



Housing Cooperative Preservation Initiative
of Neighborhood Legal Services Program

Resource Guide for Volunteer Attorneys

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About NLSP and HCPI

NLSP Mission Statement

In partnership with its clients and community stakeholders, Neighborhood Legal Services Program (NLSP) helps DC residents, families and communities eliminate barriers to overcoming poverty and secure justice. Using all available legal and other advocacy tools, NLSP enables underserved DC residents to make their voices heard in the courts and other forums where their rights and protections are at stake, to secure fair and lasting solutions to their problems and to attain their individual, family, and community goals.

About NLSP

For 56 years, NLSP has provided free civil legal services to low-income residents of the District of Columbia. Our assistance preserves safe and affordable shelter, stabilizes family relationships, protects victims of domestic violence, secures access to healthcare and public benefits and reduces barriers to employment for our clients. As we protect fundamental necessities for individuals and families, we also seek opportunities to achieve broader change and pathways out of poverty for many.

As a pioneer of the neighborhood-based legal services model, we strive to be an integral part of the communities we serve. Our three offices are located in the most underserved areas of the District, including two east of the Anacostia River in Wards 7 and 8. We also partner with community-based organizations including libraries, job training programs and shelters to bring legal information and resources into the community through interactive workshops and on-site intake.

HCPI Mission Statement

The Housing Cooperative Preservation Initiative strives to preserve long-term housing affordability by supporting low-income, resident-owned affordable housing cooperatives in the District of Columbia. Our goal is to aid our cooperative clients to achieve safe buildings, good governance, and careful financial management and, ultimately, retain these tenant- owned buildings as a part of D.C.'s sharply dwindling affordable housing inventory.

About HCPI

NLSP's Housing Cooperative Preservation Initiative (HCPI) brings together the specialized legal and financial expertise of two legal services providers, Neighborhood Legal Services Program (NLSP) and University Legal Services (ULS), to preserve low-income, resident-owned affordable housing cooperatives in the District of Columbia. Housing cooperatives enable low-income families to acquire an ownership interest in a resident-controlled building, with the right to occupy a unit and participate in organizational decision-making.

Cooperatives are a powerful mechanism for creating affordable housing, but they are vulnerable without specialized assistance to sustain them; HCPI brings together services these cooperatives need to succeed. ULS provides our cooperative clients with asset management expertise while NLSP serves in a general counsel-style role.

Though we occasionally offer one-time services and brief advice to eligible cooperatives, HCPI generally seeks to build long-term relationships with cooperatives. Our team works closely with cooperative boards of directors to advise on ongoing and new issues. However, given the wide array of legal issues our cooperative clients encounter, we often rely on the specialized expertise of volunteer attorneys to supplement our in-house knowledge.

Our Pro Bono Model

HCPI identifies opportunities for attorneys to provide specialized services to low-income housing cooperatives that would otherwise go unassisted. The necessity for housing cooperatives to manage their buildings as financial assets and to maintain operations as both a resident community and a business organization creates challenges and considerations that differ significantly from the issues that legal service providers typically confront when representing individuals, and NLSP has designed the pro bono model for HCPI accordingly. Instead of training pro bono volunteers in areas of law that are new to the volunteer, as many traditional pro bono models do, HCPI routinely engages pro bono volunteers on matters within their own practice area to provide services that meet the needs of housing cooperatives, such as assistance with real estate matters and reviewing insurance coverage. By engaging volunteer attorneys with pro bono matters within their own practice areas, we are able to expand HCPI to provide services to a substantially larger number of cooperatives and provide more robust services to each one than we would ever be able to reach without the help of volunteers.

A Basic Introduction to Limited-Equity Housing Cooperatives

What is a housing cooperative?

In a housing cooperative, a business entity (“co-op”) owns the land and buildings of a particular property. The residents may purchase shares in the co-op, which entitles them to occupy their units as members of the co-op. As opposed to a condominium or single-family dwelling, the co-op members do not hold the title to the property, but rather ownership in the corporate entity. DC co-ops are typically incorporated in the District of Columbia as a general cooperative association or in Delaware as a cooperative or a general corporation.¹

¹ Though most of the LECs we work with are incorporated as described, there are other ways by which LECs can incorporate. For more information on co-op entity formation, see [How to Start a Cooperative Business: Entity Formation by the Washington Area Community Investment Fund](#).

What is a “limited equity co-op or an “LEC”?

For the purposes of maintaining housing affordability, limited equity co-ops (“LECs”) restrict the resale price of membership shares in order to maintain affordability for new members who are low or moderate income. When a member sells a share, the equity received is based on a pre-determined formula, as opposed to the market rate. Many of these co-ops also have maximum income restrictions for members.

Legal Definition of Limited Equity Cooperatives

LECs in D.C. are in many ways more a creature of contract than of statute. Even the generally accepted definition links the entity’s status effectively to covenant:

“[L]imited-equity cooperative” means a cooperative required by a government agency or nonprofit organization to limit the resale price of membership shares for the purposes of keeping the housing affordable to incoming members that are low and moderate income.²

These restrictions usually come in the form of a covenant or other loan or grant document between the cooperative and D.C.’s Department of Housing and Community Development or a nonprofit lender. The loans and grants in question can be acquisition funding or renovation capital provided years later; so many LECs end up extending their mandatory affordability periods repeatedly.

