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Cooperatives :

A Housing Alternative For Rural America



Abstract

In a housing cooperative, people join to form a cooperative corporation that owns the buildings in which they live. Purchasing a share in the cooperative entitles each member to lease and occupy a dwelling unit from the cooperative and to participate in its operation. Each member pays a share of the cooperative's monthly expenses. Housing cooperatives are democratically controlled, meaning that each member has one vote in deciding the affairs of the cooperative.

Housing cooperatives offer affordability, a sense of empowerment in that residents have control of their own living situations, and the permanence and stability that comes with home ownership.

The basic steps involved in organizing a housing cooperative may occur in a different order or even simultaneously, depending on the project. No matter what the project, the process involves identifying needs, measuring interest, determining financial feasibility, and incorporating as a legal organization.

Key words: cooperative, housing cooperative

Cooperatives: A Housing Alternative for Rural America

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Preface

Many rural communities face housing problems including a lack of housing for low- and moderate-income families and a lack of affordable, senior-friendly housing. Rural communities with tight housing markets find it difficult to attract new businesses, and substandard housing may fail to meet the most basic needs: heating, cooling, and adequate plumbing. Cooperatives are a way to bring decent, affordable housing to rural America.

This guide outlines basic information about how housing cooperatives work and how they are formed. It is intended for prospective cooperative members and development specialists.

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COOPERATIVES: A HOUSING ALTERNATIVE FOR RURAL AMERICA

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Across America, many rural communities face housing problems. Lack of housing for low- and moderate-income families means that many people must commute long distances to jobs. Senior citizens, who are no longer willing or able to maintain large homes, may have to move to nearby cities to find affordable, senior-friendly housing. Rural communities with tight housing markets find it difficult to attract new businesses, and substandard housing may fail to meet the most basic needs: heating, cooling, and adequate plumbing.

Cooperatives are a way to bring decent, affordable housing to rural America. Cooperative housing can help put low- or middle-income rural residents in control of their living situations while giving them the opportunity to build equity in their homes. This guide outlines basic information about how housing cooperatives work and how they are formed.

WHAT IS A COOPERATIVE?

A cooperative is a jointly owned business organized by people to meet common needs that they would be unable to meet on their own. Cooperatives have several characteristics that make them different from other types of businesses.

1) *Cooperatives are owned by the people who use them.* For example, an agricultural marketing cooperative is owned by the farmers who market their crops through the cooperative. A purchasing cooperative is owned by the people or businesses that buy supplies or other products from it. Similarly, a housing cooperative is owned by the residents who live in it.

2) *Cooperatives are controlled by the people who own and use the business.* A cooperative is governed by a board of directors elected democratically from among members. The board sets the general operating policies for the business.

3) *Cooperatives operate at-cost or on a not-for-profit basis.* Cooperatives exist to provide services to members, who are charged only the actual cost of running the business. Proceeds generated in excess of actual costs are refunded to members, kept in the cooperative as a source of reserve funds, or a combination of both.

WHAT IS A HOUSING COOPERATIVE?

In a housing cooperative, people join to form a cooperative corporation. It owns the buildings in which they live. Purchasing a share in the cooperative entitles each member to lease and occupy a dwelling unit from the cooperative and to participate in its operation. Each member pays a share of the cooperative's monthly expenses. Housing cooperatives are democratically controlled, meaning that each member has one vote in deciding the affairs of the cooperative.

Housing cooperatives differ from condominiums in that residents do not own or hold title to their individual dwelling units. Instead, residents own shares in the whole cooperative corporation. Title to the property is held by the corporation. Housing cooperatives differ from rental housing in that residents' ownership shares entitle them to a voice in running the association.

Cooperative housing has traditionally been located in urban areas, particularly in New York City. However, housing cooperatives are increasingly seen as a way to meet housing needs in rural America.

Cooperative housing is usually multi-family or apartment-type dwellings. However, single-family homes located close together and even trailer parks can be operated on a cooperative basis. They can be very small-made up of just a few units-or quite large. Cooperative City in the Bronx, New York, houses more than 60,000 families. Housing

cooperatives can be new construction or renovated, existing housing.

HOW DOES A HOUSING COOPERATIVE OPERATE?

The purpose of cooperatives is to provide services to member-owners, so they operate somewhat differently than other types of businesses.

Operation at Cost

Cooperative operating budgets are set up so that expected costs equal income. Because there is no profit line in the cooperative budget, costs are often lower than those for rental housing. Cooperatives that are “self-managed,” that is, do not hire professional management, can keep costs even lower.

Capitalization

Housing cooperatives are usually financed by a *blanket mortgage* on the entire property, based on the value of the buildings, etc. There are several sources of financing for housing cooperatives, including some private banks, National Cooperative Bank, various local and regional development funds, as well as State and Federal sources. The cooperative corporation, as the owner or titleholder to the property, is responsible for paying off the mortgage.

Members pay a monthly *occupancy or carrying charge* that contains their share of the mortgage payment, taxes, and other operating expenses. Part of the occupancy charge is usually set aside in special reserve accounts used to fund large repair or maintenance projects or other contingencies. If occupancy charges exceed operating expenses, the excess is allocated to members' patronage accounts.

Structure

Structure refers to the way members' equity interest in the cooperative builds up over time. Two main types of housing cooperatives are *market-rate* cooperatives and *limited-equity* cooperatives.

In a market-rate cooperative, members benefit from any appreciation in the value of the property and can sell their shares for whatever the market

will pay. People who consider homeownership an investment usually choose this type of cooperative.

Limited-equity cooperatives limit the price of membership and set controls on resale values to keep the housing affordable for low- and moderate-income residents. Formulas for setting resale prices vary. In some cooperatives the resale price is based on the initial share price plus a small amount, 1 percent per year, for instance, for appreciation. In cooperatives geared toward very low income residents, members may receive only their original share price when they move out of the cooperative.

Governance

Cooperatives are controlled by their member-owners through a *board of directors* and participation in membership meetings and committee work. The board sets the overall operating policies for the cooperative, oversees its operation, and enforces cooperative rules and regulations. The board is responsible for a range of decisions—from budgeting and changes in the amount of occupancy charges to landscaping and the purchase of playground or other equipment. The board may also be responsible for hiring professional management to handle day-to-day operations. However, in a self-managed cooperative, the board is responsible for these duties.

Member Responsibilities

As owners of the cooperative, member responsibilities are outlined in an occupancy agreement similar to a lease. Responsibilities include payment of monthly fees and assessments, participation in governance, and operation of the cooperative and adherence to house rules. House rules are policies covering pets, noise, use of common areas, parking, and other issues which affect the quality of life in multi-family housing. House rules usually include penalties for violation and a due process or appeals procedure.

Special Features

There are several special features of cooperative housing not often seen in other types of housing. First, many cooperatives ensure 100 percent

owner occupancy by prohibiting subleasing of cooperative units. It has been shown that **owner-**occupants are often more concerned with maintaining their surroundings than are renters. A cooperative's board or membership committee has the authority to screen new members and to enforce house rules. This means that applicants or problem residents who refuse to participate in the operation of the cooperative can be screened out.

WHAT ARE THE BENEFITS OF COOPERATIVE HOUSING?

The joint ownership aspect of cooperative housing results in some special characteristics that can make them more desirable for some people than other types of housing.

Affordability

When the goal is to provide affordable housing for low-income residents, cooperatives can be set up so that current costs are reasonable and the cost to future residents remains low.

Low entry costs. The initial cost or purchase price of housing in a cooperative is usually more affordable than conventional housing because of the way the cooperative is structured and financed. Because the cooperative corporation holds one mortgage for the entire property, members do not have to qualify for individual mortgages. Members need only pay for their ownership share or membership fee in the cooperative and show that they can pay the monthly occupancy fee or carrying charge.

Low monthly costs. Because cooperatives do not operate to make a profit, monthly operating costs are usually lower than in rental housing. In addition, as owners, residents of housing cooperatives have a say in what services they want to pay for. Housing geared toward low-income families may also be eligible for subsidies to reduce monthly occupancy charges.

