



# Legal Framework of Cooperative Housing in the United States

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## Did You know?

- In the United States, more than 1.5 million families of all income levels live in homes owned and operated through Cooperative Associations.
- The period of greatest Cooperative development was after World War II, in response to an acute housing shortage.

## Cooperative Housing in the United States



- The first recorded Cooperative in the United States was in New York in 1876 with construction of the RANDOLPH on West Eighteenth Street.
- A unique twist had these cooperatives being used as "home clubs" for upper class society.

## Cooperative Housing in the United States



- A housing club was defined as a joint stock company that owned real property and in turn issued long term leases to their stockholders.
- These were transferable only to persons who were considered acceptable to the other members of the club.
- Often they were only 50% owner occupied and the rest were rented to non-members.

## Cooperative Housing in the United States

- The first known cooperative litigation case involved sub-letting and was filed in 1886 in which Barrington Apartment Association asked the court for an injunction to prevent "a tenant" from sub-leasing to a third party without the housing clubs consent. The club was granted this injunction.
- The first known cooperative housing community built outside the New York area was built on E. Cedar St. in Chicago, adjacent to Lake Shore Drive.

## Cooperative Housing in the United States

- Housing cooperatives enjoyed high occupancy and low turnover during the post-war period.
- Upper luxury cooperatives dominated the market until the mid 1920-30's.
- Legislation in several states formally recognized the cooperative model for home ownership and boosted moderate-income households in the twentieth century.

## What is a Housing Cooperative in the United States?

- A Housing Cooperative is a corporation that owns or leases residential property for the purpose of passing ownership and tax benefits to its owners – the shareholders.
- The Cooperative is a tool by which persons can create homeownership privileges.

## Cooperatives are considered homeownership

- The United States Internal Revenue Service considers cooperative membership as an aspect of homeownership.
- 49 of 50 states consider cooperative ownership to be homeownership.

## Cooperative are considered homeownership

- The Emergency Price Control Act of 1942, included provisions that imposed rent controls in New York.
- Many owners converted to cooperatives to cope with declining returns on rental properties.
- Section 216 of the IRS code was enacted in 1942 as well.
- The Act allows income tax deductions for mortgage interest and property taxes for coop homeowners.
- Cooperatives were put on par with other forms of ownership.

## What tax benefits are available?

- Members can deduct their pro rata share of the Cooperative's mortgage interest and real estate taxes on their income tax returns.
- In most instances, Cooperatives and their members face the same tax benefits as single family homeowners.

## Who Owns the Cooperative?

- Cooperative members each own a cooperative share.
- Together, the members own 100% of the Cooperative.
- The cooperative owns all of the buildings, land and common area.
- The right to reside in each specific dwelling unit is allocated to a specific cooperative member and is governed by an occupancy agreement, also known as a proprietary lease.

## What do I own as a Member of a Housing Cooperative?

- The member has an ownership interest in the Cooperative Corporation equal to 1% of the Cooperative Corporation.
- This ownership is represented by a membership certificate.

## Who is Responsible – Cooperative Operations

- Member shareholders ultimately control the Cooperative
- Their authority is exercised through a Board of Directors whom they have the power to elect and remove from office.
- Through this power, members represent the highest level of accountability.
- They delegate the power to govern the Cooperative to the Board of Directors.

## What is a Board of Directors?

- The Board of Directors is an elected body responsible for overseeing the affairs of the Cooperative on behalf of the cooperative's owners (its members).
- Accountable to the membership
- The Board defines objectives, policies, and goals within the constraint of the Cooperative Principles.
- The Board has the responsibility to ensure that the created standards and principles are being followed and that the Cooperative's affairs are being managed.

What are the Legal Documents that govern a housing cooperative?

- Articles of Incorporation
- Bylaws
- Regulatory Agreement
- Mortgage Agreement
- Membership Certificate
- Management Agreement
- Occupancy Agreement

## Articles of Incorporation

- The Articles constitutes the legal document that establishes the Cooperative as a business organization subject to the laws of the state in which it is chartered.
- The articles state the name under which the Cooperative will operate and the purpose of the Corporation.



# Bylaws

- The bylaws are the written rules and regulations governing the operations of the Cooperative
- The bylaws outline the legal aspects of the membership, meetings of the members, the board of directors, officers of the corporation, rights of the regulatory agency, how the bylaws shall be amended, and the fiscal management of the Cooperative

# Regulatory Agreement

- Federally insured cooperative agreement with HUD or FHA.
- The regulatory agreement requires the Cooperative to:
  - Make payments on the mortgage
  - Establish and maintain a reserve
  - Collect adequate housing charges not to exceed a HUD approved schedule
  - Limit Cooperative membership to low and moderate income residents.

## Regulatory Agreement

- All cooperatives that are financed through a government loan must sign a regulatory agreement.

## Regulatory Agreement

- Government programs that require a regulatory agreement include:
  - 221 (d) 3
  - 221 (d) 4
  - 236
  - 223 (f)

These loans also require that the Cooperative is a limited equity cooperative

## Mortgage Agreement

- There are other types of cooperatives that do have non governmental mortgages that must be adhered to:
  - Market Rate Cooperatives
  - Leasing Cooperatives
  - Mutual Housing AssociationsThe Leasing Cooperative and the Mutual Housing Association do not earn equity for their members.

## Membership Agreement

- The membership agreement documents the purchase of shares in the housing cooperative
- The agreement includes a record of the number of shares that have been purchased.
- The agreement also states the value of the shares and the related monthly charges.

## Management Agreement



- If the Cooperative Board of Directors does hire an outside entity to manage the cooperative, a management agreement is executed that will outline the responsibilities of the management agent.
- The management agent will present a management plan that will detail how the management agent will be managing the cooperative.

## Occupancy Agreement



- The contract between each member and the Corporation
- The contract gives the member the right to occupy a specific unit.
- The contract also provides the member with the right to participate in the governance of the Cooperative
- The member will receive tax benefits

## Cooperative Finances

- Annual Operating Budget
- Operating Expenses
- General Operating Reserves
- Replacement Reserves
- Miscellaneous Savings Accounts
- Quarterly Financial Statements
- Audited Financial Statements

Thank you.

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