

Be the Board



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What is NASCO Properties?

NASCO Properties

A nationwide cooperative land trust

Your coop is part of a larger system - a “coop of coops” - called NASCO Properties. Each of the coops within NP make their own decisions on local issues - membership policies, leases, and the way your houses run. But each of them is connected to the whole system, with the houses supporting one another with finances and information.

Formed in 1988, NASCO Properties holds title to property leased to local coops around the United States and is dedicated to expanding mutual ownership. While it will hold title to all its buildings in perpetuity, it’s ultimate goal is to strengthen all its groups to the point where they can begin to purchase property themselves. So, while a leasing coop won’t ever “buy out of NP”, NP exists to help that leasing coop expand into a new, locally owned property.

As of 2013 there are 14 properties owned by NP and rented by eight leasing cooperatives across the United States. These coops each have their own boards, missions, and policies, but all of them share representation on the NP board, and all of them have access to the shared maintenance and development funds of NP. Coops which are sufficiently dedicated to their own development will have the opportunity to become hybrid systems, in which some properties are owned nationally by NP and some are owned locally by the NP-member cooperative.

Rooted in NP, Expanding Locally

NASCO Properties has the goals of developing self-sufficient coop systems and a nationwide pool of equity for future coop growth. NP envisions the evolution of member coop systems as follows:

NP member cooperatives will be classified as Jointly Managed or Master Leased. Jointly managed sites will operate under a management agreement with NASCO Properties, and NP and local member coops will work together to develop a strong coop organization over time. Sites which have become large and stable enough to hire on-site staff shall graduate into the master lease phase. Such sites shall have significantly high degrees of independence from NP’s central organization.

NP will ensure the autonomy and local control of master leased systems. While NP will own the properties purchased through NASCO Properties, all effective control of the cooperatives shall rest with the local members.

All equity built up in NP cooperatives is for the improvement and expansion of NP coops; the sole purpose of NP equity is to grow NP and its member cooperatives. All decisions regarding NP equity shall be made by the NASCO Properties board. Projects at current sites shall have first priority to utilize NP equity. NASCO Properties sees this model as providing the best balance between the desires to build local coop autonomy while also growing an equity pool to assist future group equity coops.

The NASCO Family

Making Sense of the NASCO Family of Associations

North American Students of Cooperation (NASCO Education)

The North American Students of Cooperation (NASCO) is a non-profit organization dedicated to strengthening and expanding the cooperative movement across North America. NASCO was conceived to help educate new generations of coop members about the principles and practices of cooperation, to forge alliances between existing coops, and to act as an advocate for group equity cooperatives serving students and community members. This is accomplished through an array of programs: training and technical service, education programs such as NASCO Institute and Anti-Oppression Action Camp, networking through publications, and regional conferences.

NASCO's career development program allows coop members to transfer their skills and energy to internships and jobs in the cooperative business sector. Through its affiliated organizations, NASCO works to expand the coop movement by assisting groups who want to start new coops using the group equity model.

NASCO Properties

NASCO Properties was created in 1988 as a property holding and management corporation to assist new student housing cooperatives with financing and management. Since then NASCO Properties has become an

important development tool for student and community groups that want to start group equity coops but do not have access to money or technical resources. NASCO Properties uses equity from buildings it owns to provide collateral and equity for these new groups.

It also operates as a support network for its member coops, offering training and asset management assistance. In turn, these member coops form the governance structure for NASCO Properties.

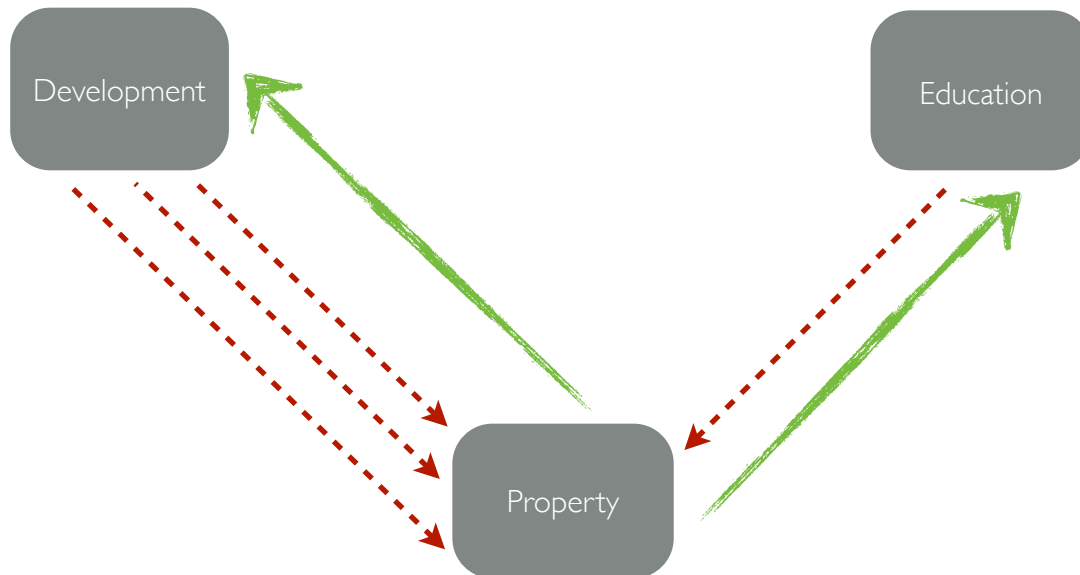
NASCO Development Services

The Campus Cooperative Development Corporation (CCDC) was started in 1987 to reaffirm the student cooperative movement's commitment to expansion, and has since been renamed NASCO Development Services (NDS). NDS provides technical resources and direct development assistance for new and expanding cooperatives. NDS is funded by member dues and through success fees generated from projects.

