



Cooperative Housing Law Journal

Pentiuk,
Couvreur &
Kobiljak

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THE RETURN OF THE OUTGOING MEMBER'S EQUITY: How to Improve the Move-Out Process and Protect the Co-Op's Interests

For some cooperative members, moving out and selling their membership equity is inevitable. Whether the process is initiated voluntarily by the member, by death or by the Co-Op enforcing its rights to terminate the occupancy for cause, there are several aspects of this process that deserve attention and revisiting. Sloppy record keeping, poorly written By-Laws and Move Out Policies could cost the Co-Op money, exposure and liability in the event that an outgoing member files a lawsuit. Cooperatives need to be aware of several important steps to be taken during this process: first, being familiar with relevant provisions of the governing documents, rules and regulations and move out policies; and second, tips and suggestions for improving these policies and preventing exposure and liability in unwanted lawsuits by outgoing or former members.

Pursuant to Michigan law, the Landlord Tenant Relationship Act's (MCL 554.601 et seq.) provisions regarding the return of security deposits, does not apply to cooperative housing. *Penokie v Colonial Townhouses Co-op, Inc*, 140 Mich App 740; 366 NW2d 31 (1985). Thus, the operative authority that governs the Co-Op and outgoing member during the move-out process are the Co-Op's governing documents: the By-Laws, Occupancy Agreement, Rules and Regulations, and any other move-out policies adopted by the Co-Op. It is very common that an outgoing member's equity is returned less due to the following: (1) any unpaid amounts due to the Co-Op for carrying charges, fees or fines; (2) the costs of repairs and reconditioning the dwelling unit; and (3) any legal fees incurred by the Co-Op in enforcing the terms of the governing documents (i.e., when a member's occupancy is terminated for cause). If your Co-Op's By-Laws do not contain these provisions, they should be amended.

Well drafted By-Laws, Occupancy Agreements and Move-Out Policies using clear and unambiguous language should also be implemented. If not, it should be a priority of the Co-Op to revise their governing documents. A Co-Op should also adopt a Move-Out Policy if one has not already been implemented within its Rules and Regulations. Move-Out Policies should be written with clear and decisive language to inform the outgoing member of their obligations during the move out process. Specifically, the member's responsibilities as they relate to any repair, maintenance or unit reconditioning such as painting and cleaning.

Additionally, the outgoing member should be aware of any ongoing liability for carrying charges – whether for 30-days, for 60-days, or until the membership is sold. However, sometimes people do not read entire packets during the move-in process. Thus, the Co-Op should have a mechanism in place to verify that every incoming member has received these policies and governing documents, signed for them and accepted them.

The Co-Op can employ this process on the back-end as well. By doing so, the Co-Op is effectively reiterating and reminding any outgoing member of these policies, rules and procedures in the Co-Op's Move Out Notice. If the outgoing member is aware of his or her obligations during the move out process, it may limit any future dispute once the remaining equity is returned. If the Co-Op can show that it did everything in its power to provide the outgoing member with these rules and policies, positive light will be shown on the Co-Op in any future dispute.

The physical aspects of this process, the unit inspection and preservation of evidence are equally important and when done properly should greatly benefit the Co-Op. Whether the Co-Op employs multiple inspections or a single inspection after the unit has been vacated, it is extremely important to document the inspection(s). This includes completing a written move-out checklist, taking photographs or video of the unit (whether damaged or in good condition), having the unit inspected by more than one representative or agent (for example, a maintenance worker and a management agent, or even include a Board Member or two). It is also important to maintain records of subsequent costs for repairs, labor or parts needed in reconditioning the dwelling unit. The preservation of evidence will be an integral part of any defense to a subsequent lawsuit by the outgoing member in the event of any dispute regarding repairs.

Once the outgoing member has returned possession of the dwelling unit, the keys and membership certificate, and a new member has taken possession of the unit, the Co-Op must return any remaining equity to the now former member, less amounts due to the Co-Op as described above.

