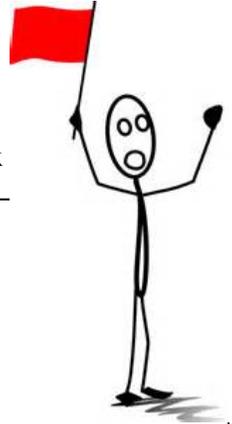




# MAHC Messenger

## Red Flags For Cooperative Boards

Kerry Lee Morgan, Esq., Pentiuk, Couvreur & Kobiljak



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Last summer my family visited the Atlantic Ocean in North Carolina. When we arrived on the beach however, we noticed that red flags were flying. The red flags warned us that there were rip tides and that swimming was out of the question. We had to wait a few days to get in the water, but it was safe when the red flags came down.

Are there red flags flying at your cooperative, but you can't see them?

Perhaps the biggest red flag flying at Cooperatives these days involves member requests about pets. Perhaps you've had a member who has a pet dog or cat but your cooperative has a no pet policy. What do you do? Evict? Write up? Send a warning letter? Humm, did you see the red flag? The red flag here says not all dogs and cats are pets. That is no misprint. Some dogs and cats are what the law calls "companion animals" or "emotional support animals" and some dogs are "service animals." If your member has an animal or is going to get an animal and it's one of these three kinds of animals, then it's not a pet. Since it's not a pet, it is not subject to Cooperative's "No pet" policy.

In fact, the law requires that Cooperatives allow that member to have that animal provided the member's physician certifies that such an animal is required to help alleviate a mental or physical condition or disability from which the member suffers. Boards can't judge whether the member actually suffers

from this or that condition. They have to take the doctors word for it. Once a member provides you a doctor's note and the member requests an accommodation to keep the animal, the Board should consider that a red flag flying in the wind. What to do? At that point, the Board should be talking to its attorney. It should not be trying to evict or write up its member for violation of the occupancy agreement. Swimming in this rip tide is fatal.

Of course, this doesn't mean the animal can run wild, bark all night, or jump up on other members. Boards should adopt reasonable rules and regulations that govern all companion and emotional support animals in order to provide a quiet and safe environment for everyone else. Your attorney can help you draft such policies that are enforceable. But such a policy can't require the owner to pay a fee for the privilege of owning the animal.

Boards which ignore this red flag will end up wading into the riptide of governmental investigators. That will cost you more time and money than you can afford, and in the end the member will be able to possess the animal, yet subject to your rules and regulations governing the animal's care and conduct.

Remember, Boards cannot keep companion or emotional support animals out of the Cooperative, but they can

(Continued on page 2)

## Inspiration to live by...

**“It is amazing how much you can accomplish, when it doesn’t matter who gets the credit”**

~ Unknown

**“Talent wins games, but teamwork and intelligence wins championships”**

~ Michael Jordan

**“Only a man who knows what it is like to be defeated can reach down to the bottom of his soul and come up with the extra ounce of power it takes to win when the match is even.”**

~ Muhammad Ali



## Red Flags For Cooperative Boards

(Continued from page 1)

adopt reasonable rules and regulations governing the animal’s conduct.

What other red flags are flying which Cooperatives fail recognize? Our society has gradually reduced the places smokers can smoke for the last 40 years. It’s a war against smokers waged by government at all levels. Now the war has come to cooperatives with non-smokers having the upper hand. Perhaps you are a smoker? Perhaps you are against smoking? Do you see the red flag flying? The Cooperatives policy can’t be based on your own personal views on smoking. Stay out of that rip-tide!

The smoking battleground is now in your cooperative. If your cooperative permits smoking by members in their unit, then it’s only a matter of time before non-smokers in the same building as the smoker complain about secondhand smoke in their units. This is another red flag. Do you see it? Don’t ignore it. Your cooperative’s bylaws or occupancy agreement or perhaps rules promise that each member is entitled to the quiet peace and enjoyment of their own unit. Your documents also prohibit creating a nuisance. Does the smoking member’s secondhand smoke disturb the quiet peace and enjoyment of non-smoking members? Does it create a nuisance? You have a complaint about second hand smoke in hand. What are you going to do about it?

The cooperative may certainly

ban smoking in common areas such as hallways or the clubhouse or pool area for instance. But can it ban smoking by a member in their own unit? The answer seems to be that it can. In fact, the federal government is moving towards actually requiring complete smoking bans in public housing. Keep your eyes open for these developments.