NDS works closely with existing groups, providing technical and financial advice, generating loan applications, networking with lending sources, and coordinating development efforts to whatever extent is necessary. The success of NDS's work has led to its reputation as one of the most energetic supporters in the North American cooperative movement.

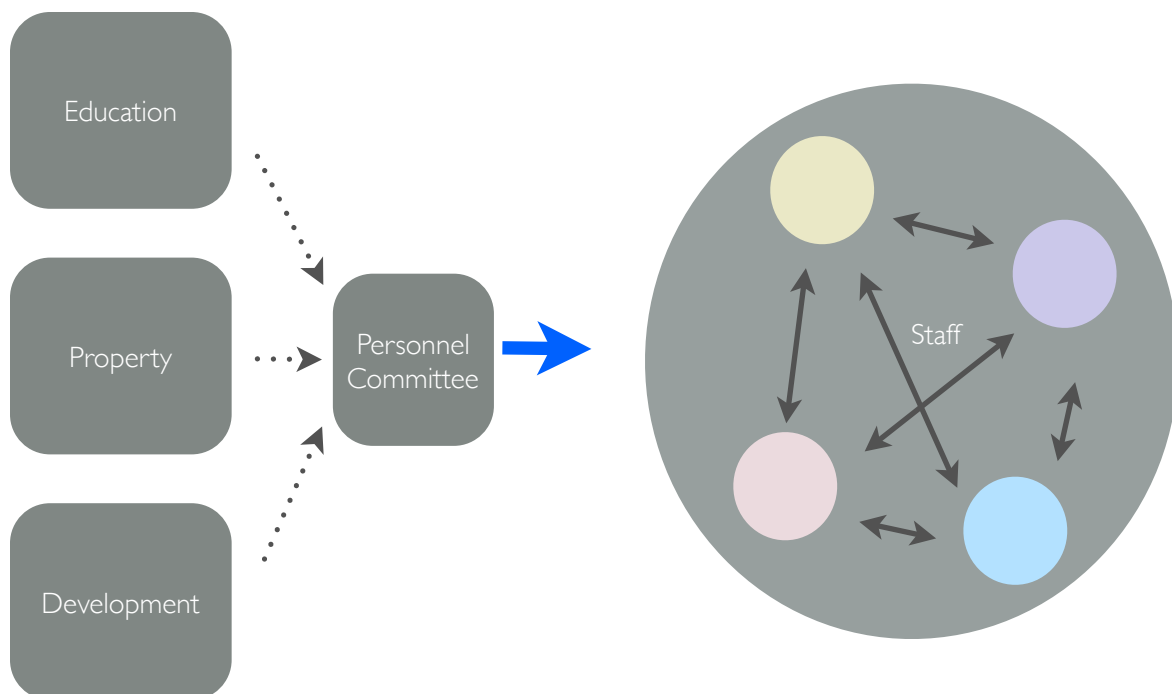
The NASCO Family

There are three organizations in the NASCO Family, each with their own mission and board. The three boards all share one staff. Each board does something complementary to the others. All of the boards work together through committees. They also appoint cross-board representatives to sit on one another's boards to provide perspectives.



Dash arrows below show other boards appointing directors to NP, and pencil arrows show NP appointments to them.

The NASCO staff work for all of these organizations, although each staff person might work more closely with one or another board. The staff act as each other's supervisors in a non-hierarchical collective, but the collective as a whole is supervised by a personnel committee. Each board that works with staff gets a seat on that committee.



Family Board Cooperation

To coordinate important overlaps in the governance of each board, the NASCO Family has several cross-board committees. Each board receives reports and minutes from these committees, and each committee has a specific staff member as liaison.

Financial Sustainability Committee

FiSus works on coordinating budgets and fundraising, as well as big picture views of financial health.

Inclusion Committee

Looks at issues of power and privilege within the NASCO Family and our membership. Writes an annual Plan for Inclusion. VP's of each board.

Negotiating Committee

As needed, the NASCO board appoints to this. NP and NDS may not get votes. Negotiates the renewal or any changes to the staff contract and its policies.

