

MAHC MESSENGER

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MIDWEST ASSOCIATION OF HOUSING COOPERATIVES

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It is the Mission of the Midwest Association of Housing Cooperatives to support and champion the cause of quality housing through education, legislative action, partnership and advocacy for housing cooperatives.

THE DEVIL IS IN THE DETAILS DEALING WITH CO-OP VENDORS

BY RANDALL A. PENTIUK, ESQ.

Cooperative Boards, in discharging their duties, usually award contracts to low bids. They also try to cut corners in entering into contracts with bidders. Obviously, the motivation is to keep costs down for the benefit of their members. That is what they perceive as their job, and they are correct—in part.

But the rest of the story needs to be told. Sometimes the low bidder is not an established, reputable businessperson. Sometimes, the low bid means cutting corners. Sometimes, it spells disaster for the Cooperative.

The point of this article is to encourage Boards to be circumspect and knowledgeable in making decisions on bids. It is not to dissuade Boards from taking advantage of good deals and awarding contracts to the low bidder. Quite to the contrary: the goal here is to equip Boards to do their due diligence and take steps to protect themselves.

While it is impossible to provide a comprehensive list of rules, the following is an attempt to identify some common concerns that Boards should consider with each contract. It is not a replacement for involving the Cooperative's professionals - management and legal.

Rule # 1:

Require the Vendor to have and

produce Workers' Compensation coverage. If someone working for the vendor is injured while working on your Cooperative's project and your vendor does not have worker's compensation, that injured person will be able to recover from the Cooperative. Therefore, it is a simple preventative matter to require evidence of the coverage.

One nonprofit learned this lesson the hard way. It was a simple job, involving repairing a stairwell. It seemed like a

small matter and so a friendly local vendor was summoned, and a very reasonable price was agreed upon. The vendor, who happened to be a one-man shop, came with a friend who was to help. Unfortunately, this friend was not very adept with power tools and was injured by a saw. Much to the surprise of this nonprofit, the friendly

vendor did not have any workers' compensation and, under Michigan law, the injured assistant was able to recover from the nonprofit. Of course, the result would have been different if Rule #1 had been followed.

Rule # 2:

Get guarantees in writing. Being precise and having the legal ability to force

Cooperative
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take steps to
protect
themselves.

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a vendor to keep its word depends on having a written deal. Here, there are actually two rules in one - first, get it down in writing; second, make sure the deal is clear.

As to the first point, Cooperatives are reluctant to spend money on legal fees to prepare a contract for every single transaction. That makes sense and for that reason, we have standard "wrap around" agreements for Cooperatives, that contain the essential elements of typical deals yet allows a vendor and Board to tailor the performance aspects. This provides a handy tool for the Board and Manager to quickly and inexpensively provide a written contract that, in turn, incorporates an attached performance bid specification and the vendor's proposal. If the vendor's form has fine print that conflicts with the standard "wrap around" agreement, it is resolved in favor of the standard "wrap around" contract by that instrument's terms.

This tool is good for many smaller transactions. Larger ones, where more is at risk, should involve the Cooperative Attorney. The Manager should be involved in deciding whether the size and complexity of the deal requires legal assistance. Failing to get legal help is penny wise and pound foolish, and eventually catches up to those cutting corners.

Related to this point is the need to spell things out. Ambiguity is as fatal to a claim that the vendor failed to do the agreed upon job as is not having it defined at all. More detail here is better than brevity. Use layperson's language and insist on being able to understand it. You

need to play "devil's advocate" and think of the various scenarios possible. If the Board is hiring someone to replace gutters, think about what should happen if the underlying wood is rotted out. Managers should be helpful in this regard. Of course, no one has experience in all matters so do not hesitate to seek other experienced help.

Rule # 3:



Make sure there is liability & automobile insurance. Requiring insurances of the vendor is a simple enough requirement and if you are dealing with a reputable company, it will not be a problem. In fact, it is expected as a customary element of doing business. Should you meet resistance to imposing insurance on the vendor, that is a red flag that you should run away from that deal.

Among the insurance requirements you should seek are insurers that are licensed and registered in your State. The amount required should be abundant and if it involves high risk activity, ask for more. Make sure the insurer has the

financial means to pay any claims, and that if it cancels the vendor, that you get advance notification. Also, it is easy enough to check on the insurer's history of complaints against it. You do not want to have an insurance company that fights with the vendor and the Cooperative when a third party files a lawsuit. You want an insurer to take up the defense immediately and handle it all the way through final disposition.

Associated with this is identifying the scope of coverage.

This requires professional advice to make sure that all possible claims are covered in the policy. These need to be spelled out in the bid specifications.

Rule # 4:

Require a start and finish date. As simple as it sounds, many times the parties do not set a start and finish date. This can be very frustrating when the vendor uses that omission to excuse slow performance.

