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**HOMEOWNER ASSOCIATION
OVERVIEW AND FORMATION COURSE**

Kazakstan

August 1996

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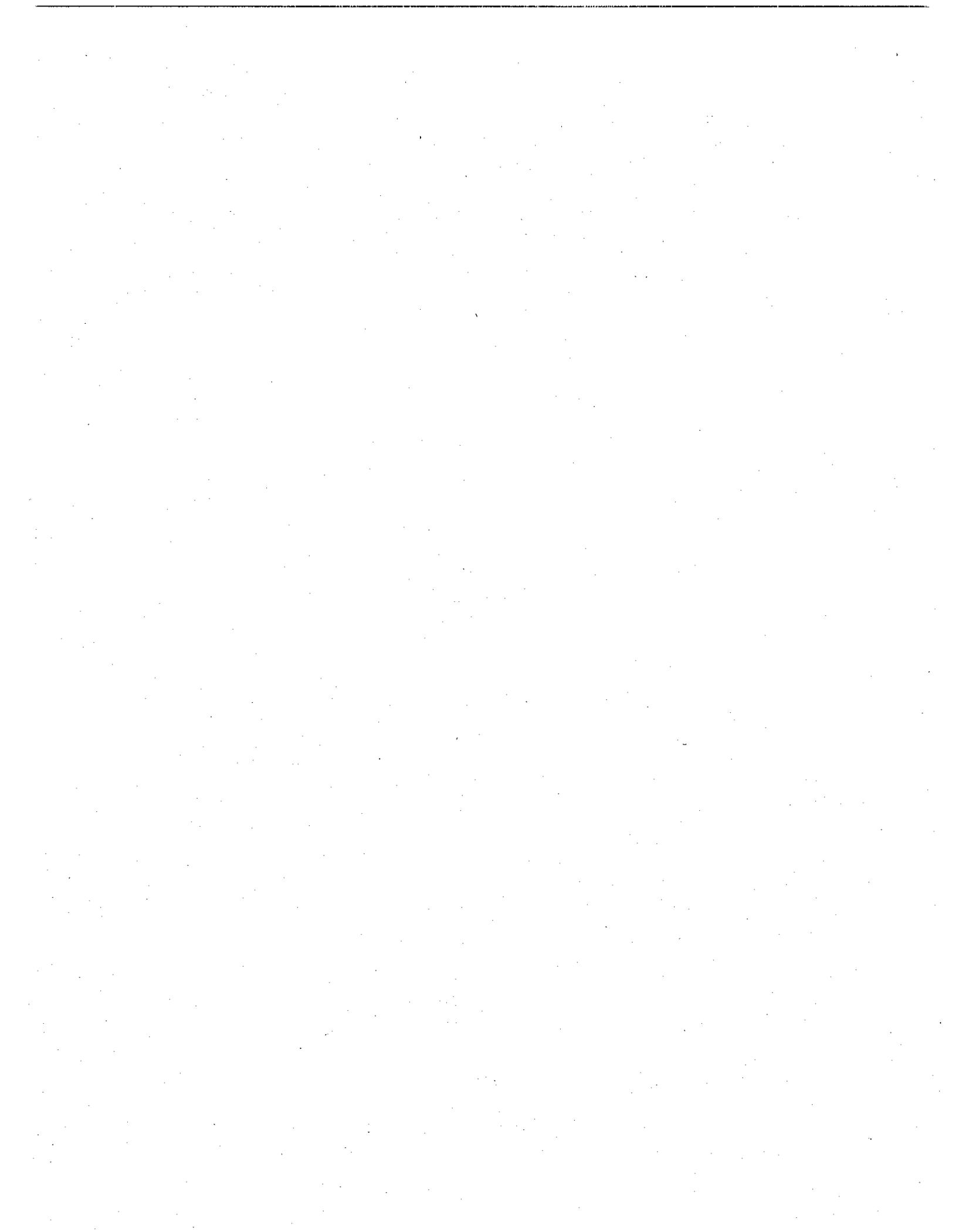
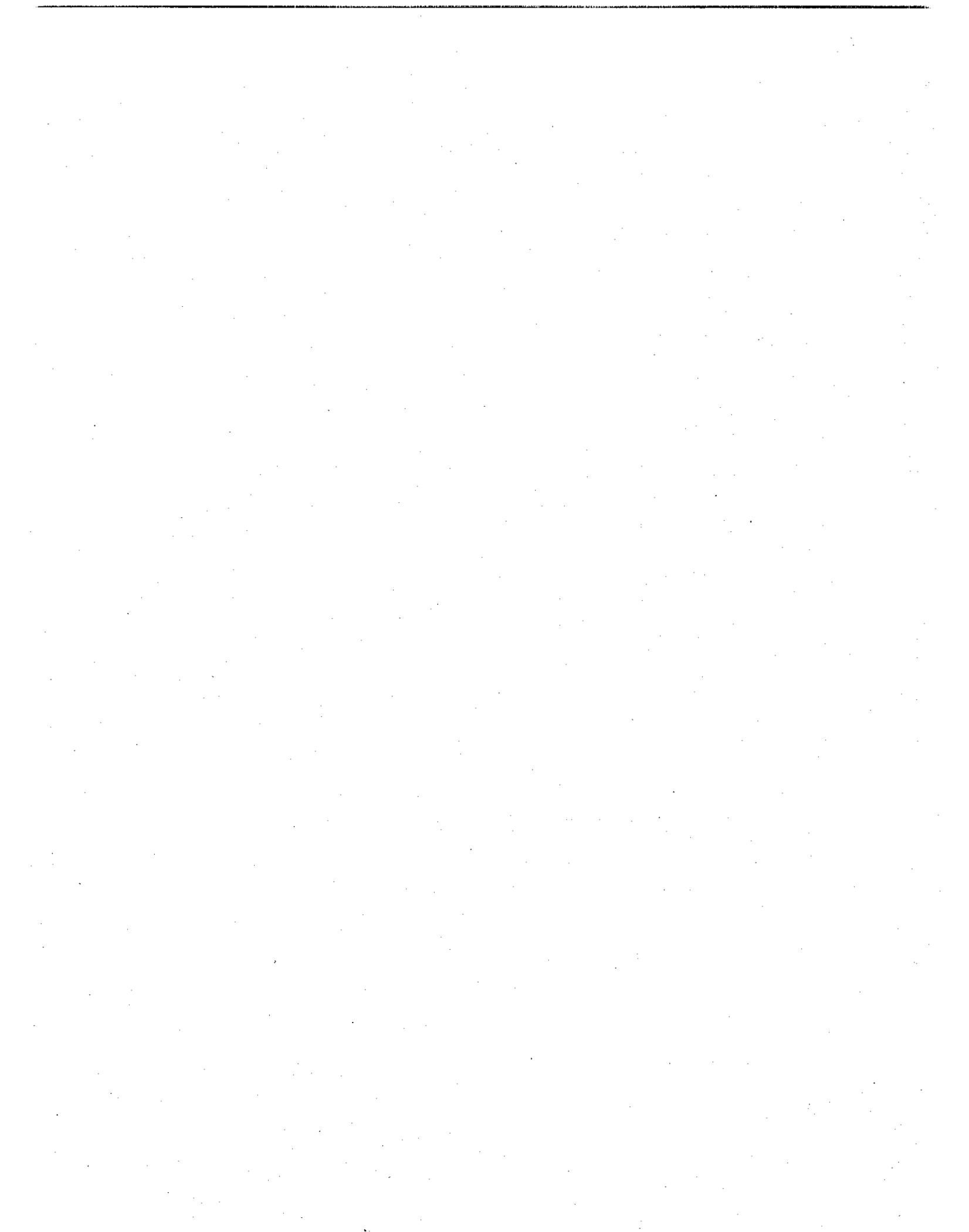


