a 40% discount on the registration fees.

Opportunity for researchers to present at the Summit

In addition to the opportunity to publish and distribute their papers, researchers who wish to do so may present their research findings at the International Summit at a designated location. [CHB](#)

For more information on this call for scientific papers, please contact:

Marie-Paule Robichaud (mariepaulerobichaud@coopquebec.coop) – English

Ernesto Molina (ernestomolina@coopquebec.coop) – French or Spanish



National Association of Housing Cooperatives 52nd Annual Conference

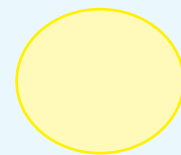
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