Using a penalty for untimely performance is a powerful stick to prod a vendor into action. Of course, that needs to be in the contract. Similarly, the Board may consider a reward to give an incentive to early performance. These are reasons why rule #2 is so important.

Rule # 5:

Make sure the vendor gets the permits and pays the fees. The local government may have codes and ordinances that mandate inspections, permits and fees. For example, installing furnaces and hot water heaters may trigger such requirements. The vendor ought to bear the responsibility of interfacing

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with the municipality. After all, it is the vendor's work that is being inspected. Knowing these requirements at the commencement of the job and shifting them to the vendor is much preferred to chasing the vendor after the fact.

Rule # 6:

If the project involves construction of any kind, beware of the construction lien act and require evidence of payment to subcontractors and suppliers before you pay the general contractor. Most states give subcontractors and material suppliers the legal right to place a lien on the property of a customer if they do not get paid. Therefore, it is imperative to follow the strict requirements of your State's construction lien laws. Among the most important requirement is to withhold payment to the general contractor until and unless you obtain sworn statements from the subcontractors and suppliers that they have, in fact, been paid.

One Cooperative learned this lesson the hard way. Assuming that the Manager knew this law and would follow it proved to be a disaster. He did not know the requirements and went ahead and paid the contractor in full. Sure enough, the subcontractors were never paid and so they placed a lien on the Cooperative's property and began to foreclose. The general contractor happened to file bankruptcy, so the Cooperative ended up paying for the work twice - once to the general contractor and a second time to the subcontractors and suppliers. Litigation to recover from the general contractor has proven unfruitful to date, and the Manager is presently being sued by the Board in an attempt to recover from him.

This is a complex area of law and the Cooperative Attorney must be involved. In the case cited above, the Attorney was not involved and the results have been disastrous.

Rule # 7:

Read the fine print of the vendor's form contract. If you are not preparing the contract but instead signing the vendor's form, take the time to have it reviewed. You may find that it is extremely unsatisfactory. For instance, if there is a dispute, you may find yourself in an out of state court. You may find an attempt to alter the statute of limitations, curtailing your rights to bring suit. Performance guarantees may be limited or essentially eliminated.

Knowing this going into the deal is important. You may wish to attempt to negotiate these and other onerous or one-sided terms out of the contract. Alternatively, you may want to use the standard "wrap around" agreement form discussed in Rule #2, or draft your own contract. In any event; as obvious as it sounds, reading the fine print is essential before you sign on with a vendor.

Many experienced attorneys can help the Board evaluate whether it should engage a vendor who presents such a contract form. For example, the Cooperative Attorney may have dealt with the vendor in other deals and can advise you of whether the pricing is reasonable. Similarly, the Cooperative Attorney may be able to check litigation histories.

As noted above, this list is just a beginning. Professionals should guide the Board to minimize risk to the Cooperative. The stakes can be rather high in even the smallest and apparently routine matters. We have seen major lawsuits over mistakes in

7 Rules to Follow When Dealing with Vendors

1. Require the Vendor to have and produce Workers' Compensation coverage.
2. Get guarantees in writing.
3. Make sure there is liability & automobile insurance.
4. Require a start and finish date.
5. Make sure the vendor gets the permits and pays the fees.
6. If the project involves construction of any kind, beware of the construction lien act and require evidence of payment to subcontractors and suppliers before you pay the general contractor.
7. Read the fine print of the vendor's form contract.

contracting with vendors, costing literally hundreds of thousands of dollars in legal fees to fight it out in court. So the wise Board will not play Russian Roulette with the Cooperative bank account. When in doubt, err on the side of spending a little extra time, energy and money to do things right.

HIGHLIGHTS OF THE 2006 MIDWEST ASSOCIATION OF HOUSING COOPERATIVE'S ANNUAL SPRING MEETING

BY THOMAS HUTCH, HISTORICAL COMMITTEE CHAIRMAN

Once again, this year's Annual Meeting held at the Jacksonville Hyatt Regency Hotel on Sunday, May 19, 2006 was a great success with a turnout exceeding 200 attendees. We also had a "filled-to-

capacity" turnout of vendors in our exhibit areas, which fortunately not only bring benefit to the Association but benefit to Association attendees as well. A testimonial to our growth and popularity over the years.

The first morning's programs began with the usual opening Welcoming session with remarks by Midwest Association of Housing Cooperative's President Mr. William Magee. Our meeting instructors and professional facilitators kicked off the sessions for a great meeting with classes on committee formation, the Role of the Treasurer and much more.

We all looked forward to the Annual Luncheon, and an opportunity to once again pay special tribute to our special members who have generously supported our educational programs over the years. Congratulations to Marlene Dau, who was honored with the Almeda



The Emergency Planning class presented by Blaine Honeycutt and Richard Berendson provided class participation.