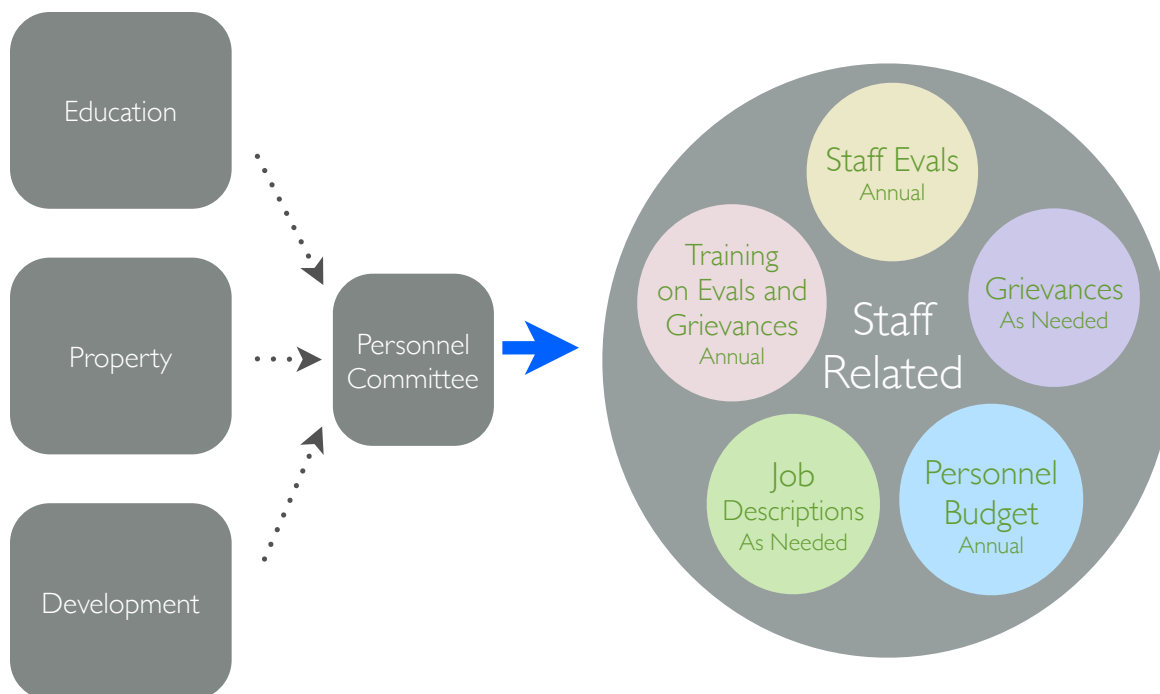
Planning Committee

Monitors and reports on progress made toward NASCO family goals. Coordinates and plans a "Mondo" meeting of all three boards every three years to set new goals.

Hiring Committee

When needed, each staff member plus one person from each board form the Hiring Committee. Job Posting, Interview process, and final decision.

In order to coordinate the staffing needs of three organizations, the Personnel Committee gathers or reviews information on the use of staff time, the overall NASCO Family staffing budget, and staff performance. The Personnel Committee also approves any changes to staff job descriptions. And as a neutral body representing the interests of all boards, the Personnel Committee investigates and responds to any grievances that cannot be handled by the Staff Collective. The committee receives annual trainings on Evals and resolving Grievances.



Nuts and Bolts



NP BY THE NUMBERS: COUCH

Urbana, IL
Harvest House, 14
Brooks, 14

CHEA

Austin, TX
Sasona Coop, 17
La Reunion, 40

KCH

Kalamazoo, MI
Fletcher Collective, 10

NICKEL CITY

Buffalo, NY
OI Wondermoth, 14
Plankton, 11

QUMBYA

Chicago, IL
Bowers, 21
Concord, 18

SCO

Athens, OH
The Vine, 8

SCSHC

Santa Cruz, CA
Zami!, 14

UKSHA

Lawrence, KS
Ad Astra, 11
Olive, 8
Sunflower House, 33

The Goals of NP:

Credibility

We believe it will be easier for NASCO Properties to negotiate successfully with a lender given that it is a national organization that has developed a track record in property ownership. For instance, the National Cooperative Bank has indicated that it feels much more comfortable lending to an established organization than to a new student coop.

Stability

Small student groups will not be able to afford paid management in the initial (and sometimes later) years of operation. Ownership through NASCO Properties makes certain that property taxes, mortgages, and insurance are paid. NASCO has several examples of small student coops that lost their buildings due to poor management. NASCO Properties would like to ensure that no student coop ever fails because of avoidable mistakes.

Equity Accumulation

Until the creation of NP, newly-organizing student groups had to rely on the goodwill of established student cooperatives in order to get loans to start-up new coops. With ownership of some buildings at a central level, new groups will have access to funding directly through the NASCO/NDS development effort. And, although the equity accumulated in the buildings will be available for the use of new groups, first priority will be given to NASCO Properties projects wishing to expand.

Governance of NP:

The NP board of directors is technically appointed by the NASCO Education Board of Directors (as NASCO Education is the parent of NP). In practice, the NASCO Education Board accepts appointments as suggested in the NP by-laws. Currently, the board is composed of one representative from the NASCO board, three from NDS, and the representative from each leasing cooperative (at this time eight groups). There may also be a Community Board Member selected by the others on the board for expertise. The General Manager is a designated NASCO staff member, who is also a non-voting Secretary of the board of directors.

In addition, groups with which NP is working to purchase property are called Associates and have unofficial (non-voting) representatives to the board.

There are four corporate officers: President, Vice-President, and Treasurer, who are elected from the board membership for one year terms each fall, and the Secretary, who is the General Manager. The officers, plus a member at large from the board, comprise the Executive Committee, which can make decisions between board meetings.

Executive Committee meetings are currently held monthly by teleconference.

Board meetings are held three times a year. These meetings are generally at the NASCO Institute in the fall, during the winter (generally February), and in the summer (generally July).



NP Vision Statement

I. The mission of NP is to increase the opportunities available for cooperative living throughout North America. This is primarily accomplished by the ownership of properties suitable for use by local cooperative organizations. NP will continue to expand both in order to increase the number of buildings available for use as cooperatives, and in order to assure the long term stability of the organization. NP will serve as a permanent guardian of cooperative housing stock, and as a source for guidance in development of local cooperative organizations (member cooperatives) which lease NP buildings.

