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Mark your Calendar!

**2024 ANNUAL
CONFERENCE**

Atlantis - Paradise

Island, Bahamas
May 19th - 22nd, 2024



A Message from the President

Greetings, Members of the Midwest Association of Housing Cooperatives.

Winter is still trying to hold on here in the Midwest, but Spring is just around the corner.

What better way to chase those winter blues away and embrace Spring and Summer than by attending the MAHC 2024 annual conference in the Bahamas!

Not only will you get to learn some new ideas and tips to take to your cooperative, but you can also enjoy tons of activities at the resort.

The most important reason for going to conference—meeting your fellow co-operators. This is your opportunity to show other housing cooperatives what makes your cooperative so special, and what can you learn from other cooperatives that will help your cooperative be even better!!!!

And what a place to have a conference: being surrounded by sandy beaches, warm blue ocean water and swaying palm trees while hanging out with your fellow MAHC members! After a long day of meeting vendors and attending our training sessions, unwind in this lush tropical atmosphere.

I hope that you can join us May 19-22. For more information about the conference and registration, check out this issue and our website at

www.mahc.coop

Thank you for your continued support. I look forward to seeing you in May.

Jerome Rayford

Jerome Rayford, President
Midwest Association of Housing Cooperatives





MAHC
Award Nominations
Celebrate Those Who Shine Bright in
Our Cooperative Housing Communities!

It's time recognize individuals who make their mark in cooperative housing. Nominations are now open.

Deadline is March 29, 2024

Almeda Ritter Award

Awarded for devotion and contribution to the Cooperative Housing Community

A. Morley Presidents Gavel

Awarded to an outstanding cooperative board president nominated by the cooperative members of the cooperative board of directors

Bill Magee Spirit Award

Awarded for promoting and consistently displaying dedication and commitment to the preservation of the cooperative housing movement

C. March Miller II Award

Awarded by the President of MAHC for outstanding service by a MAHC board member

Cooperative Leap of Faith Award

Displaying the confident belief and trust in the housing cooperative concept and assisting cooperatives in attaining their goals today and in the future.

Cynthia A. Phillips Secretary Award

In appreciation and recognition of your many years of dedicated service, extraordinary

devotion, and outstanding commitment to our organization.

Dr. Herman E. Curtis Co-oper of the Year Award

Awarded to a Co-oper for Outstanding Service to their home cooperative; nominated by the by the board or members of the cooperative

Executive Director's Award

Awarded for outstanding service to MAHC by a person or organization other than a member of MAHC'S Board of Directors.

Leadership Award

Given to a person who works above and beyond the call of duty to lead cooperatives now and in the future.

Lifelong Service Award

Displaying confident belief and trust in the housing cooperative concept and assisting cooperatives in attaining their goals today and in the future

Solidarity Award

For the fellowship and common responsibility that the board projects on behalf of their membership to seek and share knowledge.

Special Award

For outstanding services for helping us to reach our goals and objectives. Keep reaching for the stars.

The MAHC Messenger

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Jerome Rayford

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Continued

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Member Access to a Unit After a Fire



When a member experiences a fire loss, whether it be a partial or total loss, the member may request that the cooperative grant him/her access to his/her dwelling unit to retrieve personal items, if any personal items can be safely retrieved. The concern here is that as a result of the fire, the unit is uninhabitable and structurally unsound and access should only be granted on a case by case basis. It is vital that in these unfortunate events the safety of the member is protected and the dwelling unit is preserved at all times until the unit can be repaired.

When a member requests access to his/her dwelling unit after a fire, the cooperative must take protectionary measures to ensure not only the safety of such access, but to ensure the safety of the dwelling unit as cooperative property.

When these unfortunate events occur, and once the cooperative ensures the safety of the affected members, secures the unit and contacts the fire department and insurance company, it should contact the cooperative attorney to draft a release and waiver of liability for the member to sign in order for the member to access the dwelling unit. The release and waiver of liability will not only work to protect the cooperative in the event that the member injures him/herself while accessing the unit, but it will also provide for the strict purposes that the member is allowed to access to his/her unit.

A member's access must be limited to the retrieval of small personal items, such as a wallet, license, social security card or other vital documents. Large personal items such as televisions, furniture, etc., must not be moved. Most importantly, such access must not only be supervised by a representative of the cooperative or management agent and/or a representative of the police and/or fire department, but must only be granted when the dwelling unit has been determined to be accessible by the police and/or fire departments.

The member must understand that there are inherent risks involved in the accessing of his/her dwelling unit due to the structure not being structurally sound because of the fire. Said risks include personal injury or death and/or injury to or loss of property. As a result of such inherent risks, the member must agree to assume all risk and liability associated with his/her access to the dwelling unit for the limited and supervised purpose of retrieving his/her personal belongings.