Long-term affordability. Affordability for future residents can be assured through a limited equity structure in which the cooperative's bylaws set limits on resale prices and on the amount of equity or ownership that members can build up. This makes

for permanently affordable housing and is a central feature of cooperative housing geared toward low-income residents. Members who move out of the cooperative receive only the amount of equity that the limited equity formula in the bylaws allows.

Empowerment/Control

Homeownership through cooperatives empowers residents by putting them in control of their living situations. Cooperative members are their own landlord, and are responsible for addressing their own needs. As owners, cooperative members control spending and the types of services needed. Cooperative homeowners exercise this control through a democratically elected board of directors, through joint decisionmaking at membership meetings, and by volunteering to serve on various committees.

Stability

Homeownership provides stability and permanence to families and neighborhoods by giving residents a vested interest in the maintenance of their surroundings and in issues involving their communities. In addition, cooperatives are usually set up to require owner-occupancy, that is, they do not allow rentals. As a result, there is more concern about the long-term well-being of the cooperative and a greater opportunity to develop consistent leadership. As owners, cooperative members are less likely to tolerate vandalism and abuse of property, and they have a greater interest in seeing that the property is well-maintained.

Community Interaction

The opportunity for interaction among residents as they work together to operate a cooperative results in strong community bonds and development of social structures to meet the unique needs and circumstances of residents.

WHAT ARE THE CHALLENGES OF COOPERATIVE HOUSING?

Although these advantages make cooperative housing an alternative for many people, potential members must also consider the challenges encountered in organizing and living in this type of housing.

Tenant Mindset

People who have lived in rental housing for a long time may find it difficult to adjust to “being their own landlord.” Homeowners must get involved in the operation of the cooperative rather than relying on others to take care of things.

Desire for Single-Family Housing

For many people, the “American dream” is ownership of a detached, **single-family** home. However, this “ideal” is not immediately within the reach of everyone. Nor does everyone desire this type of housing. Millions of people, especially in urban areas, happily live out their lives in multi-family or apartment-type housing.

Desire for Sole Ownership

Housing cooperatives are jointly owned. Title or ownership of the buildings rests with the cooperative corporation. An educational effort is usually necessary to inform residents of their role as “part owners,” and that they will not have a deed registered in their own names.

Restrictions on Resale

Growth in the resale or transfer value may be limited, especially in limited-equity cooperatives where the goal is to maintain affordable housing for future residents. Some may view this cap on the selling price as a negative. For lower income residents, the affordability and empowerment aspects of cooperative housing are usually more important than resale value.

Submitting to Group Decisions

Some people may not be comfortable in a cooperative in which democratic decisionmaking affects all members. As a cooperative member, individuals must view their own needs in relation to those of the whole group. Reaching group consensus requires compromise and giving up some individual independence.

Close Living

Residents of multi-family (apartment-type) housing must have more consideration for their neighbors because of close living arrangements.

Some people may consider rules governing noise, behavior, pets, etc., as infringing on their freedom.

Complexity of the Organizational Process

Planning, financing, and construction, as well as becoming familiar with cooperative way of operation pose some unique challenges. Because of this, most cooperatives require outside help in getting started. A sponsor (person or organization) or access to persons with experience in developing cooperatives can go a long way toward simplifying the process and enhancing the chances of success.

Cooperative living is not for everyone, but for many, affordability and greater control of their living environments offer more than enough incentive to take on the challenges.

STARTING A COOPERATIVE

Cooperatives begin with a group of people discussing a common problem and ideas on how to solve it. The time needed to start a cooperative depends on many factors such as leadership skills, the complexity of the proposed plan, and availability of capital. Time can range from several months to several years, but planning should be done carefully to increase the likelihood of success. To alleviate any impatience members might experience in awaiting their new homes, clear “markers” should be established to let members know what must be done to accomplish their goal and to provide signposts for measuring progress.

There are basic steps involved in organizing a housing cooperative. Depending on the project, some steps may occur in a different order and some simultaneously. Also, the following discussion assumes new construction rather than conversion or renovation. No matter what the project, the process involves identifying needs, measuring interest, determining financial feasibility, and incorporating as a legal organization.

Leadership and Advisers

The development of a cooperative should be carried out mainly by its potential members because they will use the cooperative and know what they need from it. Members must choose leaders from among themselves who are willing to

devote much time and energy to making the cooperative a reality. Most groups will also need a sponsor or technical assistance provider to help them throughout the planning and development process, and through the first stages of owner occupancy. The sponsor or technical assistance provider might be a private or public community-based organization, a nonprofit developer, or a housing consultant.

Having a sponsor or technical assistance provider can help simplify the whole process and increase the chances that the cooperative will be successful. The experience of the sponsoring group may be of greatest benefit early in the process when plans are being developed and financing arranged. As members become more familiar with cooperative housing, the level of technical assistance needed should decrease, especially once the cooperative is established and operating.

The range of services that a sponsor or technical assistance consultant may provide in helping to organize a housing cooperative includes:

- Provide information on housing options.
- Define needs and interests.
- Determine what is affordable.
- Determine the feasibility of a housing cooperative.
- Secure the services of an architect, attorney, accountant, etc.
- Obtain financing through government, commercial, and community sources.
- Help with incorporation and other legal matters.
- Develop business or operating plans.
- Develop an educational program for members and the board of directors.

Cooperative members should work closely with the sponsor /adviser during the organizational process. This is particularly true if the cooperative intends to be self-managed. However, it is important that the cooperative not become too dependent on a sponsor, especially once the cooperative is established and operating. Members and the board of directors must become knowledgeable enough to run the affairs of the cooperative on their own. The sponsor/adviser must also understand his/her own role of providing advice and support, and make it clear that decisions are to come from members.

Getting Started

Development of a housing cooperative may begin with one or more small meetings of interested persons to discuss ideas. Local housing options may be reviewed, along with cooperative principles, benefits, and responsibilities. If there is agreement that a cooperative could be the solution, the **group** should seek the advice of someone familiar with cooperative housing.

Next, an exploratory meeting can be held with people whose housing needs might be met by a cooperative. Meetings can be publicized through word-of-mouth, newspapers, or flyers posted throughout the community. Discussion topics should include:

- How the proposed cooperative can meet the identified need.
- Cooperative principles and terminology.
- Advantages and disadvantages of a housing cooperative.
- Typical financial requirements.
- Member commitment.

Steering Committee

If interest exists in pursuing organization of a housing cooperative, a steering committee should be selected. The committee's role is to guide the group through the cooperative development process. It should consist of people who intend to live in the cooperative and may also include advisers and sponsors. In any case, those who serve on the steering committee should be respected in the community and able to make sound business judgements. Residents who serve on the steering committee often go on to serve on the cooperative's first board of directors.

Survey Potential Members

The steering committee can assess the housing needs, level of interest, and financial situation of prospective members by conducting a survey. The questionnaire should focus on identifying the types of housing and services needed or wanted; location alternatives; and how much prospective members can afford to pay for housing on a monthly basis. If a site has already been selected, information and questions about it should be included in the survey.

A sample membership survey is found in Appendix A. Survey findings are then reported at a meeting of those interested in joining the proposed cooperative and a vote is taken on whether to continue.

Site Selection/Design

An early step is to select the site for the cooperative—a land site if new construction or an existing building if renovation/conversion. The development process cannot go beyond the informational meeting stage without a cost estimate. In addition to costs, other factors (zoning requirements; soil tests to determine suitability as a building site; accessibility to building hookups; and environmental factors—wetlands or floodplains, etc.) must be considered when evaluating various land sites. Technical advisers such as realtors and architects should be consulted at this time.

Preliminary architectural designs and cost estimates are then developed. Design of the housing should suit the needs of the intended residents; complement the land site; and conform to all local, State, and Federal codes and standards, as well as any lender requirements.

Financial Feasibility

Financial feasibility involves developing estimates of the total cost of the project—land acquisition, construction or renovation, and monthly operating expenses. Costs should reflect reasonable and customary charges for the local area.

