FLORIDA SKP CO-OP RESORT
2219 SKP WAY
ZOLFO SPRINGS, FL 33890-9770

O. GRANT SIMONS'

MANUAL

FOR

SKP CO-OPS

AND

BOARDS of DIRECTORS

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prepared by

O. GRANT SIMONS, ESCAPEE MEMBERSHIP NUMBER 907

FIRST EDITION, AUGUST 1993

D E D I C A T I O N

this book is dedicated to all the volunteers who have worked and those who are still working on the construction of our eleven co-ops; to the intrepid members of the organizing boards without whose dedication none of the co-ops would exist today; to those who had the vision and were brave enough to undertake the development of the first co-op at Casa Grande, Arizona

and

to Joe and Kay Peterson whose never-ending vision and constant optimism continues to infuse all of us with the spirit of caring and sharing.

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PREFACE

For almost a decade, the SKP co-ops have been fumbling, stumbling, with members grumbling because there has been little or no guidance available to assist the directors and leaders of the co-ops.

The need for a manual or book that would clearly define the SKP co-op as a nonprofit corporation and its limitations by statute was seen over four years ago. While that goal was being pursued, co-ops continued stumbling and fumbling calling attention to other items which needed to be addressed. As time went on, the original goal was expanded to include them.

By now, it is probably well known that there will be no more co-ops because, stated bluntly, "the directors simply did not have the expertise to do the job.". Expertise is gained from experience or study. Most persons chosen to be directors have never experienced the government of a corporation, much less, a nonprofit corporation.

There is no publication that will explain the SKP co-op organization, the SKP co-op as a corporation, the SKP co-op as a nonprofit corporation, or the SKP co-op governed by a group of people who know nothing about nonprofit corporations and apparently, most could care less!

This book is the first extensive effort to provide any compiled form of direction for boards of directors and leaders in the co-ops. Many co-op directors and members were interviewed while researching this material much of which is a result of those interviews. Even as it is published as a first edition, there are questions from directors and members that remain unanswered and a lot of questions have not yet been asked.

I am and have been a member of a co-op for almost nine years and have experienced the aches and pains that are destined to befall every co-op. I do not consider myself an "expert" in anything but I have spent hundreds of hours (and dollars) researching the material presented in this book. This book is published with the hope that every co-op will use it as a "springboard" to launch each director and co-op leader on a search for additional training materials that will end up making the co-ops the utopian place of caring and sharing they were intended to be.

As you read this, please feel free to critique what is presented. However, this invitation does not include the prerogative of argument. If you do not agree with anything in this book, your comments will be accepted only if you can substantiate them with documentation to support your argument.

Grant Simons, Escapee Club #907

First edition 1993

INTRODUCTION

BEING A DIRECTOR ON THE BOARD OF AN SKP CO-OP IS NOT A BED OF ROSES!

Let's look at a few facts: (this is not all of them by any means.)

1. Until this book, there has been no written source of information for co-op directors except for a few bits from National.
2. The succession of directors in co-ops has, from the beginning, been a case of the "blind leading the blind".
3. Most new directors coming on the boards don't have the foggiest idea of what they are supposed to do.
4. New directors don't want to make a mistake so they "go along" with the "old" directors.
5. Boards (or directors) too often react to pressure from one or two individual "noisy" members. (this results in rule by the minority).
6. At board meetings, directors hesitate to vote in the minority because they will be criticized.
7. Directors are reluctant to debate issues brought before the board lest they be called "argumentive" or "difficult".
8. Directors are elected for their popularity but as soon as they become directors, the members begin taking pot shots at them either because of decisions they made or did not make.
9. The relationship between the members and the board is "we" and "they" as though the members and the directors are on opposite sides; Like in "what are 'they' doing to us now?"
10. Directors are reluctant to ask for help or admit they might have been wrong because of the criticism that would result.
11. Worst of all is the director who believes that by becoming a director he is given a dictator's power over the co-op.

This book is not going to cancel any of these ten facts overnight but it will provide information that, if a director is serious about his job, will give him the confidence he needs to stand up to many of the arguments and criticisms that come from uninformed members. It cannot be expected that any single publication can have all the answers and thus this small book certainly does not make that claim.

The material in this book has been researched and is supported by publications from a wide spectrum of sources, including co-op directors and members; attorneys, and real estate persons. It is presented only for the purpose of providing information to directors or other leaders in the co-ops. It does not claim to be legal advice in any way shape or form. There are very few suggested ways (procedures) of implementing the information because it is felt that the co-ops, when informed of the facts, will develop the procedures they will use to conform to them. How each co-op uses this information is entirely up to their board and members in the same manner as they would use a dictionary, encyclopedia, or other reference material.

Too often, directors are chosen because they have great personalities and are well liked, NOT because of their qualifications as directors.

Members cannot be expected to understand what is required of a director if the directors don't know either. Therefore, it stands to reason that if the voters don't know what a director is supposed to do, the most popular person will be selected! We argue and debate the persons who are candidates for public office but when it comes to the co-op board of directors, qualifications seem unnecessary. This makes one wonder if THINKING is a forgotten ability in the co-ops, or is it that members have retired their minds as well as their bodies? (Just see how fast they react if a rule is proposed that is something they don't like!!!)

This author has no illusions that co-ops are smooth-running, efficient organizations where harmony, caring and sharing are the highest priority or are even recognized characteristics. This book was inspired by the demonstrations of strife, persecution, discrimination, selfishness, greed and downright lawlessness which has occurred in the co-ops.... conditions which continue to this day.

Rest assured that, almost without exception, when you begin to accept and implement a lot of the information in this book, you will be criticized and argued with almost instantly! WHY? Because of the four underlying issues which run through this book from beginning to end. They are repeated again and again in different ways and in identical ways. Those issues are:

THE MEMBER CAN RECEIVE NO INCOME AND MAKE NO PROFIT however small.

THE MEMBER DOES NOT OWN ANY PART OF THE CO-OP (or its money) however it might be identified.

THE MEMBERS, NOT THE BOARD, GOVERN THE CO-OP contrary to the belief of many directors, past and present.

DON'T TRY TO BEAT THE SYSTEM, it can't be done.

These are the issues which have prevented the co-ops from being what we dreamed they would be.

Grant Simons, SKP #907

CHAPTER 1.

HOW CO-OPERATIVE IS A SKP CO-OP?

The SKP "co-op" was conceived as a means for members of the Escapees club to develop RV parks for the exclusive use of members of that club and their guests. Financing was solicited from Escapees who were in turn guaranteed, first, that they would be able to lease a lot in the park when it was developed, and second, that if they changed their mind, could get a full refund and third, that at any time after the park was completed the person could terminate his lease and get a 100% refund of what he had paid "out of pocket" for his lease plus any additional assessments he might have paid.

Because of this method of development, an erroneous belief that the co-ops were co-operatively "owned" came into being. The co-ops are co-operatively GOVERNED, but not co-operatively OWNED. H.Oleck in his book "Nonprofit Corporations, Organizations and Associations" (Prentice-Hall 5th Ed) states,

> "a nonprofit organization is, by definition, one that nobody owns, in that nobody is supposed to get from it any personal profit (in the pecuniary sense) such as owners get from their property."

The contention, hostility and anger in the co-ops that has resulted from this misunderstanding is extremely hard to overcome because as Mr. Oleck further remarks,

> "As in all human activities, a number of people (estimated at about 5 percent) always seem willing to evade or violate the rules or laws of decent society in order to obtain personal power or wealth."

In new concepts, there are new uses for old words. One such word used by the SKP Co-ops that is quite often misunderstood and, therefore, deserves an explanation is the word, "assessment".

> "An assessment is an amount of money paid equally by every member for durable improvements made to the park such as a swimming pool, laundry, fencing to enclose the park, park security lighting etc. and is added to the value of a lease or membership"
>
> An assessment is not to be confused with costs of upkeep such as painting, re-surfacing roads, attorney fees, or other items considered to be "expenses".

The generally accepted use of the term "co-op" can not be applied to the SKP Co-op. Definitions of "co-ops" by the law codes of the various states and by the IRS present difficulties when trying to apply them to the SKP Co-ops. The laws of most states provide that "co-operatives" may be formed for marketing, public utilities, water companies etc., all of which are in the commercial sector and are governed by entirely different statutes than those which govern the co-ops. Mr. Oleck describes a co-operative as a "democratic association of persons organized to furnish themselves an economic service under a plan that eliminates entrepreneur profit and that provides for substantial equality in control and ownership."

The concept of the SKP "Co-op" does not include commercialism as a part of its purpose. The stated purpose of the SKP Co-ops is to "develop and operate an RV park for use by members at a lesser cost than can be achieved by rental or ownership and to provide a place where visiting members of the Escapees club can park--on a space available basis--while in or travelling through the area; to provide opportunities for fellowship and recreation in a community of people with common interests.", or such similar words.

Some states define nonprofit organizations as "mutual benefit" corporations, or associations. This definition more clearly describes the concept of the SKP co-op because, in the truest sense, the co-ops are formed for the purpose of bestowing benefits upon the members as a result of a mutual effort. The benefits, however are not such that any member may realize a monetary profit from any transaction between the member and the corporation.

The benefits can be recognized by examining the things that make a SKP co-op unique as well as the relationship of it-as a nonprofit corporation-to its members. (See also Chapter 6)

There is nothing unique about a corporation buying land and developing an RV park such as has been done by the co-ops. Nor is it unusual for a corporation to enter into leasing agreements with persons for the use of their property. An SKP co-op is unique because:

- The cost of a lease is determined, not by the prevailing market but by dividing the development cost of the park by the number of sites available to be leased. The cost of a lease can be increased only by "assessment" of the members wherein each is required to pay an equal share for additional durable assets or improvements to the park or by board action (see Appendix C). Inflation, the national price index, assessed value of the park, an increase in the capital assets of the corporation, appreciation of the market value of the property or any other influence has no effect on the value of a lease. Therefore, the persons on a "wait list" can be assured that the cost of a lease will be essentially the same 10 years from now as it is today.

- When a member terminates, a full refund is made to that member of the "out-of-pocket" money paid by the member for the lease and any subsequent amounts paid for durable park improvements via "assessments".

- Money spent for personal improvements to the leasehold is refunded less any depreciation, as determined by a committee appointed for that purpose, which might have occurred. [The amount spent for such improvements may be limited by some co-ops.]
- Members (leaseholders) may make their leasehold (assigned lot) available to the corporation for renting to non-member members of the Escapee club and guests of members. This provides income for the corporation which is divided 50-50, for example. Fifty percent benefits all members by a reduction of their annual fees. The other fifty percent determines the amount of a refund of part or all of the current year's annual fees to those members who have made their lots available for rent and provides an incentive for others to do the same. The amount of refund for each member whose lot has been available

for rent is determined by a complex formula. Any refund that an individual lot has accrued in excess of the current year's annual fee becomes an additional benefit for all members.

NOTE:Any benefit applied to a member's upcoming year's annual fees, which was larger than the member had paid for the current year's fees is not only taxable income for the individual but is a violation of nonprofit law regarding distribution of corporate income.

The social and personal benefits, in addition, are too numerous to mention but include opportunities to serve on activity committees, to participate in the government of the corporation, parties, celebrations, fellowship and the security of living in a community of people who care about each other and are willing to share when the need arises.

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SKP co-ops are organized as nonprofit corporations wherein all members have voting rights. Most members of the co-ops have never experienced membership in a corporation, particularly a "nonprofit" corporation where they are responsibile for their own government thru democratic debate and voting . They therefore find it difficult to understand how they fit into the "business end" of the corporation. This applies, equally as well, to the directors who are elected by the members--from the membership--to conduct the business affairs of the corporation. In fact, few members or directors actually know what a corporation really is--not to mention a "nonprofit" corporation.

A common misunderstanding in the co-ops is that, because they're small and the emphasis is on the social aspects of life in the park, that the co-op is not really a true business like bigger organizations. Nevertheless, members and directors alike must accept the fact that the SKP co-op corporation--even though nonprofit--is a business as real as Sears and Roebuck or General Motors. The SKP co-op corporations are small but the laws governing corporations do not accomodate a difference in size. Every nonprofit (or "for profit") corporation, small or large, must abide by the law and can suffer the same penalties if they fail to do so. It is, therefore, important that boards of directors, more so than the members, make a special effort to learn as much as possible about:

- The corporation as an organization governed by local, state and federal laws.
- The responsibilities the board has to the members
- The part they, as individual directors and as a board, play in fulfilling the purposes and goals of the corporation.
- The responsibilities the members-at-large have to the board, the corporation, and to each other.
- The personal risks involved in being a director of a nonprofit corporation.

CHAPTER 2.

WHAT IS A CORPORATION? A NONPROFIT CORPORATION?

As mundane as definitions usually are, they are sometimes the only key to understanding. Black's Law Dictionary definition of a corporation is:

"A corporation is an entity created by law that is separate and distinct from the members who comprise it"

What, exactly, does this statement say?

- "A corporation is an entity created by law."

  An "entity" is an "existence", a "being". An "entity", in law, can be either an "unnatural" or a "natural" person. A corporation is an "unnatural" person, whereas people, human beings, are "natural" persons.

  Consider the corporation as a "person" for whom the board of directors is responsible. It could be said that, because the corporation is an "unnatural" person, it has no soul or brain, therefore, the law provides for that soul and brain by requiring a board of directors to conduct the business affairs of the corporation.

- "(An entity) that is separate and distinct from the members who comprise it".

  The members of a corporation are not a part of the corporation but are separate from it. Their tie to the corporation is the board of directors. The board is the only mechanism permitted by law that can conduct the business affairs of the corporation. However, the laws provide that in corporations wherein members have voting rights, the members pretty much determine the destiny of the corporation. BUT it must be made very clear that THE MEMBERS ARE NOT PART OF THE CORPORATION NOR DO THEY OWN ANY PART OF IT.

  Note, for example, that "SKP RETREAT AND BOB-SLED PARK INC." is the name of a corporation--- it is NOT the co-op. The "Co-op", as we think of it, is a physical park. The park is an asset owned solely by the corporation whose name is (whatever yours is named), and not by the members as is often times erroneously thought.

Nonprofit corporations must be "non-stock" corporations in most states. Members cannot own any part of a "non-stock" corporation. SKP co-ops are "non-stock" corporations. Nonprofit, non-stock corporations are not "owned" and cannot be owned by any one. Non-stock corporations are organized by "incorporators" who do not own any part of the corporation but are the necessary "natural" persons who undertake the "beginnings" of the co-op. The money, or income, that finances the development of a corporation can come from any source as determined by the incorporators or the organizing board of directors. In the case of the SKP co-ops, the money was obtained from members of the Escapee Club who wished to become members of the "co-op". The money was not given to the

corporation "in trust" but as development capital the corporation could spend to accomplish the purpose stated in their articles of incorporation. Once any funds are delivered to the corporation, the donor no longer has any claim on them, or any income which might be earned by those funds except in the case of refund of those funds when required by the state due to default of the corporation to perform within a specific period of time.

WHAT MAKES A NONPROFIT CORPORATION "NONPROFIT"?
Nonprofit organizations have existed since history began. Our present code of laws has evolved over the centuries from written and unwritten laws which governed businesses whose purposes were altruistic rather than profit.

Model nonprofit laws authored by the American Bar Association (ABA) made sweeping changes in state nonprofit codes in the late 1970's. As a result of this effort, codes of the various states are very similar and some characteristics appear in all. Some, though, are very complicated, detailed, and restrictive while at the same time are more lenient in some parts than are other states. California and New York are probably the most complicated and difficult to comprehend. This (ABA) model is updated periodically and the lawmakers of all states decide to accept the changes or not. Too, sections of that model code have been copied, almost word for word, by many of the states. Others have changed portions of it but as far as the "nonprofit" characteristics of the law, the states are universal.

The laws in every state define a "nonprofit" corporation. The wording will vary but each definition is distinct and absolute in three basic unbendable precepts.

- "Nonprofit" means that no part of the income or profit shall be distributed to any corporate member.

- A nonprofit corporation may make a profit but that profit must be used to benefit all members according to the purposes stated in the articles of incorporation.

- A nonprofit corporation may compensate members and officers for expenses incurred in service of the corporation. ("Service" in this context means such things as mileage, reimbursement for meals, work performed for the corporation etc.)

The definition which follows is from the corporation code of Arizona and is a typical example of the definition of a "nonprofit" corporation.

- From **Arizona corporations code title 10, chapter 5:**

  "Nonprofit corporation" means a corporation no part of the income or <u>profit</u> of which is distributable to its members, directors or officers, except this chapter shall not be construed as prohibiting the payment of reasonable compensation for services rendered or a distribution upon dissolution or liquidation as permitted by this chapter.

"Distribution" or "distributable" are also key words in nonprofit corporation law. Oregon nonprofit code has an excellent definition of the word "distributions".

- 65.001 **Definitions** (from Oregon nonprofit code)

  "Distribution" means the payment of a dividend or any part of the income of a corporation to its members, directors or officers and does not include payment of value for property received or services performed or payment of benefits in furtherance of the corporation's purposes.

It is clear that the **corporation** is permitted to MAKE A PROFIT provided **NONE OF THAT PROFIT IS PASSED ON (distributed in kind) TO** ANY **INDIVIDUAL MEMBER!** The "services" referred to means mileage, expenses incurred in conduct of business, etc and does NOT mean administering the rental of lots and/or being the agent for lease terminations and/or exchanges or sale of memberships etc.,etc., etc.

Shares of stock are issued by business and for-profit corporations as evidence of "ownership" of some portion of that corporation. Not so with nonprofit corporations. Yet, in every state wherein a SKP co-op is located, the nonprofit code includes some reference to "shares" and/or "shares of stock". Florida permits the issuance of "shares" by not-for-profit corporations, but examination of their code reveals that there can be no dividends paid and that the shares are merely a method of **identifying membership** and **voting power.** Arizona's statement regarding "shares and dividends" is quite typical--and in some cases identical--to other states.

- **SHARES OF STOCK AND DIVIDENDS PROHIBITED** (from Arizona code)

  "A corporation shall not have or issue shares of stock. No dividend may be paid and no part of the income or profit of a corporation may be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, but no such payment, benefit or distribution may be deemed to be a dividend or a distribution of income or profit."