After the return of remaining equity to the former member, or even in instances where the equity is exhausted in reimbursing the Co-Op for unpaid charges, damages or legal fees, disputes are sometimes bound to arise. Typically, these disputes involve the costs and/or necessity of certain repairs or unit reconditioning and amounts withheld for legal fees due to the Co-Op for terminating the former member's membership and occupancy.

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When a former member files a lawsuit disputing the amount of their returned equity, it is common for these cases to begin in Small Claims Court where the alleged damages are under \$5,500.00 (States' small claim court jurisdictional limits may vary). In these Small Claims Court cases, the Co-Op has one of two options: either they can proceed to Court by having a representative of the corporation appear and defend the Small Claims Court lawsuit; or they can have the case removed to the general civil docket, typically done by the Co-Op's general attorney, and have the attorney litigate the case.

While it is possible for the Co-Op to represent itself in Small Claims Court (at least in Michigan), the outcomes are too uncertain and it is always best to be represented by an attorney or law firm that is well-versed in housing cooperative matters. If the complaint is filed outside of Small Claims Court, the Co-Op cannot represent itself due to unauthorized practice of law. In these cases, the Co-Op must obtain representation of legal counsel. Moreover, if the Co-Op is successful in defending the lawsuit, the former member may become liable for all attorneys' fees and costs incurred by the Co-Op in defending the case.

For success in these cases, the Co-Op should have a set of well-drafted governing documents and move out policy. The process to document and preserve evidence during the move out should be completed and result in a degree of peace of mind for the cooperative. Having all of one's ducks in a row should may allow give the court ample reason to dismiss the case in favor of the cooperative.

However, one of the pitfalls of this process is that if there is any ambiguity in the governing documents, or a lack of evidentiary materials to support a showing that the Co-Op followed all procedures, a court could set the case for trial, and in some instances, order money to be returned to the now former member. Nonetheless, a skillful attorney with knowledge in housing cooperative matters should be more than able to successfully navigate the Co-Op through these disputes, all while limiting exposure and liability, and seeking the recoupment of attorneys' fees and costs when successful. Ensuring your cooperative has trusted legal counsel to update governing documents and defend your cooperative from move out disputes is a vital tool that if overlooked, could result in a costly and time-consuming mistake.

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News You Can Use

The Housing authority ruling for the City of Bridgeport

According to the U.S. Department of Justice, The Housing Authority for the City of Bridgeport has been ordered to give \$10,000 in restitution to plaintiff. In July of 2015, the victim submitted a reasonable request to her apartment management to relocate after a horrific homicide. The incident occurred directly outside of the tenant's apartment. Following the tragedy, she was diagnosed with anxiety and depression as a result of the incident, and in May of 2016 she was given a diagnosis of post-traumatic stress disorder.

The request to move apartments was denied by management. Due to ignorance of the Fair Housing Act, The Housing Authority by the complex the City of Bridgeport will now have to pay \$10,000 to the victim. On top of the restitution to the victim management will have to pay for employees to go through training on the subject of fair housing, and submit regular reports to the Justice Department.

A second lawsuit has been filed against the housing authority on the matters of the Rehabilitation Act of the Americans with Disabilities Act, this lawsuit is pending.

Mandatory Use of the EIV System and Multifamily EIV Help Desk

A reminder has been issued for all owners and management agents about the required use of the Enterprise Income Verification System (EIV). Owners and Management Agents who participate in the programs identified in the HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs are required to have continuous access to and utilize the EIV System.

Those who do not have access or are not utilizing the EIV system will receive a finding and penalty of a five percent of their monthly rental subsidy payment from HUD. A decrease in the voucher payment will be levied for the month after the violation date and will continue until the violation is resolved. Access to EIV can be done through the EIV Application and Online Access for Multifamily Housing Programs website here.

For additional aid on EIV reach out to the Multifamily EIV Help Desk at 1-800-767-7588 or email Mf_eiv@hud.gov

Growth and Sustainability of Cooperative Housing

Theuptake.org did a story last month on the growth and sustainability of cooperative housing. According to Christina Jennings the executive director for Shared Capital Cooperative, "Cooperatives are an economic tool, but they are also a community organizing and development tool, and a power-building tool. If we use it as that." The impact and organization cooperatives can have on the community is pretty powerful. Cooperatives make a difference. For more information on the article and cooperative living check out [this](#) site.