Process for Becoming an LEC in DC

The vast majority of LECs are formed by low- to moderate-income tenants asserting their TOPA rights of first refusal^{3,4} when their landlord put their building up for sale. The process of forming an LEC through TOPA is expensive, arduous and complex and involves fierce competition for very limited funding sources.⁵

² [D.C. Code § 47-802\(11\)](#). This definition applies for the purposes of things like D.C. real estate tax assessment rates and deed tax exemptions. See §§ [47-820.01](#), [42-1102\(31\)](#). It has also been adopted by D.C.’s LEC task force.

[D.C. Code § 42-2061](#). Other statutory benefits available to LECs require they commit to more specific limitations on resale price. For example, to qualify for exemption from the tenant election requirement and certain fees in D.C.’s cooperative conversion statute, LECs must “certify their intent” to limit share value to “a maximum of the annual rate of inflation, for low and moderate income persons as defined from time to time by the United States Department of Housing and Urban Development for the Washington Standard Metropolitan Statistical Area (SMSA).” [D.C. Code § 47-802\(11\)](#).

³ In D.C., the Tenant Opportunity to Purchase Act provides tenants in most residential, multifamily buildings the first option to buy their building or assign their rights to a third party. See [D.C. Code § 42-3404.01](#) et seq.

⁴ Out of 86 co-ops formed since 1980, less than 5 LECs have been formed outside of the TOPA process. See [Creating and Sustaining Limited Equity Cooperative in the District of Columbia](#).

⁵For more information on the TOPA process, see “How are LECs Created?” in [Creating and Sustaining Limited Equity Cooperative in the District of Columbia](#).

Not all of our clients are technically bound by statute or covenant to remain as limited equity cooperatives. We also serve cooperatives who are voluntarily operating on a limited equity basis and/or primarily serve low-income residents.

Cooperative Membership

Typically, a member purchases a membership for a subscription fee (often comparable in amount to a security deposit) in order to move into a particular unit. Though cooperative members do not own any part of the unit or building in which they live, the cooperative business is owned by its members, and each member has an equal ownership interest and an equal vote.

Entitlements of Membership

A membership entitles the member to all of the rights, benefits and responsibilities that are outlined in the cooperative's governing documents. Members usually have the rights to:

- **Live in their unit for as long as they want**, unless they (1) violate a provision of their governing documents and the membership (or Board, depending on the bylaws) votes to terminate their membership or (2) the cooperative is sold or converted to a different type of building (rental/condominium). Cooperatives are rarely sold or converted, and such a decision would require a vote of the membership.
- **Sell their membership back to the cooperative**, or to the person who moves into their unit when they leave, typically for slightly more than what they paid for it. (The "transfer" formula can be found in the bylaws and does not usually exceed 2-3% per year of the membership price paid by the member.)
- **Vote on issues affecting their property** including electing a Board of Directors. Members may also be elected to the Board. Each membership is entitled to one vote regardless of the price paid for the membership or how many people live in the member's unit.
- **A Membership or Share Certificate**, a document signifying their ownership in the Cooperative.

Members have other rights as well, which vary between cooperatives. All rights and responsibilities of membership should be described in each cooperative's governing documents.

Renters vs. Members

LEC residents are often a mixture of cooperative members and renters. Though full occupancy by members is the ideal, for a variety of reasons, LECs often end up with at least some units occupied by renters. Upon conversion, certain residents are

permitted by D.C. law to remain perpetually tenants.⁶ Many LECs over their lifetimes also end up with “accidental” tenants, whose documentation at move-in was insufficient to comply with membership requirements⁷ due to inattention or lack of knowledge on the part of the LEC’s agents. Finally, some LECs permit their members to sublet, either temporarily or long-term.

There are substantial differences between the rights and responsibilities of tenants and cooperative members. D.C. courts and the D.C. Rental Housing Commission have ruled that members of housing cooperatives are something of a legal hybrid between renters and owners.⁸ Unlike tenants, they have an ownership interest in the building and appurtenant voting rights, the opportunity to manage the organization if elected to the Board of Directors, and an opportunity to receive a return on their interest/share upon transfer. However, tenants have substantially greater rights in other areas, including eviction protections,⁹ rent control,¹⁰ and protections provided by the housing code.¹¹

⁶ At the time of cooperative conversion, low-income residents who are 62 years of age or older or disabled may apply to DHCD’s Rental Conversion and Sale Division to be qualified as a statutory tenant and have the right to remain in their apartment as a renter. [D.C. Code § 42-3402.08](#).

⁷ Such a resident, even in the absence of clear documentary evidence of the intent to create a tenancy, could be found to have created an estate by sufferance: the statutory equivalent of the common law tenancy at will. See [D.C. Code § 42-520](#). Even roomers unknown to the cooperative could potentially be construed as tenants by sufferance and therefore come under the protection of both Landlord and Tenant Court and the eviction controls of the Rental Housing Act. See [D.C. Code § 42-3505.03](#); *Harkins v. Win Corp.*, 771 A.2d 1025 (D.C. 2001), *Samuel v. King*, 118 DWLR 243 (Super. Ct., von Kann, J., LT 89-11788, Dec. 18, 1990).

⁸ In *Snowden v. Benning Heights Co-op., Inc.*, the D.C. Court of Appeals found that “[a]lthough a member of a cooperative is like a tenant in some respects, the member owns shares in the cooperative, making the member a co-owner of the property along with the other members” and that “[a] member’s cooperative apartment is not a “rental unit” as defined in the D.C. Rental Housing Act because it is not “rented or offered for rent” by the cooperative to the member.” 557 A.2d at 156; see also *Capital Constr. Co. v. Plaza West Coop. Ass’n*, 604 A.2d 428, n. 4 (D.C.1992); *H & E Management v. Davis*, TP 11,049 (RHC July 9, 1984).

