

Title 11: Corporations, Partnerships And Associations

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Chapter 14: Cooperative Housing Ownership Act

§ 1582. Purpose

The purpose of this chapter is to foster creation and preservation of affordable housing in Vermont by enabling individuals to form cooperative housing corporations, including limited equity cooperatives, for the purpose of developing, acquiring, owning, and operating housing on a cooperative basis, and by encouraging lending institutions to engage in financing of cooperative housing ownership interests. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1583. Definitions

The definitions contained in chapter 17 of this title shall apply to this chapter. As used in this chapter, the following terms shall have the meanings indicated, unless the context otherwise requires:

- (1) "Conversion" means a change in character of residential real property from a rental to an ownership basis. Creation of a cooperative housing corporation to own property formerly rented for dwelling purposes is deemed to be such a change in character.
- (2) "Cooperative housing corporation" means a domestic corporation which has elected to be governed by the provisions of this chapter.
- (3) "Cooperative interest" means the ownership interest in a cooperative housing corporation which is evidenced by a membership share.
- (4) "Cooperative property" means all the real and personal property, including mobile and manufactured homes, in this state owned or leased by a cooperative housing corporation for the primary purpose of residential use.
- (5) "Low income" means having income that is less than or equal to 80 percent of median income for the area, adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation and comparable to standards of the U.S. Department of Housing and Urban Development existing on June 16, 1988.
- (6) "Moderate income" means less than or equal to 100 percent of median income for the area, adjusted for family size, in accordance with standards generally accepted at the time of incorporation and comparable to standards of the U.S. Department of Housing and Urban Development existing on June 16, 1988.
- (7) "Lender" includes banks, the Vermont Housing Finance Agency, and other financial institutions.
- (8) "Limited equity cooperative" means a cooperative housing corporation, organized in accordance with section 1598 of this title.
- (9) "Limited equity formula" means a rule or method for determining the transfer value of a share in a limited equity cooperative.
- (10) "Member" means a person who owns a cooperative interest, and who is entitled to voting rights as prescribed in section 1594 of this title.

- (11) "Proprietary lease" means an agreement with a cooperative housing corporation governing a member's right to occupancy, under which a member has an exclusive possessory interest in a unit.
- (12) "Resident" means any occupant of space owned by the cooperative housing corporation.
- (13) "Share loan" means an agreement entered into by a member and a lender to finance the member's acquisition of his or her cooperative interest.
- (14) "Subscription agreement" means a written agreement between a prospective member and a cooperative housing corporation for the purchase and sale of a cooperative interest.
- (15) "Unit" means a portion of the cooperative property leased for exclusive occupancy by a member under a proprietary lease, or leased to a tenant by lease agreement. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1584. Application

Any corporation organized under chapter 17 of this title may elect to be governed as a cooperative housing corporation under the provisions of this chapter. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1585. Name; use of "cooperative"

The use of the terms "cooperative housing," "housing cooperative," or "cooperative apartments," or any variants thereof in identification of dwelling units is reserved to cooperative housing corporations organized under this chapter. Except as allowed by section 981 of this title, use of those terms, or any variants thereof, by any other person is prohibited. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1586. Property classification of cooperative interest

- (a) A cooperative interest is personal property.
- (b) The possessory interest evidenced by a proprietary lease is a part of and may not be severed from a cooperative interest. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1587. Perfection of security interests in cooperative interests

- (a) A security interest in a cooperative interest shall attach, be perfected, and be enforceable as provided in 9A V.S.A. Article 9.
- (b) On request of a secured party, a cooperative housing corporation shall note on its books and records the interest of the secured party in a cooperative interest. No such request or notation is required in order to perfect a security interest in a cooperative interest. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1588. Articles of association; minimum requirements

Articles of association of cooperative housing corporations shall contain the following provisions in addition to those required by chapter 17 of this title:

- (1) a statement that the cooperative housing corporation shall have only one class of stock;
- (2) a statement of restrictions, if any, upon transfer of shares;

