



# DC Cooperative Housing Coalition News

Representing the interests of the cooperative community in the District of Columbia since 1984

May – August | 2016

Serving the District's cooperative housing community for 32 years

**Mark your Calendar:**

## Annual Meeting

Tuesday evening,  
October 18

Hosted by

The Broadmoor Cooperative  
3601 Connecticut Ave., NW

Once again, the Coalition's Annual Meeting will be hosted by the Broadmoor Cooperative, conveniently located just a block north of the Cleveland Park Metro (Red Line) Stop. (Learn more about the Broadmoor's interesting history:

<http://www.broadmoordc.com/History.htm>).

The program and start time announcement will be mailed mid-September to the co-op member's Coalition representative of record. We look forward to seeing you there!

## Solar Power Seminar *New DOL Regulations: Proper Classification of Community Association Employees Matters*

By Lynn Ohman, Shoreham West

On Saturday morning May 7, the DC Cooperative Housing Coalition presented a seminar, *Installing Solar Power: Issues for Housing Cooperatives in DC*. Held at the Harbour Square Cooperative in Southwest DC, over 50 people attended, representing 27 cooperatives.

Four panelists discussed financing options, federal and state tax credits and other financial incentives available to market rate housing cooperatives interested in installing solar collectors. The panelists focused on the advantages of "going solar". They also answered questions from the audience regarding implementation concerns and maintenance.

Anya Schoolman, Executive Director, Community Power Network and Founding Member of DC Sun shared insights into the types of solar projects that are being installed through-out DC neighborhoods and, in particular, in multi-family buildings. She discussed her organization's commitment to setting up purchasing groups that allow consumers to arrange the most favorable pricing, and provide assurances that installations will  
(Cont'd, page 3, "Solar Power")

By: Jennifer S. Jackman, Esq. and  
Tiffany M. Releford, Esq.  
Whiteford, Taylor & Preston

Proper classification of employees is critical to avoid potential liability for unpaid overtime. If that did not get your attention, then consider this: In addition to unpaid overtime, misclassification of employees can result in liquidated damages, equitable relief and reimbursement of attorney's fees. Classification is particularly important now, in light of the proposed changes to the Fair Labor Standards Act ("FLSA").

As a general review, there are two types of classification for employees: exempt and non-exempt employees. Exempt employees are not entitled to overtime and their hours worked are not tracked. On the other hand, non-exempt employees are required to earn overtime for each hour worked over 40 hours and organizations are required to track non-exempt employees' time.

There are two tests to use when classifying an employee. The first test is the "salary test" which  
(Cont'd page 2, "New Regs")

**New Regs** (From page 2)

requires that an exempt employee make a minimum of \$455 per week or \$23,660 annually, with a few limited exceptions. The second test is the “duties test”. The factors to use in the duties test are dependent upon the exemption category relied upon.

There are many exemption categories and those include, without limitation, executives, administrative staff, education employees, professionals, creative professionals, computer professionals, outsides sales employees, and highly compensated employees. The test for each exemption category is different but most of the tests require that an exempt employee’s primary duty include the exercise of discretion and judgment with respect to matters of significance.

As a general rule, status as an exempt employee should be the exception not the norm. This is because the presumption is that most employees should be classified as non-exempt (and subject to overtime) rather than exempt (salaried). The most commonly confused and misclassified exemption category is the administrative exemption in which the primary duty must be the performance of non-manual work that is directly related to the management or general business operations of the organization in which the person exercised discretion and independent judgment with respect to matters of significance. If an employee is classified as exempt under the administrative exemption but is primarily in a support position (i.e. receptionist), which is often the case with administrative positions, that position should be non-exempt.

Similarly, the computer employee exemption is often misunderstood. This exemption applies to computer programmers and engineers – the employees who design computer systems – and not to help desk employees or the typical IT employee.

Currently, more than 85% of the workforce satisfies the salary test for exempt employees, meaning,

the majority of the workforce earns more than \$23,660 annually. This is about to change. In July 2015, the Department of Labor, at President Obama’s urging, issued its long awaited proposed changes to the FLSA Regulations which, if enacted, will dramatically increase the minimum salary for exempt employees to \$921 per week, or \$47,892 annually. In addition, the proposed changes will provide an automatic adjustment of the minimum salary requirement going forward annually meaning that the minimum salary for exempt employees will continue to increase yearly. These changes are expected to take effect in 2016.