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MAHC's Newsletter Committee



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Monte Huston



Observations From the Trial Attorney Litigation Preparation

As the supervising attorney in the landlord tenant litigation department of my firm, I believe it's important to personally litigate trials when they are necessary to hone the skills and keep a finger on the pulse of judges. I successfully litigated a trial last week and comments from the judge prompted me to note his observations.

1. Prepped witnesses are worth their weight in gold: It doesn't matter the type of case. In landlord tenant cases, it is essential for the site manager to be conversant with the facts of the case whether it be the ledger amounts, why the charges assessed were done so and when, late fee policy, familiarity with complaints about the problem member, etc.
2. Due process essential: Follow protocol on due process before rushing to court. If you require giving a hearing to a resident being evicted, give it. If you have progressive discipline in your rules, follow it (unless specific language allows deviation from the policy in extreme circumstances). If you have an expulsion provision in your bylaws, go through it. Failure to do these things will likely result in procedural defenses that are at minimum going to temporarily derail the proceedings and add costs if you are forced to go through these procedures after you filed the case, and may require dismissal of the case and a refile.
3. Selectivity in enforcement has considerable benefits: At two recent hearings I have seen the judges' perspective on both ends of the spectrum. In one case, the judge commented to the Defendant during the proceeding how my client rarely brought evictions actions and the fact that they did in this case, showed that they felt the allegations were serious enough to seek the eviction. This is very telling. Having the judge who is the objective arbiter of facts give you the benefit of the doubt shows how important it is to avoid filing cases just to get rid of problem members absent solid proof and genuine intentions. On the flip

side, in a very contested eviction case in a different court, the judge referenced the "bad blood" between the parties and made a facial expression to me about the case which may not bode well.

4. Know and use the rules of evidence: The rules of evidence is the legal way of presenting, admitting and excluding evidence to support your case. Important pieces of evidence are the occupancy agreement, bylaws, rules and regulations, ledgers, written complaints, video evidence, letters to members evidencing defaults, eyewitnesses, etc. It is essential we have witnesses with personal knowledge, meaning things that have been seen or heard first-hand by the witness. Hearsay testimony is normally not admissible. Hearsay means things that are rumored or heard and recited from third parties. There are ways around hearsay and alternative ways to get important facts into the record for the judge or jury to consider when making their decision. Careful planning with witnesses can avoid many of these problems.
5. Manage expectations and reevaluate when necessary: It's important to evaluate cases before issuing the notice and then at intermittent times during the proceedings (during and after discovery, after testimony of witnesses, etc.). Sometimes what seemed like a good case, fizzles on you when you hear the testimony or the judge/jury reaction to the testimony. Sometimes witnesses don't show despite subpoenas. It doesn't mean you have to pull the plug and surrender completely, but in some circumstances these developments may cause you to reevaluate as to whether a conditional occupancy agreement is better than losing a case.

The takeaway? Following protocol, pre-evaluation of the quality of cases and proper preparation goes a long way to assure your rule enforcement is given the best chance to prevail.

Creighton D. Gallup, Esq.

The MAHC Messenger



2024 ANNUAL CONFERENCE
Atlantis - Paradise Island, Bahamas
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Early Registration extended to March 28, 2024!

Go to MAHC.coop to register



MIDWEST ASSOCIATION OF HOUSING COOPERATIVES

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The cooperative’s permission to grant the member access to the dwelling unit must solely be limited to the agreed upon date to enter the dwelling unit. The member must understand that he/she cannot enter his/her dwelling unit at any other time. Said restriction not only protects the member from injury, but protects the dwelling unit from suffering further loss.

The release and waiver of liability also works as a condition precedent for the member to be able to access his/her dwelling unit for the limited and supervised purpose to retrieve only the member’s requested personal items. The release and waiver of liability must also include protectionary provisions such as the agreement of the member to waive, release and discharge the cooperative for claims arising out of the member’s access to his/her dwelling unit. Another important protectionary provision that must be included is indemnification. The member must agree to indemnify the Cooperative for any injury, damage causes of actions, etc., that may arise from the member’s access to the dwelling unit. The concern here is that there is a potential for personal injury, death, injury to property or the loss of use of the property as a result of the fire in the dwelling unit.

The loss of one’s home whether partial or total and the loss of one’s possessions are beyond devastating. We sincerely hope that no cooperative and its members have to ever endure such loss. In sum, in the event that a member requests access to his/her dwelling unit after a fire loss the member must effectuate a release and waiver of liability prior to accessing his/her dwelling unit in order to protect both the member and the cooperative.

Alyssa M. Gunsorek

MAHC Messenger-

We welcome your article contributions of 500 words or less submitted in MS Word format. Please feel free to forward them to the editor at the address listed below.

