

Lost Proprietary Documents a Growing Problem

Co-ops need to take protective action

*By Joyce Rhodes, President
Edmund J. Flynn Company*

The problem

Because of mergers, bank failures, and other recent financial difficulties, a new problem has evolved that affects some District housing cooperatives: lost and destroyed “proprietary documents” and associated settlement dilemmas. Proprietary documents include stock certificates, proprietary leases, and ownership contracts; settlement problems include delayed settlements and delayed disbursements of funds for sellers, buyers, and cooperative boards of directors.

The Edmund J. Flynn Company, the company that introduced and developed cooperatives in the District of Columbia and the company that settles the vast majority of cooperative sales, has identified the loss and destruction of these important documents as a major, and growing, problem

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Tom Sherwood Speaks at 2008 Annual Meeting



Tom Sherwood, NBC4 TV

Following a pre-meeting social period with refreshments, approximately 30 people attending the 2008 Annual Meeting of the Coalition held at the Broadmoor Cooperative, listened to guest speaker Tom Sherwood, a reporter for local WNBC TV affiliate specializing in District politics, talk about Washington politics and the possible changes that might result from this year’s Presidential election, including greater security. Following his remarks, Mr. Sherwood opened the floor to questions. Topics covered by members’ questions ranged from

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CAI Conference & Expo March 28, 2009



The Coalition is pleased to announce that it has been asked to join in the Washington Metropolitan Chapter Community Associations Institute’s 2009 Conference and Expo.

The Coalition has participated as an Allied Partner. The 2009 event will be held in the Washington Convention Center on Saturday, March 28. The event includes many helpful training sessions as well as many vendors serving homeowners associations including cooperatives.

The Coalition will send out additional information about the event in the next few months. Consider sending several Board and/or committee chairs to this event and join hundreds of other homeowner board members. It will be time well spent.

Lost Documents *(from page 1)*

In accordance with the Cooperative Addendum to the Regional Sales Contract, sellers are responsible for providing their original proprietary documents prior to or at the time of settlement. Usually, this is less of a problem when the seller owns his or her unit free and clear, but this is not typical. For the seller that has pledged and assigned their original proprietary documents to a lender as collateral security for a loan, the seller is solely responsible for ensuring that the proprietary documents are delivered at settlement following the payoff of the existing loan.

No effective mechanism or leverage

There is no effective mechanism in place to assure buyers of cooperative units and cooperative boards that sellers have indeed returned the original proprietary documents to the appropriate authority. As a consequence, these documents are not always available, thereby making it impossible to complete a settlement without adding many days, weeks, and sometimes months, before funds can be disbursed. Settlement companies, including the E.J. Flynn Company, and attorneys have spent many hours begging lenders to return the proprietary documents. I know from personal experience the number of hours I spend writing and mailing letters and emails, and calling lenders asking for their cooperation.

Unfortunately, settlement companies and cooperative boards have no leverage with lenders or sellers after settlement. Once settlement has occurred and a lender and a seller have their money, they have no interest in following through to provide the proprietary documents to the settlement companies or boards of directors.

Solution one: Escrow fee for lost documents

In the event the proprietary documents cannot be located, an affidavit of loss and indemnification can be used; a majority of District cooperatives accept this affidavit. In support of the affidavit of loss, the Flynn Company has started a new procedure for those cooperatives using the Flynn Company as their transfer agent: in the event of lost proprietary documents, a seller authorizes the Flynn Company to escrow between \$300 and \$500 from their proceeds to cover the cost of preparing an affidavit of loss. We, as the settlement company, maintain the escrow for 60 days. This 2-month period is an amount of time that we deem reasonable for a lender to return the proprietary documents. The agreement requires the seller to allow for the automatic release of the escrow on the 61st day.

Solution two: Update Recognition Agreements

Currently, lenders believe they bear no responsibility for paying the costs for lost or destroyed proprietary documents because

that responsibility is not explicitly stated in recognition agreements. In addition, lenders, themselves, do not have any requirements that dictate a specific time period by which they must return the original proprietary documents after a loan has been paid in full.

To correct the situation, and because recognition agreements vary from lender to lender and cooperative to cooperative, the Flynn Company suggests that cooperatives and lenders consider making the following changes to their recognition agreement documents:

The Corporation has issued to Borrower, or will issue to Borrower to be held by Lender, promptly after settlement, the evidence of Borrower's ownership in the Corporation and possession and use of the Unit which in the case of this Corporation are represented by _____ ("Proprietary Documents"). If the Proprietary Documents are lost or destroyed, the Lender will be responsible for the costs and replacement of lost or destroyed documents as required by said Cooperative.

If the Lender does not release/return the original Proprietary Documents to the Cooperative within sixty (60) days from the Borrower's pay off the Loan, the Lender will proceed with the Cooperative's requirement for lost Proprietary Documents.

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Separately, the Flynn Company also recommends that lenders establish one or more “Custodians” in the District of Columbia to act as their agents for proprietary documents. These custodial agents would be responsible for storing these critical documents, thereby eliminating the chances that documents will be lost or destroyed. Such a practice exists in New York and has served the lending and cooperative communities well.