The amount and source of capital (member equity and loans) needed to finance the project, as well as expected income from monthly occupancy charges, are identified and compared with expected costs. At this point, changes in project design or operation may be made to bring costs and/or income into line. Based on the outcome of the financial feasibility, a vote should be taken on whether to continue the project.

Incorporation

Most financial institutions as well as Federal, State, and local development agencies will make loans only to legally established cooperatives.

Incorporation is the process that gives the cooperative a legal identity. Therefore, once the group makes a firm decision to go forward, the cooperative should be legally incorporated under the appropriate State law. Assistance should be sought from an attorney familiar with the cooperative incorporation process. Incorporation involves developing Articles of Incorporation and filing them with the appropriate State agency. Bylaws should also be drafted at this time.

Articles of Incorporation describe the type and scope of the cooperative's activities and include principal place of business, purposes, powers, etc. Model Articles of Incorporation are found in Appendix B.

Bylaws describe how the cooperative will conduct business, and usually include member eligibility, membership rights and responsibilities, how voting is carried out, etc. Bylaws establish formal lines of decisionmaking and authority as well as financial and managerial guidelines. Model bylaws are found in Appendix C.

Other legal documents to be drawn up include an *occupancy agreement*, also known as a *proprietary lease*, which outlines the rights and obligations of the member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing. A *subscription agreement* is the initial contract between the prospective cooperative member and the cooperative specifying the terms of application for membership and the amount of the membership fee. Samples of these agreements are found in Appendixes D and E, respectively.

A checklist of additional items to be accomplished at the time of incorporation includes:

- Select a bank where appropriate accounts can be established.
- Set up appropriate accounting procedures to maintain accurate records of membership payments and organization expenses.
- Require downpayment or membership fee. This will show the serious intent of potential members.
- Select an initial board of directors and committees such as planning, design, and finances. These groups should work closely with the sponsor and technical assistance group to both learn and

have some input when meeting with the architects, banks, community officials, etc.

- Conduct regular meetings and record discussions and decisions (minutes and agendas).

The Role of Directors

The board of directors is the democratically elected decisionmaking body of the cooperative. Cooperative boards vary in size, although most contain 6 to 9 directors. Cooperative laws usually require that all directors be members of the cooperative, although some State statutes allow housing cooperative boards to include nonmember directors who are representatives from the community, a sponsor group, etc.

The general membership has the authority to select board members and makes other important decisions as outlined in the bylaws. However, the day-to-day responsibility for decisionmaking and operations generally rests with the board of directors unless the cooperative has hired management. The board typically deals with matters in three broad areas of responsibility: membership issues, building management and maintenance, and financial oversight.

Board duties. Membership issues may include selecting or approving members; developing recreational, social, and educational programs for members; notifying members of meetings, votes, and decisions; and appointing members to committees.

Building management and maintenance responsibilities include adoption and changes in operating policies and practices; development and enforcement of house rules and architectural standards; hiring, directing, and monitoring professional management and employees; overseeing physical maintenance of buildings and grounds; and maintaining adequate insurance.

Financial oversight duties include establishing sound financial policies; maintaining accurate records; maintaining accountability to lenders and donors; approving annual budget, occupancy charges, and all major expenditures; acting against delinquent members; and arranging for the annual audit of the cooperative.

The bylaws require the board of directors to meet regularly (usually monthly); to notify all members well ahead of the meetings; and to conduct an open meeting at which members can attend and be heard (a provision allowing the board to meet in executive session for specific reasons, without members present, is usually included). The bylaws should also require that minutes be kept and distributed to all members.

Officers. The bylaws also provide for the election of officers from among those serving on the board of directors. Officers are elected by the board to the following positions and responsibilities:

- *President*—The elected head of the cooperative. The president calls and chairs meetings of the board and of the general membership; acts as official representative and spokesperson of the board; and personally reviews financial activities of the cooperative. It is common for the president to be cosigner of checks and documents.
- *Vice-president*—Serves in the absence of and assists the president.
- *Secretary*—Maintains written records including minutes, leases, deeds, mortgages, corporate papers, and contracts. Handles official communications.
- *Treasurer*—Maintains or supervises the financial records of the cooperative and typically cosigns checks and other legal documents.

Committees

It is critical that member-residents become involved in the operation of the cooperative by serving on the board of directors or on various committees that advise the board or perform certain tasks. The board of directors in a self-managed cooperative is helped in daily operations by committees made up of residents.

Committees may have responsibility for such duties as maintenance and groundskeeping or member communications. Committees in cooperatives having professional management might be responsible for developing rules and regulations or for evaluating certain projects such as the need for playground equipment or additional parking spaces.

Cooperative committees encourage members to mingle and interact. It allows the cooperative

and the board of directors to pool member talents and resources. Members also have the opportunity to work together to achieve solutions directly affecting them and to take charge of their living situation.

Training and Education

The responsibility cooperative members have for controlling and operating their housing dictates the need for training and education. Throughout the development process and periodically after that, residents (particularly board members) should receive training on various aspects of cooperation and building management. Topics might include roles and responsibilities of the board of directors, committees, and members; budgeting and finance; member communications; and maintenance of building systems. Such training is available from cooperative advisers or sponsors and local or regional cooperative associations.

WHERE TO GET MORE INFORMATION ABOUT COOPERATIVE HOUSING

National Association of Housing Cooperatives
1614 King Street
Alexandria, VA 2231402719
703/549-5201

National Cooperative Business Association
1401 New York Avenue NW, Suite 1100
Washington, D.C. 20005
202/638-6222

Housing Assistance Council
1025 Vermont Avenue NW, Suite 600
Washington, D.C. 20005
202/842-8600

National Cooperative Bank
1401 Eye Street NW, Suite 700
Washington, D.C. 20005
202/336-7700

Cooperative Services Program
Rural Business and Cooperative
Development Service
U.S. Department of Agriculture
14th & Independence Avenue NW
Washington, D.C. 20250
202/720-7558

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APPENDIX A

COOPERATIVE HOUSING SURVEY

The following questions will help you decide if cooperative housing is right for you.

(Please circle yes or no)

1. Are you willing to share the responsibilities required of a cooperative member? (yes/no)
2. If asked, will you serve on the board of directors or on a committee? (yes/no)
3. Are you willing to help maintain the cooperative property? (yes/no)
4. Do you now have a better idea of what cooperative housing really is? (yes/no)
5. Do you want more information about the cooperative before deciding whether to join? (yes/no)
6. If the answer to question 5 is "yes," will you come to a local information meeting? (yes/no)
7. Did you answer "no" to any of the questions 1, 2, or 3? If so, this type of housing is probably not for you. If you are interested, please complete the second portion of this survey
8. How many persons in your household? adults: _____ children: _____
9. Approximate annual income from all sources: \$ _____
10. How much are you currently spending for housing? \$ _____ per month.
11. Are you or members of the household disabled or impaired and in need of specifically designed housing arrangements? (yes/no) If yes, please describe briefly: _____

An informational meeting is scheduled for _____ a.m./p.m., on _____, 19 __, to discuss a proposed -unit cooperative planned for this community

APPENDIX B

(These are only sample legal documents. They should be adopted only after review by legal counsel who understands the unique characteristics of cooperatives and housing so that the documents conform to applicable laws and meet the specific needs of the cooperative and its members.)

SAMPLE ARTICLES OF INCORPORATION FOR COOPERATIVES

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a cooperative corporation under the laws of the State of _____.

FIRST: The name of the cooperative is _____.

SECOND: The location of its principal place of business in this State is _____, _____, County

THIRD: The location of its registered office in this State is _____, _____, County.

FOURTH: The name and address of its resident agent in this State is _____, _____, _____, County

FIFTH: This cooperative is organized not for profit in as much as it is not organized to make a profit for itself or its members. The objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

- (1) to acquire, construct, provide, and operate cooperative housing and related facilities.
- (2) to acquire, improve, and operate any real or personal property or interest or right herein or appurtenant thereto; to sell, convey, assign, mortgage, lease any real and personal property;
- (3) to borrow money and execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

SIXTH: The number of directors shall be prescribed in the bylaws, but shall not be less than five nor more than nine.¹

SEVENTH: The cooperative formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

¹ If the statute under which the cooperative housing project is to be incorporated with permit, it is preferable to state here the minimum number of directors. The actual number can then be stated in the bylaws which are more easily amended if it becomes necessary to change the number.