From this quotation, note that it:

(1) Permits nonprofit corporations to have income or profit but prohibits distribution of any part of that income or profit to the members.

(2) Permits corporations to bestow benefits on its members. Rental income or income from invested funds becomes a "benefit" to all members when it is used to cover part of annual operating expenses so as to reduce the amount of annual fees paid by all members. Full or partial refund (see note) of the annual fees of those who permit the corporation to rent their lots to others is both an additional benefit and an incentive for members to make their lots available to the corporation for rental to visitors. Other income can also be spent for improvements of the corporation property in such a way as to benefit all members equally. BUT IN NO CASE MAY A DIRECT DISTRIBUTION OF DOLLARS TO ANY MEMBER BE MADE. To do so would result in a profit by corporate members.

(Note: Notice that this is a "refund" of fees paid at the beginning of the current year....NOT the fees for the upcoming year)

Another example might be that if, when the funds are received from an incoming lessee (a new member), the amount received is greater than the amount the corporation is obligated to pay the departing lessee, the excess is corporate income and cannot be distributed to any individual member. (This is covered in detail in Appendix C)

(3) A corporation may use income or profits as compensation for services rendered to the corporation.

Summarizing:

1. The corporation is an entity, a "being" in itself. The corporation is not the members and the members are not the corporation.

2. The members do not own the corporation. The corporation, as an entity, "owns" itself.

3. Only the board has the authority to conduct the business affairs of the corporation although the board must bow to the will of the members providing that will is within the law.

4. A nonprofit corporation, MAY MAKE A PROFIT but cannot distribute any of that profit to any corporate member. The corporation must use that profit to provide BENEFITS for the members but never in direct dollars.

5. Members of a nonprofit corporation MAY **NOT** MAKE A PROFIT no matter how small.

CHAPTER 3.

LET'S TALK ABOUT THE MEMBERS

Corporations may have:

- No members.
  Until recently, Escapees Inc. had no members, just the board of directors. We "Escapees" were members of the "Escapees Club" only.

- Members who do not have voting privileges.
  At the present time, Escapees Inc. is this type. If you look at your membership card, it says you are a member of "Escapees, Inc." which is the corporation we call "National".

- Members who have voting privileges.
  The members of the co-ops have full voting privileges with no restrictions. Each member has equal voting power in the determination of issues brought before them at meetings of the members.

Most nonprofit corporations do not establish small, closed communities such as the co-ops. The intimacy of the co-ops tends to generate a proprietary attitude among the members which can work for good or bad. A proprietary attitude can create loyalty, support, fellowship, caring and sharing attitudes and many other desireable results. Yet, it can generate selfishness, greed, dissension, distrust, jealousy, controversy and even legal confrontations. The existence of this bad attitude can usually be traced to a lack of good or proper leadership at the board level. It also results in decisions being made by the members which are influenced more by the personal interests of an individual or a "faction" of individuals rather than by rational consideration for the good of the membership as a whole. Whether or not the attitude of the members is productive or counter-productive depends on the leadership given by the board of directors. When members become emotional, demonstrative or irresponsible, a board must remain firm in its resolve to represent and work for the good of the <u>whole</u> membership. A board cannot afford to bend to the will of a "noisy minority" or those making irresponsible proposals. The board needs to stand for what is right and just and is within the law. Whether or not the "proprietary attitude" is producing "good" or "bad" results is often displayed in the bylaws and rules of a co-op. An analysis of the bylaws of a co-op is a testimony to the leadership of the board. Inadequate leadership by the board can result in bylaws and rules being accepted by an emotional membership rather than by a membership that carefully considers each statement and its long-range results. And yet, the members may not have to take the responsibility for all bad bylaws because those bad bylaws could be the result of recommendations from an incompetent board.

Members of co-ops who have never been involved in the government of a corporation have difficulty learning that the co-ops are not just "Mom and Pop" businesses but are a special type of business that is specially chartered by the state. It is even more difficult for them to comprehend that the co-ops are not just "social clubs" that can make up their own rules, laws and requirements without regard to public law.

Co-op members, like anyone else like to make money. In fact they were taught all their lives that they were to make a profit from any opportunity that presented itself. As a result, many co-op members cannot (or will not) believe that it is unlawful for a co-op member to make a profit--no matter how small. To avoid controversy and attempts to circumvent the law, the board needs to continuously remind those members that THE LAW MUST BE ADHERED TO and explain the requirements of nonprofit law to them.

To be a member of an SKP Co-op, a person must be, first of all, a member of Escapees Inc. and then must enter into a lease or membership agreement with the corporation for the use of a lot in the park. Some co-ops have additional qualifications for membership. In any event, all corporations that have members require that a person take some action or have some qualification to become a member and require that the person agree to abide by certain criteria in order to maintain membership. It may come as a surprise to many co-op members that this agreement is CONTRACTUAL in nature. Universally, the co-ops require that members abide, first of all, by the lease or membership agreement, articles of incorporation, bylaws and rules. Failure to abide by any of these is a breach of contract not only punishable according to the terms of the documents themselves, but could be brought to court as a breach of contract. (The "waiting list" of persons desiring to become members is, believe it or not, a viable contract that would stand up in any court)

Members are the core of and the only reason for the existence of the co-ops. It is from the members-at-large that corporation directors, officers, committee members, and all the other volunteers necessary to the on-going purpose of the co-op are recruited. The members determine the destiny of the co-op and the authority of the board. There is nothing more important in the life of a co-op than the relationship between the members and the board. The relationship between the board and the members of a successful and harmonious co-op will be one of unity---not a "we" and "they" relationship. The board, as leaders, bear the responsibility for making this relationship become and continue to be a reality. It is only through this compatible type relationship that the co-op can grow richer in its quest for the things that make up the happier, fuller lifestyle, where caring and sharing are realities, not just dreams.

Members are accorded specific rights via the bylaws or articles of incorporation. They also have many rights under state and national law. Boards have failed to consider some of those rights and have ended up having severe and expensive difficulties. If there is a question or even a suspicion that the rights of an individual might be violated, the matter should be referred to a competent attorney before any action is taken which might affect those rights---not afterwards! A difficult action for a board to undertake is the involuntary termination of a member. (See Chapter on "Involuntary Termination"). It is also well to bear in mind that although the member does not own any part of the corporation, he still has rights which are protected by the court as "property" rights.
The authority to make and amend bylaws and to amend the articles of incorporation should, in all co-ops, be reserved to the members. The specific authority the board has is delegated to them by the members via the bylaws or articles of incorporation or is required by public law. Wise leadership by the board will recommend bylaws and

articles that will create harmony, will be compatible with good business practices, are consistent with public law and will provide protection for the rights of the members and the board.

A discussion of the members would be incomplete without some mention of the need for maintaining democratic rights and equality. An important example of the need for equality is in the area of voting. Although many of the co-op members can't be bothered to walk across the street to vote in public elections, they will drive hundreds of miles to attend the annual meeting of the co-op! Their right to vote is precious because they can calculate the power of each vote in a community as small as a co-op! To dilute this power is a violation of democratic equality and a sure source of contention, anger and even possible law suits! Every member must have equal voting power under any circumstances, whether present at the meeting or not. Boards should be extremely careful to not create a condition where **even one member** might be deprived of his rights of debate and voting. The fairest method to assure that every member has equal voting rights is by the use of proxy voting whereby another member may be appointed by and to act for the absent member. This way the absent member still has his authority to be represented and to vote.

Use of a proxy generated by and assigned to the board which includes multiple debatable issues within a single document amounts to a "absentee ballot". This form of voting is unfair because it deprives members of their rights to deliberate and debate the issues being recommended to them. A proxy assigned to a member of the board might possibly be acceptable if it was known that the issue was popular and there would be no debate or if it was a simple "yes" or "no" question that precluded debate. A person---not the board or board member--- who has been appointed as "proxy" for an absent member can argue and discuss in the stead of the absent one. EXCEPT FOR THE ELECTION OF DIRECTORS, the use of mailed-in ballots by nonprofit corporations is not consistent with the nonprofit laws of most states.

The statutes of many states provide that, "A member who is entitled to vote, may vote in person or unless the articles of incorporation or bylaws otherwise provide, by proxy executed in writing by the member or by his duly authorized attorney in fact." In other words, the state permits voting by proxy but allows the organization to deny the use of proxy voting. Therefore, if the bylaws or articles do not prohibit the use of a proxy, it is o.k. to use it.

What follows may repeat what has been said several times before but the emphasis is felt necessary because it addresses a common misunderstanding in the co-ops as well as the Escapee Club-at-large!. Although members have provided the funds for the development of the park, they do not "own" the park. Technically, they subscribed the funds for the corporation to develop the park. Upon receipt of the funds from these prospective members, the funds belonged the corporation---the contributor no longer could lay claim to any portion of those funds. After over a decade of co-op existence, the statements are still made, incorrectly, that "it was our money that built this place, so I own part of it". At the time of construction, the corporation assured those subscribers that they would be able to lease a lot in the park when the proper time arrived. As time goes on, the corporation acquires other assets as a result of donations from individuals and from the fund raising organization of the co-op. These

assets add to the total (and taxable) value of the corporation property but, NONE OF THOSE ADDITIONAL ASSETS BELONG TO THE MEMBERS any more than did the park in the first place. It must be made clear to the members that the members, are **"members"** and are NOT "owners".

Members are naturally concerned about what happens to the co-op because it is, for them, at least a part-time home. It is important that the board make every effort to keep them informed as to the business affairs of the corporation by providing copies of minutes of board meetings, annual meetings and periodic financial statements. As a matter of fact, the statutes are universal in all 7 states wherein we have co-ops that the records of the co-ops are to be open for inspection by any member at any reasonable time and that they may make copies as they desire. Statutes also include civil penalties for officers who interfere with this right.

Don't sell the members short! Although the law looks at it differently, the members look to the board as the leaders of the co-op. How well your members get along, how happy and fun your co-op is, and how much your members care and share depends on you!

CHAPTER 4.

LET'S TALK ABOUT THE BOARD

WHO IS THE BOARD?

The board is made up of volunteer members of the corporation. These volunteers are placed in nomination by the "elections" committee (or some similar name) because they have volunteered to serve as directors of the corporation not because they have any special qualifications to fill the position of director on the board of a nonprofit corporation. They are, for the most part, elected on the basis of popularity and affability because the members have no other criteria by which to determine their fitness for the position. The liklihood that successive generations of members will be less naive than the present generation is rather suspect due to the nature of the SKP co-op and the attitude of the members who make up the membership of the co-ops. It is because of this condition that the information in this book was compiled. This information can establish a "norm" by which the co-ops can perpetuate the thinking of the originators as time goes on.

Before we get into the details of board business, let's take a look at the people that make up the board of directors of a typical SKP co-op.

Although there are exceptions, directors who have served the co-ops:

- are mostly retired persons.
- are diligent and concerned about the co-op.
- have never served on a board of directors except possibly that of a religious organization.
- know little about bookkeeping and accounting or the importance thereof.
- do not understand the concept of nonprofit corporations
- are dubious about their ability to read and understand the statutes regarding nonprofit corporations so balk at doing so.
- have had no administrative experience in a corporation.
- were elected as directors without having been told of any qualifications necessary for the job or the personal risks involved.
- have their own ideas as to how the organization should be run. (with the result that how the organization is run changes with every election)
- find it difficult to admit they don't know what they're supposed to do so are reluctant to seek advice.
- believe that they are totally protected from personal liability because they are "indemnified".
- Do not comprehend or are unwilling to accept the "servant", "stewardship" or "trustee" role of the board.
- have difficulty relating statutory regulated business with a "social club". (Categorically, co-ops are listed as "social clubs".)

Contrary to the majority opinion at the time of the writing of this first edition of this book, the board of directors is the board of directors of the CORPORATION but does NOT <u>govern</u> the co-op! The MEMBERS govern the co-op with the <u>administrative assistance</u> of the board. The co-op, as we generally think of it, is the park, the improvements, the social life, the members, activities and surroundings BUT IT IS NOT THE CORPORATION.

It is not essential that a corporation have members but a corporation MUST have a board of directors for two reasons:

- The law requires it.
- Without a board of directors, a corporation could not function for any purpose because a corporation, as such, has no soul or mind.(See Chap.2) The board performs those functions.

AUTHORITY

The board does NOT have the AUTHORITY to GOVERN the CORPORATION or the actions of the members **except as permitted by the articles of incorporation or bylaws.**

Corporation law requires that the board of directors conduct the "business affairs" of the corporation. The members, however, may direct the board to do their will in any situation related to the operation of the corporation that would be within the law. Members have been known to impose unreasonable sanctions on the board and to introduce unworkable provisions in the bylaws. In any event, it is the *responsibility of the board to determine whether the will of the members is in accord with the law, the articles of incorporation and/or the bylaws.* And it is furthermore necessary for the board, exercising proper leadership methods, to use the patience and tenaciousness to bring irresponsible membership action around to responsible results.

Boards of directors often assume that the members are responsible to the board when the exact opposite is true. The courts have established that:

> "the board of directors or trustees of a corporation are merely its managing agents for the purposes of its business, they have no power unless specifically authorized by the members". (from Corpus Juris Secundum)

The board is delegated by the members to perform the business necessary for maintenance of the corporation, its property and the park in general and other "business" as defined in the law, articles of incorporation or the bylaws of the corporation. Actions that affect the behavior of the members should always be approved by the members. This needs to be considered rationally and not fanatically because, in the on-going affairs of the corporation, there are bound to be times when it is necessary and/or convenient to the conduct of ordinary business for the board to make decisions which will affect the actions of the entire membership. In the end, if such decisions are determined to not be the will of the members, the members can, in body politic, reverse the decisions at special or annual meetings, depending on the priority of the item to be considered. The board may recommend matters to the members that are not part of the "business affairs" but the board may not always implement those matters except as provided by the articles of incorporation, bylaws or act of the members.

For example, consider "rules" which relate to the social conduct of members. Rules are necessary because people have a tendency to overstep the bounds of mutual respect whether the community be as small as a couple or as large as a city! But, rules are not part of the "business" of the corporation. Development of "rules" is a responsibility of the members---not the board. The board, must, however, determine whether or not any of those rules would violate the

civil or property rights of any member because, should that happen, the corporation--not the members--would become involved in the litigation which could result. Properly, the board should only suggest rules to the members for their consideration. The **authority** delegated to the board (except for the authority given by statute) and the things which affect only the members are both determined by the members.

The formation and supervision of the "maintenance committee" is the responsibility of the board because the board must care for the property, or assets of the corporation...that's the business end. The appraisal committee, landscape committee, development and construction committee come under the same category.

The board, being an administrative body which is required by law to accommodate the business affairs of the corporation, carries an awesome responsibility. A person who accepts a position as director in a co-op deserves the thanks and gratitude of all the members. Board members, however, will never be accorded this recognition until they recognize their responsibilities and limitations; the relationship of those responsibilities to others and that the position of director is one of leadership, service and stewardship. When a director fulfills his position in a responsible and professional way, that director deserves the highest plaudits. Likewise, a director who believes that his is a position of power and authority and fails to solicit or accept counsel from others deserves only the contempt of the members.

LIABILITY

When making decisions, a director has no better protection of his own liability than to know the limitations imposed on nonprofit corporations by the laws of the state. It is commonly believed that directors are immune from legal responsibility for the decisions they make and actions they undertake while serving as directors...that they are "indemnified" from all cost incurred in litigation. Nothing is further from the truth! Directors are <u>personally</u> responsible for their actions if they:

- Take a business action without the concurrence of the board. For example: A co-op member meets a director on the street and asks a question that needs to be interpreted by an attorney. That director talks to another director and they decide to consult an attorney which they do without approval of the board.
  AT THAT POINT, THOSE TWO DIRECTORS ARE **PERSONALLY** RESPONSIBLE FOR THE COSTS OF CONSULTING THE ATTORNEY. IF THE BOARD DOES NOT SUBSEQUENTLY APPROVE OF THEIR ACTION, THOSE TWO DIRECTORS WILL HAVE TO SPLIT THE COST! IF LITIGATION HAD FOLLOWED BECAUSE OF THEIR DECISION, **THEY** ---NOT THE CORPORATION--- WOULD HAVE BEEN **PERSONALLY RESPONSIBLE FOR THE COSTS!**

  The point is, that directors <u>may not act individually</u> but must act as a board in ANY and ALL decisions pertaining to even the smallest item of corporation business. A director may act on his own decision but still AT HIS OWN RISK if he believes that he has acted on something that the board will subsequently approve AND he follows up to be sure that they do approve it AND the approval <u>is entered in the minutes.</u>

  H. Oleck, in his book "Nonprofit Corporations, Organizations and Associations" (Prentice Hall-5th Edition 1988) states that

"A director is an agent. As such he ordinarily has no personal liability for the debts of his principal, the corporation. But a position of trust that gives him a fiduciary responsibility increases his susceptibility to liability as an agent."

"An act of a director, done without authorization, may be ratified by the board of directors, if he could have been previously authorized."

"Acceptance of the benefits of an unauthorized act, with knowledge of the facts is implied ratification."

- Fail to be sure that their dissenting vote is recognized and entered in the minutes when an action is taken by the board that the director feels is contrary to law or could result in expensive litigation. To register dissent absolves the director of any responsibility for the decision and protects that director should litigation arise as a result of the decision of the board.

- If they knowingly approve action that is contrary to public law whether it be related to nonprofit organization, civil rights or any other statute.

- If they knowingly approve action that is contrary to the corporation's bylaws or articles of incorporation and suit is brought to seek remedy of such decision.

As far as liability is concerned, directors need pay attention not only to their personal liability but the liability of the corporation as well. An improper decision or action by the board could even result in actions by the attorney general of the state to dissolve the corporation. (See "Involuntary Dissolution" in your statutes)

ORIENTATION AND INDOCTRINATION

How, then, is a volunteer who has had no previous experience as the director of a corporation to find out how to do the job? In chapter two, "How co-operative is a co-op?" this question was alluded to but now let's look at a bit more in depth.