Submit your suggestions to MAHCeditor@gmail.com.

If you are interested in placing an ad in the MAHC Messenger, please contact the editor at MAHCeditor@gmail.com

The views and opinions expressed herein are those of the author(s) and contributors and should not necessarily be reflected as those of the Midwest Association of Housing Cooperatives.

The purpose of this publication is to serve as informational only and not to engage in disbursement of legal advice. If you require legal assistance please consult an attorney. If you have questions or comments please submit them to the editor at the email address listed above.

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The MAHC Messenger



News



2024 Conference Highlights



Before you go:

This year MAHC has upped the level for our conference locale, and we can't wait for you to join us! Before you attend this year's conference, there are a few things you need to know.

Passports

[When traveling to the Bahamas, you'll need a passport.](#) Don't have one? You can get the process started by scanning the QR code here or by going to www.passportinfo.com.



For information on passports

SCAN ME

For information on registration



Registration

Early registration ends [March 28, 2024](#). Reserve your space today!

There is still time to get your passport and receive the discounted price for the Conference!



Why Your Cooperative Attorney Needs to Review Contracts

Your Cooperative attorney wears many hats. Obviously they will litigate your nonpayment cases and evictions, but sometimes Boards and management companies forget to use them for arguably the most important task...reviewing contracts. We see all too often that Cooperatives will rely on canned or template contracts provided to them by the vendor/contractor or perhaps one they retrieved on-line thinking it must legally protect their interest. Sometimes they are right. Often, they are not, and it can cause many problems and cost your membership thousands, if not tens of thousands of dollars. Calling your attorney after you signed a bad contract is trying to put the horse back in the barn. Here are few examples to let the message sink in:

Management Contracts

While the vast majority of management companies we know use standard language widely accepted in the industry, many times, there will be terms within the management contract that can be very unfair and problematic. Your cooperative attorney will spot these right away. Are you agreeing to a term that cannot be canceled upon 60 days' notice? But, are you responsible for the entire term if you want to change management companies? What are your indemnification obligations? If the cooperative has to reimburse the management company as a result of their actions which caused a lawsuit, you should not necessarily be automatically responsible. We will make sure the management companies use language to prevent the cooperative from being responsible for the company's mistakes. There are big differences in the terms: "negligence" and "gross negligence." The difference may cost you.

Contracts for Construction

Your cooperative attorney will assure essential terms are mandatory. Adequate guarantees of workmanship and warranties are non-negotiable. We had a client years back who did not have our office review the contract on a 7-figure project. The workmanship was horrid and required massive repairs. The contractor refused to provide anything to remedy the situation since it fell outside of a short warranty period. The client should not have had to pay out of pocket for the repairs. Our own experts verified the poor workmanship, yet the court held the client to the strictest reading of the contract terms. Since the repairs came after the expiration of the short warranty/guarantee of workmanship, they were stuck and the contractor got off Scott-free. The reason we use this example is that the court stated to the parties during the ruling, this should have been caught before signing the contract and the judge's hands were tied. Obviously, he felt badly for the injustice that occurred, but people enter into bad deals. This one was.

Landscaping Contracts

Be wary of deals where you are getting a discount in consideration for extended terms of contracts. We have seen a lot these vendors give you a sweet deal if you sign on for 3-5 years. However, if you cancel it any sooner, they will hit you to repay the discounted amounts. What happens if you terminate because of poor workmanship? It seems unfair the contractor should be rewarded for their poor service and you have to compensate them in a form of liquidated damages because of their failures. This is not cool in our book, and it shouldn't be for you either.

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The MAHC Messenger

Is Nepotism Affecting Your Cooperative?

All housing cooperatives either have a requirement that all members of the Board are to also be members of the corporation, or, that at least a majority of the Board must be members of the corporation. Not all housing cooperatives, however, have any requirement when it comes to how the members themselves are qualified to be on the Board of Directors.

It is unavoidable that there will be family members who also reside in the cooperative as members in their own right, or a joint membership between a husband and wife, etc. It is also unavoidable that there will be decisions made based upon how it will impact a family member or, even worse, related board members that find an opportunity to wreak havoc on the corporate business activities. The former can be thwarted by requiring all Directors to sign a conflict of interest policy which requires him or her to abstain from decisions in which he or she has an interest. The problem with this is that it fails to address the secondary issue of nepotism.

In the cooperative world, nepotism is the practice of showing favoritism toward one's family members or friends in economic or employment terms. A good example is using the Director position to give special dispensation to certain individuals or even hiring a friend or relative in a position with the cooperative. This not only has a damaging effect on the overall operation of the cooperative, it also erodes the membership trust and may ultimately lead situations where elections are fixed, member issues are ignored, and/or members who speak out are intimidated, or worse, embezzlement of corporate funds.