EIGHTH: The cooperative is not organized for pecuniary profit and shall have no power to declare dividends. The balance, if any of all money received by the cooperative from its operations, after payment in full of all operating expenses, debts, and obligations of the cooperative of whatsoever kind and nature as they become due, shall accumulate in an interest-bearing account but be equally assigned to each member as patronage capital.

NINTH: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators	Directors
_____	_____
_____	_____

TENTH: If at any time prior to dissolution the member wishes to terminate membership in the cooperative, money which has accrued in the member's patronage capital account and the member's membership fee shall be paid to the member provided the member's occupancy account is not delinquent and that any other charges to which the member is liable are paid.

ELEVENTH: The duration of the existence of this corporation shall be **perpetual**.²

IN TESTIMONY WHEREOF, We have here subscribed our names on _____ 19 ____.

_____	_____
_____	_____
_____	_____

_____ ² Duration should be perpetual, or long enough to cover the period of the loan plus 5 years.

APPENDIX C

(These are only sample legal documents. They should be adopted only after review by legal counsel who understands the unique characteristics of cooperatives and housing so that the documents conform to applicable laws and meet the specific needs of the Cooperative and its members.)

SAMPLE BYLAWS OF A NONPROFIT COOPERATIVE CORPORATION

ARTICLE I

Name and Location

Section 1.01. Name and Location. The name of this corporation, hereinafter referred to as the Cooperative is _____ and is located in _____, _____ in _____ County

ARTICLE II

Purpose and Powers

Section 2.01. Purpose. The purpose for which the Cooperative has been organized is to purchase or otherwise acquire, operate, and manage housing projects on a cooperative not for profit basis in the interest of and for the benefit of its members. In connection with such projects, the Cooperative may itself or through contract, lease, or otherwise, provide such facilities, services and benefits as may be necessary or convenient for the welfare of its members, provided the membership shall determine that such facilities, services and benefits are needed and are not otherwise available.

Section 2.02. Powers. The Cooperative shall have the power to purchase, lease, or otherwise acquire land in _____ and to construct or locate dwellings and other buildings and facilities thereon, to manage such property, and to do any and all things necessary or convenient for the fulfillment of the purpose of the Cooperative. The management of the property shall include the power to act as agent for members and prospective members of the Cooperative in the sale or lease of housing units and in all transactions incidental thereto.

ARTICLE III

Members

Section 3.01. Eligibility for Membership. Any natural person who is approved by the board of directors under the Cooperative under its rules and regulations shall be eligible for membership, provided that a Subscription Agreement and Occupancy Agreement in the usual form employed by the Cooperative covering a specific unit in the housing project, have been executed. A membership interest in the Cooperative may be jointly owned by two or more persons. The board of directors may approve memberships, by majority vote, at any regular or special meeting, when a quorum is present.

Section 3.02. Eligibility Criteria. Eligibility and approval of memberships shall be based on the following factors:

- a. satisfactory proof of financial ability to meet the costs of membership purchase and monthly costs of membership and/or qualification for applicable loan, and/or subsidy programs;
- b. interest in Cooperative participation and agreement to participate in Cooperative activities; and
- c. other factors deemed relevant by the Board.

Section 3.03. Nondiscrimination. The Board of Directors will not deny membership to an applicant for any unlawful reason under applicable local or federal law.

Section 3.04. Membership Certificates. The board of directors shall provide for the issuance, and determine the form of, certificates evidencing membership in the Cooperative. Such certificates shall state that the Cooperative is organized under the laws of the State of _____, the Cooperative's lien rights against such membership as set forth in these bylaws, the name(s) of the person(s) to whom the membership certificate is issued and date of issuance, a statement that each membership certificate is entitled to one vote only, and shall be signed by the president and the secretary, sealed with the seal of the Cooperative, and consecutively numbered. If a certificate becomes lost, mutilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board of directors may determine.

Section 3.05. Lien. The Cooperative shall have a lien on the outstanding memberships in order to secure payment of any sums which shall be due or become due from the holders for any reason whatsoever, including any sums due under any occupancy agreements.

Section 3.06. Voting Rights. Each membership interest as evidenced by a membership certificate is entitled to one vote. A membership interest in the Cooperative jointly owned by two or more persons is nevertheless entitled to one vote only.

Section 3.07. Termination of Membership for Cause. A member may be suspended or expelled, for violation of rules set forth in the Occupancy Agreement or these bylaws, by a majority vote of the board of directors, provided the member has been informed in writing of the charges against him/her at least ten days before the meetings of the board. However, the Cooperative shall not evict any member except by judicial action pursuant to State or local law. The member shall be given an opportunity to be heard at such meeting of the board. Upon termination of membership rights under the Occupancy Agreement, the member shall be required to deliver promptly to the Cooperative his/her membership certificate and Occupancy Agreement endorsed as required by the Cooperative. The terminated member then shall be entitled to receive the amount determined in accordance with the provisions of Section 3.10 less the following amounts (the determination of such amounts by the Cooperative to be conclusive):

- a. Any amounts due to the Cooperative from the member under the Occupancy Agreement;
- b. The cost or estimated cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the Cooperative to place the dwelling unit in suitable condition for another occupancy; and

- c. Legal and other expenses incurred by the Cooperative in connection with the default of such member. In the event the retiring member fails, within a 10-day period after demand, to deliver to the Cooperative his endorsed membership certificate, the membership certificate shall be deemed to be canceled and may be reissued by the Cooperative to a new member.

Section 3.08. Resignation. Any member may choose not to renew the Occupancy Agreement by notifying the Cooperative 4 months in advance of the renewal date. The member shall be required to deliver promptly to the Cooperative his/her membership certificate and Occupancy Agreement endorsed as required by the Cooperative. The retiring member then shall be entitled to receive the amount determined in accordance with the provisions of Section 3.10 less the following amounts (the determination of such amounts by the Cooperative to be conclusive):

- a. Any amounts due to the Cooperative from the member under the Occupancy Agreement; and
- b. The cost or estimated cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the Cooperative to place the dwelling unit in suitable condition for another occupancy

Section 3.09. Transfer of Membership. Membership in this cooperative is not transferable or assignable except to the Cooperative unless, upon death of a member, his/her membership in the Cooperative passes by will or intestate distribution to a member of the immediate family This is conditioned upon the person's eligibility and approval for membership and by his/her assuming in writing the terms of the Subscription Agreement and Occupancy Agreement within 60 days after member's death and payment of such debts.

Section 3.10. Transfer Value. Whenever a membership is transferred to the Cooperative, the term "transfer value" shall mean the sum of:

- a. The membership fee paid by the member on the books of the Cooperative, and
- b. The amount of the patronage capital which has accrued to the member during his/her period of membership as shown on the books of the Cooperative.

Section 3.11. Subscription Fees. All subscription funds shall be deposited promptly without deduction in a special account or accounts of the Cooperative as escrow or trustee for the subscribers membership. These funds shall not be corporate funds, but shall be held solely for the benefit of the subscribers until transferred to the account of the Cooperative as hereinafter provided. Such special account or accounts shall be established with a banking institution where deposits are insured by an agency of the Federal Government. Such funds shall be subject to withdrawal, or transfer to the account of the Cooperative, or disbursed in a manner directed by the Cooperative only upon certification by the president and secretary of the Cooperative that:

- a. The subscription agreement of a named applicant has been terminated pursuant to its terms and such withdrawal is required to repay the amount paid by him under such agreement; or
- b. A sufficient number of applicants for ____ dwelling units has not been established and such withdrawal is required to repay established applicants the amounts paid by them; or

- c. Applicants for dwelling units have signed subscription agreements, have been approved as to their eligibility by the board of directors, and have made at least a downpayment on their subscription (membership) fee. If these requirements have been met and the mortgage loan has been scheduled for closing, the entire amount of the funds in the subscription escrow account may be transferred to the cooperative which shall at that time deliver membership certificates to all members.

