

Adopting Ethics and Confidentiality Agreements for Cooperative's Board of Directors

Members elected to serve on the Board of Directors hold special and unique positions as fiduciaries to the housing cooperative corporation. A Director holds a position of trust, fiduciary and good faith to the housing cooperative to which he or she serves. While members elected or appointed to serve as a Director may not always be the savvy corporate type, it is important for Cooperative's to establish certain policies, sometimes best contained in an Agreement, for each Director that will spell out that Director's responsibilities and duties pertaining to ethical corporate conduct and the handling of sensitive, confidential information.

Sometimes, a Cooperative will find itself in a situation asking, "did the Director's action or conduct serve in the Cooperative's best interest?" Or sometimes a Cooperative may be asking, "is the Director benefiting from a given transaction between the Cooperative and a contractor/vendor/third party?" Adopting policies or agreements that spell out the Directors' duties and responsibilities are useful tools to prevent the Cooperative from having to deal with unsightly legal issues between its Directors, membership or third parties. While these agreements alone will not by themselves prevent situations where a Director may act in a unfair manner, or in a way that is not in the best interest of the Cooperative, they do serve as helpful reminders for each Director as to their duties and responsibilities. Directors should be aware of these duties at all times, and the considerations and practices they require should be inherent in all action taken by the Board.

A Director owes three main duties and responsibilities to the corporation upon which he/she serves. These duties are generally categorized as:

- Duty of Good Faith.
- Duty of Care.
- Duty of Loyalty.

When adopting policies and agreements that encompass these duties, it is easy for them to become verbose and robust. Scholarly articles, journals and cases have dissected each duty. However, a good policy or agreement will hit the key notes, reminding each Director of their obligations. Policies and Agreements can include language, that each Director agrees:

- to perform his/her duties as a director in the best interests of the Cooperative, in good faith, with due care, and with devotion and loyalty to the Cooperative.
- to regularly attend Board and Committee meetings unless absence is excused.
- to keep up to date on issues pertaining to the Cooperative and its membership.
- to conduct him/herself with professional competence, fairness, impartiality, efficiency, and effectiveness.
- to refrain from acting upon the influence of any conflicting interest when participating in Cooperative Board meetings, deliberations, voting or decision making, and to refrain from using his/her service on this Board for personal advantage or for the advantage of his/her family, friends, associates or business partners.
- to deal fairly with Cooperative members, suppliers, contractors, and employees, and avoid taking unfair advantage of anyone through manipulation, concealment,

abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practice.

- to avoid and to disclose any potential or real conflicts of interest and to refrain from taking official Board action in any such matters where a potential or real conflict exists.
- to maintain the confidentiality of all Cooperative Confidential Information and refrain from discussing confidential matters with persons not on the Board of Directors.
- to continue to maintain qualifications to serve as a Director of the corporation.

Code of Conduct and Confidentiality Agreements that include these core concepts of a Director's duties and responsibilities, will both assist incoming Board Members in understanding their position and responsibilities in serving on the cooperative housing corporation's Board, but also reinforce these concepts for already existing Board Members and Directors. Moreover, if a Cooperative adopts a policy or agreement for each Director on serving on the Board, they may provide for certain penalties such as censure, removal from the Board or committees, removal of membership, or legal proceedings.

In adopting and adhering to best corporate practices, Housing Cooperatives should consider Board of Director policies and agreements that encompass the fiduciary duties and responsibilities that each individual Director must agree to abide by, and employ in the practice and conduct of their duties and service to the Cooperatives they serve. Cooperatives should consult with their legal counsel and attorneys for best ways to craft policies and agreements that meet the specific needs and desires of the Cooperative.

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