- (3) the rate of dividend, if any, allocable to membership shares which shall not exceed six percent per annum on invested capital;
- (4) reservation of the right of the cooperative housing corporation to acquire membership shares;
- (5) basis of distribution of assets in event of dissolution;
- (6) the method of allocation of ownership and voting interests in the cooperative housing corporation; and
- (7) the conditions, if any, under which the cooperative housing corporation shall have a right of first refusal upon proposed transfer of cooperative interests. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1589. Subscriptions for membership prior to organization; organization meeting

- (a) Within two years after issuance of the certificate of incorporation of a cooperative housing corporation, the cooperative housing corporation shall secure memberships or subscription agreements representing no less than 80 percent of the units in the cooperative housing corporation. In the case of a conversion, other than a conversion of a mobile home park, subscription agreements representing no less than 50 percent of the units in the proposed cooperative housing corporation shall be secured prior to issuance of the certificate of incorporation, provided that at the expiration of the two-year period after issuance of the certificate of incorporation or at the expiration of the notice periods provided to tenants at 27 V.S.A. § 1333, whichever comes later, no fewer than 80 percent of the units in the cooperative housing corporation shall be occupied by members, occupied by sublessees permitted under subdivision 1599(1) of this title, or subject to subscription agreements. In the case of a conversion of a mobile home park, subscription agreements representing no fewer than 25 percent of the units in a proposed cooperative housing corporation shall be secured prior to issuance of the certificate of incorporation, provided that at the expiration of the two-year period after issuance of the certificate of incorporation or at the expiration of the notice periods provided to tenants pursuant to 27 V.S.A. § 1333, whichever comes later, no fewer than 80 percent of the units in the cooperative housing corporation shall be occupied by members, occupied by sublessees permitted under subdivision 1599(1) of this title, or subject to subscription agreements. Extensions of the time limits imposed by this section may be granted by the Commissioner of Housing and Community Affairs for cooperative housing corporations containing more than 50 units or for cooperative housing corporations formed in connection with the conversion of a mobile home park.
- (b) Within six months after the first conveyance of a share to a member, an organization meeting of the cooperative housing corporation shall be held for the purpose of adopting bylaws, electing officers and transacting such other business as may come before the meeting. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988; amended 2005, No. 116 (Adj. Sess.), § 2, eff. April 26, 2006.)

§ 1590. Minimum occupancy requirement

Subject to the provisions of section 1589 of this title, at least 80 percent of a cooperative housing corporation's occupied units shall be occupied by members. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1591. Membership

- (a) A cooperative housing corporation shall be organized on a membership basis with capital stock.
- (b) A cooperative housing corporation shall have one class of stock and, therefore, one class of members, all of whom must be residents except as provided in subdivision 1599(1) of this title. The designation, qualifications, requirements, method of acceptance, and incidents of membership shall be set forth in the articles of association or the bylaws.
- (c) No member may transfer his or her membership except as permitted in the articles of association or the bylaws.
- (d) The bylaws may provide for termination of membership and the conditions and terms thereof. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1592. Bylaws; minimum requirements

The bylaws of a cooperative housing corporation shall contain procedures under which the cooperative housing corporation's possessory remedy shall be pursued in the event of a member's default and the rights of the defaulting member, in accordance with subdivision 1599(3) of this title. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1593. Membership shares; requirements

A cooperative housing corporation shall issue shares to its members as evidence of their ownership of a cooperative interest. Such shares shall be in a form prescribed in the articles of association or bylaws of the cooperative housing corporation. Restrictions upon transfer of shares shall be noted on the face of the certificates representing shares. No membership shares shall be issued under this section and no proprietary leases shall be issued under section 1599 of this title prior to issuance of a certificate of incorporation as a cooperative housing corporation. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1594. Voting

- (a) The votes in a cooperative housing corporation shall be assigned so that each member has one vote.
- (b) Voting authority may not be assigned to nonresidents.
- (c) Nonmembers may be elected by the membership of the cooperative housing corporation to serve on the board of directors of the cooperative housing corporation, provided that no more than one-third of the directors may be nonmembers.
- (d) Voting by proxy may be permitted in cooperative housing corporations, provided that proxies are assigned to members and that no more than one proxy may be voted by any member on any question.