⁹ Cooperative members are exempt from most protections of the Rental Housing Act. See *Snowden*, 557 A.2d at 156.

¹⁰ Generally, cooperatives do not need to seek a specific rent control exemption from D.C. Department of Housing and Community Development Rental Accommodations Division (DHCD RAD). D.C. Code §§ 42-3501.03(14), 42-3502.05(a) (referring to “rental” units). However, cooperatives need to comply with rental housing laws if any of their residents are renters. They must register with the RAD even if they qualify for a rent control exemption. [D.C. Code § 42-3501.03\(5\)](#).

¹¹ The D.C. Housing Code (D.C. Mun. Regs. tit. 14, §§1-13) and Property Maintenance Code (D.C. Mun. Regs. tit. 12 G) technically apply to all residential and in the case of the latter, also nonresidential buildings in the city. Compare D.C. Mun. Regs. tit. 14, §101.1 with D.C. Mun. Regs. tit. 12-G 101.2. But D.C. law unequivocally allows tenants to look to landlords to effectuate compliance. *Brown v. Southall Realty*, 237 A.2d 834 (D.C. 1968) (establishing void lease doctrine) *Javins v. First National Realty*, 138 U.S. App. D.C. 369, 428 F. 2d 1071 (D.C. 1970) (establishing warranty of habitability doctrine); see also D.C. Mun. Regs. tit. 14, §§ 301, 302.1, and 302.2. While cooperatives can choose to allocate by contract responsibility for housing code compliance between the cooperative and its members, D.C. law prohibits landlords from reallocating their statutory responsibility to tenants. D.C. Mun. Regs. tit. 14, § 304.

	Member	Renter
Initial Fee	Purchases a share, subscription or membership for a fee that can be resold for a very minimal return (usually around 3%)	Pays a security deposit to landlord
Essential Agreements	Signs a subscription agreement or sales contract AND an occupancy agreement (proprietary lease)	Signs only a lease
Monthly Fee	Pays carrying charges monthly	Pays rent monthly
Ownership	Has ownership interest in cooperative – signified by membership or share certificate (or subscription agreement)	Has no ownership interest so receives no membership certificate
Law Governing Rights	Has rights according to the cooperative governing documents and the D.C. General Cooperative Association law (or other statute if incorporated in a different way), but not most rental housing laws	Has rights under the lease and D.C. Rental Housing Act and other rental housing laws, not cooperative business laws
Internal Voting/Control Rights¹²	Can be elected to the board and make decisions as described in the below section of this guide Entitled to a vote on membership matters, including board of directors, amendments to bylaws, and sale or conversion of the property	None
Eviction	Requires a board or membership vote (as required by relevant incorporation statute) at meeting on whether to remove, before management can evict Can assert breach of contract defenses arising out of governing documents	If evicted for nonpayment of rent, can assert various defenses, including housing code violations, to reduce rent owed
Remedy for Housing Conditions	Coop must comply with housing code, but responsibility for compliance is distributed between member and the cooperative by governing documents	Can file a tenant petition with DHCD if rent is raised and housing conditions are bad (and other situations) and can sue in housing conditions court

¹² This section is not inclusive of all voting and control rights, which vary according to property.

Governance

Board of Directors

Cooperative Boards of Directors oversee the business of the cooperative. They are comprised of volunteer members periodically elected by the membership. Their number and terms are defined by the cooperative's governing documents, within the confines of the applicable statutory regime.

Directors and officers of cooperative boards owe fiduciary duties, including duties of care and loyalty to their cooperatives and their members. Boards of directors have broad discretionary powers to manage the cooperative and to decide what is in the business's best interest.

However, certain powers and decisions are reserved to the membership as a whole and, unless explicitly delegated, may not be undertaken by an LEC's board of directors or other agent. Some of these are found in statute,¹³ for example:

- Amendments to the cooperative's articles of incorporation;¹⁴
- Adoption, amendment, or repeal of the cooperative's bylaws;¹⁵
- Election and removal of members of the board of directors;¹⁶
- The right to force the board to purchase a withdrawing member's share or override board failure to approve a prospective buyer;¹⁷
- The right to terminate other members;¹⁸
- The right to receive a written report of the LEC's annual audit;¹⁹
- Approval of any dissolution of the cooperative;²⁰

Others are reserved in an individual LEC's bylaws or articles of incorporation. In general, if explicitly incorporated in the bylaws or articles of incorporation, an LEC's membership may retain broad power to overrule any decision of its board of directors.²¹

It's important to check both the statute and an LEC's governing documents to make sure you are dealing with the proper authority on a given question.

¹³ Note that some of these provisions also require votes greater than a majority.

¹⁴ [D.C. Code § 29-907\(a\)](#)

¹⁵ [§ 29-908](#)

¹⁶ [§§ 29-918, 29-920](#)

¹⁷ [§ 29-926](#)

¹⁸ [§ 29-930](#)

¹⁹ [§ 29-933](#)

²⁰ [§ 29-934](#)

²¹ "The articles or bylaws may provide that, within a specified period of time, any action taken by the directors shall be referred to the members for approval or disapproval if demanded by petition of at least 10% of all the members or by vote of at least a majority of the directors; provided, that the rights of third parties which have vested between the time of such action and such referendum shall not be impaired thereby." [D.C. Code § 29-921](#).