To begin with, the appendix of this book lists the sources for the nonprofit laws from Florida, Texas, New Mexico, Arizona, Nevada, California, Oregon and Washington. The laws are not written in terms or grammar that are difficult to understand. There is a word here and there that you may want to look up in a good dictionary, like "ultra vires", "de facto", or "prima facie". There are places where close attention must be paid to punctuation and the way sentences are put together in order to understand the intent of the statement. But as a primary resource, every board of directors should have a copy of the nonprofit corporation statutes for their state.

It is not necessary that a director become familiar with the entire nonprofit code for your state. The sections to be concerned about will be entitled similar to these from the Arizona code.

- definitions
- general powers
- statutory or registered agent

- known place of business of corporation
- members
- bylaws
- meetings of members
- notice of member's meetings
- voting
- quorum
- board of directors
- number, election and classification and removal of directors.
- vacancies
- quorum of directors
- committees of the board of directors
- place and notice of director's meetings
- Officers
- removal of officers
- books and records
- shares of stocks and dividends prohibited
- right to amend articles of incorporation
- procedure to amend articles of incorporation
- articles of amendment
- filing articles of amendment; effect of amendment
- restated articles of incorporation
- reports and filings
- general provisions

Of interest also are sections relating to "Sale of Assets", "Voluntary and Involuntary Dissolution" and "Penalties and Liabilities"

ORIENTATION

A nine member board whose members serve 2 year terms seats 4 new members one year and 5 the next. This makes serving on the board and providing continuity a difficult task which is further complicated when some members resign during their term of office. The difficulty is compounded in the SKP co-op system by the lack of persons who have served on the board of a corporation, particularly a nonprofit corporation. The result is that there is ALWAYS half of the board members who have had NO EXPERIENCE! A far better arrangment would be THREE members elected each year for a THREE year term. Nevertheless, there are some things that a board can do that could make their operation run more smoothly even with new, inexperienced members.

To begin with, make the member feel comfortable and welcome to the board. Don't make them feel like "greenhorns" that are intruding on your "turf". Help them feel that his/her contributions to the work of the board will be appreciated. Maybe having a "social" meeting of the board over coffee where the new member can meet and get to better know the other members.

New members coming on to the board should be provided with copies of the minutes of all the meetings of the board for the past year at least, two years would be better. In a semi-formal "get acquainted" meeting, brief them as to the goals the board has set for itself for the current year and the progress the board has made towards those goals. Tell them (in addition to past minutes) about current unfinished business that will be pursued at upcoming meetings.

Inform the new member if you have a standardized agenda, any special rules of conduct at the meetings or anything else that would provide a better understanding of how the board proceeds.

An excellent assistance to an incoming director is to provide a large three-ring notebook with proper dividers and includes copies of the minutes for the previous year, up to date bylaws, articles of incorporation, committee guidelines, current budget, current financial reports or other documents that would be helpful to a director as he pursues his task. During his tenure, he can keep personal notes in the notebook. At the end of his term those notes can be removed and the notebook passed on to his successor.

Boards could function far more effectively if, upon assuming their duty, every director was required to:

1. Skim through the entire nonprofit law for your state. Read all the sections noted above. (No harm would be done if the entire board did this together)

2. Read and **study** the Articles of Incorporation of your co-op and any amendments thereto. Remember that the articles of incorporation take precedence over bylaws or any rules of your co-op. Bylaws must be consistent with the articles in all respects. The articles of incorporation can be described as the corporation's "contract" with the state and the filing of the articles is the state's permission to function as a corporation.

3. Read, **study** and **understand** the bylaws of the corporation.(If you can't understand them, how can you expect the members to understand them?) That does not mean a cursory glance but a thorough study from beginning to end. If you can't understand them, then it is the board's responsibility to recommend changes to them so they can be **easily** understood by all members. Bylaws are fundamental to the operation of the corporation. They contain the instructions, specifications and direction for members and the board.

   BYLAWS are the INSTRUCTIONS FOR RUNNING THE CORPORATION

   RULES are the INSTRUCTIONS FOR THE BEHAVIOR OF THE MEMBERS.

4. Become familiar with the procedures for all committees. These procedures have been approved by previous boards but may need to be updated because of new and different experiences as time goes on. Few co-op members, even after having been members for years, are familiar with the duties of all the committees. The board cannot co-ordinate the activities of these committees if they are unfamiliar with their assignments.

5. Learn, at least, the basics of Parliamentary Law. Most co-ops prefer to use Robert's Rules of Order Newly Revised published by Scott Foresman. Robert's Rules, however, does not accomodate some statutory requirements for nonprofit corporations. An excellent publication on parliamentary law that is brief, easy to understand and to the point with a lot of additional helpful information is "A Standard Code of Parliamentary Law" by Alice Sturgis. The procedures set forth in this publication are supported by over 3000 court cases. (See also chapter 7, "Bylaws")

6. Read this book and become familiar with its contents. It may not have all the answers but is better than guessing at all of them.

For those directors who would like to improve their ability as directors beyond the "just get along" level, there are resources that can be explored that have a wealth of helpful information. For example:

The public library has volumes regarding nonprofit corporations and organizations. A very helpful volume is "Nonprofit Corporations, Organizations and Associations" by H. Oleck (Prentice-Hall). An excellent resource for better understanding of legal terms is "Blacks Law Dictionary".

If available, learn to use the law library, where information will be found that is very helpful towards understanding corporate organization. The librarian will be glad to help you. For example, ask for the volumes of "Corpus Juris Secundum" and look under "corporations". From there, you may be led to references in other volumes of that set as well as other sets of volumes which will aid your understanding of corporations. Or just tell the librarian what it is you want to look up.

Find out if there is a member of your corporation who has had experience or is knowledgable about nonprofit corporation organization. Seek them out, their expertise may be invaluable. Especially if this person is a CPA, an Accountant, or may have served on the board of an established nonprofit corporation other than whose in the SKP system.

OFFICERS

Statutes require that corporations have certain officers. Check your statutes to be sure you are complying. Most require a President, Vice President, Secretary and a Treasurer. Many forbid a person to simultaneously hold the office of President and Secretary. Statutes include options for additional officers which can be determined by the organization. Check your statutes to be exactly sure.

Usually, the Secretary takes and records the minutes but there are times when it is expedient that a non-board person be enlisted to take and record the minutes but in such event, the Secretary still bears the responsibility of the minutes being properly signed and kept as archival records. This is an acceptable procedure under any state statute but if your bylaws include a statement under the duties of the secretary that the "secretary shall record the minutes of all board and membership meetings" a bylaws change is required to make it possible! This same situation applies to the office of Treasurer. If the treasurer is not capable of maintaining the books, a non-board person may be enlisted to perform this task. However, the Treasurer bears full responsibility for the condition and integrity of the books of account and all other financial records.

The normal and usual duties of the officers as well as some general information on the duties of directors can be found in manuals of Parliamentary Procedure. It would do well for all directors to at least glance through whatever parliamentary manual your co-op uses for additional ideas. A word of CAUTION! Be aware that Robert's Rules or other parliamentary manuals may, in some cases, be inconsistent with the SKP co-op type organization's documents and/or with state statutory requirements. A parliamentary procedure that is not consistent with your state statute, articles of incorporation, bylaws or even rules, is superseded by those documents.

DON'T FORGET NATIONAL!

Escapees Inc, at Livingston have added a staff position, "Administrative Consultant". This person develops job descriptions, work procedures and the like for Escapees Inc., and has the added responsibility of coordinating National's efforts to support the co-ops. This office develops training seminars for co-op directors which are held at the Spring and Fall Escapades. This effort is to assist directors to understand their task better and to promote greater harmony through understanding in their co-ops. Included in the support is limited legal advice from an attorney who is also on staff at Livingston.

Because this effort is being expended to share knowledge with co-op directors, it is important that the directors communicate the concerns to National that they would like to have addressed at the seminars. As time goes on, things change in the co-ops so it is an added responsibility of the board to keep abreast of changes in trends, laws, and new ideas for making the co-op experience a more enjoyable one. These things are part of the learning experience that can come about through the seminars that National sponsors. But for any program to be successful, it must have participants. Each director has a responsibility to attend these seminars as long as he is in office which, in most co-ops is two years. Each director who attends should share with subsequent new directors what was learned at the seminar! A director who does not attend these seminars or take advantage of other opportunities to become a better director is NOT doing his best for the co-op.

When your board needs guidance or counsel from Livingston, feel free to call. Your co-op office can supply the 800 number available for your use. If you don't know the name, ask for the "Administrative Consultant". They'll be glad to help.

CHAPTER 5

MEETINGS

Decisions of the board are, necessarily, made at meetings of the board where issues can be discussed and conclusions reached by sharing the expertise and knowledge of all the members. Statutes presume that decisions made by the board will take place at "meetings".

Sometimes, directors take it upon themselves to make decisions without the concurrence of the other directors in a meeting. Such action is not only irresponsible but places those directors in the vulnerable position of being personally responsible for their decisions. (see also chapter 4) To be personally responsible means that, in a sense, their "indemnification" has been cancelled and if a suit should follow, they would personally have to cough up the money to pay for the attorneys, court costs and damages, if any. D & O insurance will only cover such situations if the director was able to <u>prove</u> that they didn't know it wasn't proper for them to make that decision on their own. When a director makes a decision by himself or with another director, they are not representing board or the corporation they are acting as individuals. Only a decision made by the board and <u>entered in the minutes</u> is a decision made for the corporation by the board.

Meetings of the board do not need to be complicated and detailed but an organized board depends on PLANNED meetings and INFORMED directors. Planning for the meeting and getting information to the directors is the responsibility of the officers, especially the president because it is the president, as chairperson, who is responsible for the agenda (the plan) for the meeting.

If a director is to make worthy decisions at a meeting, he must have time to do his "homework" before the meeting. Expecting a director to make decisions on the spur of the moment is not only unfair to the director but can lead to decisions which will be regretted later on. If the business is worth discussing, it is worth the time it takes for a director to consider the issue thoroughly.

All directors should be provided with copies of any correspondence or other data that will be considered. When the board holds meetings on a haphazard schedule, or even once a week, it is ridiculous to expect directors to make good decisions unless the material they are expected to consider is provided to them several days in advance.

A well organized board should not have to meet more often than every two or three weeks, at the most, and ideally once a month--even during the busy season. To meet more than once every two weeks indicates either that the directors are insecure and feel they are proving that they are conscientious and doing their job by having many meetings, or it is an indicator that they are trying to do the job without the help and expertise of the resources that are usually available in the co-ops. Either case is counter-productive and places an unnecessary burden on the directors, not to mention the ridiculous results that can occur.

The bylaws of most co-ops make a statement regarding "regular" meetings but fail to define what is meant by the term "regular". Technically, something that is "regular" occurs according to a repetitive pattern. Unless the bylaws establish that pattern, the board will have to do so.

Irregularly held meetings impose the additional burden on directors of never knowing when they will be required to attend a meeting. After all, being volunteers, they have activities of their own to pursue without having to stand by waiting for a board meeting to be called! There is no better way to have effective and efficient meetings than by good ORGANIZATION and PLANNING on the part of the officers and by having well informed directors.

Officers, and especially the President, have presumably been elected for their particular ability to fulfil the duties of the office. Those duties include, whether written in the bylaws or not, an ability to PLAN and ORGANIZE and to LEAD but <u>not</u> DIRECT or DICTATE. It is upon these officers that the responsibility for the organization of the board is placed. The development of the agenda (the plan) for meetings is primarily the duty of the president. The agenda should include the items of business suggested by all directors and/or members since the last meeting, items of which only the president is aware and unfinished business from the last meeting.

A suggested agenda for a board meeting would be:
(for further suggestions consult your parliamentary manual)

- Call to order by the Chairman
- Determination of quorum by roll call or statement by the secretary.
- Reading and correction (if necessary) of minutes of previous meeting.
- Old business
  - Presentation of reports of special assignments
  - Action required as a result of reports
  - Disposition of business not concluded in previous meeting.
- New business
  - New items presented by the chairman
  - New items brought to the meeting by other officers or directors.

  NOTE: If your board permits members to make inputs during board meetings, now is the time to do it.
- Adjournment

"Special" or "emergency" meetings create their own set of situations. Special meetings sometimes can or must be held between the regular (scheduled) meetings of the board. The reason for their being called "special" is because they are called to consider distinct, specific issues that must be decided before the next meeting can take place. The only item(s) of business which can be considered at a special meeting are those for which the meeting was called. Special meetings may not allow sufficient time to prepare and distribute an agenda to the directors ahead of time but IF there is sufficient time, a good president will make sure that the directors are supplied with all the information needed to enable them to make good decisions when the meeting is convened. If it is not possible to get information to directors prior to the meeting, the chairman should permit enough time for the directors to assimilate the information presented at the meeting. Special meetings usually allow notice so, as a general rule, there is no reason why the data should not be included in the notice of the meeting. (Check your state statutes to determine what is required in the way of notice for meetings of the board. Some states are very specific (California, for example) and do not permit even special meetings to be called without considerable notice) Emergency meetings,

by their very nature, prohibit the distribution of agendas or any other data ahead of time. However, the "emergency" should be no less than a threat to "life, limb, or property" such as would require decisions for the protection and safety of property or lives after a major disaster such as tornado, fire, flood, or other such calamity has befallen the co-op.

To have informed directors and an efficient board--unless the bylaws specify something different--establish a policy that will:

1. Schedule meetings of the board no less than two weeks apart. Frequent meetings are the trademark of a poorly organized board (except during major construction).

2. Make sure that the agenda and all other data to be considered is in the hands of the directors no less than five days ahead of the scheduled meeting.

3. Provide for "special" meetings but call them only if the occasion is really and truly "special" and cannot wait until the next scheduled meeting. Whenever possible, meet the requirements of number two, above.

4. Plan for and define the steps to follow for "emergency" meetings. Describe examples of circumstances that would require an "emergency" meeting.

PARLIAMENTARY PROCEDURE

Parliamentary procedure was developed several centuries ago when the legislative body of England became a "parliament" or a "gathering for discussion and debate" (from the French word "parley") of issues which were faced by its members. To prevent the meetings from becoming chaotic and disorderly, with everyone talking at once, it became necessary to invoke "rules of order". These rules have been refined through years of experience and now are included in many manuals of "Parliamentary Rules" or "Rules of Order"---some good, some not so good.(See chapter 7, "Bylaws") Their purpose is not only to make orderly meetings possible but to protect the rights of minority members as well as the rights of all members of the assembly.

State legislators have recognized that unless certain parliamentary procedures are required by law, nonprofit (and for-profit, as well) organizations will fail to provide for the protection of some of the rights of minority members or stockholders or to even develop a reasonable order of business for the operation of their enterprise. Therefore, you will find many places in all nonprofit statutes where a requirement set forth by the State is to be adhered to "unless otherwise specified in the bylaws or articles of incorporation". This statement usually says that unless your bylaws or articles specify something different <u>regarding that subject</u> the organization agrees, by default, to the condition stated in the law.

Your bylaws may say that your meetings are to be "guided" by Robert's Rules (or your chosen authority). "Guided" has been interpreted by some to mean that the conduct of meetings can arbitrarily deviate from such rules. A dictionary definition of the word "guided" is "governed" and implies that conforming to those rules is mandatory, not arbitrary. (A much better bylaw statement would be that meetings "will be conducted in accordance with the procedures set forth by Robert's Rules of Order, Newly Revised") (or whatever parliamentary manual you have chosen.)

Manuals on parliamentary law unanimously agree that if your bylaws specify a parliamentary resource, that resource MUST BE ADHERED TO except as noted below under "Priority of Documents". Parliamentary law provides for changing or modifying parliamentary rules governing meetings when it becomes necessary or is more convenient but the rules must be changed according to a defined and proper procedure. Unless your organization really feels that there is a need for a specific rule for the conduct of your meetings, do not include parliamentary rules in your bylaws or articles of incorporation.

PRIORITY OF DOCUMENTS (see also chapter 7, BYLAWS)
There is an established hierarchy of the publications and documents which govern nonprofit corporations. Organizations which are not regulated by statute or ordinance can, for the most part, make up their own rules and choose the "drummer" they want to march to.
Corporations, nonprofit or otherwise, must conform to several authorities, each of which has a priority. These are, in order of their authority-----

1. Constitutional and Federal Law
2. State Law
3. County and Municipality Law
4. The organization's Articles of Incorporation
5. The organization's Bylaws
6. The organization's Rules
7. Their chosen Parliamentary Manual.

The co-op must conform to items 1, 2, or 3, they cannot change them. The Articles of Incorporation must not be inconsistent (be contrary to) with and are superseded by items 1, 2 or 3. The Bylaws must not be inconsistent with and can be superseded by the Articles of Incorporation. Even "rules" rank above parliamentary law. Parliamentary law is the document of lowest authority.

As stated before, statutes, articles of incorporation, and bylaws all could include rules which might be called "parliamentary rules". If such is the case, any parliamentary manual, rule, or law is superseded by any or those rules. For example, if the bylaws state that a certain item of business requires a 2/3 vote and the parliamentary authority only requires a majority vote, the bylaws prevail. If the bylaws require that voting be only by secret ballot, other methods described in the parliamentary manual may not be used and ALL voting at the meeting must be by secret ballot--even to adjourn or take a recess! If the Articles of Incorporation require a quorum of 3/4 of the membership and the bylaws only require a majority, the bylaws are superseded by the Articles of Incorporation. This hierarchy is supported by most parliamentary manuals and is easily traceable as far back as Thomas Jefferson.

ANNUAL MEETING OF THE MEMBERS
Annual meetings of members are conducted for the purpose of making decisions which effect the "business" of the corporation as well as the behavior of the members.

It is the responsibility of the board to plan for and conduct the annual meeting of the members. Bylaws usually provide for some of the parliamentary procedures that must be followed such as quorum, roll call, voting, participation rights of members, disposition of proxies, majority required for passage of issues etc. It is not difficult to accommodate these requirements when they are mandated by the bylaws.