Annual Meeting (from page 1)

his reflections on the District’s school system to why he decided to sell his home in Tenleytown after living there over 20 years and then purchasing a cooperative apartment on the Southwest waterfront (hopeful to the former, and ease of maintenance and location, for the latter).

Following Mr. Sherwood’s presentation, the formal portion of the annual meeting was called to order and the Coalition Board Directors introduced. Reports by Treasurer Nancy Skinkle (Broadmoor), Secretary Art Leabman (1870 Wyoming Avenue), and President Mike O’Dell (Harbour Square) were given.

Vice President Carl Gerber (The Cathedral Avenue) conducted the election of officers. In addition to the current directors, three new

directors were elected. Board members are listed on page 4.

Coalition’s Turns 25!

2009 marks the Coalition’s twenty-fifth anniversary, a major achievement for any organization, especially for a volunteer organization! Over the years, the organization has grown to become known and respected by our members and city officials. During our past 24 years, we have made significant achievements, including legislation that defined how market-rate housing cooperatives are assessed.

In recent years the Coalition moved forward by taking advantage of technology: improving our web site, including member profile pages to the site, and initiating e-mail notifications. Our future looks bright, as we begin our next twenty-five years and become an even more important part of our members’ interests!

Reverse Mortgages for Co-op Owners

On July 30, legislation was signed into law that will provide co-op owners with the ability to seek reverse mortgage loans (also known as home equity conversion mortgages or HECMs), a benefit that had been limited to owners of single-family homes and condominiums (*Member News*, 1st Quarter 2008, pp. 1-2). Until policies and procedures are

finalized, you can learn more about reverse mortgages, by going to:

<http://www.aarp.org/money/wisecounsel/financinghomes/a2002-09-30-HomeLoansReverseMortgages.html>

Update: Proposed Employee Parking Fee Legislation

Other than holding a June 25 “Roundtable,” the City Council has taken no action on B17-0725, “District Department of Transportation Clean Air Compliance Fee Act of 2008” (*Member News*, 2nd Quarter 2008, p.1). If passed as written, employers would be charged a “fee” of \$25 each month for each employee parking space they now offer for free.

OTR Co-op Survey

With a June 25 e-mail alert, the Coalition notified members about a DC Office of Taxation and Revenue (OTR) survey originally due July 15. The next day a mailed letter provided additional, more detailed information. Many of our members were unaware of the survey and many more of our members were relieved to learn that the data being sought was limited to three years and only for sold units, saving our members much time and money!

The Coalition also worked with OTR to extend the July 15 deadline and to eliminate any penalties for late filing.

Board of Directors**President**

Michael O'Dell
Harbour Square, 447 units

Vice President

Carl Gerber
The Cathedral Avenue, 145 units

Secretary

Art Leabman
1870 Wyoming Avenue, 28 units

Treasurer

Nancy Skinkle
The Broadmoor, 194 units

Directors

Fred Dyda
Tilden Gardens, 170 units

Madeline Evaneck
Naylor Gardens 318 units

Desmond Foynes
The Presidential, 43 units

Jill Golden
3028 Porter Street, 11 units

David Horrigan
1300 Massachusetts Avenue (The DeSoto), 31 units

Paul St. Hilaire
Tiber Island, 389 units

JoAnn Wells
Potomac Plaza Apartments 249 units

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About the Coalition


Established in 1984, the DC Cooperative Housing Coalition exists to advance the common interests of cooperative housing associations in the District of Columbia and to promote cooperative housing as a desirable form of home ownership. It is therefore both an advocacy organization that articulates the interests of members before government officials and regulatory agencies and a service organization that provides information and education to members.

Membership is open to all District housing cooperatives, regardless of size. A volunteer board of directors, elected by member co-ops, governs the Coalition. Activities are financed through annual dues.

The Coalition grew out of an ad-hoc group of District cooperatives that formed in response to a judicial ruling that had cast a cloud over many cooperatives by banning proportionate voting. By marshaling the forces of more than 3,000 housing cooperative units, the ad-hoc group persuaded the District's City Council to resolve the matter.

Recognizing the importance to the cooperative housing community of speaking in a single voice and maintaining the ability to respond quickly and knowledgeably to matters affecting cooperative housing, the ad-hoc group decided to form a permanent organization. The Coalition was established in 1984 and was incorporated as the DC/CHC, Inc., a nonprofit, IRS Code Section 501(c)(6) organization in the District of Columbia, May 24, 1993.

Member Web Page

Does your cooperative have its own dedicated page on the Coalition's web site? It's free and it is one of the benefits Coalition membership. To see examples, go to www.coopscdc/Membership.htm and click on members with the  icon next to their names. Don't let your co-op miss out on this members-only benefit!

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**Does your co-op need
a web site or
one that needs updating?**

CHC is fortunate to have found a talented web designer to create our web site. Luckier still, he is willing to create sites for our member coops at reasonable rates. Go to our web site, <http://www.coopscdc.com/services.htm>, and click on "Scott D. Seligman." Scott has done several web sites for co-ops in addition to the profile pages on our web site.