Advisors and Agents

Cooperatives typically hire **property management companies** to perform their day-to-day operations and serve as their agents, under the oversight of the Board of Directors. Cooperatives' loan agreements often require hiring outside management, but otherwise cooperatives are not necessarily legally required to outsource management. Given limited- equity cooperatives' complex needs, including requirements to produce financial reports, audits, budgets, pay taxes and other bills, and comply with D.C. regulatory reporting and loan requirements, it can be very challenging for them to self-manage.

Cooperatives also typically hire an outside **accountant** to prepare taxes and conduct annual audits or compilations of their finances.

Governing Documents

Articles of Incorporation typically contain minimal information, other than the type and place of corporate entity.

Bylaws act as the cooperative's constitution. They outline a cooperative's governance and membership structure, including requirements to become a member, be on the board of directors, elections, membership meetings and the purchase and sale (transfer) of memberships/shares.

House rules govern more mundane issues of building occupancy, such as noise restrictions or pet policies. Not all cooperatives create house rules.

A **subscription agreement** records the purchase of the membership share and its price. Members must sign a subscription agreement upon moving into a building to signify their membership in the cooperative.

An **occupancy agreement** is a type of proprietary lease that outlines the members' rights and duties with respect to occupying the unit associated with the membership. For example, it outlines the maintenance and repair responsibilities of the member versus the cooperative.

Share certificates serve as a paper record of a share. Not all cooperatives issue shares or share certificates.

If inconsistencies or contradictions between documents arise, the documents should be interpreted in order of importance. Bylaws take precedence, followed by the subscription and occupancy agreements, which carry equal weight, and lastly house rules. All documents can be amended by a vote of the membership or Board of Directors, depending on the document and the rules of the cooperative.

Overview of Statutes Governing Our Cooperatives (DC and Delaware)

Residents seeking to form a limited equity housing cooperative in D.C. have options in terms of what type of entity to become and in what jurisdiction to incorporate. Depending on the structure of the organization and the applicable state law, there could be subtle but important differences in the LEC's operational requirements, such as when elections are held and how derivative suits can be raised. Additionally, while enabling acts set out certain minimum requirements governing LECs incorporated or admitted to operate under them, other statutory requirements only constitute default rules, alterable through the LEC's articles of incorporation or bylaws.

Volunteers should not presume that all of our LEC clients will be structured in one particular way. Rather, you may need to review organizational documents to determine if the organizational structure and state of incorporation has any effect on the matter you are handling.

As our clients are most commonly organized in D.C. or Delaware, we provide here a brief overview of the applicable enabling statutes in those jurisdictions.

D.C.

General Cooperative Associations

Most limited equity cooperatives organized under D.C. law are incorporated as general cooperative associations under Chapter 9 of Title 29 of the D.C. Code. The general cooperative association entity was designed to house many different types of enterprises desiring to operate on a cooperative basis in the District of Columbia, from worker cooperatives to art galleries, grocery stores, or community purchasing alliances.²² Since the statute is not specific to LECs or even housing cooperatives more generally, parts of the statute are, in practice, inapplicable or, at best, a rough fit to LEC operations.

The statute provides individual LEC members with both the assurance of limited liability²³ and the framework necessary to work cooperatively. LECs incorporated under this statute are classified as nonprofits.²⁴ The statute requires that their purpose must be for the "primary and mutual benefit of the patrons of the association."²⁵ It also sets out certain limits on capital return and allocation of net savings designed to ensure the entity is

²² Of course, many cooperatives choose to organize themselves as other types of entities.

²³ "Members shall not be jointly or severally liable for any debts of the association . . . except to the extent of the unpaid amount on the shares" [D.C. Code § 29-929](#).

²⁴ The statute provides that an association incorporated under it "shall be treated as a nonprofit corporation for purposes of taxation or securities regulation under the law of the District." [§ 29-902](#) (2). However, LECs do not incorporate as 501(c)(3)s and are not tax exempt. See section on Tax.

²⁵ [D.C. Code § 29-904](#).

operating in a cooperative manner and not for profit.²⁶ These statutory limitations overlay in a more permanent way the time-limited, contract-based constraints on the resale price of membership—the “limited equity” in LECs— discussed above.

The statute provides for the usual basics regarding formation and governance of entities organized or admitted under it, including: incorporation process and purpose;²⁷ corporate powers;²⁸ minimum content of articles of incorporation and bylaws²⁹ and the process and votes required for amendment thereof;³⁰ eligibility for,³¹ voluntary transfer,³² involuntary termination of³³ and documentation³⁴ of membership; membership meetings & procedure;³⁵ board of directors and officers composition, election, removal,³⁶ and limitations on powers;³⁷ delegation & committee options;³⁸ and manner of dissolution & distribution of assets.³⁹

While many of these provisions are default rules, alterable through the LEC’s articles of incorporation or bylaws, some set out unalterable statutory minimums. Some key minimum requirements include:

- Membership meetings must be held at least annually;⁴⁰
- Voting is generally limited to one member / one vote, with certain exceptions, including “[a]llocation of votes in a cooperative housing association proportionate to the share of ownership in the association or on the basis of one vote for each unit;”⁴¹
- Amendment of the articles of incorporation generally requires 2/3 of member voting,⁴² for bylaws “at least a majority” of “members voting;”⁴³
- Minimum process for calling certain meetings and/or votes;⁴⁴
- Board of directors must consist of at least five (5) directors elected by the members for terms of no longer than three (3) years;⁴⁵
- Officers must include, at minimum, a president, vice-president, secretary and treasurer (or a secretary-treasurer), elected annually unless the bylaws provide