Until then, if your cooperative permits smoking and you receive complaints about secondhand smoke, the Board has a duty to take action to prevent secondhand smoke from entering the unit of the non-smoking member. This area is in a state of development so be sure to consult your attorney for options as each case must be considered on its own facts. Whatever you do, don’t ignore the red flag. If you do, then state and federal investigative agencies will be on your doorstep and you’ll have more problems to deal with than just smoke in your eyes.

If you want to enjoy this summer, look for the red flags and avoid the rip tide of governmental investigators. Your cooperative will have a better quality of life if you do.

*Mr. Morgan is an attorney practicing law with the Pentiuk law firm. Much of Mr. Morgan’s practice focuses on civil rights law, employment and labor law, and civil litigation. He is a former attorney for the U.S. Commission on Civil Rights.*

## What To Do When The EEOC Comes Knocking?

By: Randall Pentiuik, Esq and Kerry Morgan, Esq.

**H**as your Cooperative ever received a charge of employment discrimination? Such charges are often filed by Cooperative employees after termination. The terminated employee contacts the Equal Employment Opportunity Commission (EEOC) or a State civil rights commission and files a charge. Charges often allege the employer discriminated against an employee because of race, color, gender, religion, age, etc. In the past dozen years, the number of claims against employers alleging discrimination based on disability has also risen dramatically.

Cooperative employers are often taken by surprise by such claims. The employer may perceive that the claim bears no resemblance to the actual basis upon which the employee was terminated, usually poor performance. What should a Housing Coopera-

tive do upon receiving a charge from either the EEOC or a State Civil Rights Agency?

The first thing many Cooperatives do is nothing. They just hope the matter will go away. Rest assured, it will not. The first thing that you should do is contact your Cooperative Attorney and send the charge to him or her immediately. The EEOC often imposes very strict timelines for responding to a charge, usually 14 to 21 days. So timeliness is important.



*(Continued on page 8)*

### MAHC Board of Directors 2016-2017

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# Did You Know?



CO-OP's are Serious Business

*Running a Housing Cooperative is a serious business. It is not an opportunity to play games, to reward friends, to punish enemies, to push petty personal projects, or to accumulate power.*

*The Board of Directors is morally and legally responsible for running their cooperative as a serious business.*

## Dear Co-op Counselor; HELP!

Dear Counselor;

I understand that HUD has issued a new rule on criminal convictions in screening applicants for membership; does this mean that we can no longer ask about criminal histories? Please advise.

Signed,  
Criminal Conscious



Dear Conscious;

In April of this year, HUD and the department of justice issued a "guideline" on the use of criminal convictions in housing decisions. The intent of this "guideline" is to avoid a discriminatory impact by the arbitrary use of criminal convictions to exclude a person from housing. While this directive does not prevent inquiring about criminal histories care must be given when using this information for membership selection.

This is a brand new direction which will require much analysis of your cooperative's policies related to member selection and, in particular, decisions based upon an applicant's or potential occupants criminal history.

There is a misconception that the new directive applies only to cooperatives subject to HUD. In reality, this guideline is premised upon fair housing principles, and therefore, is applicable to all housing cooperatives.

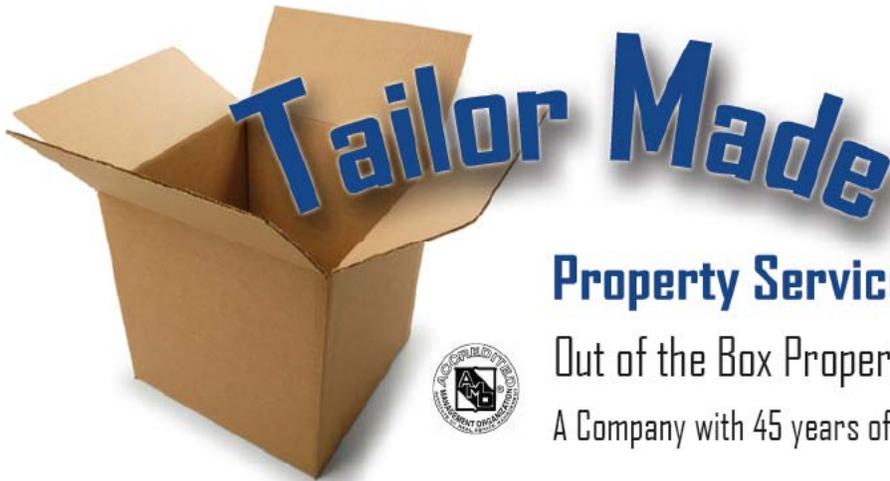
In summation, boards are strongly encouraged to review the new guidance with their cooperative attorney to ensure full compliance.