- (e) Voting by early voter absentee ballots may be permitted in cooperative housing corporations.
- (f) Notwithstanding subsection (a) of this section, a cooperative housing corporation not organized as a limited equity cooperative pursuant to section 1598 of this title may adopt in its articles of association or bylaws, a voting scheme other than one vote per member, except that decisions to merge a cooperative housing corporation with another entity, dissolve it, or amend its articles of association or bylaws shall be made on the basis of one vote per member. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988; amended 2001, No. 6, § 12(a), eff. April 10, 2001.)

§ 1595. Meetings; notice; quorum

- (a) Each cooperative housing corporation shall provide in its bylaws for one or more regular membership meetings annually.
- (b) Special membership meetings may be called by the president or the board of directors, and shall be called upon receipt by the board of a petition signed by at least ten percent of the cooperative housing corporation's members.
- (c) Written notice of a meeting, stating the time, date, location, and purpose of the meeting, shall be mailed to each member not less than seven days prior to the meeting, by those authorized to call the meeting. A signed waiver is equivalent to notice to the member signing.
- (d) No less than a majority of a cooperative housing corporation's members shall constitute a quorum, except that the bylaws may provide for a lesser quorum requirement for cooperative housing corporations with more than 50 units, but in no event shall the quorum be less than 20 percent. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1596. Directors; election; removal

- (a) The business of the cooperative housing corporation shall be managed by a board of directors of not less than three individuals, elected by the members from their own number, except as provided in subsection 1594(c) of this title.
- (b) In cooperative housing corporations with less than 20 members, the bylaws may provide that the members shall constitute the board of directors.
- (c) Directors may be removed from office for cause shown, by a two-thirds vote of the board of directors at a meeting duly convened for this purpose. Directors may be removed from office without cause, by no less than a majority vote of the cooperative housing corporation's members at a meeting duly convened for this purpose. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1597. Merger; consolidation

Cooperative housing corporations shall not engage in mergers or consolidation if such action is undertaken for the purpose of circumventing section 1598, 1602, 1603, 1606, or 1607 of this title. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1598. Limited equity cooperatives

A cooperative housing corporation may organize as a limited equity cooperative in order to fulfill the public purpose of providing and preserving housing for persons and households of low and moderate income at the time that they purchase their memberships. In addition to safeguarding the foregoing public purpose, a limited equity cooperative shall meet the following requirements:

- (1) The articles of association shall require that cooperative interests be sold at no more than a transfer value determined by a limited equity formula contained in the articles. That value shall be consistent with the object of maintaining long-term affordability of cooperative interests for persons or households of low and moderate income.
- (2) A limited equity formula, once established by a cooperative housing corporation in its articles of association, may be amended only if that amendment does not make the cooperative membership unaffordable for the class of low or moderate income households for which the cooperative housing corporation was originally incorporated, as determined and certified by the Commissioner of Housing and Community Affairs. A cooperative housing corporation once organized under this section may not reorganize as other than a limited equity cooperative without first dissolving.
- (3) A limited equity cooperative shall not sell all or substantially all of its assets if such sale is intended to circumvent the public purposes of this section.
- (4) The articles of association shall require that the cooperative housing corporation shall have the first right to repurchase a member's cooperative interest.
- (5) The articles of association shall require that the total distribution out of capital to a member shall not exceed that transfer value.
- (6) The articles of association shall require that upon dissolution of the cooperative housing corporation, any assets remaining after retirement of corporate debts and distribution to members shall be distributed to a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, a public agency, or another limited equity cooperative whose formula for determining transfer value shall be no less restrictive than that of the cooperative housing corporation being dissolved.
- (7) The articles of association shall require that no sublease of a unit shall provide for monthly payments by the sublessee in excess of 110 percent of monthly payments for the unit provided for in the proprietary lease. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1599. Proprietary lease

Every member of a cooperative housing corporation shall be entitled to receive from the cooperative housing corporation a written proprietary lease which shall include the following:

- (1) A provision that no sublease in excess of one year, no amendment, and no modification to such proprietary lease shall be permitted or created without the prior written consent of the board of directors of the cooperative housing corporation. A member who sublets does not relinquish the rights and benefits of membership.