Federal Law and State Law for Marijuana

U.S. Attorney General Jeff Sessions annulled a trio of memos from President Obama's administration on the policy of non-interference with marijuana-friendly state laws. The Obama administration had adopted a hands-off policy when dealing with pot possession, distribution and cultivation of the drug. However, this administration can and will release federal prosecutors to persecute offenders in states that have legalized the drug. Although, marijuana has been decriminalized or even made legal in certain states it is still deemed illegal by federal law, so there are some mixed messages between federal and state. Bottom line: just because a state deems marijuana legal, does not mean a person will not face federal charges if found in possession of the drug.

The newest edition of Programs of HUD is now available. The resource guide is a comprehensive summary of all agency's grant, regulatory and mortgage insurance programs along with the corresponding statutory and regulatory authorities. This is a great resource for HUD staff and our external partners. Visit [this](#) site for the Programs of HUD.

Unauthorized Occupants and What to Do

Ok, the Cooperative setting is uniquely awesome because we love our neighbors and know who our co-members are... well, usually. But wait, what happens when you see unfamiliar residents? You are friendly, introduce yourself and attend gatherings, so something does not add up. This is because these strangers are *not* members!

The wonderful aspect of our cooperative communities is knowing and looking out for our fellow co-members. That is why we have a selection process and an on-going occupancy requirement. This is a piece of what makes cooperative living so special. All too often some members abuse our rules to house family or friends who may not otherwise qualify on their own, or even more jadedly, may use their unit as a profit maker by unauthorized leasing. All cooperatives have some form of policy on this issue; although sometimes it is unenforced, either out of logistical difficulties or mere indifference.

We have these policies for a reason. When members start complaining about concerns of who their "neighbor" is, it means management or the board have not fulfilled their obligations to enforce our policies in this regard. Our firm has even heard from one client that possibly up to half of their units were occupied by non-members. This is no good. Time for a change.

The systemic lack of enforcement for months and even years has to be fixed. Merely picking units arbitrarily that are believed to be in non-compliance is probably not the right initial reaction. Although tough love and making an example out of a person- i.e. YOU in violation may send a message, but it also may put you in hot water.

First, the lack of active enforcement will be an affirmative defense by a member, often know as "waiver." The argument: "you haven't enforced this policy ever, why me?" Second, what happens if you begin to evict numerous units at once? Legal costs and empty units is not the way to keep you financially solvent. Even potentially more problematic, what about Fair Housing Laws? What happens if you select a unit that happens to have a resident of a protected class such as race, gender, or that little barking "Fifi" dog is their "emotional support animal"? Having not universally applied this rule could potentially be used against you in this case and in the future.

Boards and management should consider a more incremental approach. We have found issuing a notice to all households indicating that the lack of adherence to our residence/membership requirements is NOW going to be actively enforced. This concept works for traffic infractions. When the radio announces a warning from police that they are targeting speeding, drunk driving, seatbelts, etc.; the same could work for this scenario.

Granting ALL households a short amnesty period (30-60 days) BEFORE issuing termination notices or fines creates, at minimum, an illustration of incremental enforcement that has allowed EVERYONE the same opportunity to cure any residency issues, which would require all households to provide accurate, truthful information on all unit occupants who will have to be screened and approved consistent with the application process for members and occupants. Those who fail to avail to this amnesty period have no one to blame but themselves when further action is taken. The Board should then sleep better at night knowing they have eliminated the appearance that units have been "singled out."