Signed: Co-op Counselor (CC)

**Disclaimer:** While we hope this information is helpful in answering some of your questions, please be advised that the answers provided here are for "general" informational purposes only. This information should not be construed as "legal advice" either to the individual or the Cooperative that they represent, the use of this forum does not create an attorney-client relationship between the user/reader and Mr. Penttiuk or his law firm, Penttiuk, Couvreur and Kobiljak, P.C.

For specific legal advice and personalized assistance with regard to your particular issue or problem you should contact a professional cooperative attorney.

If you are interested in submitting a question (regarding legal policy and procedure) to the Co-op Counselor, please submit your question via email to MAHCeditor@gmail.com, insert the words "Co-op Counselor" in the subject line. If you would like to mail your question please send it to Penttiuk, Couvreur & Kobiljak, P.C., 2915 Biddle Suite 200, Wyandotte, MI 48192 Attention: "Co-op Counselor". While we will do our best to respond to your question please understand that submission of your question to this forum is no guarantee that you will get a published response.



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# Announcements/Awards



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EXECUTIVE DIRECTORS AWARD

**Tailor Made Property Service**

DR. HERMAN E CURTIS CO-OPER OF THE YEAR AWARD

**Kathy Wood——Cumberland Green Cooperative**

ALMEDA RITTER AWARD

**Jim Hermsen——Three Fountains East**

BILL MAGEE SPIRIT AWARD

**Randall Pentiuk——Pentiuk, Couvreur & Kobiljak**

SOLIDARITY AWARD

**St. Joseph Community Cooperative**

LIFE LONG SERVICE TO MAHC AWARD

**David Rudicil—Colonial Village Cooperative**

## CONGRATULATIONS!

### You're all Winners!

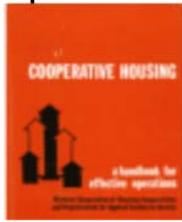
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### Our Mission Statement

To Support and champion the cause of quality housing through education, legislative actions, partnership, and advocacy for housing cooperatives

## What To Do When The EEOC Comes Knocking?

(Continued from page 3)

The second thing you should do is notify your insurance company. Why is this necessary? It is necessary because many insurance companies are declining to represent employers in lawsuits unless the employer first notified the insurance company of the original claim when filed with the EEOC or State Agency. In this case, it's better to be safe than sorry. Your insurance company might decline to represent you before the EEOC, but the point is that they are placed on notice that such a claim exists.

Let us assume you notify your insurance company and it informs you that you do not have coverage for this type of the claim.

In such cases, your Board needs to sit down with your Management Agency and Attorney. You need to review the gaps in your insurance company coverage. You need to immediately obtain insurance that will cover the type of claims that the EEOC is investigating. It is very important that in filling out the application for insurance that you be truthful. The Cooperative must disclose prior or pending claims, including the claim before the EEOC. Whether or not your insurance company will actually defend you if that claim proceeds from the EEOC into a State or Federal court, will depend entirely on the terms of the insurance policy.

But why risk it? Perhaps the best thing to do right now is to review your insurance coverage beforehand? Does it cover claims of employment discrimination? Does it cover claims of housing discrimination? Does it cover civil rights claims in general? Does it cover situations in which the Cooperative mistakenly or negligently discloses confidential information of applicants or members? And more importantly does it cover claims by applicants for housing who are not members or persons who are applying for employment who are not employees? All these questions should be asked and answered by your Insurance Agent in connection with your Attorney.

It is also important to understand that a charge with the EEOC is not a lawsuit. The EEOC is not a court. The EEOC is charged with trying to resolve the claim or charge before the matter may proceed into a Federal court. If the matter can be resolved amicably with both sides in agreement, that is better than ignoring the matter and waiting for the lawsuit to inevitably come. In a lawsuit, the stakes are much higher. The price to resolve it in litigation is more than to resolve it in the EEOC administrative setting. But this is all advice and counsel you should be receiving from your attorney based on the specific facts of the case.

*"It's very important that in filling out your insurance claim that you be truthful."*

The third thing that usually occurs in EEOC claims involves disclosure of documents. Usually, the Cooperative is required to disclose its policies and procedures regarding a broad mixture of issues. The EEOC also demands a list of past and present employees and an indication of their race, disability, gender, age, etc., depending on the type of employment discrimination alleged. The EEOC often demands information which is extremely confidential. It is important to understand how this information is going to be used. It is also important to understand how this information can ultimately be used against the employer and Cooperative.

Earlier this year, the EEOC quietly announced new Nationwide Procedures. These new procedures state the:

"EEOC will provide the Respondent's position statement and non-confidential attachments to Charging Parties upon request and provide them an opportunity to respond within 20 days. The Charging Party's response will not be provided to Respondent during the in-

(Continued on page 9)

## What To Do When The EEOC Comes Knocking?

vestigation.” (emphasis added).