- (2) A provision that the security for a loan against the member's cooperative interest shall be in the nature of a personal property security interest, and any default of such loan shall entitle the lender to treat such default in the same manner as a default of a loan secured by personal property.
- (3) A provision that the cooperative housing corporation's possessory remedy in event of default of a member affecting that person's right to occupancy shall be in an action under 12 V.S.A. chapter 169, subchapter 3. However, good cause shall be required for termination of the right of occupancy. Good cause shall include nonpayment of loans, fees, costs, or assessments pertaining to the cooperative interest, or material violation of bylaws, rules, or proprietary lease which continues following reasonable notice and reasonable opportunity to cure the alleged material violations.
- (4) Provisions for determining maintenance and carrying charges for the unit.
- (5) A right on the part of the cooperative housing corporation to cure any default in the member's obligations pertaining to the member's cooperative interest, including share loans, and cooperative fees, costs, and assessments.
- (6) A provision requiring that terms and form of the proprietary lease shall be amended by the board of directors only.
- (7) A provision requiring that any lease term which is not uniformly applied to all members or prospective members of the same or similar category shall be unenforceable. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1600. Deposits; sale of cooperative interests; escrow

Deposits taken in connection with the sale of cooperative interests by a cooperative housing corporation, with respect to units intended for residential use shall be deposited and held in an interest-bearing escrow account for the benefit of the purchaser, until such time as the transaction closes unless the escrow requirement is expressly waived by the purchaser. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1601. Offering of cooperative interests; subscription agreement; disclosures required

- (a) In conjunction with the offering of cooperative interests to prospective members, a cooperative housing corporation, or other persons or entities seeking to establish a cooperative housing corporation, or the owner of a cooperative interest seeking to sell that interest, shall provide to all prospective purchasers a copy of the proposed or adopted articles of association and bylaws of the cooperative housing corporation, a subscription agreement or sales agreement, a proposed proprietary lease, and the most current corporate financial statements, if any exist.
- (b) The subscription agreement or sales agreement shall contain provisions detailing the cost of acquisition of a cooperative interest, the rights and privileges of membership in the cooperative housing corporation, and terms and conditions of occupancy of a unit in the cooperative housing corporation; provisions, if any, under which the subscription agreement or sales agreement is subordinated to other agreements or otherwise

encumbered; provisions for cancellation of the agreement by either party; and a legally sufficient description of the property.

- (c) The subscription agreement or sales agreement shall contain provisions detailing the risks of acquisition of a cooperative interest including risks resulting from failure of all units to be occupied.
- (d) The subscriber or purchaser shall have a right to cancel the subscription agreement or sales agreement without penalty, upon provision of written notice to the offeror within 10 days of the date of signing the agreement. In the event of such cancellation, all monies paid by the subscriber or purchaser to the offeror shall be returned to the subscriber or purchaser within 14 days of receipt of the notice of cancellation by the offeror. The offeror shall inform the subscriber or purchaser in writing of their right of cancellation. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1602. Consumer protection; enforcement

- (a) For purposes of this section, “consumer” means an actual or prospective subscriber, purchaser, member, assignee, or transferee of a cooperative interest with respect to a residential unit. A “consumer” includes a co-obligor or surety for a consumer.
- (b) To the extent that a violation of a provision of this chapter affects a consumer, that violation is deemed to be a violation of 9 V.S.A. § 2453 and is subject to all rights, obligations, and penalties provided under 9 V.S.A. chapter 63.
- (c) Failure or neglect to provide to subscribers or purchasers the documents and disclosures required by section 1601 of this title is deemed to be a violation of this section. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1603. Dissolution