But when it comes to procedures for conducting the meeting and controlling debate, many arguments can ensue because, inevitably, there are dozens of "expert" parliamentarians in the assembly who presume that they know parliamentary procedure better than the chairperson. Maybe they do, maybe they don't. That depends on how well the board does its job planning the meeting. If the board determines to enlist the expertise of a member to act as parliamentarian, it is a good practice to state that "the board has asked Mr.(or) Mrs. So-and-So to act as Parliamentarian for our meeting. If there are any members who object to this decision, please let it be known at this time." If there are no objections, it should be entered in the minutes that the assembly approved the action. If the board chooses to engage a professional parliamentarian, **that person must be given sufficient time and the courtesy to read and study your bylaws or any other co-op documents which set forth parliamentary requirements that effect or regulate your meetings.** A PARLIAMENTARIAN CAN ONLY CALL THE CHAIRPERSON'S ATTENTION TO OR SUGGEST HOW A SITUATION SHOULD BE HANDLED. THE CHAIRPERSON IS RESPONSIBILE FOR MAKING THE DECISION.

NOTICE OF MEETINGS

Notice of meetings is considered important enough by state legislators to be included in the nonprofit statutes. Great emphasis is placed on the time of notice of meetings, both for the membership and the board. In fact, meetings for which improper notice is given can be declared null and void. Most bylaws provide specific limits for notification such as "no less than 10 or more than 40 days" prior to the meeting. (Note that there is a <u>minimum</u> and a <u>maximum</u>)

Bylaws prescribe time limits for distribution of certain issues so the members can acquaint themselves with them prior to having to make their decision to accept or reject. These time limits usually coincide with the notice of meeting.

PROXY VOTING

Proxy voting is a comparatively new innovation in parliamentary procedure and was not a recognized means of voting under common law governing corporations, especially nonprofit corporations, until our society became so mobile. Common law required that only persons who were present could vote on issues at meetings of members and stockholders. There was no provision for voting by absentee ballot except for election of officers. At present, a couple States permit voting by absentee ballot but there is a prescribed procedure that must be followed. Check the statutes in your State. IF YOUR STATE DOES NOT SPECIFICALLY PROVIDE FOR VOTING BY ABSENTEE BALLOT OR IF THERE IS NO MENTION OF ABSENTEE BALLOT (except for election of officers) ANY VOTE TAKEN BY ABSENTEE BALLOT BY YOUR MEMBERS OR BOARD COULD BE UNLAWFUL IN YOUR STATE! (Absentee ballot is defined as that with which we are all generally familiar and is not to be confused with a "proxy". (See also comments regarding "Proxy voting" in Chapter 3)

Proxy voting is a fair method of giving members an opportunity to be represented at a meeting they cannot attend. Proxies can be either "instructed" or "general". An instructed proxy could be given to any other member because it directs that person to vote a particular way. A general proxy is usually given to a friend or someone who shares the same attitudes and philosophies as the giver of the proxy--one who the giver can expect to vote as they would if they could be present. It can but does not necessarily include instructions.

Some co-op members maintain that proxies are unfair because one person can vote more than once. True, but that one person is voting only once for himself and once for each proxy he holds and IT IS NOT UNFAIR because who is to say that the person who gave the proxy would not vote as their friend or confidant had voted? A proxy that is submitted to the members by the board to give the board the authority to vote as instructed on that proxy is an unfair scheme which deprives members of their right to debate and amounts to nothing more than an "absentee ballot" which is, as stated above, not generally permitted by nonprofit statutes and is recommended against by parliamentary authorities.

DEBATE
Parliamentary law is a vehicle dedicated to the regulation of debate so that members can discuss--"share", if you will--their opinions regarding the issues placed before the body.

Debate is the basis of all meetings of an assembly, be it the board or the members. Without debate, there is no reason for meeting. If the right to debate is abridged, the meeting is no longer a democratic process whereby the wisdom and thoughts of the entire body are combined to result in the best possible legislation that can be produced. There should be no bylaw or rule that deprives or even restricts the rights of members to debate any issue that is brought before the body for consideration.

What, then, about setting time limits on debate? Parliamentary law provides that debate may be limited for purposes of protecting the rights of those who wish to enter into the debate. Limits are established so that more aggressive persons may not dominate the meeting at the expense of the less aggressive. Setting the limits is not an arbitrary or haphazard rule. It must be based on the expected number of persons who will want to participate, the controversial nature of the subjects to be discussed, and the length of time allotted to the meeting. However, debate should NEVER be limited to a point that prohibits even the most timid member from expression. Nor should it be limited to the point that a member may not be able to explain his viewpoint adequately. (Members can be admonished to not "ramble" and to "stick to the subject") Debate should never be CLOSED as long as there is one more person who wishes to speak to the question! The belief that debate must be closed when a member "calls for the question" has no basis in fact and is not supported by any parliamentary authority. The chairman is NOT obligated to recognize such calls until satisfied that there is no further debate.

MINUTES OF MEETINGS
(For further information on "minutes" consult your parliamentary authority)
Books have been written specifically for the guidance of organization secretaries, principally in regard to this duty. For example,

- Miller, MANUAL AND GUIDE FOR THE CORPORATE SECRETARY (Engelwood Cliffs, N.J.; Prentice-Hall, Inc. 1969)

- Friedman, ENCYLOPEDIA OF CORPORATE MEETINTGS, MINUTES, AND RESOLUTIONS (Englewood Cliffs, N.J.; Prentice-Hall 1958)

Nonprofit laws in all states in which we have co-ops demand that minutes be kept of ALL proceedings and meetings of the board and of the members.

Minutes are not only a history of the proceedings of an organization but they are the official records of that group. Actions taken that are not supported by motions recorded in minutes are not considered to have the authority of the organization and may not be affirmed by a court. Minutes are considered "prima facie" evidence in court and are accepted in preference to the testimony of witnesses.

The secretary is usually responsible for keeping the minutes and does so by taking notes during the meeting. With the advent of electronic recording, the secretary need not concentrate so diligently on the details of the meeting and can participate in the debate. However, motions and/or resolutions presented for consideration should be submitted in writing to the secretary if they are lengthy or complex. After the meeting, the secretary transcribes the notes, information from the electronic recordings and items submitted during the meeting into a "Minutes" book. This should be a looseleaf binder and contain the secretary's transcriptions, copies of any correspondence considered and acted upon at the meeting or any other data that would make those minutes stand alone as a record of the proceedings that took place during the meeting. It is also recommended that Minutes be permanently bound into volumes which may include one or two years or more as your board sees fit. The advisability of this is that the minutes have less chance of being corrupted or "misplaced" when they are permanently bound together. To make the records kept in the "Minutes" book easier to use, it is a good idea to compile an index of each volume of permanently bound minutes. The index should help locate specific items of business that were conducted during the time included in each volume.

(Note: Correspondence, committee reports, proposals or other documents which are used at a meeting need not be included in "posted" or distributed copies of the minutes but should, by all means, be included with the minutes in the "minutes" book.

Only the business data need be entered in the minutes. Comments and editorial remarks by the secretary should never be used. Such comments as "much heated discussion ensued", "the meeting was recessed because it was too hot", "Joe Blow asked to be excused to take his wife to town", "after much discussion, the motion was put to a vote", "it appeared that tempers were getting short" are unnecessary and should not be included in minutes. Remember that minutes are the "record" of the business of the meeting and not a narrative for the entertainment of the readers. Lengthy, wordy minutes are the mark of an inexperienced, uninformed secretary. Secretaries should take the time to examine various parliamentary manuals for examples of minutes as they should be presented. The index of your parliamentary manual under "minutes" will list lots of interesting and helpful information.

Minutes can provide the protection that directors need in case of litigation. They can be the "witness" to the fact that a certain director did not approve an action which that director felt might lead to legal confrontations and therefore would protect that director. Minutes can stop future arguments by providing positive evidence of actions taken by the board. Actions taken by the board that were not recorded in the minutes cannot be affirmed and therefore have no authority. A good axiom to apply is:

"If it is not recorded in the minutes, you may not be able to prove that it ever occurred!"

Generally, minutes should contain the following:

- Time and place of meeting (one co-op identifies their meetings by number which makes it very convenient when trying to put the minutes in chronological order, particularly when there are several meetings close together.)
- Statement that notice was sent and meeting is duly called.
- Names of Secretary, presiding officer and those present
- Quorum statistics
- Reading, corrections, and approval of minutes of the previous meeting.
- Record of business transacted at the present meeting
  a) Resolutions proposed
  b) Resolutions adopted
  c) Record of votes
  d) Reports of officers and committees
- Adjournment
- Signature of secretary.

NOTICE AND AGENDA FOR ANNUAL MEETINGS of the members
Prior to an annual meeting, the following information should be sent to all members.

1. Notice of meeting giving time and place. (This is required by state law)
2. Proposed bylaw amendments (If your bylaws reserves the right to make rules to the members, amendments to rules would be included.
3. Assessment proposals
4. Other items of business the board wishes the members to take action upon.
5. Electoral ballot for election of directors including complete voting instructions, envelopes for enclosure of ballot and addressed envelopes for return of ballot to corporation office. (See Robert's Rules, Newly Revised Section 46 regarding secret voting) and a resume of each candidate to assist the member's decision.
6. A tentative, or proposed agenda for the meeting.
7. Other enclosures required by your bylaws.

NOTICE OF THE MEETING IS REQUIRED BY STATE LAW. THE BALANCE OF INFORMATION SHOULD BE REQUIRED BY YOUR BYLAWS.

Usually, bylaws amendments, assessment proposals etc. are recommended by the board. Therefore, if the board is serious about recommending these items, they must "sell" the idea to the members. This means then, that a GOOD presentation with sufficient justification and facts to convince the members to accept the recommendation should be included with the notice .

If there are items which must be included that have not been recommended by the board, such as items by petition of members, the board has the obligation:

- To give the petitioners "equal time" in the mailed out notice.
- To analyze those items and inform the members of the consequences of accepting or rejecting those items.

But in any case, BE FAIR! Just because the item is contrary to the opinion of some or all of the board is not sufficient grounds to

recommend rejecting it. The decision must ultimately be determined by the membership. THE MEMBERSHIP GOVERNS! If their decisions are unreasonable, the board must negotiate or go to court! (how good are you as salesmen?)

AGENDA FOR THE MEETING.
(See your parliamentary manual for further information on "agenda")
There is no "standard" or a "right" or "wrong" agenda. An agenda is a "program" or an "order of business" for the meeting. Its purpose is to provide a direction to follow as the meeting progresses and to provide a succession of events that make the most efficient use of meeting time.

Annual meetings are the means by which the "business" of the corporation that can only be decided by the members is conducted. Although these meetings are usually quite formal, there are traditions that develop in each co-op that become a part of each meeting because of the desire for "ritual" that is characteristic of mankind. Those traditions could be the salute to the flag and pledge of allegiance, an invocation, a club song, or other such non-business activity. This portion of the program could be called the "opening exercises", the purpose of which is to bring the meeting to order and get the participants into the mood of the meeting. Because the AGENDA is a program of events, it should include such activities but the approval or acceptance of the agenda by the members need only include the "business" activities portion of the session.

The agenda is adopted by a majority vote of the body but once adopted, a 2/3 vote is required to change it.

In an assembly such as a small (less than 10) board or committee meeting, the agenda can be informally accepted by consent of the members or may not even be presented to them for acceptance if the group is generally compatible.

AN EXAMPLE OF A POSSIBLE AGENDA: (Bold capitalized words are not part of the example.) (Business portion of Agenda (program) should be submitted to members for approval immediately after establishment of rules for meeting)

OPENING OF MEETING:

Call to order by chairman

Roll call by secretary

Opening Activities

Salute to flag

Memorial moments honoring departed members

Welcome to new members

Reading and approval of minutes of previous meeting.

Presentation, discussion and acceptance of special rules for the meeting such as limits of debate, methods of voting, or other procedural matters. (NOTE: If your bylaws specify the methods of

voting, those cannot be changed except by amendments to bylaws.) Rules for the meeting determined at this time can only be changed or suspended by vote of the members. See your parliamentary manual.

BUSINESS PORTION OF MEETING:

Reports:

- President
- Treasurer
- Standing Committees (Including Budget and Audit)
- Special Committees
- Other

Additional business to be considered.
Items overlooked previously by the board which need to be added to old, unfinished or new business.

Items that members wish to place on the floor as new business.

Unfinished (or "old") business (as recorded in the minutes.)

Business recommended by the board as submitted with meeting notice.

Other business submitted with notice of meeting

New business (Items submitted earlier in meeting)

Announcement of election results

Introduction of new directors

Adjournment
NOTE: If your co-op recesses while the board elects the new officers, and the new officers are introduced prior to adjournment, it is a nice courtesy to permit the new President to say a few words and to adjourn the meeting.

CHAPTER 6.

WHAT IS CORPORATION INCOME?

If you have not already read chapter 2, "What is a Corporation?" now would be a good time to read it. The term "Corporation Income" only makes sense when the position of the corporation in the SKP Co-op organization becomes clear.

A discussion of "corporation income" inevitably overlaps discussion of "nonprofit" and of situations which have occurred and can continue to develop in the SKP co-ops as a result of misunderstanding the nature of "corporation income" and "nonprofit". Therefore, this chapter will be an expansion of and include more references to these subjects.

As has been said before, the corporation and the members are separate entities. So it is with money. The corporation has its money and the members have theirs. Sears and Roebuck has their money and the customers have theirs. In the SKP co-op, the members pay the corporation for their membership privileges and provide money to operate the park. How much more simply can it be stated? The difference is that, at the end of the year, Sears and Roebuck is not obligated to refund any of the income received from the customers whereas, the co-op corporation, being a nonprofit organization, must refund to the members any unexpended income which has the effect of lowering the member's annual fees which is another of their benefits.

Some co-op members insist that, because the organization is a "co-op", all the assets, including the money, belong to the members. The truth is that NONE OF THE CO-OP'S MONEY (or assets) BELONGS TO THE MEMBERS! The corporation may <u>owe</u> some money to the members but even then, the money does not belong to the members until they are paid! All their lives, members have been taught that profit-making is one of the most important goals in a capitalistic society. There's nothing wrong with that unless they mistakenly expect to make a profit from being a member of a NONPROFIT organization!

> "A nonprofit corporation is not a money making device for the benefit of its members, and it may not sell stock or pay dividends" (Parliamentary Law and Practice, H. Oleck, Cami Greene pub.by American Law Institute-American Bar Ass'n 1991)

In a for-profit corporation, the members actually own part of the corporation by way of portions of the corporation they have purchased commonly known as "shares of stock". When the corporation makes a profit, that profit is divided (distributed) among all the shareholders, each receiving an amount commensurate with the number of shares they own. That distribution of profit is known as the "dividends" the corporation pays to its member-shareholders. Such distribution of profit by nonprofit organizations is forbidden by statute in ALL states.

In the SKP co-op, the board needs to continually remind the members of separation between the members and the corporation to prevent the member's "proprietary syndrome" from resulting in actions by the members what could jeopardize the organization. Probably the greatest distinction of the nonprofit corporation is that its members cannot receive any portion of corporation income, or profit. This includes

the value of gifts, donations, and income from the collection of fees or penalties. The prohibition also applies to items (assets) donated to the corporation by any fund raising activities conducted by the members or money or assets received from ANY source. (assets acquired through "fund raisers" are not contributed to equally by all members therefore, cannot be added to the value of a membership as with assessments) Can it be said any more plainly than," NONPROFIT, MEANS THAT THE MEMBERS CANNOT MAKE A PROFIT". NONPROFIT means NONPROFIT for the members but doesn't prohibit the corporation from making a profit. BUT, there's a catcher here too! Any profit the corporation makes must be used to the NON-CASH benefit of the members! Now we've said it again, again, and again. If the message in this paragraph gets across to the members of all the co-ops, the greediness and grabbiness will be at least reduced to cat fights between neighbors which certainly will not jeopardize the corporation. Read again, the statement on the front fly page "IN MEMORIAM"!

Twice, now, the word "jeopardize" has appeared. The jeopardy the SKP corporation can encounter is the threat of involuntary dissolution by action of the Attorney General of the state. As with all other public, law, there are penalties imposed by every state for actions which violate the laws which govern nonprofit corporations. Most states reserve the power to dissolve corporations that conduct their affairs in a manner contrary to their law. Although states are very generous toward volunteer organizations, they, nevertheless, have not set forth the laws as idle thought. The board of directors needs to continually remind the members of the requirements of the law and the penalties provided for its enforcement.

As this writer sees it, the three transactions which would be the most likely to result in a profit to a member are--- and they have been stated before-----:

1. Any amount added to the value of a membership as a result of acquisition of assets paid for by fund raising activities or by donations or gifts from any source. It is easy to see that all members do not participate equally in fund raising activities, therefore, unless ALL members contributed equally, those who contributed less would realize a profit when they terminated.

   Income from fund raisers has nothing to do with corporation income. Such income belongs strictly to the fund raising activity. The corporation cannot claim it any more than the "fund raisers" can claim any of the corporation income. This is a good example of the separation between the members and the corporation. The "fund raisers" are volunteer organizations (which have no legal identity) made up entirely of members who want to take part. The corporation has nothing to do with their activities or their money.
2. A member's share of the rental pool being applied to the coming year's annual fees that was greater than the member had paid as annual fees the previous year. The district office of the IRS in Dallas, Tx holds the position that " if the amount received by a member is a refund of a fee previously paid it is not taxable income". This makes sense because it is a return of money the person had paid. BUT, if the amount received by a member exceeds that which they have previously paid, it is taxable income. Such would be the case

if the upcoming annual fees were greater than they were the previous year. If it is taxable income it is not a return of money already paid. It stands to reason that it is a PROFIT to the member which is illegal.

3. Income from invested corporate funds being added to the value of a membership or in any way distributed to any member. This requires little explanation because it is a straightforward case of corporation income being divided among the members which is universally prohibited by nonprofit law.

The following section of the Arizona Revised Statutes is an example of statute regarding involuntary dissolution of a corporation:

- **ARS 10-1051 Involuntary dissolution**
  A. A corporation may be dissolved involuntarily by a judgment of the court in an action filed against it by the attorney general when any of the following is established:

  1. (not applicable to this discussion)

  2. The corporation has exceeded or abused the authority conferred upon it by this chapter.
     (balance of section, not applicable.)

What this section of statute means is that if the corporation does not conform to the requirements and definitions provided by statute, the corporation can be dissolved whether the members like it or not. Therefore, it behooves the board to carefully conform to the statute regardless of any desires to "do it our way".

WHAT THEN, SPECIFICALLY, IS "CORPORATION INCOME" and WHAT CAN IT BE USED FOR?