ARTICLE IV

Member Meetings

Section 4.01. *Annual Meeting.* An annual meeting of the members shall be held at _____ on the _____ of the month of _____ each year, beginning with the year **19** ____ at the hour of _____ o'clock, ____m., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 4.02. *Special Meetings.* Special meetings of the members may be called by the president, the board of directors or not less than one-fourth of the members.

Section 4.03. *Place of Meeting.* The board of directors may designate any place within or not more than ____ from _____ as the place for an annual meeting or for any special meeting called by the board.

Section 4.04. *Notice of Meetings.* Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than ten or more than twenty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the Cooperative, with postage thereon prepaid.

Section 4.05. *Quorum.* At any meeting of the members, a quorum shall consist of no less than ____ percent³ of the members. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting without further notice.

Section 4.06. *Proxies.*

- a. At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

³ For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

- b. For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Section 4.07. Voting.

- a. At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the Cooperative on the day of such meeting shall be entitled to vote in person or by proxy. Jointly owned memberships are entitled to one vote only.
- b. Unless otherwise stated in the articles of incorporation, or these bylaws, or required by applicable law, all questions shall be decided by a vote of a majority of the members voting thereon.

Section 4.08. Order of Business. The order of business at any regular or special meeting of the members or the board shall be:

- a. Roll Call.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading and approving of any unapproved minutes.
- d. Reports of officers and committees.
- e. Election of inspectors of election (when applicable)
- f. Election of directors (when applicable).
- g. Unfinished business.
- h. New business.
- i. Adjournment.

ARTICLE V
Directors

Section 5.01. Board of Directors. The property, business, and affairs of the Cooperative shall be managed by a board of directors composed of ____ members. Each director elected shall be a member of the Cooperative in good standing.

Section 5.02. Powers and Duties. The board of directors shall direct the affairs of the Cooperative and make necessary rules and regulations not inconsistent with the law, these bylaws, or the decisions of the membership meetings. The board may delegate duties to officers, committees, or other personnel, but it shall be responsible to the membership for their proper performance. It shall be the duty of the directors of the Cooperative to attend board meetings, to perform such tasks as may reasonably be assigned to them by the board, to study the problems and work of the Cooperative, to report thereon to the membership, and to make every effort to assist the Cooperative to achieve its purposes. The powers of the board of directors shall include, but not be limited to, the following:

- a. To accept or reject all applications for membership and admission to occupancy of a dwelling unit in the cooperative housing project, either directly or through an authorized representative;
- b. To establish monthly occupancy charges, as provided for in the Occupancy Agreement and based on an operating budget formally adopted by the board;
- c. To engage an agent or employees for the management of the project under such terms as the board may determine;
- d. To authorize the recording of patronage capital assignments on the Cooperative's books to members;
- e. To terminate membership and occupancy rights for cause; and
- f. To promulgate such rules and regulations pertaining to use and occupancy of the premises as may be deemed proper and are consistent with these bylaws and the Certificate of Incorporation.
- g. To appoint and abolish committees as deemed necessary.

Section 5.03. Election and Term of Office. Directors shall serve for two-year terms as herein provided or until the election of their successors. In even-numbered years directors shall be elected, and in odd-numbered years shall be elected.

The directors shall hold office until their successors have been elected and hold their first meeting. (If a larger board of directors is contemplated, the terms of office should be established in a similar manner so that they will expire in different years.) The term of any director who becomes more than 30 days delinquent in payment of his occupancy charges shall be automatically terminated and the remaining directors shall appoint his successor as provided in Section 5.04.

Section 5.04. Vacancies. Any vacancy occurring on the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 5.05. Organization Meeting. The first meeting of a newly elected board of directors shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected. No notice shall be necessary to the newly elected directors in order to legally constitute such meeting, provided a majority of the whole board is present.

Section 5.06. Regular Meetings. Regular meetings of the board of directors shall be held each month at such time and place established by the board of directors. Notice of regular meetings of the board of directors shall be given to each director, either personally, by mail, or telephone at least 5 days prior to the day named for such meeting.

Section 5.07. Special Meetings. Special meetings of the board will be held whenever called by the president or called by the secretary at the request of any two directors. Each director shall be provided three days notice. Such notice shall be made personally, by mail, or telephone and shall state the time, place and

purpose of meeting. The authorized person or persons calling a special meeting of the board may fix any place within or not more than _____ miles from _____ as the place for holding such meeting.

Section 5.08. Waiver of Notice. Before or at any meeting of the board of directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to being given such notice. Attendance by a director at any meeting of the board shall be a waiver of notice by him/her of the time and place thereto. If all directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 5.09. Quorum. A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors is present at said meeting, a majority of the directors present may adjourn the meeting without further notice.

Section 5.10. Manner of Acting. The act of a majority of the directors at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act without a formal meeting by written consent of all the directors of the Cooperative setting forth the action taken.

Section 5.11. Removal from Office. A director may be removed from office for violation of these bylaws or rules set forth in the Occupancy Agreement. A written complaint stating the reason(s) for removal and signed by at least members must be submitted to two officers of the board. A director may then be removed by the vote of not less than two-thirds of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against him/her at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Section 5.12. Compensation. Directors shall not receive any compensation for their services as directors.

Section 5.13. Absence from Meetings. Any director who is absent from _____ consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office of director.

Section 5.14. Residuary Powers. The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the Cooperative. All powers of the Cooperative except those specifically granted or reserved to the members by law, the Articles of Incorporation, or these bylaws shall be vested in the board.

ARTICLE VI

Officers

Section 6.01. Officers. The officers of the Cooperative shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 6.02. *Election and Term of Office.*

- a. The officers of the Cooperative specified in Section 6.01 shall be elected from the membership of the board of directors by the board at its annual meeting or as soon thereafter as feasible. New officers may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.
- b. The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 6.03. *Removal.* Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever, in its judgment, the best interests of the Cooperative would be thereby served. Such removal shall be without prejudice to the membership rights, if any, of the officer so removed.

Section 6.04. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 6.05. *President.* The president shall be the principal executive officer of the Cooperative and shall in general supervise and control all the business and affairs of the Cooperative. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the Cooperative authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed. In some cases the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officer or agent of the Cooperative and shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 6.06. *Vice President.* In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 6.07. *Secretary.* The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the Cooperative is affixed to all documents, the execution of which is on behalf of the Cooperative under its seal, is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary and such other duties as from time to time may be assigned by the president of the board.

Section 6.08. *Treasurer.* The treasurer shall have charge and custody of and be responsible for all funds and securities of the Cooperative; receive and give receipts for moneys due and payable to the Cooperative, from any source whatsoever, deposit all such money in the name of the Cooperative in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president of the board.

ARTICLE VII

Committees

Section 7.01. *Committees of Directors.* The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the Cooperative; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. *Member Committees.* Other committees not having and exercising the authority of the board in the management of the Cooperative will be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. At the first membership meeting the members will be solicited by the president to obtain voluntary commitments to serve on the various committees. As many members as possible should be encouraged to become involved in committee responsibilities. Any member may be removed from a committee by the president whenever in his/her judgment the best interest of the Cooperative shall be served by such removal.

Section 7.03. *Term of Office.* Each member of member committees shall continue as such until the next annual meeting of the members of the Cooperative when members may change from one committee to another. Additional members may join a committee at any time during the year.

Section 7.04. *Chairperson.* One member of each member committee shall serve as chairperson by decision of the members of the committee. The chairperson will report committee activities and receive direction from a designated member of the board.

Section 7.05. *Vacancies.* Vacancies in the member of any membership committee may be filled in the same manner as provided in the case of the original members.