²⁶ [§§ 29-902\(3\)\(B\) to \(C\), 29-922.](#)

²⁷ [§ 29-903 to 904.](#)

²⁸ [§ 29-905.](#)

²⁹ [§§ 29-906, 29-909.](#)

³⁰ [§§ 29-907 to 908.](#)

³¹ [§ 29-923.](#)

³² [§ 29-926.](#)

³³ [§§ 29-927, 29-930.](#)

³⁴ [§ 29-925.](#)

³⁵ [§§ 29-910 to 917.](#)

³⁶ [§§ 29-918 to 20.](#)

³⁷ [§ 29-921.](#)

³⁸ [§ 29-912, 18\(b\) to \(c\).](#)

³⁹ [§§ 29-934, 29-931.](#)

⁴⁰ [§ 29-910.](#)

⁴¹ [§ 29-902\(3\)\(A\).](#)

⁴² [§ 29-907.](#) Note that the vote required varies by nature of the amendment.

⁴³ [§ 29-908.](#)

⁴⁴ [§§ 29-907, 29-910 to 17.](#)

⁴⁵ [§ 29-918\(a\).](#)

- otherwise;⁴⁶
- Controls on board decision-making via member referendum power;⁴⁷
- Removal of a director/officer requires 2/3 of members voting after an opportunity to be heard (in person or by counsel);⁴⁸
- Involuntary termination of a member requires a majority vote of members voting after 10 days’ notice and an opportunity to be heard (in person or by counsel);⁴⁹
- Bonding requirement – every officer or employee handling funds or securities amounting to \$1,000 or more, in any one year must be covered by “an adequate bond”;⁵⁰
- Audit requirement – an LEC’s books must “be audited at the end of each fiscal year by an experienced bookkeeper or accountant, who shall not be an officer or director.”⁵¹

Overall, the general cooperative associations statute is much sparser than many corporate enabling acts. Many of the details of corporate governance are lacking. The statute points LECs to D.C.’s general business corporations enabling act to fill in many of those gaps, providing that “Chapter 3 of this title shall apply to associations formed under this chapter, except to the extent that it is in conflict with this chapter.”⁵² Similarly, the corporate powers of an LEC formed under the general cooperative associations statute include “any power granted to ordinary business corporations, except those powers inconsistent with this chapter.”⁵³ Finally, the general cooperative associations statute explicitly incorporates certain “modernizing” provisions of the business corporations statute.⁵⁴ Another source of best practices is D.C. nonprofit law and practice.

Limited Cooperative Associations

Limited cooperative associations (LCAs) are a relatively new type of entity, developed as a hybrid model to allow a broader range of investment financing schemes while maintaining a cooperative framework. Traditionally, as in Chapter 9, ownership in cooperatives is restricted to member-patrons, with all benefits of any enterprise undertaken by the cooperative to flow only to them and strict limits on distribution of any profits. Cooperatives organized under the LCA hybrid model can generate returns for investors like other traditional corporation types, while restricting the role of investors with regards to member-patrons to protect the culture and mission of

⁴⁶ [§ 29-919](#).

⁴⁷ [§ 29-921](#).

⁴⁸ [§ 29-920](#).

⁴⁹ [§ 29-930](#).

⁵⁰ [§ 29-932](#).

⁵¹ If the annual business amounts to less than \$10,000, the audit may be performed by an auditing committee of 3, who shall not be directors, officers, or employees. [D.C. Code § 29-933](#).

⁵² [§ 29-938](#).

⁵³ [§ 29-905\(9\)](#).

⁵⁴ *E.g.*, [§ 29-305.09](#) (permitting much broader and more flexible remote participation in membership meetings than that authorized under Chapter 9).

traditional cooperatives.

D.C. adopted a limited cooperative association enabling act—Chapter 10 of Title 29 of the D.C. Code—in 2011. Thus far, we are aware of only one LEC in D.C. organized under this chapter, so we do not include a detailed summary of its provisions here.

Foreign Cooperatives

A cooperative incorporated under the laws of another state—and thus categorized as “foreign” by D.C. law—once properly registered in the city,⁵⁵ “shall govern itself in accordance with its bylaws and the laws of the state wherein it is organized.”⁵⁶

Delaware

Delaware corporations have a great deal of latitude to create organizational documents and govern operations so that a closely-held corporation could effectively function as a cooperative (for housing or other business activities). Part of the appeal of Delaware corporate law is the very strong protections for board members in executing their fiduciary responsibilities. Also, uniform codes for business entities weren’t prevalent until about 10-15 years ago, so many jurisdictions did not have decent default rules for cooperatives until fairly recently. As a result, a number of D.C. LECs are still being incorporated in Delaware.

In Delaware, LECs can be incorporated either as general cooperatives or as general corporations set up to run as cooperatives.

Brief Information on Specific Topics

Subsidy Programs

LECs frequently receive subsidies from a variety of sources.

Most commonly, residents moving in to an LEC may bring with them portable housing choice vouchers administered locally by the D.C. Housing Authority (DCHA) with federal funding from the Department of Housing and Urban Development (HUD).⁵⁷ Cooperative members, not just tenants, qualify for these vouchers, colloquially known as “Section 8”

⁵⁵ [D.C. Code § 29-105.03](#).