Problematic or Proactive: Security Cameras

As the season for giving passes we are left with the warm memories of happy homes, loving family... and filing reports for missing packages. Online orders are a convenient way to give and receive gifts, so boxes get delivered to our front steps and wait patiently for us to return home. However, pesky "porch pirates" pounce on the unsuspecting present and poach them from their proper place. Some homeowners try defensive measures to thwart these thieving "porch pirates" with the installation of security cameras. However, most cooperative governing documents prohibit the installation of security cameras because it is a structural alteration. On top of the governing documents preventing the installation of these cameras, there is the question of privacy and enforcement of regulations for taping, as well as the potential for threats of litigation against the cooperative as a result of improper and lewd use of these types of security cameras.

Members looking to record potential suspicious activity have to keep in mind that everyone is afforded a reasonable expectation of privacy. There are countless stories out there of folks who have fallen victim to the improper and lewd use of security cameras. From a legal stand point, cooperatives could face some serious repercussions if regulations are not properly enforced. The cooperative could set up rules and regulations that pertain to restrictions on how the camera lens is directed, or implement a record retention policy or even an access to footage policy. However, in theory that all sounds proactive and appropriate, but regulating the cameras will become a nightmare.

A specific team would have to be assigned to enforcing the guidelines, and cooperatives will have to invest in some serious man power. Each camera would have to have a specific setting to ensure privacy for other members, which sounds pretty straight forward, but some security cameras are small with no visible lens that can move without detection, so someone has to watch the feed constantly. The cooperative will have to be physically present in every member's unit checking the footage continuously. This is not a small undertaking and can create an astronomically expensive backlash with the number of hours the cooperative and management company would have to invest.

Issues with record retention and gaining access to such records also arise once the cameras are given the O.K. Not only would the cooperative and management company take on a heavy burden of checking and maintaining the needed recordings, but it would also be contingent on member cooperation. Placing this responsibility on members can cause chaos with the likelihood of what can go wrong. A member could forget to record or even delete potential helpful information on purpose or on accident, or could even fail to turn the cameras on. Implementing policies will take away from the day to day operations of the cooperative and management company and would strain the relationship of the office with the members. No one likes feeling like they are under a microscope or being micromanaged.

It is the cooperative's duty to not only protect the structural integrity of the cooperative, but to also protect its members from any potential invasion of privacy claims. Allowing its members to install security cameras is not in the best interest of the cooperative and its members. This is a legal Pandora's box that needs to remain closed.

Do not make the cooperatives to make assumption that security cameras can be installed inside or outside of your dwelling unit. Please remember to check with your governing documents or contact your cooperative's management company before you alter your dwelling unit.

Resources for you

Midwestern Association of Housing Cooperatives (MAHC) <http://www.mahc.coop/> (734) 955-9516

National Association of Housing Cooperatives (NAHC) <http://www.coophousing.org/> (202) 737-0797

National Housing Cooperative Law Center <http://www.nationalcooperativelawcenter.com/>

A complimentary service provided to our friends and clients of Pentiuk, Couvreur & Kobiljak, P.C., a law firm serving housing cooperative boards throughout the nation. (<http://www.nationalhousingcooperativelawcenter.com/>).

The material contained herein is not intended to constitute legal advice, or to create an attorney-client relationship where none previously exists.

In an effort to make this newsletter digital and efficient any subscribers receiving the print edition can send in an email and be changed over to electronic copies.

The reader is encouraged to consult with competent legal counsel that is experienced in housing cooperative law. For additional information, please email rpentiuk@pck-law.com or call our offices: (734) 281-7100 (Michigan) or (773) 435-6503 (Illinois). For more information on Pentiuk, Couvreur & Kobiljak, P.C., check out our website at www.pck-coop.com. Please Like us on Facebook: PCK Law.

What the Midwest Association of Housing Cooperatives has to Look forward to in 2018

Another year has ended, 2017 is in the history books. However, our efforts to continually improve and grow as an organization never stop.

Recently, the MAHC Board members updated our strategic planning with a focus on how Cooperative housing needs efficient goals to achieve effective operations along with a need to have “trained and fully engaged” board members to do so.

MAHC believes that structured continuing professional development (CPD) is required to meet the rapidly changing needs in the cooperative. The findings of the needs assessment were used to tailor educational opportunities to build the capacity of cooperative board of director’s education system.