Section 7.06. **Quorum.** Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole member committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. *Rules.* Each membership committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

ARTICLE VIII

Financial Regulations

Section 8.01. *Fiscal Year.* The fiscal year of the Cooperative shall be the calendar year.

Section 8.02. *Deposits.* All funds of the Cooperative shall be deposited to the credit of the Cooperative in such Federally insured banks, trust companies, or other Federally insured depositories as the board may select.

Section 8.03. **Books and Accounts.** The treasurer of the Cooperative shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and commit-

tees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the Cooperative may be inspected by any member, or member's agent or attorney for any proper purposes at any reasonable time, so long as prior written notice stating such purposes is provided.

Section 8.04. *Auditing.* At the close of each fiscal year, the books and records of the Cooperative shall be audited by a Certified Public Accountant. Based on that report the Cooperative will furnish its members with an annual financial statement including the income and disbursements of the Cooperative. The Cooperative will also supply the members, as soon as practicable after the end of each calendar year, with a statement showing the amount assigned to each member's patronage capital account.

Section 8.05. *Patronage Capital.* All funds accruing to the Cooperative during the year, above and beyond the costs and expenses of operating the Cooperative, shall be assigned to each member on the books of the Cooperative as patronage capital at the end of each fiscal year. These patronage capital funds may not be removed from the patronage capital account except in payment to members upon termination of membership. Any member not wishing to renew the Occupancy Agreement will be entitled to receive the patronage capital assigned to the member on the books of the Cooperative. Likewise, members terminated because of violation of these bylaws may receive his/her patronage capital pursuant to provisions of Section 3.05.

ARTICLE IX

Seal

Section 9.01. The board shall provide a cooperative seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words "Cooperative Seal." The seal will be kept by the secretary.

ARTICLE X

Waiver of Notice

Section 10.01. Whenever any notice is required to be given under the provisions of the statutes of said State or the Articles of Incorporation or the bylaws of the Cooperative, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XI

Repeal or Amendment of Bylaws

Section 11.01. *Repeal or Amendment of Bylaws.* These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present provided no such action shall change the purposes of the Cooperative so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the Cooperative or its members, or to deprive any member without an express assent of rights, privileges or immunities then existing. Notice of any amendment to be offered at any meeting shall accompany the notice of any regular or special meeting at which proposed amendment is to be voted upon.

ARTICLE XII

Dissolution and Property Interests of Members

Section 12.01 Upon dissolution, after all debts and liabilities of the Cooperative have been paid, all membership shares redeemed, the remaining property and assets of the Cooperative shall be distributed among the member in the proportion which the aggregate patronage of each member bears to the total patronage of all such members insofar as practicable, unless otherwise provided by law.

APPENDIX D

(These are only sample legal documents. They should be adopted only after review by legal counsel who understands the unique characteristics of cooperatives and housing so that the documents conform to applicable laws and meet the specific needs of the Cooperative and its members.)

SAMPLE SUBSCRIPTION AGREEMENT

Dwelling Unit No. _____

Date _____

1. Subscription Amount:

(a) I/We _____ a legal resident(s) of _____, hereinafter called "Subscriber," hereby subscribe for membership in _____, a cooperative housing corporation hereinafter called the "Cooperative," and hereby subscribe to a Membership Certificate in said Cooperative having a par value of \$ _____

(b) Subscriber hereby agrees to pay for the Membership Certificate, also referred to as Membership Fee, as follows:

(1) \$ _____ upon signing this agreement.

(2) \$ in monthly payments of \$ _____ payable over _____ consecutive months (not to exceed 12 months).

2. Ratification of Other Provisions. Subscriber has read and agrees to be bound by all provisions of the articles of incorporation, bylaws, and occupancy agreement, copies of which are attached hereto and receipt of which is hereby acknowledged.

3. Priority of Mortgage Lien. This agreement and all rights hereunder are and at all times shall be subject and subordinate to the lien of the mortgage and accompanying documents executed by the Cooperative, and to any and all modifications, extensions, and renewals thereof; and to any mortgage or deed of trust which may at any time hereafter be placed on the property of the Cooperative or any part thereof.

4. Occupancy Agreement. Subscriber, if approved for membership, will be entitled to occupancy of the above numbered dwelling unit under provisions of the above-mentioned occupancy agreement. Estimated initial charge per month for said unit will be established prior to signing the occupancy agreement. I/We agree to execute the occupancy agreement on demand and to comply with all the terms thereof.

5. Cancellation Rights.

(a) The Cooperative reserves the right at any time before it has notified the Subscriber of his/her acceptability for membership, for reasons deemed sufficient by the Cooperative to return the amount paid by the Subscriber under this agreement. In the event the Subscriber shall have died prior to becoming a member, the Cooperative reserves the right to return the amount paid by the Subscriber under this agreement to Subscriber's estate or legal representative and thereupon all rights of the Subscriber shall cease and terminate without further liability on the part of the Cooperative.

- (b) If the subscriber within five (5) days after the execution of this subscription agreement, notifies the Cooperative in writing that he/she wishes to withdraw from the agreement, the amounts paid by the Subscriber under this agreement will be returned to the Subscriber and thereupon all rights and liabilities of the Subscriber hereunder shall cease and terminate. If, at the end of the five-day period, the Subscriber has not exercised this right to withdraw, the right will be terminated.
- (c) If the Subscriber defaults in any obligation under this agreement, and such default continues for fifteen (15) days after notice sent by registered mail by the Cooperative to the Subscriber at the address given below, then at the option of the Cooperative, the Subscriber shall lose any and all rights under this agreement. Any amount paid toward this subscription price at the option of the Cooperative may be retained by the Cooperative as liquidated damages or be returned, less the Subscriber's proportionate share of expenses incurred by the Cooperative as determined solely by the Cooperative. The Cooperative may, at its option, release the obligations of the Subscriber under this agreement in the event the Subscriber secures an assignee of this agreement who assumes the obligations herein contained and is satisfactory to the Cooperative. This agreement is not otherwise assignable.

6. Oral Representation Not to be Relied Upon. This agreement will supersede any prior understandings and agreements and constitutes the entire agreement between the Subscriber and the Cooperative, and no oral representation or statements shall be considered a part hereof.

WITNESS:

(Subscriber)

(Subscriber)

(Address)

(Telephone)

APPENDIX E

(These are only sample legal documents. They should be adopted only after review by legal counsel who understands the unique characteristics of cooperatives and housing so that the documents conform to applicable laws and meet the specific needs of the Cooperative and its members.)

SAMPLE OCCUPANCY AGREEMENT (Proprietary Lease)

THIS AGREEMENT, dated _____, by and between _____ (hereinafter referred to as the "Cooperative"), at _____ and _____ (hereinafter referred to as the "Cooperative"), at _____ and _____ (hereinafter referred to as "Member").

WITNESSETH: WHEREAS:

The purpose of the Cooperative is to acquire, own, and operate a cooperative housing project and its members shall have the right to occupy its dwelling units under the terms and conditions set forth in this agreement:

Member is the owner and holder of a certificate of membership of the Cooperative and intends to occupy a dwelling unit in the project as permanent residence; and

Member has certified to the accuracy of the statements in Member's application.

TO HAVE AND TO HOLD dwelling unit Number _____ on the terms and conditions set forth in this agreement, in the corporate charter, bylaws, and any other rules and regulations of the Cooperative. The term of this agreement shall be for a -year period ending on _____, 19 ____, renewable for s u c c e s s i v e -year periods under the conditions provided for in this agreement.

ARTICLE 1. OCCUPANCY CHARGES.

Section 1.01. General. Commencing at the time indicated in ARTICLE 2, the Member agrees to pay to the Cooperative a monthly sum referred to as the "Occupancy Charge." This amount will be equal to one-twelfth of the Member's proportionate share of the total amount required by the Cooperative, as estimated by its board of directors, to meet its annual expenses and the requirements of the mortgagor. These include but are not limited to, the following items:

- (a) Project operating expenses and cost of services furnished.
- (b) Necessary management reserve and administrative costs.
- (c) Taxes and assessments levied against the project or the Cooperative which it is required to pay.
- (d) Fire and extended coverage insurance on the project any other insurance which the Cooperative may require.
- (e) The cost of furnishing any water, electricity, heat, gas, garbage and trash collection, and other utilities, if furnished by the Cooperative.
- (f) Payments to other reserves set up by the board of directors.
- (g) Estimated costs of repairs, maintenance, and replacements of project property to be made by the Cooperative.