II. NP allows smaller local cooperatives to fulfill the cooperative goal of ownership through several mechanisms:

A. First, NP is governed by a board of directors that shall be at least 51% composed of representatives from leasing cooperative organizations. This allows members of leasing cooperatives to exert control over the decisions of NP relating to its holdings.

B. Second, NP allows leasing cooperatives to develop local governance of cooperative life, without interference from university or profit driven real estate interests.

C. Third, NP allows leasing cooperative members to participate in the aspects of ownership that involve responsibility and service while de-emphasizing the interpretation of ownership that involves contribution of capital. (This is intended to allow cooperative development among a group, such as students, where capital is scarce but leadership is abundant.)

D. Fourth, NP shall maintain the physical stability and value of its

holdings through management of maintenance funds, thus ensuring the continued and durable availability of buildings for use by local cooperatives.

III. NP shall be governed according to a principle of service to the leasing cooperatives as follows:

A. NP shall seek no profit from the lease arrangements with local cooperative organizations.

B. NP shall always attempt to operate with thriftiness and savings that can be passed on to leasing cooperatives, and reduce financial strains on their individual members.

C. NP shall maintain personnel with sufficient resources and expertise to guide leasing cooperatives with their development and education needs. Increase in revenue for the purpose of retaining expert staff shall come primarily through the expansion of NP holdings rather than by increasing average room rates at member cooperatives.

D. NP is an organization committed to expansion of holdings for the use both of existing member cooperatives and of new member cooperatives. This expansion shall be funded primarily by the use of the accumulated equity of NP holdings rather than by increasing average lease charges from member cooperatives.

IV. Member cooperatives shall have an understanding of their role in NP as partners committed to the common good of all NP leasing cooperatives. Member cooperatives shall have a goal of mutual aid and undertake partial responsibility for the management and expansion of NP. Leasing of NP buildings is required for membership in NP.

TAX STATUS

NASCO Properties is incorporated under section 501 (c)(2) of the IRS code. This classification denotes NASCO Properties as a special property- holding affiliate of NASCO, a 501 (c) (3) non-profit, organization.

The governing boards for NASCO Properties is made up of one representative from each leasing coop, three people from the board of NASCO Development Services, and one rep from NASCO Education.

As a 501(c)(2) non-profit, NP is intended to hold title to property as a source of revenue for the parent corporation. But NP must also be accountable to the member coops, and also assist with educating the members of these coops to help their coops run smoothly.

To do this, NP, NDS, and NASCO Education share one staff. On a typical staff visit, there might be a workshop from NE, a maintenance walkthrough from NP, and a consultation on bank loans from NDS, all done by one staff person.

Q&A

What does a board do?

The concept of the board as the supreme decision center recognizes the fact that a cooperative must have one decision center for coordinating the whole enterprise. The board shall not abdicate its responsibilities as informed, competent, directors who take responsibility for overall direction of the cooperative.

Supreme Decision Center Functions

The board of directors functions as the supreme decision center by:

- pro-actively addressing problems
- formulating proposals to meet concerns
- establishing objectives;
- formulating, approving, and adopting policies;
- approving goals, programs, and plans;
- and selecting the managers of the coop.

Advisory Functions

The board of directors performs an advisory function for managers and members. The board advises members of changes requiring their action or sanction. These may be changes that will enable the cooperative to perform more effectively in a changing environment, or these changes may be required by law. The board's advisory function to members is closely related to their function as trustees (Below).

The board's role in advising management is more difficult to specify. Alert managers will seek the advice of the board when formulating operating policies and when implementing board policies managers will often seek the advice of directors on possible solutions to operating problems.

Trustee Functions

The board functions as a trustee for members (past, present, and future), and the general public by assuming responsibility for the effective, socially responsible, management of the cooperative. Basically, the trustee function is to control the assets of the organization in such a manner as to protect and develop the cooperative within the general interests of society.

The board carries out its trustee function by stewardship of the resources committed to the cooperative. The board often employs outsiders to audit the financial affairs of the corporation. This provides the board with an independent check on the soundness of the coop's business practices and management's operation of those practices.

Perpetuating Functions

A fundamental task of the board is to provide for the continuity of the coop. The board accomplishes this by selecting, guiding, and supervising effective management and by taking other measures to ensure continuity of direction of the coop. Other perpetuating activities include numbering board proposals to enable referral to opinions and activities of previous boards, planning processes which are built upon year after year. Boards manuals are perpetuating activities, as well as a structure which encourages board members to continue serving for more than one year.

The boards ability to provide continuity boils down to its own ability to remain a vital force over time. Its vitality must transcend the terms of members, management, and directors. The board has two primary tasks in this regard:

- (a) to specify an ideal level of effectiveness for the functioning of the board, and
- (b) to maintain a board at this level of performance by transferring knowledge, skills, and attitudes to new board members.

Symbolic Functions

The symbolic function goes beyond the cooperative. It permeates the community with which the coop deals. Directors have a tradition and duty to uphold the cooperative in all private and public contracts. A directorship is a position of responsibility and trust; it is a position reserved for leaders. Directors cannot escape the symbolic function associated with their position⁷ and must learn to perform it effectively.

What does a Board director do?