- Corporation income is money (or value) received BY the corporation from any source.

- It can be used to pay for operation expense, social activities, improvements to the park, or establishment of dedicated funds for future use by the corporation to pay for major asset replacements due to deterioration or depreciation.

CO-OP CORPORATION INCOME is derived from a number of sources.

- Annual maintenance fees paid by members.

- Interest from invested funds, such as unexpended operating funds or funds dedicated to special purposes.

- Contributions from friends

- Income from lots in the rental pool

- Payment for leases received from incoming members which exceed the amount the corporation owes to the departing member. (See Appendix C for a full explanation)

- Laundry (if co-op has such an amenity)

- Various fees and penalties
- Any other income the corporation might legally receive.

Please note that none of the above listed sources include income received by the fund raising organization.

NONPROFIT organizations are formed to provide BENEFITS of some kind (but not income) for their members or others. The thing that bothers most co-op members is that the benefit they receive cannot be a cash benefit! If the members cannot receive dividends; if they cannot receive a share of the value of assets donated by the "fund raisers";if they cannot receive any of the rental income, WHAT BENEFITS CAN THEY RECEIVE?

Aside from the rights, privileges and pleasures of being in a community of kindred souls by belonging to a co-op, there ARE economic benefits. To begin with, the cost of membership can be kept at a minimum so each successive member can acquire a membership for a payment that is much less than they would have to pay for a comparable membership in a commercial, condominium, housing association or for-profit co-op accommodation. That's a pretty good benefit! And besides that,

1. The members govern the organization so their rent (annual fees) is determined by their own action and not by a landlord. If they set the fees too high and there's something left at the end of the year, they get a REFUND of their share of what's left---it is not kept by the landlord! That's a pretty good benefit!

2. Members who participate in the rental pool receive a REFUND of all or a portion of the annual fees they paid for the current year. That's a pretty good benefit!

Remember too, that if the corporation invests some of its money until it is needed, the interest earned on that money is corporation income and belongs to the corporation...NOT TO ANY MEMBER. Interest earned is "profit" or "earnings" for the <u>corporation</u> but <u>not</u> for the <u>members.</u> However, the corporation is obligated to use those earnings to pay for any of the four items previously mentioned. In that way, the interest becomes another benefit to the member.

So why can't a co-op member make a profit?

- The answer is simply that, because the co-ops are nonprofit corporations, the law forbids it.

If your co-op has received IRS "tax exempt" status, there are many restrictions regarding corporation income. Income received as "non-related business income" is still taxable and you're up to your ears in paperwork. Suffice it to say that a "tax exempt" status, because of its restrictions, is probably the last thing a co-op would want.

Summing up everything in this chapter, corporation income is exactly that---corporation income, not member income or profit.

CHAPTER 7.

BYLAWS

"Officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or bylaws" (Arizona Statute)

"Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws." (Arizona Statute)

"The articles or bylaws may not provide that a lesser vote....." (California Statute)

"Unless the articles or bylaws require majority vote of the ....." (California Statute)

"If its bylaws so provide, a corporation may...." (Texas Statute)

".....unless the articles or bylaws otherwise provide." (Texas Statute)

Statutes sometimes demand but all expect that nonprofit corporations will have bylaws. Statutes provide directions for nonprofit organizations that will protect the rights of the members and the public. Legislators have included options in the laws to allow organizations to develop their bylaws in a way that will better support the purpose for which they were organized and will protect the rights of the members. Thus it is very important, that as co-op bylaws are being developed (or amended) the statute be constantly referred to so the resulting bylaws are consistent with the laws.

Statutes demand that nonprofit organization bylaws include many "parliamentary rules". Some of these are: Notice of meetings for members and boards; methods of voting by members and boards; election of directors; number of directors; duties of officers; records to be kept; quorum for board or members meetings; procedure for amendments to articles; and on and on. (California statutes are far more detailed than others and will require a lot of study by any bylaws revision committee in that state)

Parliamentary manuals are of great assistance when working with bylaws. A word of warning, though, most parliamentary manuals in general use have not considered the effect of state and federal legislation on some parliamentary procedures which apply to nonprofit corporations. That is not to say that they shouldn't be used but that care must be exercised so the resulting bylaws are not in conflict with the law, or, in other words, are "not inconsistent with the law". Three parliamentary manuals which are supported by case law and are highly recommended for reference are:

"Parliamentary Law for Nonprofit Organizations" by Howard L. Oleck, a practice handbook published by the American Law Institute-American Bar Association. Library of Congress number 78-73161. This book has 160 pages and costs less than $10.00 (1993 price).

"Parliamentary Law and Practice for Nonprofit Organizations" second edition by Howard L. Oleck and Cami Green. Library of Congress number 91-072549. Published by American Law Institute-

American Bar Association, 4025 Chestnut St. Philadelphia, PA 19104-3099. Book has 180 pages and costs about $50.00 (1993 price).

"Standard Code of Parliamentary Procedure" third edition by Alice Sturgis. ISBN 0-07-062399-6 Published by Mc Graw-Hill Book Company. Price less than $20.00 (1993 price)

Any of these three will provide a bylaw committee with valuable resource material. The information contained in the first two, especially, will provide a better insight of application to nonprofit organizations than can be obtained from other parliamentary manuals. Robert's Rules, although widely accepted, do not accommodate the statutory characteristics of nonprofit organizations and must be used with EXTREME CAUTION.

WHAT ARE BYLAWS?

The states of Washington, New Mexico and Texas all define bylaws as "the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated." From a practical standpoint, BYLAWS can be described as the "instructions for the conduct of the business and activities of the corporation". By comparison, co-op RULES are "instructions for the conduct or behavior of the members as related to the park.".

Anything that can be said in bylaws may be said in the articles of incorporation but it is impractical to do so. Amendment to the articles must be filed with the state division of corporations and fees for filing must be paid whereas bylaws can be amended without filing or fees. Also, some states require that articles and amendments thereof be published in a newspaper so the more verbage, the more it costs to publish. An axiom to remember is:

PUT ONLY IN THE ARTICLES THE MINIMUM INFORMATION REQUIRED BY STATUTE PLUS THE SPECIFICATIONS YOU FEEL ARE IMPORTANT ENOUGH TO BE CARVED IN STONE!

NOTE: One specification which should be carved in stone is that of vesting the power to amend the articles and to make and amend bylaws entirely in the members.

OTHER CONTROLLING DOCUMENTS

Bylaws are not the only "rules" which govern or regulate nonprofit organizations. There are others and their effect depends on a "hierarchy" or an order of precedence in which each is superseded by the other beginning with constitutional law. That hierarchy is:

- Public law
- Articles of incorporation
- Bylaws
- Rules
- Parliamentary law.

NOTE: The lease, or membership agreement is the basic contractual transaction between the corporation and the member. It cannot be emphasized too strongly that the wording and conditions expressed in that document must be consistent with all other governing documents. Litigation could easily develop because of inconsistencies and/or misunderstandings based on ambiguous or implied meanings in either the agreement or the governing documents. It is highly recommended that any lease or membership agreement or any change thereto be reviewed by a competent attorney prior to it being used as a binding document.

THE PURPOSE OF BYLAWS

Although it is not commonly known, bylaws are a contract between the members and between the members and the corporation and are enforceable under the laws governing contracts. The board should monitor whether or not the bylaws truly reflect the current will of the members, that they are written accurately without confusion or duplication, and are not inconsistent with the law. If changes (amendments) need to be made, the board must submit the changes to the members as recommendations for their approval. If there is ever a question whether an authority rests with the members or the board, a wise board will defer to the members. The ultimate authority in any co-op is reserved to the members unless otherwise provided in the articles of incorporation or bylaws.

Bylaws establish the boundaries that the members and the board of directors of a corporation must stay within. Unless those boundaries are clearly defined in the bylaws, both parties have no criteria upon which to base their rights, authority and responsibilities. The organization then becomes chaotic with uncertainty, conflict, suspicion, and doubt becoming the guiding forces.

Summarily, then, the purpose of bylaws is to:

1. Regulate the internal activities of the corporation.
2. Define the relations, rights, and duties of the members between themselves and the organization.
3. Define the powers, duties, and limitations of directors, and officers.

A bylaw, however, that is in contradiction or inconsistent with public law or the articles of incorporation is void. A bylaw that is not used or is ignored for a period of time and such action is with acquiescence of the members, such a bylaw becomes without effect. A bylaw that is unreasonable will not be supported by the court.

WHAT BYLAWS SHOULD INCLUDE

The bylaws of most co-ops are unnecessarily lengthy, verbose and complex. Too much content is spent building "safeguards" to protect against "what ifs" rather than providing instructive direction for the organization. Co-ops have included pages of items in bylaws that should have been included in "rules". Procedures for maintaining financial or other records should be kept in separate books of "procedures" rather than in bylaws. Bylaws could, and should, specify that certain procedures be established by the board, committees, or even the members-at-large. Using bylaw mandated procedures to regulate functions provides the flexibility needed to make changes as experience is gained. Far too many times, single acts of impropriety generate enough emotional turmoil in a co-op to clobber up bylaws with amendments prohibiting such acts when all that was needed was a little caring and sharing to prevent further occurrences.

H.L. Oleck, in his book, "NONPROFIT CORPORATIONS, ORGANIZATIONS and ASSOCIATIONS" (fifth edition section 228) lists the following important provisions for inclusion in bylaws:

1. Purposes stated in the charter should be restated in somewhat greater detail.
2. Qualifications for membership, methods of admission of members, rights and privileges.
3. Initiation or admissions fees, dues, termination of membership for non-payment or otherwise.

4. Rules for withdrawal, censure, suspension and expulsion of members (including appeals)
5. Officers titles, terms of office, times and manner of election or appointment, qualifications, powers, duties and compensation.
6. Vacancies in offices or on the board of directors: when they shall be deemed to require action, and the method of filling such vacancies.
7. Voting by members, including what number shall constitute a quorum. Voting procedures should be carefully detailed.
8. Meetings for elections and for other than election purposes, including notice, quorums, and agendas (general and special meetings.)
9. Voting qualifications, individually or by groups; proxies, etc.
10. Director's qualifications
11. Classification of directors into two, three, four, or five classes, each to hold office so that the terms of one class shall expire every year.
12. [Optional] Executive committee of the board of directors to exercise all (or certain) powers of the board between board meetings.
13. Director's titles, terms of office, times and manner of election, meetings, powers, and duties.
14. (not applicable to co-ops)
15. (Not applicable to co-ops)
16. The seal: its adoption, custody, and method of use.
17. Bank depository; which officers may act for the organization.
18. Bonding of treasurer and other officers and agents
19. Fiscal year, audits of books
20. Principal office, and other offices
21. Books, records, and reports.
22. Amendment methods and rules, for the charter as well as for the bylaws (and "rules" for co-ops)
23. Principal committees
24. Dissolution procedures
25. Disposition of assets upon dissolution.

Examine the statutes for your state. There may be other subjects which need to be addressed so your bylaws will be consistent with your laws. Refer also to the beginning statements of this chapter.

The content of bylaws must never be taken lightly or without the greatest critical scrutiny. Nothing should be included that cannot be measured or proven. If a requirement is established, <u>there must be a stated means of accomplishing that requirement.</u> Bylaws must never be ambiguous or permit any doubt as to the meaning of a word, phrase or paragraph. This sometimes requires the use of a lot of paper but will prove its worth many times as the bylaws are used. There is nothing more useless than a document that can be interpreted differently by different people in different circumstances!

WHO AMENDS BYLAWS?
Most states' statutes establish that the "originating board" or the "organizing board" shall make the original bylaws. When the members of the corporation first approve the bylaws, the authority to amend the bylaws is thereafter vested in the members. This should be made as a statement of fact in the articles and repeated in the bylaws. (see

also above) To do so eliminates any possibility of argument as to the authority for amending bylaws. (This is further evidence that the MEMBERS, not the BOARD govern the organization)

NOTE: It is recommended that a statement such as follows be included in the articles of incorporation:
"The power to amend the articles of incorporation and the power to make, amend, repeal and/or adopt new bylaws is reserved to the members"

WHAT ABOUT RULES?
Members of the co-ops are, for the most part, eligible for "senior" discounts and have lived a good number of years "conforming" to the disciplines of working careers, education, child raising, maintaining property etc. and feel that it is time for them to have more freedom, to "kick up their heels", so to speak. They just plain don't like more rules! But would the absence of regulation really provide the freedom they covet? General Henry M. Robert writes as a preface to his "Robert's Rules of Order":

"Without law, there is no freedom"

This statement reminds us that we all depend on laws for the protection of our rights. Without the protection of laws, the strong would overwhelm the weak and the majority would destroy the minority. And, yet, although we have laws, rules, bylaws and all manner of controls on members and boards, unless there is good leadership, membership cooperation, and rules are enforced, those controls are of no value and freedoms are curtailed.

No discussion of bylaws for co-ops can be complete without reference to "rules". Rules, like bylaws, seem to proliferate in co-ops to the extent of being ridiculous! One has to continually ask the question, "Why is it that commercial parks, Coast-to-Coast parks, Thousand Trails etc., can publish less than a page of "rules" when it takes many pages to regulate the behavior of people in a co-op that is supposed to be a "caring-sharing" group of people?" It is here suggested that one of the standing committees in the co-ops be named the "Rules Reduction Committee" and that their assignment be to reduce the number of rules to less than a page and keep it that way!

But, as long as there are going to be rules, it is important that the authority to make these rules be firmly established by provisions in the bylaws. At this stage of co-op development (1993), there are three schools of thought as to who should have the authority to make the rules that govern the behavior of the members and under what circumstances.

1. BOARD MAKES ALL THE RULES.
   The problem with this is that the board's main responsibility is the "business affairs" of the corporation. The conduct and behavior of the members is not a part of the business affairs of the corporation. If the members' conduct and behavior is a threat to the safety or physical well being of the corporation's assets or any member, immediate and direct physical intervention is probably required. Furthermore, if the board has the power to make rules, it becomes a government by the minority rather than the majority. However, the method, No.3 below, is far more desirable for a permanent deterrent.

2. THE BOARD MAKES ALL THE RULES BUT THEY MUST BE RATIFIED BY THE MEMBERS at the next meeting of the members unless that meeting is held for a special purpose other than to consider those rules.

   The problem with this is that a capricious or ill-informed board could make rules early in the year which would result in great difficulties for the members and the members would not have any recourse until the next annual meeting. What this amounts to is a "split" form of regulating the behavior of the members with the accompanying split in responsibility for it. Such a wide division of responsibility between the members and the board invites friction and can result in open warfare.

3. THE BOARD RECOMMENDS RULES TO THE MEMBERS who accept or reject them at either the annual meeting or a meeting called for that purpose. This is, by far, the most desirable way for rules to be generated. It prohibits making rules hastily and without sufficient thought. It's traditional and historical that the hue and cry of the American citizen when even the smallest thing displeases him is, immediately, "There oughta be a law.....!".

   "Rules" regulate the behavior and conduct of the members but <u>do not</u> regulate the conduct of the business of the corporation. Therefore, it only makes sense that the members make their own rules and furthermore that the members be required to enforce them! A co-op that requires the board (or of all ridiculous things, the manager) to enforce rules is not only unfair and an imposition upon them but is a clear cut case of passing the buck!

   If members are to govern, they must accept the responsibilities that go with governing.

CHARGE ON! GO NOW TO THE NEXT CHAPTER,
"BYLAWS! A CASE FOR TEAMWORK!"

CHAPTER 8

BYLAWS! A CASE FOR TEAMWORK!

Why TEAMWORK on bylaws? It may take a bit of reading to arrive at the "teamwork" part but although much of what follows been said before in this book, its appearance here is necessary to provide a context into which to place the TEAM.

The mere mention of "BYLAWS" sends most co-op members into tantrums of anger, and emotional distress which could be an expected reaction to a responsibility they would rather avoid. Why? Co-op boards have, historically, destroyed perfectly good bylaws with unnecessary amendments and have rammed unrealistic bylaws down the throats of co-op members. As a result, the members feel that their efforts are futile because they can't "fight city hall" so what's the use? This is the result of boards that assume the authority of dictatorship rather than providing leadership. A board which provides good leadership realizes that the ultimate authority in any nonprofit social organization is **SHARED** authority!

Reviewing a bit, yet trying to not be overly redundant, in the beginning, every co-op had a board of directors but no members. There was no one with whom to share authority. Although, the articles of incorporation provided that the corporation have members, there could be none until leases or membership agreements were signed. Until there was a park, there was nothing to be leased nevertheless there was work to do and there were "business affairs of the corporation" which had to be conducted. That task fell to the "initial" board of directors. At that time, the board was autonomous, that is, it was an authority unto itself. A wise board accepted suggestions from prospective members but there were no legal requirements to do so. They elected their own officers, appointed directors to fill vacancies and whatever other leaders they deemed necessary.

When construction of the co-op was completed and there were members, the board could no longer be autonomous. In a corporation wherein the members have voting power, the board of directors is, by law, subordinate to the members. Their authority is limited (sometimes to extreme) by the members via the bylaws and articles of incorporation and yet, at the same time, the members expect the board to provide the leadership the co-op needs to keep it running properly---truly a dilemma that seems to defy solution.

There is a solution, however.....it's called "TEAMWORK" or in our co-ops, better still, "CO-OPeration"!

J. Clifton Williams, in his book "Human Behavior in Organizations" makes the statement:

> "The acceptance of authority is in part dependent on beliefs, perceptions, and attitudes which are deeply imbued in our society. Generally speaking, Americans are suspicious of authority and are repelled by the notion of blind obedience."

This attitude tends to create barriers between the board and the members. These barriers can destroy any effort by the board to successfully enlist the co-operation of the members as they attempt to provide "leadership" for the co-op; in fact the barriers can be re-inforced by a board that does not recognize their cause or existence.

The key words here are "blind obedience". When a board is frank, honest and sincere about working with the members we have "shared responsibility rather than "blind obedience"!