- (h) The amount of principal, interest, and any other required payments on any indebtedness of the Cooperative.
- (i) Any other expenses of the Cooperative approved by the board of directors, including operating deficiencies, if any for prior periods.

Section 1.02. *Amount of Occupancy Charge.* The board of directors shall determine the amount of the occupancy charges annually, but may do so at more frequent intervals should circumstances so require. No Member shall be charged with more than the appropriate share determined by the board of directors. That amount of the occupancy charge required for payment on the principal of mortgage of the Cooperative or any other capital expenditures shall be credited upon the books of the Cooperative as a capital contribution by the Members. Until further notice from the Cooperative, the monthly charge for the above-mentioned dwelling unit shall be \$ _____.

Section 1.03. *Time of Occupancy Charge.* After thirty days' notice by the Cooperative that the dwelling unit is available for occupancy or upon acceptance of occupancy, whichever is earlier, Member shall make a payment for occupancy charge covering the unexpired balance of the month. Thereafter, Member shall pay occupancy charge in advance on the first day of each month.

Section 1.04. Late Charges. In addition to all other sums due or to become due under this agreement, Member shall pay to the Cooperative a late charge, not to exceed \$10.00, at any time payment of occupancy charges, or part thereof, is more than 10 days late. This late fee may be waived, depending on the circumstances and at the discretion of the board.

ARTICLE 2. PATRONAGE REFUNDS.

The board shall, on the books of the Cooperative, assign to Member in accordance with the Internal Revenue Service ruling concerning patronage capital, a proportionate share of money collected in excess of the amount needed for Cooperative expenses, including reserves, and Members will be notified of the amount assigned each year.

ARTICLE 3. OPTION TO RENEW.

It is agreed that the term of occupancy shall be renewed for further periods of years from the expiration of the initial term (or for a longer term as mutually agreed to by the member and the Cooperative). Such renewals shall be based upon the same agreements as contained in this agreement unless: (1) notice of Member's decision not to renew is given to the Cooperative in writing at least months prior to expiration of the current term, and (2) Member, before expiration of said term shall (a) endorse membership certificate for transfer to Cooperative and deposits same with the Cooperative, (b) meet all obligations and pay all amounts due under this Agreement before said expiration, and (c) vacate and leave the premises in good state of repair. Upon compliance with foregoing provisions (1) and (2), Member shall have no further liability under this agreement. If extenuating circumstances warrant, the Member's _____ -month notification of intention to vacate may be modified appropriately. The Member will be entitled to the patronage capital which has accrued and been assigned during the term of this agreement provided that provisions (1) and (2) have been met.

ARTICLE 4. OCCUPANCY.

Section 4.01. Peaceable Possession. In return for Member's continued fulfillment of the terms and conditions of this agreement, the Cooperative agrees that the Member may at all times while this agreement remains in effect, have and enjoy for the Member's sole use and benefit the dwelling unit and community facilities hereinabove described.

Section 4.02. Occupancy. Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit for the Member and/or immediate household and for no other purpose. The Member shall have use of all common community property and facilities of the project so long as Member continues to own a membership certificate of the Cooperative, occupies the assigned dwelling unit, and abides by the terms of this agreement. Any sublessee of the Member, if approved pursuant to Article 8 hereof, may enjoy the rights to which Member is entitled under this Article 5, except that the sublessee will have no voting rights in the affairs of the Cooperative.

Section 4.03. Authorized Use of Premises. Members shall use the premises and the common property and facilities in conformance with the terms of this agreement, the bylaws, and the rules. Use of the premises or any part of the premises for any purpose contrary to the interests of the Cooperative or its members as determined by the Cooperative or contrary to law is not authorized. It shall be the duty of the Member to respect the comfort and peace of mind of neighbors as well as of all members and tenants of the Cooperative, not to engage in conduct that is objectionable conduct, and to ensure that all persons occupying or visiting the premises so act. Member agrees not to do or allow to be done, or keep or allow to be kept upon the premises, anything that will increase the rate of insurance on the premises or do or allow to be done any act or thing that shall or may be a nuisance, annoyance, inconvenience, or damage to the Cooperative or its members or tenants, or to the occupants of adjoining dwellings or of the neighborhood.

Section 4.04. Rules. The board may impose any reasonable Rules not inconsistent with the bylaws, and may change the rules from time-to-time as in its judgment may be necessary or desirable for, among other purposes, the safety, care, and cleanliness of the premises, common facilities, and surrounding dwellings, and for the preservation of good order, comfort therein, and Member agrees to observe and comply faithfully with such rules, and agrees that all persons occupying or visiting in the premises also shall observe and comply with such rules.

ARTICLE 5. OPERATING SERVICES, UTILITIES AND RESERVES.

Section 5.01. Duties of the Cooperative. The Cooperative shall: (i) provide necessary management and administration of the Cooperative; (ii) provide for the payment of all taxes and assessments levied against the Cooperative; (iii) procure and provide for the payment of fire and extended coverage and public liability insurance and provide purchase of such other insurance or self-insurance, coverage and protection as the board may deem advisable, including insurance on the premises, but such insurance or self-insurance shall NOT cover Member's personal property, including alterations, betterments, or improvements in, on, or appurtenant to the premises; (iv) set up reserves to cover contingencies, repurchases, and future costs of replacements; and (v) subject to different provisions that may be contained in the rules from time-to-time, pay for all current repairs, maintenance and replacements on the items provided by the Cooperative in accordance with the general maintenance program described in this agreement, except that repairs, maintenance, and replacements necessitated by the negligence of Member or any person occupying or visiting in the premises shall be paid for by the Member.

Section 5.02. Member Duties. Heating, air conditioning, and hot water charges [will/will not] be individually metered and billed, and [Member/Cooperative] shall pay for these charges directly to the appropriate utility companies. Water and sewer charges [will/will not] be individually metered and billed, and [Member/Cooperative] shall pay for these charges directly to the appropriate companies or agencies.

ARTICLE 6. MAINTENANCE AND REPAIRS.

Section 6.01. General Maintenance Program. The Cooperative shall have the exclusive authority to direct from time-to-time the manner of maintaining, repairing, and replacing the premises and the equipment in the premises owned by the Cooperative. The expense of making all repairs or taking any other action necessitated by negligence of Member or of persons occupying or visiting in the premises shall be paid entirely by Member.

Section 6.02. Member Maintenance Responsibilities. Member agrees to repair and maintain Member's dwelling unit at own expenses as follows:

- (a) Any repairs or maintenance necessitated by Member's own negligence or misuse;
- (b) Any redecoration of own dwelling unit authorized, done or contracted for by Member;

Section 6.03. Access to Premises. Member agrees to the right of the officers of the Cooperative to authorize entrance to Member's dwelling unit in order to complete necessary repairs, maintenance, and replacements and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency, or others at any reasonable hour of the day and upon reasonable notice. In the event of emergency, the unit may be entered at any time. Notification of entry will be left for the member by the person performing the maintenance or repair.

Section 6.04. Alterations and Additions. The Member shall not, without the written consent of the Cooperative make any structural alterations in the premises or in the water, gas or steam pipes, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements, or fixtures from the premises.

ARTICLE 7. EFFECT INTERESTS OF MEMBER OF SEVERE DAMAGE OR LOSS.

Section 7.01. In the event of loss or damage by fire or other casualty to Member's dwelling unit without fault or negligence of Member, the Cooperative shall determine (1) whether to restore the damaged premises and, if not, (2) the amount to be paid to Member to redeem membership and for reimbursement for any loss sustained by the Member.