In order for a director to fulfill the tasks which are required or expected of them, they would probably do well to have a job description. While a well-informed director may be able to cull the job requirements from her or his vast knowledge of Board and coop operations, legal liability, and governing codes, a prospective candidate or even a new director can hardly be expected to have the scope of knowledge which a director must have or acquire.

When drawing up a job description, the Board or Board committee should begin by analyzing the areas of responsibility of a director. A general responsibility of a director is to serve on the central decision-making body of the coop. Other areas include:

Members	Directors should act in the interests of the members, maintain communication with them, ensure that member needs are met, and ensure member equity is effectively used and protected. Members elect directors to their positions and directors should recognize that they are accountable to the membership.
Board Operations	Directors should participate effectively in productive and harmonious Board meetings. The Board should establish committees for thorough and efficient investigation of issues to be presented to the whole Board, and directors should serve on those committees.
Management	Directors should help to select, to direct, and to evaluate the manager(s), and determine the manager's salary and other compensation. Directors and manager(s) should act as a leadership team.
Finance planning, policy, and monitoring	Financial planning is important for setting the direction of the coop. The director functions as a trustee in the protection and effective use of investments in the organization. The Board must approve capital and operating budgets and approve major changes in assets.
Comprehensive planning	Directors must plan appropriate services and facilities. The Board must monitor the coop's progress toward organizational goals and achievement of objectives, and is also responsible for creating useful metrics by which to measure this progress.
Relations with community, other coops, and governments	Community relations is necessary for the coop to fulfill social responsibilities and to maintain a good image in the community.
Legal aspects	The Board of Directors must operate within the legal mandates established by the articles of incorporation, bylaws, and constitution. It is the responsibility of the Board to represent the coop in legal actions.
Perpetuating an effective Board	The Board of Directors should develop potential leaders among members, and support policies and programs for Director development.

Keeping your Coop of Coops in sync

All of the NP coops help one another by dealing with issues locally and being awesome. Here are some of the local issues that board members - or other local officers - can help with to keep each of the coops running well. This will also make sure NP or the rest of the coops can lend help.

Responsibilities of coop reps

- Attend all board meetings and committee meetings
- Report to the group you represent about NASCO Properties actions
- Ask for ideas and feedback from your group and communicate these to staff and board
- Send names and contact information on maintenance and finance people at your coop to staff
- Work with staff to solve problems as they come up
- Give information on NASCO, and NASCO Development Services to new members, and ensure that house manuals/orientations explain the house's relationship to NP

Staff Visit responsibilities

- Assist with arrangements for staff visits:
- Set up meetings between staff and maintenance people
- Set up meetings between staff and finance people
- Set up a meeting with the advisory group (if such exists)
- Set up meetings with university or community members who should know about your group
- Set up a board and/or house meeting (or dinner) for the staff member to attend
- Determine whether there is a workshop that the staff member could give for the board or members
- Try to find a place for the staff member to stay
- Plan for spending your own time with the staff member

Safety responsibilities

- Make sure someone does the following:
- Checks smoke detectors and fire extinguishers
- Requests maintenance reimbursements within 60 days
- Files the income tax return
- Keeps the coop in good standing with the state

Fall responsibilities

- Plan for staff visit
- Encourage your members to attend the Institute
- Attend fall board meeting at the Institute
- Make sure that you have kept your student group status with the university (if applicable)

Winter/spring responsibilities

- Plan for staff visit
- Attend winter/spring board meeting
- Make sure that any required provisions are in your member leases
- Encourage members to apply for NASCO internships

Summer responsibilities

- Plan for staff visit
 - Attend summer board meeting
 - Think maintenance!
-

MAINTENANCE

COORDINATING WITH YOUR STAFF

NP coops have a unique way of approaching maintenance. While NP owns the properties, the members of each coop actually use them, and make most day to day decisions regarding their maintenance.

This requires a system of clearly defined responsibilities and constant communication to ensure the best housing for all members. Your staff will give reports on budgets and building, and keep on track with contractors.



A Diversity of Needs

Some NP buildings are fairly new. Some are designated historic, and need specially planned work. Some need to deal with extreme heat, intense cold, or constant fog.

In order to ensure that these buildings are in good shape for the next generations of coop members, money is set aside each year for maintenance and capital improvements. However, many of these houses were subject to decades of deferred maintenance, disinvestment, and severe lack of care prior to purchase by our group. Our maintenance funds must therefore be carefully administered so that funds are spent responsibly.

Maintenance funds collected in the property charges are earmarked for your coop. That is, none of the money you are charged for current maintenance will be used for other locations. However, the NASCO Properties reserves are pooled for greater efficiency.

NASCO Properties Maintenance terms:

MAJOR MAINTENANCE

The capital improvements portion of your coop's lease payment is set aside for major projects and purchases costing more than \$1,000. Examples are replacing the roof, performing major structural repairs, or major work on plumbing, heating or electrical systems. Sometimes reserve funds might be used to perform renovation work as well.

These funds and projects, are managed by staff, in cooperation with the coop's maintenance officer or a hired project manager. You and your housemates will be involved in these projects, and you will have an opportunity to participate in recognizing, planning, and administering capital improvements projects.

MINOR MAINTENANCE

Together with NASCO Properties, you and your housemates can improve the condition and quality of your house through careful, responsible building maintenance and improvement projects.