What this means for community associations is that beginning possibly in 2016, employees who are currently classified as exempt may need to be reclassified to non-exempt employees and entitled to overtime if they make less than \$47,892 annually. This will affect budgeting since community associations will need to determine whether the affected employees will end up working overtime, and if so, what the cost to the community association will be. In some instances, community associations may need to consider whether the estimated costs of overtime are higher than the cost of increasing the salary to the new minimum amount and make a decision as to whether to increase salaries to allow the exemption status to remain. Either way, community associations need to be aware that payroll will likely increase in the upcoming years.

What can you do to prepare your community association for the upcoming changes and to ensure that your association has properly classified its employees?

**Review Job Review Job**

**Descriptions.** Associations should review all of the job descriptions to ensure that they accurately reflect the essential functions of the job, particularly for exempt positions.

Determine which specific exemption category is relied upon for each position and ensure that the job descriptions support that exemption status. For example, the primary duty for most exempt requires the exercise of discretion and judgment with respect to matters of significance. Accordingly, job descriptions for exempt positions must include language that satisfies those factors and should include language such as “supports” and “assists”. If the accurate job description does not satisfy the requirements of that category or the employee actually is more of a support person and does not have independent discretion, strongly consider changing the employee to non-exempt.

**Identify “at-risk” positions.** At risk positions are those positions that either will not meet the minimum salary test when the changes are implemented or where compliance with the duties test is questionable. The administrative exemption is the most commonly confused and misclassified exemption. Carefully scrutinize all exempt positions, especially ones that are classified under the administrative exemption.

**Plan.** Plan how your community association will adjust if the minimum salary increases and how those changes will be communicated to staff. Sometimes employees feel marginalized or demoted when they are changed from exempt to non-exempt, despite the fact that nothing substantively changes in their position other than their ability to earn overtime. That said, requiring a  
(Cont’d. page 3, “New Regs”)

**New Regs** (From page 2)

previously exempt employee to clock in and out may have a negative effect on employee morale.

Consider the messaging that will be used if changes to exemption status are made. In the event that you determine you have misclassified employees, discuss options for correcting the misclassifications with counsel in order to minimize risk and liability.

**Consider an HR audit.** Hiring an outside attorney or consultant to review your job descriptions and policies (including overtime policies) can help ensure compliance with local and federal laws and can be useful in adopting policies and strategies moving forward to best deal with the proposed changes. The proposed changes to the FLSA regulations may be costly to community associations. Taking the above actions will help your community association minimize risk and prepare for these changes.

Please contact Jennifer S. Jackman [jjackman@wtplaw.com](mailto:jjackman@wtplaw.com) and/or Tiffany M. Releford [treleford@wtplaw.com](mailto:treleford@wtplaw.com) with any questions or for assistance in preparing for the proposed changes.

**Solar Power** (From page 1)

be done with quality parts and labor. Community Power Network is a community-based non-profit organization. Ms. Schoolman is prepared to provide advisory services for a modest fee to market

rate cooperatives interested in pursuing solar. For more information, DC CHC members should contact Ms. Schoolman directly: [anya@communitypowernetwork.org](mailto:anya@communitypowernetwork.org)

Colleen Rooney, former president of the Tiber Island Cooperative provided a “view from the board of directors”. Tiber Island installed a thermal solar system in 2011. The system generates fewer savings than was initially predicted because solar panels could not be placed at as advantageous an angle to the sun as originally planned. She also shared with the group that communication with the installer who is also the lease-holder has not been as smooth as expected after the initial installation. The installer was Skyline Solutions, now Nextility. Overall, however, Tiber Island’s commitment to “going green” made the installation worthwhile. When Tiber Island’s 10-year lease is up with Nextility in 2021, the coop plans to take advantage of technological improvements in solar energy generation, and install a photovoltaic system with increased generation of solar electricity.

Judith McNelis, General Manager Cathedral Avenue Cooperative addressed solar implementation from the general manager’s point of view and as the person responsible for working directly with vendors and reporting to the coop’s board of directors. Her cooperative, Cathedral Avenue, recently explored installing a photovoltaic system. They were ready to proceed when it was determined that installation would void an existing warranty on the construction of the building’s roof. Ultimately, Cathedral Avenue decided against moving ahead with solar. Cathedral Avenue will revisit installing solar when the building’s roof is rebuilt in the future.