So here we are back to "leadership" again. Without leadership, the members are as a ship without a rudder going only where the forces of the noisy, the diligent, the uninformed, and the intimidating minority of members or directors determine the course. Why does the minority rule the majority? Simple! At the annual meeting, the majority are reluctant to make fools of themselves, don't want to be involved, don't feel they are adquately informed, won't argue, suffer from peer pressure, are fearful of alienation, persecution, or ostracism. A board that does not take steps to overcome these influences by proper leadership throws away the greatest resource at their command----the expertise that is locked up in the reluctant members!

We talked about the board being "autonomous", then giving up its autonomy and control of the organization to the members. Problems inevitably result when boards fail, or refuse, to relinquish their autonomy. That's when the members rebel and right away pressure rises to "re-write the bylaws". With this mindset of rebellion, the pendulum swings too far the other way and the members tend to tie the hands of the board so tight that neither the board or the members have the freedom to properly conduct the activities of the organization. Good leadership can prevent this from happening.

Whether it be within the board or between the board and the members, delegation of tasks and the authority to accomplish them is one of the most effective ways for a leader to demonstrate his ability to effectively use his authority. On the other hand, if the board--or the members--hoard their authority the accomplishments are diminished to much less than could be done through sharing it. "Co-operation", under those circumstances, is just another word in the dictionary. (There are libraries full of publications on "leadership development". This book is not intended to be a vehicle for something that can be as readily acquired.) A good leader can usually be identified by his ability to delegate tasks to others. An example of leadership ability is told in an old army story of an officer candidate being asked how he would go about erecting a flagpole in front of the administration building to which he answered, "Sir, I'd get a sergeant to do it." He received the commission.

Bylaws and rules tend to be the greatest cause of low morale in co-ops so let's use them for an example to set up a "teamwork" situation between the board and the members of a co-op. The same procedure can be applied to other issues which tend to be controversial and lead to "in-fighting" in the co-ops.

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If the members can be made to feel that they are part of the team to prepare amendments to the bylaws for presentation at the annual meeting, the reluctance to consider the amendments would virtually disappear. Having shared in the preparation of the amendments, the members would have a "proprietary interest" in them and will defend what they consider "their baby"!

To get the "team" started, the board has to do some planning. First of all, the "troublesome" bylaws have to be identified and suggestions for

amendments written. Even the board probably cannot agree the first time on wordings for amendments so how can the body of members at a mass meeting be expected to be any more receptive?

If the board is required to meet in "open" forum type meetings, it would be far better if this bit of business be started by a "committee". If the wording of amendments the committee suggests becomes public knowledge, the strategy of the "team" approach could, conceivably be completely lost. Read on.....

To get this thing started, the chairman of the board could appoint the entire board as a "bylaws research" committee with the assignment to dig out the parts of the bylaws they have recognized as the cause or could be the cause of "problems" for the corporation. The chairman of the board cannot serve as moderator of this sub-committee, else it is not really a "committee".(see "Committee of the Whole" in parliamentary manuals). Although the BOARD may be required to meet in public, this ad hoc committee can meet privately any time and as often as necessary to accomplish their assignment. When they have done the "spadework", the members can be enlisted to help. Read on.....

To prepare the members-at-large for this task, the chairman of the board could make a public announcement (possibly more than once) something like this:

"THERE ARE SOME PROBLEMS WITH OUR BYLAWS AND WE NEED YOUR HELP WITH THEM. THE BOARD CAN'T CALL AN OFFICIAL MEETING OF THE MEMBERS BUT WE SURE AS HECK CAN ASK YOU TO HELP US GET READY FOR THE ANNUAL MEETING. NOW HERE'S WHAT WE'D LIKE TO HAVE YOU DO:

"This whole thing is going to be like a committee. Every member present in the park is a member of this committee. How often we meet hasn't been determined yet. Anyway, the secretary will read the part of the bylaws we're having trouble with, then the chairman will explain why we're having trouble. If you don't understand why we have a problem, we want you to feel free to ask questions until you are real clear about it. When there are no more questions regarding the problem bylaw, the secretary will read the amendment suggested by the board."

"If there are questions regarding the amendment suggested by the board, the chairman or someone he calls on will answer your questions. If you wish to suggest different wording, we want you to feel free to do so. If others want to change your wording, let's discuss it until we can agree on how it should be worded. When we get to a point where we think we have it licked, we'll take a consensus on it and the results will be the amendment wording that will be presented at the annual meeting.

There are only two rules:

1. THERE WILL BE NO ARGUING.
2. EVERYONE'S INPUT IS TO BE TREATED WITH RESPECT.

Announce the time of the meeting. If the members of your co-op meet for a quasi-social meeting once a week with "official" announcements and mini-social activities take place, it might be convenient to use that time--extended, of course--for the teamwork on the bylaws. You might ask them to bring their copies of the bylaws and a pencil with them otherwise it will be necessary to pass out copies of the bylaws, extra sheets of paper and pencils to those who do not have any.

When the meeting of the "team" is called to order, give the instructions again so everyone feels comfortable. If a feeling of "togetherness" can be attained, you've got it made! It is necessary to keep order but use formal parliamentary procedures as little as possible to maintain order and cohesiveness in the group. (See also recommended procedures in parliamentary manuals under "motions--consider informally")

BE INFORMAL! STRESS THE "T-E-A-M"!

Y E A T E A M ! ! !

During the meeting, it would be far better if the members of the board were low key and sat among the rest of the members. To have the whole board sitting up front creates an illusion of power which overwhelms the members. If the chairman of the board has the "charisma" and is a competent leader, then he should present the "problems" to the members. If there is the least possibility that his presence would create divisions among the members, he should relinquish the chairmanship to another person--who doesn't necessarily have to be a board member. Remember, this is a TEAM meeting, not a BOARD meeting. Always bear in mind that the purpose for having this team is to develop co-operation and mutual help.

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ABOVE ALL!!!!!! EMPHASIZE THAT THESE MEETINGS ARE NOT, REPEAT, "NOT", OFFICIAL MEETINGS OF THE MEMBERSHIP AND THAT THE VOTES TAKEN HERE ARE NOT, REPEAT "NOT" BINDING ON THE CORPORATION! THIS IS ONLY A COMMITTEE MEETING FOR THE PURPOSE OF MAKING RECOMMENDATIONS TO THE BOARD. But assure them that the board will not editorialize the wording of the amendments as decided by the TEAM.

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Once the board has established an attitude of teamwork and co-operation between itself and the members, the continued task will become less stressful. Without any doubt, suspicions and distrust will have turned into mutual respect and the morale of the co-op will be noticeably improved.

This, then, is an example of SHARED AUTHORITY = TEAMWORK. An example of how a better product can be molded as the result of combining the expertise of the members with that of the board simply by including the members as a productive part of the process of "conducting the business of the corporation". Y E A T E A M ! ! ! !

CHAPTER 9

SKILLS and RESOURCES

Every undertaking requires skills and knowledge gained either from experience or from research and study and sometimes from both. The task of director of a nonprofit corporation requires a great deal of both.

"What skills", you might ask, " does a person need to be director of a nonprofit corporation?"

Probably the most important skills required are the skills of diplomacy and interpersonal communication. These skills have been learned thruout the years as careers were pursued and yet, the tendency is to relax these skills when retired. During our working years, we would not have dared relax because our careers depended on our vigilance. It really is no different now.....success as a director is dependent on how well you communicate with your fellow directors and with the members of the corporation. When handling delicate or controversial issues, diplomatic skills must be called upon to provide an atmosphere of co-operation and to reach conclusions that are fair and equitable to all parties concerned.

How can these skills be improved? Probably, the first improvement to make would be to "think twice and talk once". The most successful way of improving these skills is to begin with an examination of ourselves. Do we come across to others as we hope to? Do we talk too much? Do we look at the other person as an individual and not as a part of the problem? Are we more concerned with our status than we are with the welfare of the co-op and the members?

Am I a good listener?" This question can be expanded to include the questions, "Am I willing to accept what is being said by the other person or am I being defensive?", "Am I able to admit I may have, or was, wrong in my judgement regarding an issue?", Am I able to give credit to others for helpful contributions, no matter how small?", "Am I willing to consider or accept the thought that the other person knows more about the subject at hand than I do?", and then the BIG one.... "Without losing face, can I recognize and admit to myself that I do not have the expertise to do the tasks and responsibilities of my job as director unless I ask for help from someone who has the expertise? And am I able to correctly determine who that someone could be?". If you can honestly answer "Yes" to the questions in this paragraph, you have already learned many of the skills of diplomacy and interpersonal communication you need to do the job. Now, you need to bring them into focus and apply them as you perform your task as a director.

What about RESOURCES?
When we went to grade school, high school, or college and as we followed our careers, we constantly used resources beyond ourselves to reach the goals we faced. The task of being a director of a nonprofit corporation is another goal to accomplish. Time to ask, "Why stop using "resources" now?" Do I know everything there is to know about being a director of a nonprofit corporation?". If the answer is "yes", then, how do you know that you know it all? It's doubtful that anyone would be foolish enough to answer "yes" to that question but you no doubt get the point. What are some of the resources that directors can avail themselves of in order to do their job more effectively?

Beginning with the public library, there are many excellent books regarding:

- Nonprofit Corporations and Organizations
- State statutes governing nonprofit corporations (see Appendix A)
- State statutes regulating taxation of income and property of nonprofit corporations.
- IRS codes relating to nonprofit, tax-exempt corporations and to nonprofit corporations that are not tax exempt. (see Chap.13)
- Volumes of Parliamentary law including and in addition to Robert's Rules, especially parliamentary code manuals that specifically relate to nonprofit corporations or have been based on historic decisions of the courts. (see Chap.7 BYLAWS)
- Interpersonal communications and personal development, Group dynamics, Communications within Groups, etc

Then there is the law library. The state statutes you find in the libraries will most likely be in "annotated" form and published by a company that specializes in printing laws for attorneys. These annotated statutes include references that can be only found in law libraries, however, the references are very helpful and provide information you cannot find elsewhere except by paying an attorney about a hundred bucks an hour.

Every co-op has members with expertise in many diverse fields. These members can become your most immediate and helpful resources. The expertise could be in the trades or the professions....all are necessary to the conduct of the business affairs of a nonprofit corporation. Sometimes, however, the use of "local" expertise can result in strained relationships between members, between members and the board and between directors. This is a needless waste of emotional energy and certainly a waste of talent. The reasons for these "strained relationships" are usually jealousy, distrust, pride, ignorance, or flat-out misunderstanding! If these same relationships had been encountered in the working world, the expertise of those tradesmen or professionals would be respected and accepted. One need only review the resumes' of those resources to determine whether or not they know their business and would be of help to the corporation if asked. On the other hand, there are members of co-ops who, like used car salesmen, are able to convince others that their expertise is superior to that of the experienced trades people and professionals even if their exposure to the situation has been merely casual! It is the latter that "try the souls of men" (and get the co-ops in trouble!).
How does one select the best human resource? How would you have made the determination if, during your working years, you needed to hire a person to do a job for you? The answer is rather obvious... you would have interviewed the person, maybe asked for a job history or resume' and then hired the person whose qualifications--in your judgement--satisfied the needs of the task to be performed. SELECTING RESOURCE PERSONS TO ASSIST THE BOARD OF DIRECTORS IS NO DIFFERENT. Even though the director, or resource persons are volunteers, the tasks to be performed are just as important as though they were paid. Statutes

overning nonprofit corporations permit boards of directors to engage as many "advisors" as they deem necessary to carry out the business affairs of the corporation. Far too many directors are afraid of "losing face" if they admit they need help. Therefore, directors foolishly refuse to invite persons who have the expertise needed to compliment the capabilities of the board and to join with the board in the deliberation of areas to which their particular expertise would apply. As a director, you cannot do better than apply the best of your knowledge and skills to your task and carefully select those persons necessary to provide the expertise which is not available within the board.

To determine what resource people you have in your co-op, you might undertake a survey of present members and have new members fill out a survey card that would tell of their proficiencies and interests. Hobbies, too, can provide special expertise that is valuable to co-ops.

After retirement age, it is much easier to watch television and to gossip than it is to read and study the printed page. When you volunteered to be a director you committed yourself to another job for which you must study and prepare the same way as you would have done while working. The odds are that, except for serving as an officer of a church, you have never had any experience as a member of a board of directors, have little or no knowledge of the workings of a corporation and especially, the workings of a nonprofit corporation. Do you want to be a good director? Or are you just taking up space and making your ego feel good?

If you want to be a good director, TURN OFF THE TV, GET COMFORTABLE! START STUDYING by reading this book again! Then BE BRAVE---GO TO THE LIBRARY DOWNTOWN AND GET STARTED RIGHT AWAY! And, DON'T BE AFRAID TO ASK FOR HELP!

CHAPTER 10

DISCIPLINE

Everyone recognizes the need for discipline but the difficulty comes when it must be administered. Discipline has traditionally been viewed as a "negative" activity aimed at members who fail to meet standards set by the organization. In some cases, punitive actions may be unavoidable, but it hardly seems necessary for a co-op to have to go to that extent. It would be far better to consider discipline as a CONSTRUCTIVE opportunity to <u>correct</u> rather than to <u>punish</u> a person's behavior. The word "discipline" comes from the Latin and means "Teaching" or "Learning". Shouldn't directors be more concerned with getting things "back on track" through teaching and informing than with "punishing" a recalcitrant member? When a member fails to conform to a specific rule of the organization, it is not only the duty of the proper authority to let the person know that they are not conforming, it is an obligation of the authority to help the person understand WHY it is important for the member to follow the rules!

All right, WHY IS IT IMPORTANT to follow the rules? The answer is two-fold and rather straightforward:

1. Rules, like public laws are there to be obeyed. Every rule, every law has a reason for existence although sometimes it might be a little difficult to determine the reason.

2. When we became members of the co-op, we agreed to comply with the bylaws and rules of the organization. Rules are established by the will of a majority of the members---not by just a few of them and are intended to be in the best interests of the members and the corporation.

   Lease (membership) agreements are unquestionably contractual in nature. All co-op lease or membership agreements include statements that the member agrees to abide by the bylaws and rules of the organization. Upon signing the agreement, each member AGREES to the terms of the contract. Therefore, members are not only morally obligated to respect the rights and expectations of their fellow members but are legally (contractually) obligated to comply with the rules and bylaws of the organization.

Sometimes, in spite of efforts to "teach" an erring member, the member refuses to co-operate. It then becomes necessary for further action to be taken. Today, many business managers employ a form of "progressive discipline" , an approach whereby the severity of disciplinary measures increase each time it is necessary to discipline an offender. Those steps are, typically, oral warning, written warning (repeated as dictated by the general philosophy--or tolerance--of the authority), suspension of privileges, and ultimately the termination of the relationship.

How about documentation? Full documentation of any disciplinary action cannot be overstressed as a means of protection against false charges by a disgruntled member. Furthermore, it should go without saying, disciplinary measures must be applied in a consistent manner to all offenders to avoid charges of unfairness or discrimination.
As you consider discipline, think about what has been called the "red hot stove" rule. What happens when a person approaches a red hot

stove? The heat is felt and the person gets adequate warning that getting closer could result in being burned! The discipline is immediate because the person instantly becomes aware of the discipline. The discipline is consistent, that is, anyone who ignores the warnings and touches the stove will be burned. The discipline is unemotional- - the stove doesn't lose its temper! And finally, the discipline is impersonal- - the severity of the discipline depends on how long the person touched the stove, not on the authority who imposed the discipline.

The grievance committee should be the authority that has been delegated the responsibility to enforce discipline, but at present,it is the board of directors who is generally assigned this task. For simplicity, the following instructions will be to the board.

There is no simple way to impose discipline on members of a co-op. Discipline is a part of the business of the corporation therefore, the board needs to "bite the bullet" and impose upon themselves the firm resolve necessary to enforce bylaws and rules impartially and fairly. Without this resolve, boards render themselves impotent and lose the respect of the members. Some tips to make discipline of a member easier are:

- When giving an oral warning, come directly to the point. Don't beat around the bush so much that the member doesn't understand what your intentions are.

- Timing is important. Don't procrastinate about informing the offender of non-compliance. Have your plans in place before disciplinary action has to take place---not after!

- Be sure the member knows WHY they are being disciplined.

- Don't encourage retaliation by losing your temper or exhibiting other emotions when disciplining a member.

- Do absolutely nothing without documentation, including having witnesses to oral warnings and records in the minutes of board decisions to support your disciplinary actions.

(See also chapter 11, "Involuntary Termination")

AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE!
How can troubles and disciplinary actions be avoided? Certainly there is no single set of answers to this question. Each organization is different because of differences in human nature. Yet human nature has a lot of common denominators to which directors can appeal. A few worth considering might be:

1. Try to understand your members. Does their concept of the co-op co-incide with the pattern the board is trying to shape? Is what the board is doing really satisfying their needs and wants?
2. Be approachable. Let it be known that you are available to discuss items of co-op business--either negative or positive. Don't assume an attitude of superiority just because you are a director and a member of the board.
3. Remember that you are only one director on a board of nine and decisions must be made by the board---not a director or two.

4. Know the responsibilities and limitations of the board so that you can better communicate with the members.
5. If you promise a member that you will bring something to the board, be sure that you do. Failure to do so will get into the grapevine immediately and members will lose their trust in you.
6. Be a good listener. Listening involves more than just "hearing". Books have been written on being a good listener (some are probably in your county library). Look as though you're listening; interject "Yes, I understand", "Uh-huh", "I hear you", and other indications that you are following the speaker's thought. Don't interrupt. Don't try to finish the speaker's sentences for him. Be polite. One manager made a statement that "People will come to me with some problem that is really bugging them. Nine times out of ten, if I listen and ask a few questions, they talk themselves out of the problem into a solution!"
7. If you really are sincere about "caring" and "sharing", the members will sense it and your term of service as a director will be much more pleasant and effective.

If everything else fails and it becomes necessary to take disciplinary action, the following table may make things a lot easier and more foolproof:
(from San Francisco Employers Council and has been adapted for co-ops)

1. Have we considered all the facts before taking (this particular) action?
2. Is the member being treated the same as others who have committed the same offense?
3. Is the rule that has been violated a reasonable one?
4. Does the member know of the rule and is it understood?
5. Are you following the proper procedures?
6. (When appropriate) Has the member been warned orally or in writing?
7. Is this charge fair and impartial or is it because the member has challenged the authority of the board or the corporation?
8. What is this member's past disciplinary record? (only actual recorded incidents can be considered. Offenses which were not recorded, challenged or punished cannot be used as criteria)
9. Does the member have a reasonable excuse for violating the rule?
10. Is the evidence of non-compliance easily and positively verified or is it circumstantial?
11. Does the co-op have a past record of strict rule enforcement? If not, were all members notified of the intent to crack down on rule and bylaws violations?