Day-to-day maintenance is the responsibility of your coop. Minor maintenance projects -like unclogging toilets, painting, and replacing smoke detectors- are funded through the minor maintenance items in your property charge. In order to be sure that minor maintenance gets done, and that your coop is getting the right help when needed, NASCO Properties records your minor maintenance expenses on a monthly basis. Your coop maintenance officer will prepare reports, and NASCO Properties will reimburse your house for expenses.

Unspent minor maintenance funds at the end of the fiscal year will be transferred into the maintenance reserve account, which is shared by all locations.

RESERVES

In addition to the amounts budgeted for major and minor maintenance, NP also collects a reserve account. This account is pooled between the coops, and may be used for any NP location.

Reserves are meant for emergencies which are beyond our ability to pay on an annual basis, and also for major projects down the road which we need to save for. A new roof, for example, will last up to 20 or 30 years, but it will cost a major amount when it finally needs to be replaced.

At times, it will be necessary to borrow money for major renovations or repairs instead of using cash reserves. Balancing these resources while maintaining affordable rates is key to long term success. Good planning -- and adequate reserves -- are key to successful long range maintenance.



STAFF AND MANAGEMENT

The entire NASCO staff is a resource for the NP coops. One staff member is directly responsible for working with the coops to meet your, and NP's, established goals and needs. From time to time, other NASCO staff will act as resources to you and your coop as well.

THE STAFF IS HERE FOR YOU

The responsibilities of the NP General Manager are in three major areas: providing management assistance to NP coops, coordinating NP corporate operations, and working with the coops on major maintenance projects.

Both the NP General Manager and the rest of the NASCO staff are always available for consultation and training. If there are any topics your coop wants help with, ask - the staff either have a training developed, or your question will be valuable to someone in the future.

MANAGEMENT ASSISTANCE

The Directors of Property and Development provide specific and ongoing management assistance to NP coops, encouraging their independence while ensuring the security of NASCO's investments. While these staff members should be considered resources for all aspects of coop operations, their general management duties include:

- Encouraging coop member education
- Maintaining community, city and lender relations on behalf of the cooperative
- Assisting and supporting the coop board of directors in providing responsible democratic governance
- Assisting and supporting the coop treasurers in maintaining accurate financial records
- Assisting and supporting the coop maintenance officers in coordinating repairs
- Making regular visits to each of the coops.

CORPORATE OPERATIONS

The Staff coordinate the day to day business of NP, and serve in an advisory capacity to the Boards of Directors. Those day to day responsibilities include:

- Producing reports to the board of directors, lenders, and others.
- Acting as primary board resource contacts
- Managing NP finances: income, payments, reporting, bookkeeping, & tax filing.
- Help with all NP development efforts
- Keep all records in order and up to date.

MAJOR MAINTENANCE

A very important aspect of the work of the staff is on major maintenance and renovation projects. We define "major" as meaning any project or purchase that costs over \$1,000. Some projects may be simple repairs, while others may involve major rehab and renovation work costing hundreds of thousands of dollars.

Decisions on priority, design, approach and even materials to be used must be a joint activity between NP and the leasing cooperative, since both have important stakes in the cost and outcome.

Generally, the local coop members (or sometimes a project manager hired by NASCO Properties) work with architects, contractors, the city bureaucracy and others as necessary to plan the work and get bids. The staff will be a part of this process and ultimately will sign a contract for the work to be done and cut the checks. The local managers will supervise the work, pay out the checks written in the NP office, and act as a liaison with the members.

Dividing Responsibility

Ensuring a fair and productive relationship between NP and member coops

Responsibilities of the leasing coop

Legal

- To remain a corporation in good standing.
- To operate on a cooperative basis.
- File all taxes and reports to the state on a timely basis
- Report to NP on any potential legal/insurance claims

Membership

- Keep occupancy within housing/building codes.
- To house only members.
- To approve all members.
- To keep the coops full
- To have a member education & training program
- To keep accurate membership records and leases
- To Maintain a rent roll (rent amount/payment status)

Financial

- To pay the lease on a timely basis
- Reporting financial activity which impacts the coop
- Regular reports on receipts and disbursements as a backup for local bookkeeping
- Timely budget preparation and budget reports
- Collect, hold and return security deposits or member shares according to state law
- Prepare a budget prior to the beginning of the leasing coop's fiscal year
- Charge members for the cost of bounced checks and collections of bad debts
- Pay back debts to NP at a minimum rate of \$5 per member per month
- Coop to develop a rent collection and recording plan acceptable to NP

Maintenance

- Upkeep of the property to standards required by the city, by lenders, and by NP
- Help staff with maintenance contracting as requested

Governance

- a. Nomination of a member for election to the NP Board of Directors
- b. Election of a Board of Directors for the cooperative

Responsibilities of NP

General

- All responsibilities for asset management not otherwise delegated
- Any operational matter when performance standards are required by the Board of NP but not met by the leasing cooperative

Financial

- Tax payment
- Insurance and insurance payment
- Payment on loans
- Collection and disbursement of money for maintenance and capital improvements
- Hold maintenanc and operating reserves
- Hold and monitor vacancy reserves for each coop
- Reports to lenders

Educational

- To act as educator and advisor on all aspects of property management
- To visit the cooperative several times a year

Joint responsibilities

Maintenance

- Major maintenance and capital improvements
- A maintenance and repair plan, prepared by NP. and reported on by the coop.
- To be modified during the year as necessary.

