



Legal Responsibilities of Cooperative Boards of Directors

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What are we going to discuss?

- What is a Cooperative – legally speaking?
- What is a Board of Directors?
- Legal rules that apply to Directors.
- Recommendations for effective Boards.
- Resources to learn more.



What is a cooperative – legally speaking?

- A cooperative is a business organization.
- Usually a Corporation
- Formed under State law
 - Michigan General Corporation Act
 - Michigan Business Corporation Act
 - Michigan Nonprofit Corporation Act



What is a cooperative – legally speaking?

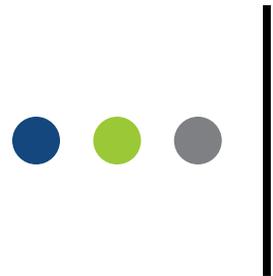
Governing Documents

- Articles of Incorporation – Filed with the State
- Bylaws – Contain rules for operating the corporation, including a cooperative plan
- Policies, handbooks, etc.



What is a cooperative – legally speaking?

- Separate Legal Entity
 - Generally treated like a natural person.
 - Legally it exists separately from its owners.
- Stakeholders
 - Owners = Shareholders or Members
 - Overseers = Board of Directors
 - Primary Managers = Officers
 - Workers = Employees & Independent Contractors



What is a Board of Directors?

- **Board of Directors:** Oversee the management of the business.
- **Directors:** Elected by shareholders or members
 - Owe fiduciary duties to corporation/shareholders/members.
 - Director Fees
- **NOTE – Officers are Different from Directors:**
 - Officers Manage the day-to-day business.
 - Mandatory: President, Secretary, Treasurer
 - Optional: CEO, Vice Presidents, General Manager
 - Appointed by the directors.
 - Often times are paid employees.
- Employees/ Independent Contractors



Legal rules that apply to Directors

- No separate set of standards exists for cooperative directors.
 - Corporate rules generally apply to cooperative directors.
 - Rules are established under statutes, case law (judge-made law), and each cooperative's governing documents



Legal rules that apply to Directors

- While the legal rules are the same, the business structure is quite different from ordinary corporations.
 - Members are also the customers or patrons.
 - Members are not disinterested investors.
- Different from a "normal" corporation where the corporation's board is responsible for maximizing shareholder value.



Legal rules that apply to Directors

- Fiduciary duties to the cooperative and its members:
 - Duty to Comply with Applicable Law and the Governing Documents (i.e., the duty of obedience)
 - Duty of Care
 - Duty of Loyalty
 - (Discussion Point - Conflicts of Interest)



Legal rules that apply to Directors

- Limits on Duties
 - Business Judgment Rule
 - Indemnification
 - Insurance



Recommendations for effective boards

- Be prepared
- Educate yourselves
- Ask questions
- Establish expectations of management employees
- Require regular financial reporting
- Use executive sessions



Recommendations for effective Boards

1. Board represents cooperative members
2. Board establishes cooperative policies
3. Board hires and supervises management
4. Board is responsible for acquisition and preservation of cooperative assets
5. Board preserves the cooperative character of the organization
6. Board assesses the cooperative's performance
7. Board informs members

SOURCE: USDA Cooperative Information Report 61
(<http://www.rurdev.usda.gov/supportdocuments/CIR61.pdf>)



Directors Preserve Character

Serve according to laws and regulations!

- Laws
- Bylaws
- Articles

And carry on the cooperative's spirit!

USDA, RBS, CIR 11 Chapter 3 - The Cooperative Director



Directors Safeguard Assets

- Protect members' investment
- Make sound financial decisions
- Hire auditors

USDA, RBS, CIR 11 Chapter 3 - The Cooperative Director



Directors Hire Manager

- Appraise applicant qualifications
- Delegate day-to-day control
- Appraise performance

USDA, RBS, CIR 11 Chapter 3 - The Cooperative Director



Directors Set Policies

- Originate and approve
- Function and business related
- Reviewed and updated
- Policy manual

USDA, RBS, CIR 11 Chapter 3 - The Cooperative Director



Directors Distribute Benefits

- Amount of patronage refund
- Proportion in cash
- Allocated equity
- Unallocated equity
- Equity revolvment and retirement



Directors Plan

- Assess business climate
- Evaluate challenges--internal and external growth, business volume, membership, territory, assets
- Develop objectives and strategies
- Monitor progress

USDA, RBS, CIR 11 Chapter 3 - The Cooperative Director



Directors Self-Evaluate

Internal assessments

- Self - ability, performance
- Whole board performance
- Board meeting productivity

USDA, RBS, CIR 11 Chapter 3 - The Cooperative Director



Directors Choose Leaders

Elect Board Officers

- President
- Vice president
- Secretary
- Treasurer

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Directors Appoint Committees

- Temporary or permanent
- Field of study (finance, feasibility, marketing, purchasing, etc.)
- Recommendations to the board
- Power to decide

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Resources to learn more

- Mid America Cooperative Council
- MSU
- USDA:
 - http://www.rurdev.usda.gov/BCP_Coop_Education.html
 - USDA Cooperative Information Report 61
<http://www.rurdev.usda.gov/supportdocuments/CIR61.pdf>
 - Cooperative Directors: Asking Necessary Questions
<http://www.rurdev.usda.gov/supportdocuments/CIR62.pdf>
 - Many others available online



Questions?

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