(Procedure for termination of a member is included in detail in Chapter 11)

CHAPTER 11

INVOLUNTARY TERMINATION

Involuntary termination of a member is a difficult undertaking (THAT CAN EVEN BE DANGEROUS) and must be done with utmost care to assure that, above all, none of the civil or property rights of the member are violated. Involuntary termination proceedings are almost a guarantee that the the co-op will face a lawsuit.

A feeling that has existed in co-ops is that because they are a very private organization, the co-op is a law unto itself and can conduct any actions in any manner they feel necessary for any purpose. Nothing is farther from the truth. When a person becomes a member of a co-op, they do not give up their constitutionally guaranteed rights or any other rights accorded them by public law. In fact, they assume further protection by the laws which govern nonprofit organizations.

Some co-ops have attempted to terminate a member, improperly, for alleged breaches of discipline. None have been successful and legal fees have been rather large. The reasons these efforts failed was because the procedures which were used denied the member either his civil and/or property rights or both---particlularly the constitutionally guaranteed right to due process. To this writer's knowledge, there has been no information available to co-ops that would assist them in preparing a involuntary termination procedure that would be acceptable and just.

Before reading the material which follows, please read the following disclaimer.

DISCLAIMER

THE INFORMATION WHICH FOLLOWS HAS BEEN DEVELOPED FROM EXAMINATION OF THE STATUTES AND FROM EXPERIENCE WITH THE FUNCTIONS OF AN SKP CO-OP. IT IS SET FORTH IN GOOD FAITH THAT IT IS CORRECT AND RELIABLE INFORMATION BUT IT IS NOT INTENDED TO BE LEGAL ADVICE. IF YOU FEEL THAT THE SUGGESTIONS ARE VIABLE BUT YOU ARE UNCERTAIN AS TO THEIR COMPLIANCE WITH THE CODES OF LAW, IT IS RECOMMENDED THAT YOU CONSULT YOUR ATTORNEY. THE WRITER ASSUMES NO LEGAL RESPONSIBILITY FOR USE OR APPLICATION OF THE SUGGESTIONS SET FORTH.

Consider before you take the very first step.....
Are the alleged reasons for the termination actual violations of your internal documents or are they merely personal irritations? Can you prove your allegations beyond any doubt?

INVOLUNTARY TERMINATION OF A CO-OP MEMBER

The statutory requirements of the state of California apply only to those corporations in California. However,California's requirements are shown here as an example, or "model" to be examined as a resource. Directors or co-op members of other states who claim that they don't have to conform to California law are missing the point and fail to appreciate the value of learning by example. Having that attitude, they can expect to regret the consequences.

Corporations such as the SKP co-ops are called "Mutual Benefit Associations" in California, "Mutual benefit corporations" in Oregon, "Cooperative corporations without stock" in Nevada, "Nonprofit Corporations" in Washington, Arizona and New Mexico,"Nonprofit, Cooperative, Religious and Charitable Corporations" in Texas, and "Corporations not for profit" in Florida. Whatever they're called, they are the same organization. Of particular interest to the board of the Sutherlin co-op is that the state of Oregon has essentially identical requirements for involuntary termination of members in their statutes as does California. Refer to Oregon corporation law chapter 65, section 65.167. In the states where there are SKP Co-ops, except California and Oregon, there are no statutory requisites for involuntary termination of members but, again, the California statute is recommended to you as a model to follow as you develop a involuntary termination procedure for your corporation. If you develop a procedure that would satisfy the requirements of the California statute, a termination proceedings which ended in court would be more likely to result in a decision favorable to the corporation. However, in any case, documentation of every action taken in an involuntary termination procedure is the evidence you must have to support your procedure. The more documentation you have, the better chance your case will succeed. (see especially subsection (e) below.).

The following verbatim copy of the California code is mandatory in California and is presented as a model for others.

ARTICLE 4. TERMINATION OF MEMBERSHIPS

Section 7341. Expulsion, suspension or termination; fairness and reasonableness; procedure

(a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended, except according to procedures satisfying the requirements of this section. An expulsion, termination or suspension not in accord with this section shall be void and without effect.

(b) Any expulsion, suspension, or termination must be done in good faith and in a fair and reasonable manner. Any procedure which conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the suspension, termination or expulsion are considered.

(c) A procedure is fair and reasonable when:

(1) The procedures have been set forth in the articles or bylaws, or copies of such provisions are sent annually to all members as required by the articles or bylaws;

(2) It provides the giving of 15 day's prior notice of the expulsion, suspension or termination and the reasons therefor; and

(3) It provides an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or body authorized to decide that the proposed expulsion, termination or suspension not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or registered mail sent to the last address of the members shown on the record.

(e) Any action challenging an expulsion, suspension or termination of membership, including any claim alleging defective notice, must be commenced within one year after the date of the expulsion, suspension or termination. In the event such an action is successful the court may order any relief, including reinstatement, it finds equitable under the circumstances, but no vote of the members or of the board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension or termination, unless the court finds further that the wrongful expulsion, suspension or termination was in bad faith and for the purpose, and with the effect of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedures for expulsion, suspension, or termination and not the substantive grounds therefor. An expulsion, suspension or termination based on substantive grounds which violate contractual or other rights of the member or are otherwise unlawful is not made valid by compliance with this section.

*******(END OF QUOTATION) **********

The term "contractual" in subsection (f) is the equivalent of the lease or membership agreement entered into between the corporation and the member as well as the bylaws and rules of the corporation.

Also in subsection (f), the term "substantive grounds" identifies the reasons you would give as cause for termination such as "Continued violation of bylaws", "Deliberate destruction of corporation property", "Failure to comply with the terms of the lease (or membership) agreement", etc.

A word of caution.....As substantive grounds for termination, do not use terms such as "Actions detrimental to the reputation of the co-op", "Disruptive behavior", "Disloyalty to the corporation", "Troublemaking" UNLESS YOU DEFINE EACH OF THESE IN DETAIL IN THE CORPUS OF THE BYLAWS AND INCLUDE A PROCEDURE FOR DOCUMENTING EACH CASE IN DETAIL!!!!! Ambiguous terms such as these are not acceptable by the courts.

The entire procedure below need not be included in your bylaws verbatim but should be a permanent part of your procedures manual.

NOTE TO CALIFORNIA and OREGON CO-OPS: See section c(1) above. Your complete procedure must be included in your bylaws (or articles) or copies must be sent to your members annually.

For suggested amendments to bylaws of co-ops of other states, see suggested amendment at the end of this chapter. The suggested procedure is, without question, an "overkill" so tailor it according to your judgement and that of your attorney.

WHETHER OR NOT YOU ADOPT ANY OF THIS SUGGESTED PROCEDURE, THE MOST IMPORTANT CONSIDERATION IN ANY INVOLUNTARY TERMINATION, EVEN IF IT IS TO FIRE AN EMPLOYEE, (CO-OPS ARE NOT IMMUNE FROM LABOR LAWS!!) IS DOCUMENTATION, <u>DOCUMENTATION,</u> **DOCUMENTATION** plus allowance for DUE PROCESS for the accused!

GENERALLY, A MEMBER MAY BE TERMINATED ONLY FOR VIOLATION OF THE INTERNAL DOCUMENTS OF THE CORPORATION. A VIOLATION OF PUBLIC STATUTE, NOT RELATED TO THE CO-OP, IS NOT LEGALLY ACCEPTABLE GROUNDS FOR TERMINATION UNLESS IT HAS BEEN SO STIPULATED IN YOUR ARTICLES, BYLAWS OR OTHER DOCUMENT WHICH IS BINDING ON BOTH THE MEMBERS AND THE CORPORATION.

As applied to an involuntary termination, each violation of bylaws, lease or membership agreements, rules, etc., should as a general rule, be considered separately and not accumulated. However, continued infractions of a variety of items could result in termination proceedings as though they were a single instance. This has to be tempered with fair judgement as to whether or not the offenses of the member are chronic or rare. A most important aspect of involuntary termination is the documentation of (1) violation(s) by the offender, (2) the resultant action(s) by the board and (3) the response by the offender. To avoid possible argument, All actions related to an involuntary termination should be conducted by the full board.

Prior to discussion by any director of a violation known or alleged to have occurred, the President should warn each director not to make any comments of any kind regarding the case to anyone except another director. The witness in step no.1 (below) must be cautioned as well. Discussion other than in closed session could jeopardize a termination proceedings because of possible violation of the offender's civil rights. Spouses of directors must maintain the same secrecy. If the offender chooses to make the case public knowledge, he may do so but no director should make any comment to anyone, even the offender, except at a meeting of the full board or as directed by an action taken by the board.

It cannot be emphasized too strongly that comments to others regarding the case could violate the offender's rights particularly if those comments would in any way influence another member to "take sides" in the issue!

SUGGESTED

PROCEDURE FOR INVOLUNTARY TERMINATION OF A MEMBER

1. By action of the board, recorded in the minutes, the offender is notified that his/her actions are not in accord with (rule, bylaw or other disciplinary requirement) and that the offender's actions must cease within 10 days from the giving of notice. This notification shall be given orally by a designated director with a witness present. Delivery of the oral notification shall be noted in the minutes of the next board meeting and testified to by the witness.

If the offender ceases the violation, no further steps may be taken and the slate is wiped clean but the records will be retained for one year. If the offender does not heed the notice, Step no. 1 shall be repeated once and then if the offender does not heed the notice, proceed to step no.2.

2. By action of the board, recorded in the minutes, the offender will be notified in writing delivered by U.S. mail and be required to either cease the violation within 10 days or submit a written request to be heard by the full board.

IMPORTANT NOTE: A written notice given to an alleged offender must be DATED and SIGNED. A form notice or other unidentifiable note could be generated by anyone and unless there is an authorized signature, the corporation could be liable whether or not they issued the notice!!!!

If the offender ceases the violation, no further steps may be taken and the slate is wiped clean but the records will be retained for one year.

If the offender does not submit a request for hearing and continues the violation, step no.2 shall be repeated once except that the letter shall be registered with return receipt requested. The offender will be notified that this is the second notice for the case under consideration and that if the violation does not cease, further steps will be taken. If the offender persists, proceed to step no.3.

But if the offender presents his case to the board and the board still feels that the offender is deliberately in violation and intends to continue the violation, go immediately to step no.4. Discussion of the case between the board and an offender shall be electronically recorded and maintained in the records of the corporation for 1 year from the date of the discussion unless the offender ceases the violation under consideration, in which case, the slate is wiped clean but the records will be retained for one year.

(By now, the offender has had two verbal notifications each with a 10 day period during which to cease the violation, two written notifications, one of which was by registered mail, each of which provided 10 days for a response to either cease the violation or submit a request for hearing.

If at this time, there is any doubt, at all, regarding the termination, the board shall engage the services of an attorney to review the case and determine whether or not the termination of the offender's membership would violate any of the offender's civil rights or any other public law..

If counsel confirms the proceedings thus far, the offender shall be given final notice by registered mail that unless the violation cease within 10 days, termination proceedings will be initiated. If the offender persists, then proceed to step no.4

4. By action of the board, and recorded in the minutes, the notice of termination shall be prepared. This notice shall include:

A. the date.

B. offender's name and leasehold (membership) number.

C. the offense(s)

D. itemization and copies of all previous communications including reference to the witness in step no.1

E. A statement that in accordance with the terms of the lease (membership) agreement, the member's membership will be cancelled 30 days from date.

F. A statement that the offender has a right to request a hearing before the board setting forth the reasons why the termination should not take place and that this request must be delivered to the board within 10 days after the delivery of this notice.

G. If the offender chooses to appeal the termination to the membership, he must do so within that time. The termination shall not be effective until that request is fulfilled. If the membership agrees to the termination, the offender will then have an additional 30 days to vacate the premises.
If the membership does not approve the termination, all proceedings shall stop and no further action taken. All documents, records, reports related to the case either written or electronically recorded will be destroyed.

End of suggested procedure----------

The above procedure is probably much more extensive and lenient than required by the statutes of California or Oregon. It is your decision whether to be lenient or strict. It is much better to be lenient because by and large, statutes for nonprofit corporations and the courts tend to be more protective of the members than do the "for profit" laws and furthermore, the present emphasis on civil rights give cause for being especially wary. There is a great liklihood that you may come up with a more superior procedure than this. Whatever it is that you come up with, its value will be much greater if it is shared between all co-ops.

Whether or not you accept this procedure, it is vitally important that you establish **some kind of a definite procedure** to cover this difficult situation. Also be sure that it will accomplish what you want without great big legal fees!

Establish your procedure <u>before</u> you go to <u>court.....not</u> <u>after!</u>

The following suggested bylaws amendment is presented for your consideration. It is related to the procedure above.

SAMPLE BYLAW AMENDMENT REGARDING INVOLUNTARY TERMINATION

Involuntary termination

1. Cause for involuntary termination of a member shall be:

   a. Repeated or continued violations of bylaws, rules and/or conditions of the lease (membership) agreement.

   b. Failure to maintain a current membership in ESCAPEES, INC.

2. Procedure for involuntary termination of a member.
   a.The board shall develop a procedure which will assure that the termination be done in a fair and reasonable manner and that the legal rights of the member are not violated in any way. This procedure will be kept in a "procedures" manual and be maintained by the secretary. The procedure shall include the statement "Any action by the board which could possibly result in involuntary termination of a member must be taken by the full board."

b. The procedure must provide:

1. Opportunities for the member to cease the violations. Such opportunities would include both verbal and written notices or warnings.
2. For the member to be heard by the board for purposes of presenting justification of the member's action.
3. A minimum of 15 day's prior notice of the termination and the reasons therefor as well as the privilege of requesting an appeal to the members at the next regular meeting of the membership or a meeting called for that purpose. While awaiting the "appeal" meeting, the member must be considered as being in good standing.
4. That any action by the board which could result in a termination be documented and the documents kept at least until the case has been closed for one year.

NOTE: It is possible that any disciplinary action, however small, could end up in a termination proceeding. For this reason, it is important to retain ALL documents such as written warnings, records of verbal warnings and accurate minutes of all actions of the board related to the any such action taken.

This procedure is recommended for use in all states.

CHAPTER 12

CHOOSING YOUR ATTORNEY OR CPA

Many atty's and CPA's do not have reason to deal with nonprofit corporations mainly because there are so few of them. There are more and more nonprofit organizations (NPO's) on the horizon because of the leverage and protection that being incorporated nonprofit can provide, not to mention the ability to attain "tax exempt" status. However, in the towns and cities near most of our co-ops there are more organizations where the bottom line is PROFIT" so it is difficult or impossible to locate an attorney or CPA that has had experience with NPO's

The complexity of today's laws and the proliferation of business types and pursuits makes it necessary for most professionals to "specialize". This is true with engineers, physicians, accountants, and even trades people. People generally choose the area of expertise which would be the most profitable for them. Therefore it comes as no surprise that attorneys and CPA's have had little or no experience with nonprofit organizations. Large NPO's such as Red Cross, United Way, the Heart Association, Lung Association etc. engage attorneys who are experts in their field. The SKP co-op, or Escapees Inc. do not have the resources or the availability of that kind of experienced attorney or CPA. Count your blessings if you find an attorney or CPA that has ever worked with a nonprofit corporation!

Most co-ops are a few years old by now and most have engaged the services of an attorney, probably more than once. But, the turnover of Directors demands a continuous process of educating new directors to the routines of business...and engaging an attorney or CPA is one of those routines.

When a co-op has need for these professionals, there is more than a little trouble explaining the exact need for help. The director trying to explain the problem probably understands the background, some of the causes and some of the symptoms of the problem, how a co-op works, its financial structure, how it conducts its business, the things it does and ways it does business that are unique to co-ops. The person from whom they are seeking help <u>cannot be expected to know those things unless they are told.</u> A co-op must make sure that the person fully UNDERSTANDS the co-op--which statutes govern it; what kind of organization it is; how it works; how is it different from other businesses and in what way. Few, if any, professionals have encountered a business like the co-op mainly because the SKP co-op is, undeniably, a unique structure that has no precedents or parallels to which it can be compared.

"Presumption" is the greatest hazard the co-ops face when seeking help. Let us examine why these presumptions occur and the characteristics that must be brought out to assist the professional to understand our co-ops so that he can provide good counsel.

When explaining that the organization you represent is a "co-op" they will most probably presume that the co-op is like the generally accepted concept of co-operatives such as marketing, hay growers, beef producers, power and utility, telephone co-ops or the like. (see chapter 1, HOW CO-OPERATIVE IS A CO-OP?) Although these other co-operatives are nonprofit organizations, they are governed by different statutes than those which govern the SKP co-ops.

When you try to explain away the traditional concept of a co-operative by saying that the SKP co-op is a place where the original members pooled their money to construct a place for them to live in their recreational vehicle, the professional probably presumes CONDOMINIUMS and HOUSING ASSOCIATIONS. These too, are governed by a different set of statutes than those which govern the SKP co-ops or the conventional co-operatives. If it isn't a marketing type co-operative and isn't a condominium or housing association, then what is it?
PLEASE NOTE: In the following paragraphs, the term "lease" or "lease agreement" equates "membership" or "membership agreement". A "leasehold" equates a "membership". These terms are used to accomodate both the co-ops which have lease agreements and those which have membership agreements in lieu of lease agreements.

Unlike a condominium or housing association, the members don't "own" any part of the park. The park and all its assets are owned solely by the corporation. It needs to be explained to the professionals that Escapees can only become members of the corporation by entering a lease or membership agreement with the corporation. The corporation is NOT an agent in the exchange of a lease or membership as would be the case in a condominium or housing association. Unlike a condominium or housing association where the market value of the person's "investment" usually appreciates, it does not do so in an SKP co-op. When a member terminates, a new member is (hopefully) available to the corporation (the co-op) from a "waiting list" of eligible persons. The "waiting list" is unique in itself and needs to be explained.

