

## Section 5: The Board of Directors

**THE BOARD OF DIRECTORS**

(Adapted from CHFBC's **Guide to the Co-op Act**)

Every co-op has a board of directors that is elected or appointed by the members. The board is the co-op's administrative body and acts on the members' behalf between general meetings.

**Duties and responsibilities**

As representatives of the membership, directors have the legal right to operate the co-op. They must manage or supervise the co-op's business and affairs. They can use all the powers of the co-operative to do their job. Sometimes the co-op's Rules will limit what the directors can do. These limits must not prevent the directors from doing their job in the way the Act says they must.

Directors work as a group or "board of directors." No one director has more power than another, not even the chairperson or president. Directors make decisions as a group. Individual directors do not have special powers to act alone. If a director acts alone, but gives an outsider the impression that it is on behalf of the co-op, then the co-op may be responsible or liable for the action of that director.

**Delegation**

Sometimes the board of directors will ask one or more of the directors to perform a special duty. That director is then acting for the board, not alone. Directors who take individual action without permission from the board could be held personally responsible.

**Committees of directors**

Directors can "delegate" or hand over some of their power or responsibility to committees of directors. They cannot delegate responsibility to committees of members who are not directors, unless the co-op's Rules specifically say they can. A committee of directors has all the power of directors to do the job it has been given.

**Advisory committees**

Directors can ask other committees whose members are not directors to do work for the co-op. These advisory committees must report their ideas, suggestions and activities to the directors. The directors can accept the committee's recommendations or suggestions if they think they are good ones.

**Directors' decisions**

Directors usually make decisions by resolution. All the directors' decisions must be recorded in the minutes.

## Section 5: The Board of Directors

### **Fiduciary duty**

Directors are legally responsible for managing the co-op. But the co-op doesn't belong to the directors—it belongs to the members. As representatives elected by and responsible to the membership, directors must give priority to the interests of the co-op ahead of their own personal interests. This is called a fiduciary duty. Directors must conduct the business of the co-op based on certain standards of conduct.

### **Standards of conduct for directors**

Directors (and officers) must follow certain standards of behaviour when they are in office. They must:

- act in the best interests of the co-op (and not in their personal interest or the interests of a small group)
- act honestly and fairly
- show care, prudence and skill when doing their job (and get help when needed)
- follow the Co-op Act (they must know what is in the Act)
- follow the Memorandum and Rules of the housing co-op (they must know what is in these documents)

A housing co-op cannot give directors or officers permission to act in a way that is different from these standards.

### **Conflicts of interest**

Directors of a co-op have the power to make decisions that ordinary members usually cannot. Because of this, they may sometimes find themselves in a “conflict of interest”.

### **What is a conflict of interest?**

Conflicts of interest arise when the co-op enters into a contract or transaction that provides financial gain to a director or officer or to someone or some organization in which the director or officer has a material interest. Not all conflicts are problems. But serious legal problems can develop if the conflicts of interest are not talked about or “disclosed.”

The Co-op Act requires directors to disclose conflicts of interest. The rules on conflict of interest in the Act are fairly narrow. They only relate to financial gain. If there is no financial gain to the director or the director's family or business, there is no legal conflict of interest. People often misuse the term “conflict of interest”. Be careful that it really is a conflict of interest before naming it so.

## Section 5: The Board of Directors

It is a conflict of interest when, for example:

- the co-op hires a director or the director's spouse to do work for the co-op, such as painting vacant units
- the co-op buys goods or services from a company owned by a director.

It is not a conflict of interest, based on the Act's definition, when, for example, a director votes:

- to hire a close friend to do work for the co-op
- to appoint the director's spouse to chair a committee
- to terminate the membership of a neighbour when the same director laid the noise complaint that is the reason for termination.

Situations like these could be seen as examples of a director's bias, bad judgement, poor leadership or unethical conduct. But they are not conflicts of interest as the Act defines them.

### **Ethical conduct**

The conflict of interest requirements of the Act set a modest standard. But that is not all there is to acting honourably, in a way that is worthy of members' trust. Sometimes it's hard to tell whether a situation puts a director in a conflict of interest. As a director, this is something to think about before you act. A co-op community may want to set standards of conduct for directors that expand on what the Act requires.

## **FUNCTIONS OF A BOARD OF DIRECTORS**

(Adapted from material in **The Board of Directors Co-operatives**, Garoyan and Mohn, and material developed by Homestarts).

### 2. THE DECISION-MAKING FUNCTION

Boards of housing co-ops are elected by the members to plan and co-ordinate the management of the co-op within policy guidelines established by the members. The Board makes proposals to the members on policy matters (in by-laws, rules, etc.) and budgets, but power to make the final decision in these areas rests with members. The members in this respect govern the co-op directly while the Board has responsibilities related to management.

To fulfill its decision making function effectively, the Board must avoid getting bogged down in day-to-day management and operational decisions which can best be handled by committees,

## Section 5: The Board of Directors

individual volunteers or staff who have been delegated responsibilities. If the Board's energy are diverted from its essential role of planning and co-ordinating the overall management, the co-op will suffer from a lack of leadership and direction.

Even when it has the authority to make the final decision, the Board has a responsibility to make sure that the decision-making process is open and collaborative.

### 3. THE ADVISORY FUNCTION

The Board receives information and proposals from a number of sources within the co-op and must channel appropriate information and advice to members, committees and staff. It has the responsibility to advise about the following:

- problems affecting the organization and possible solutions
- the democratic structure and how members can participate effectively
- areas where by-laws or policies should be adopted (or amended) and why a particular approach is being recommended
- changes in procedures adopted by the Board to guide the operations of the co-op

As part of its advisory function, the Board is responsible for ensuring that members, committees and staff have the training and skills that they need to make decisions.

### 4. THE TRUSTEE FUNCTION

The Board's trustee function require it to juggle many interests and requirements to serve the best long-term interests of the co-op. In its function as trustee, the Board:

- represents the co-op on all legal matters
- ensures the co-op complies with all relevant financing agreements and government legislation
- ensures the co-op does not exceed its lawful authority and that its by-laws are properly adopted, amended, and followed
- assumes the responsibility for ensuring effective financial management
- monitors and appraises the performance of staff and committees
- ensures that the co-op fulfills its employment obligations to staff
- ensures that the rights of the individual member in relation to the co-op as a whole are protected and enhanced
- recognizes that the position of director is founded on confidence and good faith

## Section 5: The Board of Directors

## 5. THE LEADERSHIP FUNCTION

The Board must provide the leadership necessary to guide the co-op towards its objectives. To fulfill its leadership function, the Board must:

- ensure that a clear set of objectives that have the support of the members have been developed for the co-op
- in consultation with the members, develop immediate goals and a plan to achieve the objectives
- work to ensure that there is the opportunity for members throughout the co-op to share the leadership role
- build co-op spirit and foster a community atmosphere
- use a problem-solving, co-operative approach in dealing with conflict within the co-op

## 6. THE PERPETUATING FUNCTION

The Board's perpetuating function requires it to provide for the continuity and stability of the co-op beyond the term of office of the current Board. To fulfill this function, the Board must:

- provide members with up-to-date information
- strengthen the membership, committees and staff by ensuring that education and training are provided
- ensure long-range planning and forecasting are carried out;
- co-operate with other co-op sector organizations in information exchange
- develop strong links between the co-op and the surrounding community
- build into its activities a process for ongoing evaluation of the co-op's functioning by the Board, staff, committees, and the membership.