Education was one of the key issues identified in the Strategic Plan.

MAHC’s Annual conference is collectively, shaping our future. In fact, the event is broader still, showcasing ideas that matter in any discipline. The format is fast paced: 50+ classes over the course of three days (to say nothing of the evening events). This immersive environment allows attendees and speakers from vastly different fields to cross fertilize and draw inspiration from unlikely places.

MAHC Local to you training. The main findings confirmed that structured continuing professional development (CPD) is required to meet the rapidly changing needs in the Cooperative sector. The emphasis ought to be on teaching skills, outreach work, marketing and promotion, research skills and methods, subject knowledge and terminology, and management skills.

MAHC Certification is a course that covers everything from the history of Cooperatives, Corporate Law, to Ethics in the Board Room. Additional topics covered will be budgets, audits, financial components, marketing and managing of your Cooperative. This list is only a piece of this comprehensive program which the Midwest Association of Housing Cooperatives has endorsed. Each individual who completes the course and passes the test will be given a certification of completion.

We want to sincerely thank each member for the continued support you have demonstrated time and time again. Your suggestions are always welcome. Much of the change you have seen in recent years is due to your input; we’re listening . . . keep it coming.

We are now gearing up for the next Annual MAHC Conference May 20 - 23, 2018. We hope to see you in Las Vegas. Its going to be an exciting time full of Education and Networking. For more information about the 2018 Conference please refer to the MAHC website at www.mahc.coop.

Respectfully Submitted by Richard Berendson, MAHC President

Calendar of Events

April 26-28 Annual Conference of the Potomac Association of Housing Cooperatives; Virginia Beach Oceanfront Hotel; Virginia Beach, VA.

May 2 Cooperative Development Foundation Cooperative Hall of Fame and Issues; The National Press Club, Washington, D.C.

May 5 Annual Meeting of the California Association of Housing Cooperative; African Arts and Culture Complex, San Francisco, California

May 20-23 Annual Conference of the Midwest Association of Housing Cooperatives; Green Valley Ranch Resort & Spa, Henderson, Nevada

Co-ops are better, and we can prove it

Courtesy of The Cooperative Business Journal

At a time when policymakers and housing advocates explore new approaches to affordable homeownership, it is useful to look back on the superior track record that co-ops have amassed over several decades, and to recognize the role of NAHC publications in bringing this research to light. Here are six key findings:

1. Cooperative housing produces significantly higher quality of life for the resident as compared to affordable rental housing. Mushrush, Larson, and Krause, *Social Benefits of Affordable Housing Cooperatives*, Center for Cooperatives, University of California at Davis, 1997

Saegert, Susan, "Survey of Residents of Currently and Previously City-Owned Buildings in the Bronx" in *Housing in the Balance: Seeking a Comprehensive Policy for City-Owned Housing*, Task Force on City-Owned Property, 1994

Saegert, Susan, "What We Have to Work With: The Lessons of the Task Force Surveys" in *No More Housing of Last Resort: The Importance of Affordability and Resident Participation in In Rem Housing*, Task Force on City-Owned Property, 1996

Altus and Mathews, "A Look at Satisfaction of Rural Seniors with Cooperative Housing," *Cooperative Housing Journal*, 1997

2. The higher level of participation in broadly-based, regularly functioning resident associations in low-income cooperatives, as compared to affordable rental housing, was effective in preventing in-building crime as demonstrated by crime statistics over a six-month period. Saegert and Winkel, "Cooperative Housing, Social Capital and Crime Prevention," *Cooperative Housing Journal*, 2001

3. Limited equity cooperatives create social capital that powers social activism that preserves affordable housing and maintains diversity in a hot gentrifying urban market.

Saegert and Extein, "Limited Equity Cooperatives Reinforce Anti-gentrification Measures," *Cooperative Housing Journal*, 2003

4. Cooperatives lowered monthly housing costs to residents by more than 20% compared to physically similar affordable rental housing managed by the same management companies.