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What is the take away? First, Contracts that your cooperative attorney did not draft are not contracts looking out for your interest. Second, contracts that your cooperative attorney did not review cannot be relied upon to assure your interest has been protected. My dad who is an engineer taught me a great lesson growing up: measure twice, cut once. It rarely requires extensive time or costs to have your cooperative attorney review any proposed contract or to provide proposed revisions or supplemental addendums, or what we call "wrap around contracts." There is nothing more frustrating than a client being screwed on poor workmanship, or an unconscionable contract term that could have been prevented, particular those that result in an otherwise good case, being lost.

By Creighton D. Gallup
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Nepotism is a very real and damaging phenomenon in the cooperative world. In recent years I have witnessed flourishing cooperatives that only discover that the relationships between employees and board members have destroyed member confidence in the Board and even resulted in tens of thousands embezzled due to cover-ups and favoritism towards family members and friends. In short, Directors should not be related by marriage or blood to other Directors or employees.

Board members should remember that they have fiduciary obligations to the corporation first. If he or she is unable to put the needs of the cooperative as a whole first, then he or she should not be serving on your Board. The best way to prevent these scenarios is to implement not only a conflict of interest policy, but an anti-nepotism policy which precludes certain individuals from obtaining a position on the Board of Directors or an employment position for the cooperative. In addition to the anti-nepotism policy covering both the Board and employee positions, the cooperative should consider adopting a policy containing requirements and expectations of Board members which must be signed at the beginning of each term. These policies should also include a confidentiality provision, the violation of which will subject the offending Director to removal or even litigation against the Director enjoining him or her from divulging any other information.

Policies involving nepotism also serve a dual purpose in providing additional requirements for conflicts of interest, such as defining the conflict of interest. Conflicts of interest policies will require Board members and even your cooperative staff and management to identify their business interests outside of your cooperative. For example, your management agent knows a fantastic broker who can assist with your membership transfers and her fee is quite reasonable. Many Board members do not look any further than a glowing recommendation from the hired management professional. But what if the “fantastic broker” who operates under their own business name, is also the management agent’s daughter? What if the daughter is assisting with the transfers but a fee is going back to the management agent as well? What if the daughter really is a fantastic broker and the fee structure is competitive? Having a policy in place that requires even your management and staff to advise of potential conflicts is essential to an open and transparent Board governance because if something goes south, it isn’t the management agent the members will be calling for, it will be you.

Erosion of member trust in the elected individuals is destructive to the cooperative purposes and the continuance of the corporation. The only way to ensure that the loyalty of Directors is first to the cooperative is to create checks and balances through implementation of policies which reiterate the fiduciary obligations of the Directors with his or her acknowledgment and affirmation.

I strongly encourage Boards contact their legal counsel to discuss implementation of these policies and, if you already have them in place, they should be reviewed for conformity with not only your governing documents, but with applicable state law.

Please note this content is provided to our readers for educational purposes but it is not intended and should not be regarded as legal advice. Readers are encouraged to consult with competent legal counsel for personalized guidance.

By April E. Knoch
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Resources

Website & Office

www.mahc.coop
10882 Beech-Daly Rd.,
Taylor, MI 48180

Other Web Resources

National Association of Housing
Cooperatives
www.nahc.coop

Direct Learning

Contact the MAHC office for
more information about
on-site training opportunities!

Conference Calendar

MAHC 2024
ANNUAL CONFERENCE
Atlantis - Paradise Island,
Bahamas
May 19th - 22nd, 2024

Registration is open!

National Coop Law Center

www.nationalcooperativelawcent

The MAHC Messenger

Our Mission Statement

To support and champion the cause of quality housing through education, legislative actions, partnership, and advocacy for Housing Cooperatives



Rochdale Principles

People coming together to work toward the betterment of society. During the 19th century, the Industrial Revolution created tremendous upheaval, often to the detriment of workers. What required many hours of hand-skilled labor now took half the time with machines. Hand weavers were one of the groups who suffered the most as looming machines and textile factories could turn out products and materials faster than traditional hand weavers. A group of tradespeople and weavers, said “Enough” and formed their own organization, developing their guiding principles which became the foundation of the cooperative movement and these principles are still in use today, with some minor modifications.

1. **Voluntary and Open Membership**—Membership is open to all individuals free from discrimination
2. **Democratic Member Control**—equal votes for members-one member/one vote
3. **Members’ Economic Participation**—Maintaining economic cooperation through equitable contribution and sharing of economic responsibilities and benefits
4. **Autonomy and Independence**—Cooperatives exist as autonomous organizations owned by their members
5. **Education, Training and Information**—Helps members increase productivity
6. **Cooperation Among Cooperatives**—Working with fellow cooperatives at the local, state and national level
7. **Concern for Community**—Looking after members of the community