What does this mean? It means that all the documents you sent to the EEOC will also go right to the complaining employee and his or her attorney. Yet, anything they file with the EEOC will never come to the employer Cooperative. The only way the employer Cooperative will be able to see what was filed by the employee is to submit a Freedom of Information Act request to the EEOC after the investigation is complete, and usually after litigation is commenced against the employer.

So employers have to be very careful about what they produce to the EEOC. They should avoid producing highly sensitive materials in defense of an EEOC charge. In litigation, these materials are disclosed to a private party only after a protective order is put in place, but the employer has no such protection with the EEOC. The employer should work carefully with its attorney in determining what documents are and are not to be produced.

At some point, the EEOC will propose that the charge be mediated. This means that the parties are offered the opportunity to sit down and try and resolve the matter amicably. Employers should carefully consider this proposal, as it may be a way to understand the terminated employee’s position and determine what kind of money is being discussed to resolve the matter.

If mediation is not successful, the EEOC will continue to investigate the matter for a number of months or years. At some point, the EEOC will issue a finding and provide the employee with a right to sue letter. This permits the employee to proceed to Federal court if he or she wants to file a lawsuit. Of course, if the employee fails to present his or her case to the EEOC first, they may not file a federal lawsuit, but they still may file a lawsuit against the employer for discrimination under State law in State court.



Since this eventuality is often more likely than not, it is important to have the Cooperative’s legal counsel and/or insurance company on

notice of the matter from the very beginning. This avoids the problem of making mistakes in the administrative process which comes back to haunt the employer if the matter proceeds to court. These mistakes are often costly. The money spent on an attorney early on is generally cost-effective if the matter proceeds to litigation, as your attorney’s knowledge and understanding of facts and law is already up and running, if and when the lawsuit is filed.

*Mr. Pentiuk and Mr. Morgan are employed with the law firm of Pentiuk, Couvreur and Kobiljak, P.C. located in Wyandotte, Michigan.*



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# ROBERT RULES!

*He rules! Even if we don't have a clue who he is?...*

## A little history about that Robert guy...

As Henry Robert first conceived his book, he wanted it to be brief and simple enough to serve as a guide in the hands of every meeting-goer. He thought it might run to about 50 pages. By the time the first edition was published, he found he needed 176. Following its publication, letters asking questions about parliamentary situations not clearly answered in the book began to pour in -- by the hundreds through the years.



Consequently, over time, he was obliged to add more and more pages to answer the most common of these questions. Robert himself repeatedly revised his 1876 book. In accordance with his expressed wishes, his son, his widow, and his daughter-in-law all carried on the work after his death. And now his grandson, Henry M. Robert III, is among the team of parliamentarians (as experts in these rules are called in this country) chosen by his descendants to continue the updating and revision of the book. The manual is now in its eleventh edition under the title of *Robert's Rules of Order Newly Revised* -- commonly abbreviated **RONR**. And excerpt from **Robert's Rules of Order Newly Revised IN BRIEF**.

### MAHC is Going **GREEN!**

(at least we're going to try)

But we need **YOUR** help to do this.

If you currently receive the

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you have an e-mail address,

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Cynthia Pentiuik @MAHCeditor@gmail.com

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Thank you for your help in our endeavor to make the

world a little **greener!**



## Cooperative

## Dos & Don'ts



### Board Members...

**Do**— Act in a way that earns the respect of your position.

**Don't** —Don't be unprofessional by disrespecting your fellow board members.



### MAHC Messenger-

We welcome your article contributions of 500 words or less submitted in MS Word format. Please feel free to forward them to the editor at the address listed below. If you are a Management Company and would like to contribute to the "Cooperative Dos and Don'ts" section of the MAHC Messenger please submit your suggestions to MAHCeditor@gmail.com.

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

The views and opinions expressed herein are those of the author(s) and contributors and should not necessarily be reflected as those of the Midwest Association of Housing Cooperatives. The purpose of this publication is to serve as informational only and not to engage in disbursement of legal advice. If you require legal assistance please consult an attorney. If you have questions or comments please submit them to the editor at the email address listed above.

### MAHC Messenger Staff

Editor -Randall Pentiuik, Esq.

Review-April Knoch, Creighton Gallup

Publication Design and Layout-  
Cynthia Pentiuik

MAHC  
PO BOX 185  
ROMULUS, MI 48174-0185  
PH: (734) 955.9516  
FX: (734) 955.9518  
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