Julian Belilty, Energy Consultant, Nextility, Inc. (formerly Skyline

Solutions) discussed how his company evaluates buildings for solar installations and determines leasing options. Nextility, and most



other solar installers, currently work exclusively with photovoltaic solar systems which generate metered electricity. This is a change in the industry from as recently as three years ago, when thermal systems were quite common. Mr. Belilty explained that typically a building agrees to lease roof space for a period of 15 years to Nextility. Nextility pays for and installs a solar system in the leased space. Nextility “collects” the electricity generated by the solar system and gives the building a discount on this electricity from what the building would have paid had it purchased the electricity from a standard source. Mr. Belilty is available to discuss individual installations with any interested cooperatives. He can be contacted at: [jbelilty@nextility.com](mailto:jbelilty@nextility.com)

Many thanks to Harbour Square for providing its meeting room for this DC CHC seminar.

**e-Mail surveys**

The following surveys were conducted at the request of Coalition members May through August:

- Gas-fired Heat Conversions (May)
- Washers & Dryers (August)
- Smoking Policies (August)

Columbia, May 24, 1993.

**Board of Directors****President**

Russ Rader  
The Westmoreland, 60 units

**Vice President**

Lynn Ohman  
Shoreham West, 60 units

**Secretary**

Art Leabman  
1870 Wyoming Avenue, 28 units

**Treasurer**

Dottie Moskowitz  
Tiber Island, 389 units

**Directors**

Fred Dyda  
Tilden Gardens, 170 units

Stephen McKeivitt  
Beverly Court, 39 units

Michael O'Dell  
Harbour Square, 447 units

Ray Olson  
River Park Mutual Homes, 518 units

Nancy Skinkle  
The Broadmoor, 194 units

Janet Sten  
3020 Tilden Street, 20 units

John Thornburg  
The Cathedral Avenue Cooperative, 145 units

**Counsel**

Joseph Douglass  
Whiteford, Taylor & Preston, LLP  
1800 M Street NW Suite 450N  
Washington, DC 20036  
202- 659-6779  
[jdouglass@wtplaw.com](mailto:jdouglass@wtplaw.com)

**Administrative Assistant**

Jim Smith  
700 7<sup>th</sup> Street, SW #633  
Washington, DC 20024  
200-488-3670  
[DCCHC@aol.com](mailto:DCCHC@aol.com)

**Contact us:**

[CooperativesDC@aol.com](mailto:CooperativesDC@aol.com)  
[www.CoopsDC.org](http://www.CoopsDC.org)

**About DC/CHC, the Coalition**

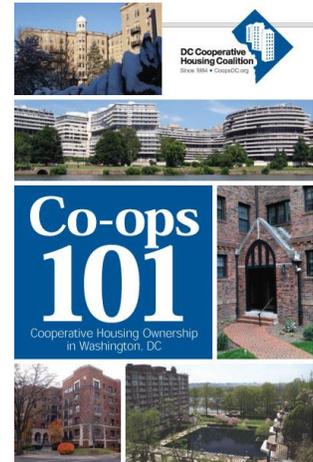
Established in 1984, the DC Cooperative Housing Coalition exists to advance the common interests of cooperative housing associations in the District of Columbia and to promote cooperative housing as a desirable form of home ownership. It is therefore both an advocacy organization that articulates the 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, \$1.50 per unit per year (12.5 cents per month)

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 DC/CHC, inc., a nonprofit, IRS Code Section 501(c)(6) organization in the District of

**Co-ops 101 Free download:**

<http://coopsdc.org/wp-content/uploads/2014/07/Co-ops101-PDF.pdf>

**Reproducing DC|CHC News Articles**

Special permission is not required to reproduce articles. However, each reproduced item should contain proper acknowledgement of the DC Cooperative Housing Coalition and note the **DC|CHC News** as the source.

**Member Profile Page**

Does your cooperative have its own dedicated page on the Coalition's web site? It's free and it is one of the Coalition membership benefits. See what your co-op is missing at <http://coopsdc.org/members/> and click on members with names in bold. **Don't let your co-op miss out on this members-only benefit**

[www.CoopsDC.org](http://www.CoopsDC.org)

*The first place to look for a service provider*