⁵⁶ [§ 29-936](#); see also *Snowden v. Benning Heights Co-Op., Inc.*, 557 A.2d 151, 154 (1989) (interpreting prior codification).

⁵⁷ Federal regulations apply, but public housing authorities (PHAs) such as DCHA also promulgate their own rules. Admission to the program and termination from the program, as well as rent calculation and other requirements, are governed by Federal and D.C. regulations. See generally, 42 U.S.C. § 1437f, et seq.; 24 C.F.R. pt. 5, 982 (1999); and D.C. Mun. Regs. tit. 14, §§ 76 to 89. DCHA’s Administrative Plan also governs the more detailed aspects of these subjects.

vouchers.⁵⁸ Residents holding a voucher pay 30-40% of their annual income⁵⁹ towards rent or carrying charges, and DCHA pays the remainder directly to the LEC. Rents or carrying charge amounts must be approved by DCHA, based on a payment standard tied to HUD- established fair market rents for the area; ⁶⁰ increases may be requested annually,⁶¹ however, LECs may not request a higher rate for a subsidized unit than a comparable unsubsidized unit.⁶²

When a resident with a voucher moves into the building, LECs become subject to a related set of federal and local regulations,⁶³ and becomes a party to the Housing Assistance Payments (HAP) Contract between the resident, DCHA, and the LEC. Key topics LECs should stay on top of include: Housing Quality Standards inspections⁶⁴ and extra eviction protections.⁶⁵ Housing subsidy law can be complex, and there are many in-depth manuals on the subject; if a subsidy issue arises at an LEC, it's highly advisable to consult with an HCPI attorney.

Older LECs may have site-based subsidies in place, most commonly “project-based Section 8.”⁶⁶ These subsidies are federally funded by HUD and locally administered by DCHA or by a HUD contractor. In contrast to vouchers, site-based subsidies are permanently attached to a specific property—often specific units; they do not move with the resident. Because funding sources for site-based subsidies vary, so do the regulations that apply. If an LEC has a site-based subsidy, you should consult with an HCPI attorney for guidance.

Finally, D.C. has a local housing subsidy program called the DC Local Rent Supplement Program. The program provides voucher-based rental assistance similar to Section 8, and project-based assistance, which is often tied to specific communities or populations.⁶⁷ If you think a housing subsidy may be at issue, consult with an HCPI attorney for guidance.

⁵⁸ D.C. Mun. Regs. tit. 14, § 9216.

⁵⁹ 42 U.S.C. §§ 1437f (o)(2)(A) to (B), 1437f (o)(3).

⁶⁰ 42 U.S.C. § 1437f (o)(1); 24 C.F.R. § 982.503.

⁶¹ D.C. Mun. Regs. tit. 14, § 8304

⁶² 24 C.F.R. § 982.507(d); D.C. Mun.Reg. tit. 14, § 8301.5.

⁶³ See *supra* note 7.

⁶⁴ D.C. Mun. Regs. tit. 14, § 8100.

⁶⁵ See 24 C.F.R. § 982.310; D.C. Mun. Regs. tit. 14, § 9221 (for termination procedures specific to the Home Owner Assistance Program which applies to cooperatives).

⁶⁶ There are different types of project-based Section 8, each with its own regulations. *E.g.*, “Moderate Rehabilitation,” 24 C.F.R. pt. 882; “Substantial Rehabilitation,” 24 C.F.R. pt. 881 and Handbook 7420.2 rev – 1; “New Construction,” 24 CFR § 880, et seq. and Handbook 7420.1 rev – 1. There are also local project-based subsidies, but these are newer and not yet commonly used by LECs.

⁶⁷ [D.C. Code § 6-226](#); D.C. Mun. Regs. tit. 14, §§ 9500 to 9599.

Fair Housing

The fair housing laws that apply to most housing providers apply to LECs.⁶⁸ Fair housing issues most commonly arise for LECs around marketing and resident selection for vacant units and reasonable accommodation or modification requests.⁶⁹ Local D.C. law provides for a much broader list of protected categories than many jurisdictions;⁷⁰ particularly relevant for LECs is that housing providers may not discriminate based on source of income, including against voucher holders.⁷¹

Tax

As discussed above, though LECs are classified as nonprofits, they are not tax-exempt.

⁶⁸ The Civil Rights Act of 1866; The Civil Rights Act of 1964 (Title VI); Fair Housing Act of 1968 (Title VIII) (Amended 1988); The Architectural Barriers Act of 1968; The Rehabilitation Act of 1973 (Section 504); The D.C. Human Rights Act of 1977; The Americans with Disabilities Act 1990.

⁶⁹ A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling. A reasonable modification, by contrast, is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Various federal laws, including the Fair Housing Act, Section 504 and the Americans with Disabilities Act, require different types of housing providers to make or permit reasonable accommodations and modifications. *See* 42 U.S.C. § 3604(f)(3)(B); 29 U.S.C. § 794; 28 C.F.R. § 36.302. Good practical overview to the process most housing providers should follow in identifying and responding to reasonable accommodation or modification requests can be found the Department of Justice and United States Department of Housing and Urban Development joint statements. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (for reasonable accommodations); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Modifications Under the Fair Housing Act* (March 5, 2008), https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf (for reasonable modifications).