Section 7.01. If, under such circumstances, the Cooperative decides to restore the premises, occupancy charges shall stop wholly or partially, as determined by the Cooperative, until the premises have been restored. If, on the other hand, the Cooperative decides not to restore the premises, the occupancy charges shall cease from the date of such loss or damage.

ARTICLE 8. SUBLETTING.

This agreement shall not be assigned nor Member's dwelling unit sublet without the written consent of the Cooperative. Under this agreement the Member shall be liable for the conduct of the sublessee. Any unau-

thorized subleasing shall, at the option of the Cooperative result in termination and forfeiture of Member's rights under this occupancy agreement.

ARTICLE 9. TRANSFERS.

Neither this agreement nor Member's right of occupancy shall be transferrable or assignable except as provided in the bylaws of the Cooperative for the transfer of membership.

ARTICLE 10. TERMINATION/EFFECT OF TERMINATION.

Section 10.01. General. This agreement will terminate according to and subject to the terms in this agreement and, as applicable, the bylaws. All of Member's rights, title, and interest in the perpetual use of the premises shall terminate immediately when this agreement terminates.

Section 10.02. Definition. If, at any time after the happening of any event specified in clauses (a) through (i) below, the Cooperative gives to Member a 30-day notice of termination, this agreement and all Member's rights under this agreement will expire on the date specified in such notice. In the meantime the default may be cured in a manner deemed satisfactory by the Cooperative. After 10 days following such expiration of Member's rights, the Cooperative may reenter the dwelling unit and remove all persons and personal property therefrom, by any means available to it by law, and may repossess the dwelling unit in its former state as if this agreement had not been made.

- (a) If, during the term of this agreement, Member ceases to be the owner and legal holder of a membership of the Cooperative.
- (b) If Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the bylaws.
- (c) If, during continuance of this agreement, Member is declared bankrupt under the laws of the United States so as to be released from any debt or obligation to the Cooperative or to interfere with his full exercise of his/her rights as Member and occupant.
- (d) If, during continuance of this agreement, a receiver of Member's property is appointed under the laws of the United States or of any State.
- (e) If, during continuance of this agreement, Member shall make a general assignment for the benefit of creditors.
- (f) If, during continuance of this agreement, any of the membership rights in the Cooperative owned by Member are duly levied upon and sold under the process of any court.
- (g) If Member fails to effect and/or pay for repairs and maintenance as provided for in Article 6.
- (h) If Member fails to pay any sum due pursuant to Article 1.
- (i) If default occurs with respect to any obligation of Member under this agreement.

Section 10.03. *Xe-entry.* Member hereby expressly waives any and all right to reenter the dwelling if the eviction is by judgment of any court or judge. The words “enter,” “reenter,” or “reentry” as used in this agreement are not restricted to their technical legal meaning. In the event of a breach by Member of the terms of this agreement, the Cooperative shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings, and other remedies were not provided for.

Section 10.04. *Remedies.* Failure by the Cooperative to avail itself of any remedy given under this agreement shall not waive or destroy any right of the Cooperative to avail itself of remedies for any similar or other breach or default by Member.

Section 10.05. *Notice.* Notice by the Cooperative under any of the conditions described in Article 10 shall be in writing. The Cooperative shall not evict any member except by judicial action pursuant to State or local law.

ARTICLE 11. SUBORDINATION.

This agreement and all rights, privileges, and benefits hereunder shall be at all times subject and subordinate to any lien of any mortgage, deed of trust, chattel mortgage, note or other instrument made by the Cooperative or on the property of the Cooperative in existence at the time of this contract or hereinafter created. Member hereby agrees to execute, at the Cooperative’s request and expense, any instrument which the Cooperative or any lender or mortgagee may deem necessary or desirable to subordinate this agreement to any such security instrument. Member hereby appoints the Cooperative and each and every officer thereof, and any future officer, as irrevocable attorney-in-fact during the term of the agreement to execute any such instrument on behalf of Member.

ARTICLE 12. PERSONAL LIABILITY OF MEMBER FOR DEBTS OF The Cooperative.

Member shall not be personally liable for any debt or other obligation of the Cooperative. In the event the Cooperative becomes insolvent or a receiver is appointed to take possession of the Cooperative property, or the Cooperative makes an assignment for the benefit of creditors, or is granted relief under any bankruptcy statute, then at any time within a period of _____ thereafter, Member shall have the right and option to terminate this agreement by serving notice of such termination on the Cooperative or its representative, and except such liabilities as have accrued and are due and payable on the the date of the exercise of this right and option, all liabilities Member has assumed hereunder shall cease and terminate upon serving notice of such termination.

ARTICLE 13. PAYMENT OF LEGAL EXPENSES.

Member and the Cooperative hereby agree that in any legal action in any forum brought by Member against the Cooperative or against any of its directors, officers, or employees relating to any act of omission under this agreement, the bylaws, or the rules, which action is decided against the Member, Member shall pay the expenses of the Cooperative and its directors, officers, and employees resulting from that legal action. The term “expenses” includes but is not limited to actual attorneys’ fees and all other costs (including administrative costs), fees, disbursement, and court fees incurred.

ARTICLE 14. CONDEMNATION PROCEEDINGS.

Whenever the State, a political subdivision, or any other corporation, agency, or authority (collectively, "Condemning Authority") having the power of eminent domain shall seek to acquire any property of the Cooperative, including the premises, Member agrees that the board shall have the authority to negotiate with the Condemning Authority as Member's representative, and the board may execute and deliver the appropriate conveyance for all agreed consideration, except as may otherwise be provided in any mortgage or deed of trust affecting the property. The board shall allocate such consideration, whether received through negotiation or condemnation, as may be required by any holder of a lien on the property or, in the sole discretion of the board, to the repair, replacement, or restoration of the property, or to Members holding mutual ownership contracts for the premises that were the subject of such negotiations or condemnations. Subject to the foregoing provisions, in any condemnation proceeding, Member and Member's authorized assignees shall be entitled to seek just damages for the taking of the premises as allowed by law, including severance damages, if any.

ARTICLE 15. MISCELLANEOUS.

Section 15.01. Notices. Whenever any bylaw of Cooperative, any law, or this agreement requires notice to be given to either party, any notice or demand by the Cooperative to Member shall be considered to have been duly given if the same is delivered to Member at Member's dwelling unit or to Member's last known address. Any notice or demand by Member to the Cooperative shall be considered to have been duly given if delivered to an officer of the Cooperative. Such notice may also be given by depositing same in the United States mails addressed to Member as shown on the books of the Cooperative, or to the president of the Cooperative, as the case may be, and the time of mailing shall be the time of giving such notice.

Section 15.02. Representations. No representation other than those contained in this agreement and in the charter and the Bylaws of the Cooperative shall be binding upon the Cooperative.

Section 15.03. Modification of the Agreement. This agreement may be changed or modified by an amendment to the bylaws approved by the Cooperative membership as provided in the bylaws. Except as provided in the preceding sentence, no change or modification of this agreement shall be valid unless the same shall be in writing and signed by the parties to this agreement.

Section 15.04. Severability. The provisions of this agreement are severable and in the event any provision of the agreement conflicts with applicable law or is found to be invalid, such conflict or invalidity shall not affect the other provisions of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

(Cooperative)
By _____ (Seal)

(Member)

TO BE DULY ACKNOWLEDGED

**U.S. Department of Agriculture
Rural Business and Cooperative Development Service**

Ag Box 3255
Washington, D.C. 20250-3255

Rural Business and Cooperative Development Service (RBCDS) provides research, management, and educational assistance to cooperatives to strengthen the economic position of farmers and other rural residents. It works directly with cooperative leaders and Federal and State agencies to improve organization, leadership, and operation of cooperatives and to give guidance to further development.

The cooperative segment of RBCDS (1) helps farmers and other rural residents develop cooperatives to obtain supplies and services at lower cost and to get better prices for products they sell; (2) advises rural residents on developing existing resources through cooperative action to enhance rural living; (3) helps cooperatives improve services and operating efficiency; (4) informs members, directors, employees, and the public on how cooperatives work and benefit their members and their communities; and (5) encourages international cooperative programs.

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