Membership

- Coop to develop membership termination procedures that meet local legal standards
- NP to train coops on Fair Housing Law

LEGAL RESPONSIBILITIES OF A BOARD OF DIRECTORS

Coop directors frequently make the mistake of overlooking their legal responsibilities to the coop and its members. While to many, the coop is a great place to hang out with friends, to a director, the coop should be recognized as a corporate business directed by the Board of Directors and run by members and/or staff.

Board Authority

When a coop files for incorporation, it becomes an artificial "person," subject to all of the rules and regulations which govern corporations. A corporation is required by state law to designate certain individuals to act on its behalf. These individuals comprise the Board of Directors. The Model Business Corporation Act (MBCA) states that the affairs of a corporation "...shall be managed under the direction of a board of directors...." The duty of a director is therefore not to manage the daily affairs of the coop, but to supervise and to direct the management of the coop.

The Board is the supreme decision center for the coop, and it is legally recognized as having the ultimate authority within the coop hierarchy, although the board is still elected by, and responsible to, the co-op's members.

A Board of Directors derives its authority from statutes, from bylaws, and from coop members. Board authority is granted by the Articles of Incorporation. "Coop corporations can function, own, and act only within limits specified in the articles" (Fisher). Boards should take care that their coop's Articles of Incorporation neither restrict nor render limitless the authority of the Board. The coop's purpose as stated in the articles must be limited for the protection of the members, yet must also be stated broadly enough

to give the Board adequate authority to fulfill its basic purposes. "One of the limits on the authority of a Board and one of its responsibilities is to ensure the cooperative functions within the arena established by its creation" (Fisher).

"The courts have also shown a tendency to protect the individual from arbitrary and discriminatory action by the Board"

While the Articles of Incorporation grant Board authority, the bylaws define the powers and duties of the Board. Directors and officers are limited to what authority is needed to carry out the duties and responsibilities defined in the bylaws. Directors achieve authority only by virtue of presence and vote during tenure in office during a regular or special meeting of the Board of Directors, called as required, with notice as specified, and with quorum present, all as set out in the bylaws.

There are commonly three bylaw limitations on the Board's authority which are set aside for membership action:

1. *The election of the Board members, except for the filling of a vacancy until the next regular election;*
2. *The removal of Board members;* 3. *Amendments to the bylaws.*

According to Herbert H. Fisher in "Legal Responsibilities and Authority of a Cooperative Board of Directors," the responsibility and authority of a coop Board and individual directors are not well defined by the courts.

The judicial trend has been "to uphold the contractual relationships between the coop and the membership, including the setting of standards for the welfare of the

whole community group." The courts have also shown a tendency to protect the individual from "arbitrary and discriminatory action by the Board." This means that when legal action is taken against a coop, the Board's actions are judged "as to whether or not there is the slightest theoretical connection between the rule, regulation, or policy in question and the community's welfare or the welfare of the cooperative."

There are certain aspects of the Board's authority which have been recognized by the courts. For example, the Board's authority to accept or to reject applicants for membership, or to delegate that authority, has yet to be successfully challenged in court. A Board's authority is "complete and without limit" so long as it is non-discriminatory with respect to race, religion, ethnic or national origin, gender, sexual preference, or ability.

Yet when defining membership qualifications, Boards or Board committees should establish standards "which bear a definable and reasonable relationship to the well-being of the coop as a whole" (Fisher).

The Board also has the authority to establish and to enforce house rules so long as they contribute to the sound operation of the cooperative. In creating rules, the Board acts on its own, presumably acting in the best interest of the welfare of the community. The member, in signing a contract or occupancy agreement, agrees to abide by those rules. House rules are subject to the intervention of the courts only in the following possible types of legal actions:

1. *Proceeding instituted by the Board of Directors to evict;*
2. *Proceeding instituted by the Board of Directors to enjoin the objectionable conduct;*
3. *Proceeding instituted by the coop to have its rule declared invalid;*

4. *Proceeding instituted by the member to enjoin the Board of Director's threatened termination of membership and eviction; and*
5. *Proceeding instituted by the member to have the coop's rule declared invalid and not binding.*

"The general conclusion on court action to date is that Boards of Directors will be upheld where it can demonstrate that there is a reasonable relationship between the rule itself and the community welfare it is charged with governing, and that the rule is not being indiscriminately applied" (Fisher).

When developing rules, the Board of Directors should try to see that:

1. *The objective of the rule is to serve the community welfare and not the whim of one or two members;*
2. *Both the objective and the means to achieve it are clearly set out in the rule and are related; and*
3. *The rule does not discriminate against a single member or group of members but in fact is equally applicable to all members.*

Board Responsibilities

The fundamental responsibility of a director is to act in the best interests of the corporation and its members.

The MBCA sets the basic legal standards for directors, and states that [A] director shall perform his duties as a director, including his duties as a member of any committee of the Board upon which he may serve, in good faith, in manner they reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances (Section 35).

This is a basic way in which the law defines the fiduciary, or trustee, duty of directors. They are expected to act in good faith, for the benefit of the corporation as a whole, and for the protection of the owners' assets and interests.