⁷⁰ Federally protected factors include race, color, national origin, religion, sex, disability, and familial status. *See* 42 U.S.C. §§ 3604 to 06, 3617. D.C. additionally protects age, sexual orientation, marital status, political affiliation, personal appearance, gender identity or expression, family responsibilities, matriculation, source of income, place of residence or business, and victims of intra-familial offenses. [D.C. Code § 2-1402.21](#).

⁷¹ The District of Columbia Human Rights Act ("DCHRA") makes it an unlawful discriminatory practice to "refuse or fail to initiate or conduct any transaction in real property" when such refusal is wholly or partially based on the tenant's source of income. [D.C. Code § 2-1402.21\(a\)](#). Receiving rent assistance in the form of a voucher falls within the definition of "source of income" under the DCHRA. *See* [D.C. Code § 2-1401.02\(29\)](#). Further, the DCHRA specifies that "[a]ny practice which has the effect or consequence of violating any of the provisions of this chapter [Chapter 14. Human Rights] shall be deemed to be an unlawful discriminatory practice." [D.C. Code § 2-1402.68](#). *See also* *Feemster v. BSA Ltd. Partnership*, 548 F.3d 1063 (D.C. Cir. 2008) (holding, in part, that a developer's refusal to accept vouchers facially discriminated on the basis of source of income, despite the lessor's alleged non-discriminatory motive of wanting to avoid administrative burdens associated with the voucher program).

Though D.C. LECs must file both federal⁷² and D.C.⁷³ income taxes annually, they typically end up owing no federal taxes and very minimal local tax.

Similarly, on the property tax front, there are a variety of credits and deductions for limited equity cooperatives (LECs), cooperatives generally, senior citizens, and the general population that apply to either the tax amount or the property's assessed value. Upon formation, LECs generally apply for and receive a full exemption from property taxes for the first five (5) years of their existence.⁷⁴ Thereafter, the property tax relief that typically applies to LECs includes:

- **Homestead Deduction:** For principal residence. Reduces real property's assessed value by lump sum (starting at base of \$67,500, increased annually since 2012; \$76,350 for 2020⁷⁵) prior to computing the yearly tax liability.⁷⁶
- **Limited Equity Cooperative Tax Fairness Program:** Basically a formula that potentially lowers assessed value of LEC property below market value using one of three approaches.⁷⁷
- **Senior Citizen or Disabled Property Owner Tax Relief:** Reduces tax liability for property ≥ 50% owned by low-income disabled or senior (65+) citizen, “computed by multiplying the tax rate by 50% of an amount equal to the current tax year’s taxable assessment attributable to the eligible household.”⁷⁸ “[T]he deduction shall be passed on to the eligible household by the cooperative housing association during the corresponding tax year.”⁷⁹
- **Assessment Cap Credit:** A property may not be taxed on more than a 10% increase in the property’s assessed value each year.⁸⁰
- **Lower-Income, Long-Term Homeowners Tax Credit:** A refund from DC individual income tax for low-income residents who have lived in their homes seven consecutive years or more.⁸¹
- **Trash Credit:** For owners of condominiums, cooperative dwelling units, or certain homeowners who pay for garbage collection instead of receiving city garbage service.⁸²

⁷² They file 1120-C for cooperative associations.

⁷³ They file the D-20 SUB Corporation Franchise Tax Return.

⁷⁴ This exemption is based on an LEC’s low-income ownership households and requires at least 50% of the dwelling units in the property are occupied by income-eligible households. [D.C. Code §§ 47-1002\(21\), 3503\(c\)](#).

⁷⁵ See [DC Office of Tax and Revenue](#).

⁷⁶ [D. C. Code §§ 47-850, 849\(2\)\(B\)](#).

⁷⁷ [§§ 47-802\(11\), 820.01](#).

⁷⁸ [§ 47-863\(b\)\(2\)\(A\)](#).

⁷⁹ [§ 47-863 \(c\)\(2\)\(C\)](#).

⁸⁰ [§ 47-864](#).

⁸¹ [§ 47-1806.09](#).

⁸² [§ 47-871 to 87](#)

Board Legal Duties and Responsibilities

Directors/officers on cooperative boards owe fiduciary duties, including duties of care and loyalty to their cooperatives and their members. This means they must make careful and informed decisions in the best interest of the cooperative and its residents as a whole, above any personal interest that might conflict and take active steps to take care of the cooperative. For example, cooperative boards should monitor their financial reports to ensure they have enough income to make repairs and pay their mortgage. If the cooperative falls into disrepair, or if it fails to make mortgage payments, the cooperative could be at risk of lawsuits and foreclosure. For example, an individual board director's decision to vote against a carrying charge increase that would benefit the cooperative because they personally do not want to pay it could be a breach of their fiduciary duty to the cooperative. However, the business judgment rule gives boards wide discretion to act in whatever way they deem necessary to exercise their duty of care to the cooperative.

Lenders & Unique Compliance

Because LECs typically receive acquisition and renovation financing from government or nonprofit sources focused on ensuring their affordable housing missions for the long-term,⁸³ lender compliance requirements often exceed what would typically be required for similar, market-rate properties. In addition to terms standard for multifamily residential properties, LECs' mortgages often require detailed annual reporting and lender notice and approval of LEC business as minute as amendments to any bylaws provision. Loans from the D.C. Department of Housing and Community Development often carry local procurement and building requirements. Some lenders have even gone so far as to require LECs to sign on to—and pay for—“stewardship services” for the life of the loan.