Ritter Award, which is given for devotion and contribution to the cooperative housing community.. In addition, David Rudicil received the C. March Miller II Award, given by the president of MAHC for outstanding service by a MAHC Board Member.

In true MAHC tradition, we ended the Conference with our annual Membership meeting, including our Fifty-Fifty Raffle. Floyd Allen from Oakdale Cooperative in Ferndale, Michigan won this year's drawing. Special thanks go to Richard Berendson, who always does a wonderful job of displaying the MAHC board election results on screen during the election process.

In conclusion, the 2006 Annual Meeting of the Midwest Association of Housing Cooperatives was a wonderful week of informative lectures, terrific food, and opportunities to chat with a multitude of Exhibitors and colleagues. Thanks to all who made this meeting such a success. We look forward to seeing all of you at our spring meeting in San Diego, California next year! Our Program Committee is putting together another terrific conference for you, so mark your calendars.

2006 MAHC AWARD RECIPIENTS



Marlene Dau was honored with the *Almeda Ritter Award*, which is given for devotion and contribution to the cooperative housing community.



David Rudicil received the *C. March Miller II Award*, given by the MAHC President for outstanding service by a MAHC Board Member.

SAY IT, MEAN IT, DO IT! GETTING INVOLVED IN YOUR COMMUNITY

BY GERALD THOMAS

I have lived my entire life along the philosophy that if you say something it should be more than just mere words, it should translate into meaningful actions, as the old saying goes, "action speaks louder than words".

How many times have you said to yourself, "I want to get involved but I don't know how?"

There are many ways in which you can get involved in your community that could have a lasting effect on the quality of life, community development and helping those less fortunate than yourself.

From volunteering to serving on your Co-op board to running for a seat on your local School Board, you have the unique opportunity to entrench roots throughout your community that could lead to new opportunities and open doors that make a difference.

"If you will think about what you ought to do for other people, your character will take care of itself."

Woodrow Wilson

Benefits of Volunteering

The benefits of volunteerism are numerous:

- Self satisfaction
- Altruism (Selflessness)
- Potential learning or acquisition of new skills
- Specific benefits for the receivers of volunteer efforts

- Relaxation
- Socialization
- Status or reward
- Career opportunities
- Community Improvement

Examples of how you can get involved

- Churches
- Social Services
- Civic groups
- Cultural groups
- Educational institutions
- Health care organizations and institutions
- Political organizations
- Community Intergenerational Programs

So what are you waiting for, Say it, Mean it and Do it!

WHERE IS YOUR PHOTO?



Hickory Hollow
Wayne, MI



Woodsvew Place
Harbor Heights, OH



Gill Park
Chicago, IL

Show off your cooperative!

Submit your photos in digital format to MAHC. Contact Rich Berendson if you have any questions ?

COOPERATIVES OFFER ALTERNATIVES

BY ANNE SULLIVAN, REPRINTED WITH PERMISSION FROM THE NEWS-HERALD

Living in cooperative housing is the best of both worlds, according to Blaine Honeycutt, president of the board of directors at Georgetown Place Cooperatives.

It many cases, it is less costly than buying a house or a condominium, and it provides for a level of homeownership that apartments do not, he said.

Nancy Fisher was a single mother who raised her children in a cooperative in Belleville.

"It's a good place for a single mom," Fisher said of living in a cooperative. "Some (single parents) can't afford a home, and if you can, it's hard to do all the work involved."

She believed in the concept of cooperative living and took a job as the site manager at Georgetown, a position she's held for 20 years. About four years ago, she moved to Georgetown.

Cooperatives were first built in the 1920s to 1940s in cities such as New York, Chicago and Washington D.C., with dense populations.

Most were built after World War II and through the 1970s and provided a form of homeownership for low- and moderate-income families, according to the National Association of Housing Cooperatives.

It was thought that young couples would move in, save enough money to buy a house and move out, Honeycutt said. Some residents did that, while others decided to stay.

Today, many cooperatives are communities blended with senior citizens and young couples.

In tight housing markets, such as Ann Arbor, cooperatives might be the only source of affordable housing, according to the NAHC.

There are two types of

cooperatives.

A limited equity co-op means residents must be below a certain income level and the sale prices and profits are controlled, said Randall Pentiuk, a cooperative attorney and vice president for the Midwest Association of Housing Cooperatives, and a board member for the NAHC.

As an example, the three co-ops in Taylor are limited equity, he said.

The other type is market controlled and does not have limits on residents' income or sales profits,

Cooperatives built after World War II and through the 1970's provided a form of homeownership for low- and moderate-income families.

such as Bretton Village in Trenton.

Also, many senior citizen high-rise apartments are cooperatives, including Bishop Park Cooperatives in Wyandotte, and the high rises in Riverview and Trenton, he said.