Ordinarily, when a lease agreement is signed between a landlord and tenant, the tenant (lessee) fulfills certain considerations and when the lease is terminated, the landlord (lessor) has no further obligation to the lessee. This being the general rule for landlord-tenant leases, it is hard for the professionals to grasp the idea that a member can retain a lease for many years and then get a full--NO MORE, NO LESS--refund of the amount the member originally paid for the lease plus any amount the member may have contributed as "assessments" to pay for durable improvements during the period of time the lease agreement was in effect. It is important, too, to explain that assessments" are defined by the SKP co-ops as "contributions that are shared equally by all members to pay for specific improvements to the facility." Other charges imposed on members are identified as fees. Yearly fees, penalties, and other fees are not necessarily included in the termination refund.

"For profit" business corporations have or sell stock. The amount of stock owned by a stockholder represents his "equity" or ownership in the corporation and most generally determines his voting power. Such is NOT the case in the SKP co-op. Nonprofit corporations are essentially "non-stock" corporations, by law, and therefore are prohibited from "selling" memberships or affiliations that could, in any way be considered as "ownership" of or "equity" in the corporation. (Florida permits issuance of stock to determine voting power only. California permits issuance of stock as evidence of membership but NEITHER PERMITS THE STOCK TO REPRESENT **OWNERSHIP** IN THE CORPORATION. Check your statutes to be sure of what your state permits. Otherwise, just forget about "stock".) If counsel should suggest such a thing as a "deed" or "title" you can be sure he doesn't understand the situation. A "deed" or "title" would indicate "ownership" in a nonprofit corporation and NOBODY CAN OWN A NONPROFIT CORPORATION. The statutory provision prohibiting issuance of stock suports this statement.

Another concept which is seemingly impossible to understand both by the professionals and co-op members alike is that the value placed on and the amount asked for a lease or membership has nothing to do with the market value of the corporation property or the total asset value of the corporation. The amount asked for a lease could remain at its original figure even though the market value of the co-op escalated 1,000 percent and the asset value increased an equal amount! If a member were to receive more for his lease than he had paid (including assessments) he would receive a profit which is strictly forbidden by statute in ALL states.

Voting,Elections, Bylaws, Accounting, Involuntary Terminations, and many, many more questions can raised that will require counsel from professionals. This chapter, then, only hits the highlights. It is intended to make you aware that it is as important that you acquaint your professional with your total organization as it is that you acquaint your physician with yourself before he can treat you. The difference is that the human body has a lengthy medical history while a SKP co-op has essentially none.

When you interview your prospective professional, ask if he, or she, has had experience with nonprofit corporations and how much? What kind of nonprofit organizations? Were they governed by the same statutes as your co-op? Did you show him your articles of incorporation and your bylaws? Does he UNDERSTAND them? Did you make sure he understood the PRINCIPLES of the co-op organization? Did you tell him about the "money back guarantee" at termination? And that the member can deal ONLY with the corporation? How about the rental pool? Other corporation income? Do you have tax-exempt status from the IRS?

If you haven't made sure they REALLY understand the organization of the co-op, the co-op will probably be paying for information that could do more damage than good.

If you get conflicting information or something you don't think is right, go to your professional and further explain your situation or ask for further clarification AND DOCUMENTATION to back up what the person says. These people are human too and can make bad judgements so be sure you get what you pay for-----if it doesn't sound right, it probably isn't! Check it out! And then, too, maybe the professional didn't understand your explanations. Know your organization! IF YOU DON'T UNDERSTAND YOUR ORGANIZATION, YOU CAN'T EXPLAIN IT TO SOMEONE ELSE.

ONE LAST IMPORTANT BIT OF ADVICE.....

When you ask your professional for advice, insist that he put the answer in WRITING. Some professionals are like trying to nail JELL-O to the wall so make sure you get the answers you want and so they can be referred to by future directors. If you can't understand the answers, ask for clarification. YOU'RE THE ONE PAYING THE BILL so be sure you get what you're paying for!

This writer has experienced two distinct types of attorneys. One answered questions the way he thought you wanted them answered. The second one, during the first interview said, "I am going to tell you what I think the law means, not necessarily what you want to hear!"

WHICH ONE WAS THE BETTER ATTORNEY?

CHAPTER 13

TAX EXEMPT STATUS?? NONPROFIT STATUS?? WHAT'S IT ALL ABOUT????

Sometime since the birth of first SKP co-op, the identity and principles of "nonprofit" and "tax exempt" got mixed up. When the co-ops first started, someone made the statement that if "you are "nonprofit", you can be "tax exempt". Sounds great! Tax exempt, hooray, we don't have to pay any taxes!!! WRONG!!!

The statement is often heard that, "a co-op must be careful that it not lose its nonprofit status". Whenever that statement is made, it's quite possible that the maker is confusing "tax exempt status" with "nonprofit". A co-op must carefully stay within the limitations placed on nonprofit organizations by the state because there are penalties for not doing so. A co-op that attempts to circumvent the nonprofit statutes is flirting with the possibility of losing their entire park. Dissolution proceedings can be initiated by the state if a co-op fails to comply with the statutes.

The description, "Nonprofit" does not denote "status". "Nonprofit" or "not for profit" identifies the TYPE of business to be carried on by the organization. Corporations are formed either "for profit" or "not for profit". Whichever category a corporation chooses when applying to the state for charter is the category it will retain until dissolved. A corporation cannot LOSE its "nonprofit" (or "for profit") designation nor can it change that designation except through a dissolution process.

During a lengthy discussion with a representative at the District Office of the IRS in Dallas, TX, the organization, function and purpose of the SKP co-op was thoroughly explained. At the conclusion of the discussion, the representative commented that he could not see that having tax exempt status would be of any advantage to a co-op because the co-ops DO NOT HAVE ENOUGH TAXABLE INCOME-after expenses-TO REQUIRE PAYMENT OF INCOME TAX. He continued to say that, for the co-ops, it appears that tax exemption would only complicate matters unnecessarily.

Co-ops end up the year with a minimal financial balance--essentially zero--except for special reserves (which are legal unless they get unreasonably large) because the refunds of unexpended annual fees and rental pool refunds should deplete the treasury. Co-ops that are tax exempt still have to fill out at least one report (but more than likely TWO reports) each year and have to "TOE THE MARK" more tightly.....it just isn't worth it! If the co-op is not tax exempt, is has more freedom to do the things that co-ops want to do without worrying about violating the "tax exempt" requirements.

A co-op is awarded tax exempt "status" only when it has met the requirements set forth by the IRS. The co-op achieves a "status"--a consideration for which they have applied and been granted. The co-op can retain that "status" ONLY if the organization continues to comply with all the requirements by the IRS. A tax exempt "status" is very volatile and fragile and can be lost and restored--but probably not without penalties.

Some co-ops applied to the IRS for tax exempt status and were denied. Right then and there, the directors and members became really confused....it had all seemed to simple and straightforward! The

reasons given for disallowing the exemption were not understood well enough by the co-ops for them to make further effort to obtain the status. Not too surprising! Obtaining a tax exempt status is not a simple, easy procedure. Probably the most difficult and confusing part of having a tax exempt status is understanding "unrelated business income". Again, not surprising especially when most members of the co-ops have difficulty understanding what "corporation income" is. (see Chapter 6--WHAT IS CORPORATE INCOME?)

A fairly good definition of "unrelated business income" could be, "any amount of money received by the corporation other than from direct member support such as annual fees, penalties, or other fees which are derived directly from the members." Income from rent, interest earned on funds invested, income from a laundry (non-members and guests use the laundry therefore it cannot be proven that all that income came from members only), administrative fees charged for getting on the waiting list, or contributions and donations from non-members such as boondockers is "unrelated business income". Let's say it again another way, "funds that cannot be proven to have been generated 100% by the members of the co-op, are "unrelated business income! EVEN IF THE CO-OP HAS TAX EXEMPT STATUS, INCOME TAXES ARE PAID ON **UNRELATED BUSINESS INCOME!!!!!**

Apparently, when the co-ops were first started, the impression folks had was that "nonprofit" was the same as "tax-exempt" or possibly that being tax exempt was automatic when the organization was identified "nonprofit". The terms are <u>not</u> synonymous. IRS code 501(c) defines the different kinds of organizations that can qualify for tax exemption. Articles of incorporation and bylaws of the early co-ops included references to 501(c)(3) and 170(c)(3). The former relating to organizations whose purposes were "Charitable", "Educational", "Cultural", "Prevention of Cruelty to Animals" etc. The latter--170(C)(3)--defines organizations to which contributions may be made and the donor can receive tax deduction for those contributions. SKP Co-ops cannot qualify for either 501(c) or 170(c).

The definitions of "charitable", "educational", and "cultural" found in law dictionaries are based upon common use and understanding of these terms as well as upon decisions by the courts. Looking at the words individually,

- "Charitable" can be likened to those purposes pursued by the Red Cross, United Way, Churches and Rescue Missions, Salvation Army etc.

- "Educational" applies only to organizations that have a firm curriculum, a staff of persons to educate participants, and a commitment to "make every effort to increase the knowledge or abilities of those who participate as "learners" or "students".

- "Cultural" would apply to such as a "foundation for promotion of the arts or crafts of a society"; an organization to "study and preserve history, customs, legends or religions of a civilization", or even the study of birds or animals etc. Generally speaking, those things that would enrich a person's appreciation for what are traditionally considered the "finer things of life".

It is obvious that the co-ops don't fit any of those descriptions. To attempt to make the co-ops fit would only result in denial of tax exempt status. Improperly filled out applications and applications filled out with the intent to circumvent the codes could have some undesirable complications. As has been stated elsewhere, "don't try to beat the system, you can't do it and end up unscathed!"

There is, however, a classification for which the co-ops can qualify for tax exemption. That classification is that of a "SOCIAL CLUB" and is described and defined under IRS code 501(c)(7). If your co-op wishes to apply for tax exempt status, that is the only classification for which a co-op can qualify. Although co-ops can qualify for tax exemption as Social Clubs, it is this writer's opinion that a tax exempt status is the last thing a co-op would want to contend with. It's difficult enough for inexperienced directors to cope with NONPROFIT statutes without adding the complicated requirements imposed by the IRS.

If you choose to apply for tax exemption, it is advised that a professional--a CPA, an attorney who specializes in taxes, or other professional tax consultant be engaged to assist you. DON'T try to do-it-yourself! The person you choose, however, cannot help you unless you describe, in detail, the operation, function, and purpose of your organization! (See Chapter 12 regarding selecting your Attorney or CPA)

To sum up:

(1) There is a big difference between <u>"tax-exempt"</u> and <u>"nonprofit".</u> A corporation can be "nonprofit" without being "tax-exempt" but cannot be "tax exempt" without being "nonprofit". A nonprofit corporation must meet certain criteria in addition to being "nonprofit" in order to be awarded "tax-exempt" status..

(2) Because co-ops end the year with essentially zero taxable income, it would appear that, in most cases, to be "tax-exempt" would be more of a burden than a blessing because of the additional restrictions placed on tax exempt organizations.

(3) Regarding the often-heard comment "for fear of losing our "nonprofit" status", remember that the designations "nonprofit" or "not-for-profit" identify the TYPES of organizations, not the "status" of an organization. A nonprofit organization remains "nonprofit" until dissolved.

APPENDIX.A

AVAILABILITY OF COPIES OF LAW CODES FOR VARIOUS STATES

It is not necessary that every one of your directors have a copy of each of the complete law codes of your State because they contain many more sections of law code than apply to your co-op. A good way is to copy just the sections that apply and distribute those to your directors. Florida, Oregon and Washington have separated what you need from the rest of their codes so copying will be no problem. New Mexico, Nevada and Arizona booklets should be disassembled and the pertinent sections copied. California and Texas are in comparatively large books which can be copied while still attached to the book. Each of these last two cost over twenty bucks so you probably don't want to destroy them.

You may find copies of your codes in the public library. Generally, these copies cannot be checked out but copies can be made of the sections that you need. California code rambles around in the sections and makes references in one section which are affected by another section so be careful when copying so that you get all the necessary sections.

ARIZONA Publication name: ARIZONA REVISED STATUTES, TITLE 10

Available from: Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007 Phone (602) 542-3931

Cost: Over the counter, $2.00 By mail, $4.25 (advise calling prior to order)

CALIFORNIA Publication name: Corporations Code, Compact edition

Available from: West Publishing Co. 50 W. Kellogg Blvd. St. Paul, MN 55164-9752 Phone 1-800-328-9352

Cost: $20.00 (Advise calling for latest figure) Will accept credit card purchase by phone

FLORIDA Publication name: Florida Business Corporations Act, chapter 607 and Corporations Not For Profit, chapter 617

Available from: Corporate Records Florida Department of State P.O. Box 6327 Tallahassee, FL 32314 or call (904) 487-6052 "New Filing Section"

Cost: Sent on request at no charge

NEVADA Publication name: Domestic and Foreign Corporation Laws chapters 78 through chapter 89 plus Nonprofit and Cooperative Corporations and Associations chapters 81 through 86 Available from: Secretary of State Corporation Division GET ADDRESS AND PHONE FROM YOUR LIBRARY Carson City, NV

Cost: Sent on request at no charge.

NEW MEXICO Publication name: Pamphlet 77 plus supplement and Pamphlet 76 plus supplement.(Supplements are revisions to the codes) Available from: New Mexico Compilations Commission P.O. Box 15549 Santa Fe, NM 87505 Phone (505) 827-4821 Cost: Pamphlet 76 and supplement, $9.00 Pamphlet 77 and supplement, $7.00.

Comment: NM Corporation law is contained in Chapter 53 of NM law code. Article 8 (Pamphlet 76)relates to nonprofit corporations and is dependent on Articles 11 through 18 which pertain to general corporation law (Pamphlet 77).

OREGON Publication name: Nonprofit Corporations, Chapter 65

Available from: Secretary of State Corporation Division 158 12th St. NE Salem, OR 97310-0210

Cost: Sent on request at no Charge.

TEXAS Publication name: Texas Corporation and Partnership Laws

Available from: Same as California, see above

Cost: $22.00 (Advise calling for latest figure.

WASHINGTON Publication name: RCW Title 24, Corporations and Associations (Nonprofit)

Available from: Secretary of State Corporations Division 2nd Floor Republic Bldg. 505 E. Union Olympia, WA 98504 Information phone (206) 753-7115

Cost: $6.00 (Advise calling to verify)

APPENDIX C

FACTORS WHICH INFLUENCE THE VALUE OF A LEASE

Note: The term "lease" or "leaseholder" is synonymous with "membership" or "member" in co-ops that use those terms.

The primary factors which influence the value of a lease are:

1. THE INITIAL VALUE
2. ASSESSMENTS PAID BY LEASEHOLDER(S)
3. VALUE ADJUSTMENT(S) MADE BY BOARD

INITIAL VALUE:

The value of a lease is first determined by dividing the cost of developing the park by the number of leases available.

ASSESSMENTS:

An "assessment" is an amount of money contributed equally by every leaseholder for the acquisition of durable assets or improvements by the corporation. The amount of the assessment is added to the value of the lease and is returned to the leaseholder upon termination.(Annual fees are not an "assessment" in co-ops)

VALUE ADJUSTMENTS:

The board may adjust the value of a leasehold for any reason they consider good stewardship of their responsibility or by direction of the members. An example would be by adding the value of certain assets acquired by the corporation from sources other than assessment of members.

The nature of a nonprofit corporation derives from the intent of the organizers to provide benefits for their members but can not include a monetary profit for any member. Therefore, a terminating member cannot receive a greater amount when terminating his lease than was actually paid by that member as an initial payment for the lease and for membership approved assessments paid by that member during the time the person was a member. Should the value of that member's lease be increased by board action during his tenure, THE MEMBER IS INELIGIBLE TO RECEIVE ANY OF THE AMOUNT OF THAT INCREASE. The amount of that increase becomes corporation income which, when paid by the incoming member, can only be used as a benefit to all members by:

A. REDUCING OPERATING FEES
B. PROVIDING MORE AMENITIES
C. SPONSORING SOCIAL ACTIVITIES
D. SETTING UP SPECIAL PURPOSE FUNDS FOR OPERATION OF THE CORPORATION OR TO PAY FOR ITEMS A,B, AND C.

But in no event may the amount be used as a monetary payment to any individual member that would result in a profit for that member.

The nonprofit statutes of all states unilaterally prohibit the distribution of corporate income to the members of nonprofit corporation.

A nonprofit statutory definition of "distribution" is: "The payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers and does not include payment of value for property received or services performed."

The following examples depict a history of the lease for one lot. figures shown are for example only. (note that each is a separate transaction, that is, the member terminates his lease with the corporation and the corporation then delivers the lease to a new member) (All assessments add to value of lease)

First Member paid for lease	$3000.00	
Assessment	200.00	
Member received at termination	$3200.00	

Next member paid for lease	$3200.00	
Assessment	300.00	
Adjustment added by board	100.00	(not an an assessment)
Member received at termination	$3500.00	

Next member paid for lease	$3600.00	--(includes $100.00 added
Assessment	100.00	during the tenure of the
Assessment	50.00	previous member. The corp.
Member received at termination	$3750.00	profited $100.00)

Next member paid for lease	$3750.00	
(No assessments)	000.00	
Adjustment added by board	1000.00	(not an assessment)
Member received at termination	$3750.00	

Next member paid for lease	$4750.00	--(includes $1000.00 added during tenure of previous member and the $100.00 added earlier)
(and so continued on ad infinitum)		

Summing up, the board may add any amount to the value of a lease which, in their judgement, is reasonable and will result in a benefit to all members. A terminating member, however, **receives no benefit** whatsoever from this increase.

Distribution of corporation income by a method which permits any individual member to receive monetary gain is a direct violation of nonprofit statute in ANY state. Although the wording may differ slightly from state to state, the intent is universal and is expressed by Title 10 Sec. 10-1026 of the Arizona Revised Statutes:

- A corporation shall not have or issue shares of stock. No dividend may be paid and no part of the income or profit of a corporation may be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, but no such payment, benefit or distribution may be deemed to be a dividend or a distribution of income or profit.

(a verbatim quotation)

The statutes of all states wherein we have SKP co-ops agree with this section of the Arizona code.