- (a) By vote of at least 80 percent of its members or any larger percentage specified in the articles or bylaws, a cooperative housing corporation may vote to dissolve and terminate all of its proprietary leases
- (b) A cooperative housing corporation shall have its election pursuant to section 1584 of this chapter revoked if it fails to certify to the Secretary of State within 30 days of the deadlines specified in section 1589 of this title that at least 80 percent of its available housing units are occupied by members. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1604. Loans

Any lender is authorized to make loans secured by cooperative interests of a cooperative housing corporation, including limited equity cooperatives, upon the same terms and with the same limitations as other consumer and residential loans. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1605. Net income; apportionment

- (a) Annually, the board of directors of a cooperative housing corporation may apportion the remainder of the net income in one or more of the following ways:

- (1) as a reserve fund for the general operation of the business;
- (2) as a dividend not to exceed six percent per annum on invested capital; and
- (3) as an equitable distribution or refund to all members in proportion to their proprietary lease payment, except that the distribution or refund to members shall first be credited to the member's account to pay off the purchase price of his or her cooperative interest and any amounts owed to the cooperative housing corporation as a result of cure by the cooperative housing corporation of any default in the member's obligations as described in subdivision 1599(5) of this title.

(b) This section shall not prevent a cooperative housing corporation from disposing of the net income by reducing the cost of facilities or services or by applying such net income otherwise for the common benefit of members.

(c) This section shall not prevent a cooperative housing corporation from adopting a system by which the payment of net income is deferred, nor from adopting a system in which the net savings distributed are partly in cash and partly in equity interests or certificates of indebtedness. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1606. Conversion; cooperative apartments

The provisions of 27 V.S.A. chapter 15, subchapter 2 shall apply to all proposed conversions of residential rental properties to cooperative ownership. "Conversion" shall be deemed to occur when a cooperative interest is first offered to a prospective member of a cooperative housing corporation involving the subject property. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1607. Nondiscrimination

The provisions of 9 V.S.A. chapter 139 shall apply to all cooperative housing corporations in the State. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1608. Eligibility for property tax relief

Members of cooperative housing corporations shall be eligible to apply for and receive a homestead property tax adjustment under 32 V.S.A. § 6066, subject to the conditions of eligibility set forth therein. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988; amended 1997, No. 71 (Adj. Sess.), § 16a, eff. Jan. 1, 1999.)

§ 1609. Homestead exemption from attachment and execution

The provisions of 27 V.S.A. chapter 3 shall apply to cooperative interests in cooperative housing corporations, notwithstanding characterization of cooperative interests as personal property. (Added 1987, No. 254 (Adj. Sess.), § 1, eff. June 16, 1988.)

§ 1610. Separate taxation; mobile home cooperatives

Each unit in a mobile home limited equity cooperative under proprietary lease, together with any improvements thereon and together with the proprietary lessee's cooperative interest in the common areas and facilities owned by the cooperative, shall be considered to be a parcel, and shall be subject to separate assessment and taxation as real property by each assessing unit and special district for all types of taxes authorized by law, including special ad valorem levies and special assessments. Each unit held

by the cooperative not under proprietary lease, together with any improvements thereon, and together with the remaining and unissued cooperative interest in the common areas and facilities owned by the cooperative, may be combined and treated as one parcel for purposes of assessment and taxation at the discretion of the listers, and shall be subject to assessment and taxation as real property by each assessing unit and special district for all types of taxes authorized by law. Except for the units described in this section, no cooperative property, including common areas and facilities owned by the cooperative, shall be deemed to be a parcel subject to separate assessment and taxation. (Added 1999, No. 159 (Adj. Sess.), § 21, eff. May 29, 2000.)