Moving into a cooperative is much like buying a house, except that you are buying a share in the community, not a unit, said Gerald Thomas, an MAHC board member.

Michigan, Ohio, Indiana, Massachusetts, Illinois, Kentucky, Pennsylvania, South Dakota and

Washington State are part of the MAHC.

A criminal background check and a credit check are run on everyone applying to live in a coop, Pentiuk said. After approval and buying a share, you immediately become a tenant.

"That's an advantage over condos," Pentiuk said. "In a condo, Jeffrey Dahmer could move in next door."

Co-op residents pay a monthly fee to cover taxes, insurance, water, sewage, gas, lawn care, snow removal, and general upkeep of the property, in addition to the monthly mortgage, Thomas said.

In some cooperatives, residents could have a mortgage on their unit as well, Pentiuk added.

A primary difference between living in a cooperative and a condo surfaces is upkeep inside the unit.

"If your garbage disposal goes out at your house or condo, you have to buy a new one," Pentiuk said. "In a co-op, you call maintenance and it's fixed."

There are more than 200 cooperatives in Michigan. Most were built with a 40-year U.S. Department of Housing and Urban Development mortgage and those mortgages soon will be paid off, Pentiuk said.

Some co-ops, like Georgetown, have refinanced and used the money to pay off the mortgage and make renovations, he said.

Co-ops remain a popular housing option in New York City, where most are market priced, not equity-limited, Pentiuk said.

In Michigan, a developer is looking to build a 10-unit cooperative in Saginaw, which will be a market equity development, he said.

INTRODUCING HOPE TURNER MAHC BOARD DIRECTOR



Hello, let me introduce myself, I'm Hope Turner. I was recently elected in May to the MAHC Board at the Annual Conference in Jacksonville, Florida.

I am the President of the Concord Consumer Cooperative in Trenton, Michigan where my children and I reside.

I never knew that there were organizations such as MAHC that help support cooperative living and its members until this year. I learned about MAHC from a friend living in another cooperative in my area. I learned that the Board of Directors in my friend's cooperative attend seminars every year.

I looked into this further by calling my cooperative's management company. I asked them how we could get training and educate our Board of Directors. The management company told our Board and myself about MAHC. He explained what MAHC does and what they could do for cooperative members.

My board and I attended our first MAHC conference in May, 2006. I was very impressed by what I learned at the conference. I believe that more cooperative members should be aware of MAHC and their teachings.

I will continue to make cooperatives more aware of MAHC and their teachings. MAHC is a very valuable learning tool. We as current members should strongly encourage other non-members of the importance of belonging to MAHC. Belonging to MAHC is such an important part of our day to day existence as cooperators in this uncertain economic environment.

In the Cooperative spirit,

Hope Turner

MAHC Director

THINKING OF REFINANCING? QUESTIONS TO ASK POTENTIAL LENDERS

BY RANDALL A. PENTIUK, ESQ.

A large number of Cooperative Boards are presently exploring the option of refinancing their existing mortgage. Whether motivated by a desire to get rid of HUD, to take advantage of relatively low interest rates, a soft market for construction, a need to improve the property, or any combination of these considerations, the Board must do a lot of homework. We have listed some vital questions that should be answered by the prospective lenders before a selection is made.

- How is the interest rate on the new loan going to be calculated?
- What is the process to lock in the interest rate?
- What are the loan term and amortization options available?
- What are the costs and fees associated with the loan, including points at closing?
- Is a deposit required and, if so, is it refundable if the Cooperative does not close?
- What are the loan to value requirements of the lender?
- Is a survey required and, if so, is an ALTA survey required?
- What types of inspections of the property required?
- Will prepayment be permitted?
- What types of escrow accounts required?
- Will a replacement reserve be required and, if so, in what amount?
- Will reserves be required for repairs, capital improvements, or P&I?
- Is interest paid on reserves and, if so, how will it be calculated?
- What is the process for release of the loan?

- Will secondary loans be permitted?
- Does the lender have a secondary loan program should further funds be needed in the future?
- What are the annual reporting requirements?
- Has the lender ever financed a project with an IRP?
- What other Cooperatives has the lender financed?

These are a few of the pieces of information that the Board and its Management ought to be gathering in order to make the best decision for the Cooperative. By no means should this list be considered exhaustive, and it is highly recommended that the refinancing process be shepherded by an experienced and competent attorney to make certain that the Cooperative gets the best deal possible.

Moreover, it is important that the Board entertain proposals and ask these questions of a field of prospects. There are a number of lenders now interested in the Cooperative loan business. Inviting some of them to address these questions will help the Board get a clear picture of the competitive differences among them and help lead to an informed and intelligent choice.

**2007 ANNUAL MAHC CONFERENCE
SAN DIEGO, CALIFORNIA
MAY 13-17, 2007**

**May 12-13, 2007
RCM Program
(Managers Only)**

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