Parliament, Vonnegut, and Parliament, "Keeping Housing Affordable: Cooperative vs. Absentee Ownership," *Cooperative Housing Journal*, 1998

5. Manufactured home owners experience appreciation in the value of their homes in a cooperatively owned park, and pay 7% lower monthly fees than residents in rental parks.

Ward, French, and Giraud, "Effect of Cooperative Ownership on Appreciation of Manufactures Housing," *Cooperative Housing Journal*, 2005

6. Limited equity co-ops do a better job of preserving affordability than the community land trusts and programs using deed restrictions. Temkin, Theodos and Price, *Balancing Affordability and Opportunity: An Evaluation of Affordable Homeownership with Long Term Affordability Controls*, The Urban Institute, 2010

7. Cooperatives are a lower risk to lenders.

A. In an analysis of defaults of FHA-insured multi-family loans in the 221(d)(3) and 236 mortgage subsidy programs between 1958 and 1993, cooperatives had a lower default rate than rental properties owned by both for-profit and non-profit entities.

Calhoun and Walker, *Performance of HUD Subsidized Loans: Does Cooperative Ownership Matter*, The Urban Institute, 1994

B. The FHA Section 213 market rate co-op mortgage insurance program has returned unneeded and unused premiums to the co-op buildings in every year of its existence. Section 213 has the lowest default rate of any FHA multifamily or single family program.

C. The National Co-op Bank reports that of its 4386 co-op building loans, none were in foreclosure as of June 30, 2011, and the delinquency rate is less than one hundredth of one percent.

NCB also services 7388 share loans for co-op members. The bulk of those are in New York City, where NCB has experienced no foreclosures. Below is a comparison of the status of NCB's co-op portfolio and Fannie Mae's and Freddie Mac's conventional single family loans and multifamily rental loans as of June 30.

Single family	Multifamily rental
90 days+ delinquent	60 days+ delinquent
Fannie Mae 4.08%	0.46%
Freddie Mac 3.50%	0.31%
Share loans	Co-op blanket mortgages
90+ days delinquent	60+ days delinquent
NCB co-op loans 1.88%	0.008%



The People of PCK

The year of 2018 has begun and with new beginnings we wanted to reflect on 2017. Our attorneys enjoyed many successes, impactful experiences, and cultivated our community. Two of our attorneys, Kerry L. Morgan and Randall A. Pentiuk, received the prestigious recognition and title of “Super Lawyer” an honor reserved for just the upper 5% of the legal profession.

Randall A. Pentiuk, Creighton D. Gallup, and April E. Knoch had the pleasure of sharing their extensive legal knowledge through teaching classes at the NAHC conference in San Antonio and the MAHC conference in Washington D.C. in 2017. Both opportunities allowed interaction between attendees and our attorneys to grow relationships and a better understanding of how to conduct classes.

Mr. Pentiuk was elected to serve as Executive Vice President for the NAHC board, and will also be serving on 8 boards that include:

- Executive Committee
- International Committee, Chair
- Audit Committee
- Governance and Strategic Planning Committee
- Development and Preservation Committee
- Ad Hoc Bylaws Sub Committee
- Communications Committee
- Government Relations Committee
- Finance Committee

Congratulations, Randall A. Pentiuk on your appointment.

Our firm has experienced exciting growth and welcomed two bright new attorneys to the team, Alyssa Gunsorek and Matthew Nicols. We look forward to their input and contributions to our firm.

April E. Knoch will be serving on the Membership Services for the National Associations of Housing Cooperatives. This committee helps with guidance for NAHC member services. These duties include business services for members, involvement and recognition of members, membership recruitment and retention, educations and training, and developing workshops for training assistance for the needs of cooperative boards. Thank you, Ms. Knoch for taking on a role with the Member Services committee.

The attorneys at our firm are preparing for another Midwest Association for Housing Cooperative Annual conference in May of 2018. We have been invited back to teach interactive classes, such as To Catch a Thief and Legal Update, that help members develop their cooperatives and garner a greater understanding for the legal aspect of the cooperative. The conference is in Las Vegas and more information can be found at this [site](#). We look forward to another successful conference and forging connections.