The following are some generally accepted legal responsibilities:

1. *Directors cannot abdicate their responsibility to direct.*
2. *They must manage the business along lines imposed through the Articles of Incorporation and bylaws.*
3. *They are responsible for appointing officers and delegating authority to them for carrying out the functions of the corporation.*
4. *Directors must be knowledgeable about corporate affairs to enable them to perform their duties effectively.*
5. *Directors must act in good faith and with reasonable care in handling the affairs of the business.*
6. *They are considered in law as representing a trusteeship to stockholder or members.*
7. *They must regularly attend Board of Directors meetings. Absence from meetings does not equal freedom from responsibility for Board of Directors decisions.*
8. *Directors may be held financially responsible for losses incurred by the corporation under certain specific circumstances, principally gross negligence.*

**"Have an open
mind,
subordinate
individual ego"**

Duties of Directors

The law has traditionally recognized three categories of duties for corporate directors.

Duty of Attention

The duty of attention can be defined as both the responsibility to actively participate and the responsibility to know what the business is doing and what it should and should not be doing.

Directors can be held liable for personal negligence in handling

duties imposed upon her or him as a director, including reasonable supervision of officers and employees, analysis of documentation, and attendance at meetings, and are not shielded from liability if the ignorance is a result of "gross inattention".

A director cannot claim her or his failure to direct (i.e. absence from a meeting, abstention from voting) or to be properly informed (i.e. not reading board packets, not asking questions) as a valid defense. Although it is recognized that directors must rely on information which has been presented or prepared by others, such as staff, the Board must at all times reasonably believe those third parties to be reliable and competent.

Duty of Loyalty

This involves behavior which is considered to be consistent with the corporation's general interest. When a director assumes office, s/he is committing her or his allegiance to the corporation over any personal or individual interests. Directors must act honestly and there must be reasonable grounds upon which the directors feel their actions are in the best interests of the coop and its members.

Directors must be aware of potential conflicts of interest with the corporation. A conflict of interest can arise from "any contract between the corporation and a director which provides preferential terms or conditions."

Such a situation would place a director in a position of liability. When a conflict exists, a director in fairness and in good faith must subordinate her or his personal interests to those of the company. Full disclosure of such instances of divided loyalty is required, including the existence of the relationship and its nature (financial or business benefit). The Board may approve of and thereby condone the conflict,

yet it is advised that the director remove her/ himself from the discussion and decision-making.

When the opportunity to seize business opportunity (also known as corporate opportunity) comes to the attention of a director as a result of her/his position on the Board, the director must always defer to the corporation first. It is only after the corporation considers and rejects the opportunity that the director can consider taking advantage of the opportunity.

Finally, a director must deal in confidence with all matters involving the coop until full public disclosure has been made or it is understood that the information is a matter of public record. This duty is probably the most difficult to deal with for a coop, for it is difficult to determine wherein lies the director's responsibility to keep the membership informed, and wherein lies the director's responsibility to keep the coop at a competitive advantage.

Duty of Care

Duty of care is the way by which courts have come to define standards for a director's behavior. It demands the standard of care and skill which could be expected of a reasonable person. Under common law, directors of corporations are required to exercise the degree of care and skill that may reasonably be expected from persons of their knowledge and experience. The responsibility of good faith falls under this category, and it is often considered by courts in determining if the individual is liable or has merely made an error in judgment. A court decision often hinges on whether the individual acted on behalf and for the benefit of the coop. This does not mean that directors must give continuous attention to the affairs of the coop.

Duties can be left to those who have been hired to perform them.

Guidelines For Directors

The following guidelines to directors, as detailed by Karen Zimbelman, can be drawn out of the court's interpretations of the duty of care, including:

- Know the company thoroughly;
- Research issues thoroughly, get the facts;
- Devote the time needed, be prepared for and attend all meetings;
- Honor the office — have an open mind, subordinate individual ego;
- Insist on complete and timely information;
- Allow adequate time for deliberations;
- Maintain good records of Board actions; and
- Approach the job with complete honesty and personal integrity.

“All major actions of a Board ... should be thoroughly and carefully recorded, most commonly through minutes and meeting packets”

Reducing Director Liability

There are a number of preventative measures which a Board of Directors and individual directors can take to protect themselves from liability. An obvious way to avoid problems is through written documentation.

All major actions of a Board, including documentation contributing to decisions, should be thoroughly and carefully recorded, most commonly through minutes and meeting packets. Minutes

should reflect alternatives considered to decisions, for matters discussed and abandoned or tabled may help clarify the logic of decisions. An individual director, as well as an absent director, can avoid legal liability for a decision by having her or his dissent recorded in the minutes. In meeting packets, committees with clearly written assignments and a reporting form might make possible more thorough discussion at Board meetings.

Likewise, proposals should be concisely written with as much supporting information as possible. Greater involvement between directors and management in a corporation's planning process may benefit the Board's and management's plans and increase director understanding of the activities of the corporation.

Large coops with complex business activities should also seriously consider retaining a “counsel to the Board”, since in-house counsel is often kept busy with managerial and routine business matters.

If a Board takes precautions with its affairs and actions, it can vastly reduce its liability, for courts have made it clear that the procedures by which directors make decisions are important and indicative of the care and attention directors take in their role.

A court will not substitute its judgment (in hindsight) for that of a Board, for it recognizes that business judgment involves risks, and directors are generally not involved with business on a daily basis.

Finally, a Board can reduce its liability through indemnification. Indemnification is a pledge by one group to protect another person or group from possible damage, suit, or injury. Directors can receive indemnification through language in the coop's bylaws which states that the coop will stand behind its directors for actions they take on behalf of the coop.



STAFF CONTACTS

Contact NASCO staff for any questions you may have. There may be a staff person other than your usual staff contact who would be able to take care of a specific issue, and we may be able to put you in touch with outside resources.

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