Local Grant Programs & Requirements

In addition to a unique lending landscape, LECs also often benefit from a variety of grants available for building maintenance and upgrades. As these benefits are typically geared towards low-income homeowners with a goal of maintaining affordable housing, they often require the LEC to commit to covenants or other long-term contractual requirements with ongoing compliance demands. This may include anything from annual resident income certification, to regular monitoring and removal of tree shadows under solar leases.

⁸³ For more info on LEC financing, see [Creating and Sustaining Limited Equity Cooperative in the District of Columbia](#).

Maintenance

Unlike market-rate cooperatives, many LECs take, essentially, full responsibility for maintenance of their entire buildings—common areas and individual units alike. Expecting low-income residents to individually fund major repair needs in their own units is often unrealistic and would result in damaging deferred maintenance the LEC would likely ultimately become responsible for when the unit is vacated. Additionally, housing subsidy programs often impose additional requirements.⁸⁴ LECs do typically impose responsibility on members for repairs resulting from member negligence, repairs to member-purchased fixtures or appliances, and for certain, more minor repairs. In summary, each LEC's maintenance plan is highly individual and typically found in most comprehensive form in the occupancy or lease agreements signed by each member and tenant, though relevant provisions can also be found in other governing documents. Regardless of their form, it is critical LECs stay on top of these maintenance requirements, as they otherwise face many of the same risks of an average landlord in D.C.—from DCRA complaints, to subsidy stoppages, to tenant petitions, or Housing Conditions Court.⁸⁵ It is also critical for LECs to make sure board practice aligns with governing documents and is consistently applied to all residents and repair types.

Guidance for Working with Cooperative Clients

It is important to recognize that all board members of our cooperative clients are volunteers, most of whom are low-income and work full time outside of their cooperative duties. This can pose some unique challenges; please keep in mind the following when working with cooperative boards:

1. **Evening meetings are generally preferable.** Many board members work during the day and are usually unavailable; meetings outside of normal working hours usually work best for our clients.

⁸⁴ See, e.g., *supra* note 14.

⁸⁵ Though under D.C. Mun. Regs. tit. 14, § 9216.16, arguably cooperative members with Housing Choice Vouchers might be held to the same standards as all other cooperative members regarding division of responsibility between the cooperative and its members for repairs and maintenance, in practice, DCHA treats cooperatives the same way it treats other landlords, because DCHA staff, generally, do not understand the complexity of cooperatives. Similarly, other forums for hearing tenant complaints about housing code violations that might technically be foreclosed to cooperatives, in practice hear them regularly. Lawyers representing cooperatives in Landlord Tenant Court regularly file nonpayment of rent cases instead of terminated cooperative member cases, thereby opening up the cooperative to housing code defenses. The District of Columbia Rental Housing Commission, where tenant petition causes of action can include an unlawful rent increase or reduction in services due to the existence of housing code violations, has held that it has no jurisdiction over a conflict between a cooperative and its members. See *H & E Management v. Davis*, TP 11,049 (RHC July 9, 1984) (“The appellee is not a tenant in that he does not pay rent. He is an owner of shares in the cooperative.”). But the Commission regularly hears those too.

2. **Board members may have limited access to technology.** Many board members do not have access to printing, scanning, or even email. We have developed many adaptations for the common challenges that these limitations present, but bear in mind that such limitations can cause delays.
3. **Board members may have varying levels of understanding of their governing documents, contracts, and other institutional knowledge.** These documents are often lengthy and written using legal terminology or complicated language that can be difficult for the lay person to understand. When discussing governing or other legal documents, try to use accessible language and avoid jargon.
4. **You may encounter language barriers.** Some boards have non-English speaking members. Often other board members may act as interpreters, but in order to allow full participation for all members, we recommend using a professional interpreter during meetings.

Timekeeping Requirements

NLSP will track volunteer hours for the project on a monthly basis and requests that attorney volunteers keep a contemporaneous record of their time spent on HCPI cases. While case matters are ongoing, the Project Coordinator will email attorney volunteers or their designated contact at the beginning of each month to ask for an accounting of the total hours that the volunteer worked in the preceding month. The Project Coordinator will follow up with the attorney volunteer by email and by phone as necessary to obtain information. A short message identifying the total number of hours for the month is sufficient. If more convenient, volunteer attorneys may submit information in the form of a non-payable bill. Volunteer attorneys who prefer to inform NLSP of volunteer hours in this way should notify the Project Coordinator at the beginning of the case.

Ongoing Support and Closing Cases

NLSP staff will conduct regular check-ins with attorney volunteers to note updates about the case, ensure client communications are going well, and that the attorney volunteer has the information and other assistance they need from NLSP. We will also be available to answer general questions regarding housing cooperative association clients and the law governing them. Attorney volunteers are asked to send a closing letter to housing cooperative clients at the end of the case. After the case is closed, NLSP will send a Pro Bono Attorney Experience Survey to obtain feedback from the attorney volunteer.

Recordkeeping Requirements

Attorney volunteers will maintain their own casefiles in keeping with the Rules of Professional Conduct and their engagement letters with HCPI clients. While cases are pending, attorney volunteers should provide NLSP a copy of all filings in any litigation or administrative adjudication related to a HCPI case. Original documents obtained from a housing cooperative client or an agent of the cooperative should be returned to the housing cooperative or NLSP unless all of the parties agree to a separate arrangement. Attorney volunteers must notify NLSP at the conclusion of the representation and provide a copy of the final decision, work product, or other outcome in the case.