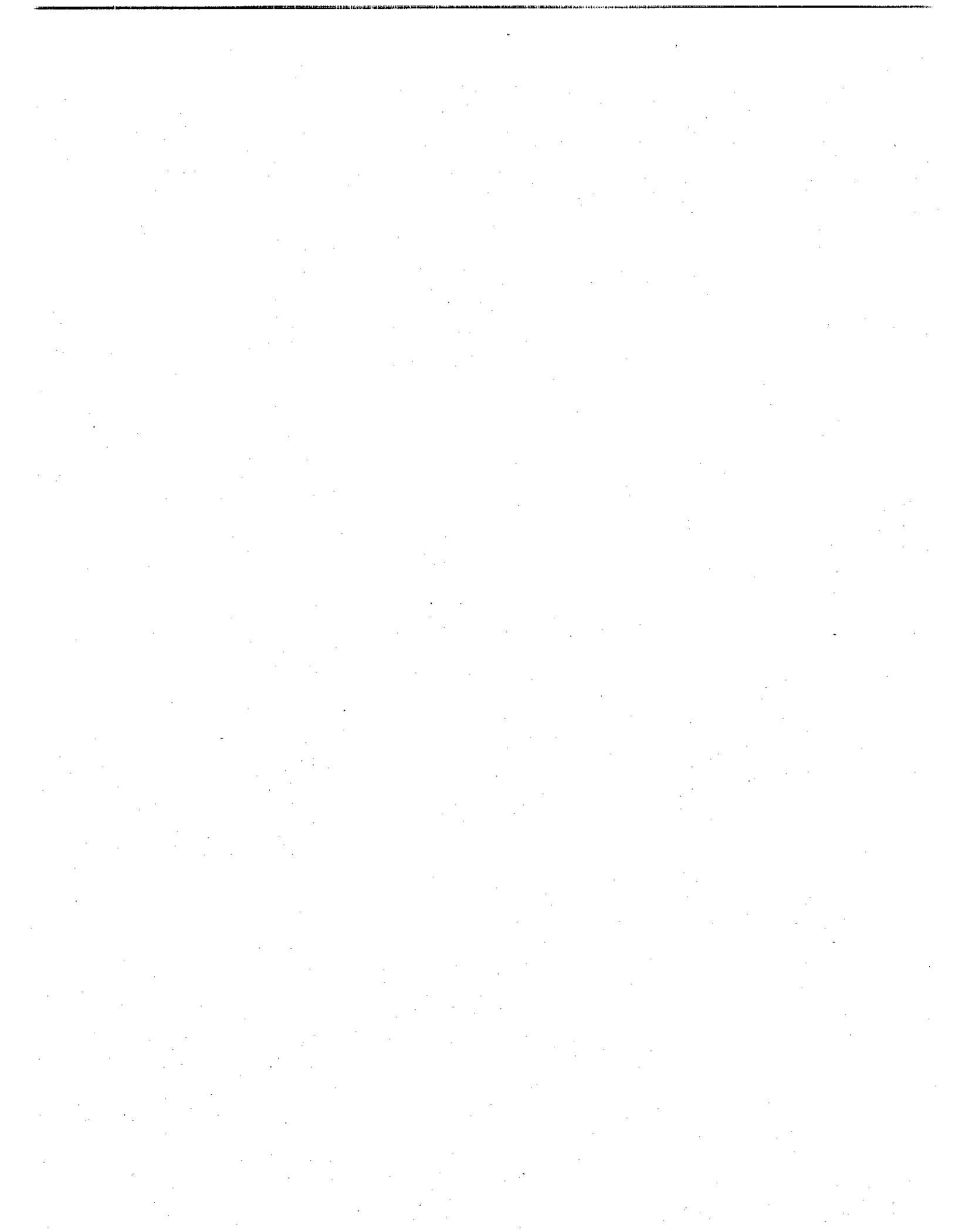
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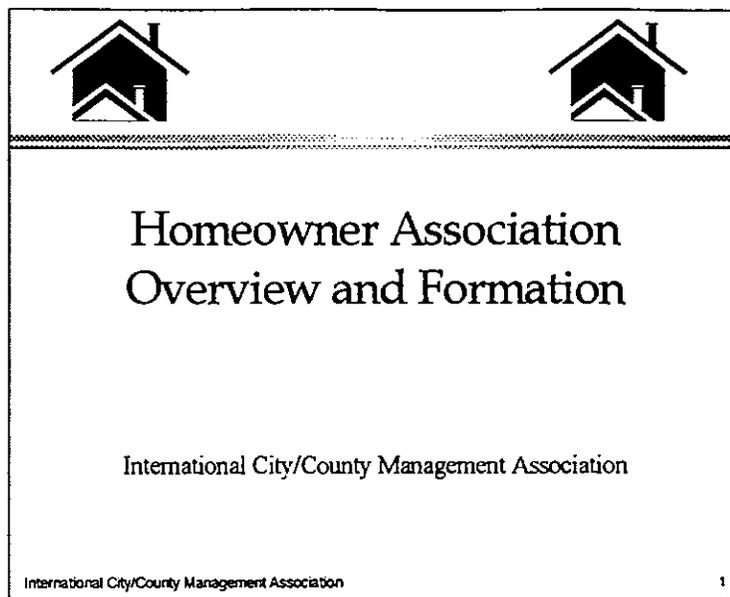
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ABSTRACT

This is a course instructor's guide for "Homeowner Association Overview and Formation" prepared by Paul Mengert and John Stern, ICMA consultants in Kazakhstan, under Task Order No. 110. It includes the course agenda, course protocol and procedures, course format, and sample exercises for course participants.





There two agendas attached for a one day or two day seminar. If one day, then the material contained in this manual will be used except for the group exercises at the end. If two days, then the group exercises will be used, and a tour to 3 or 4 local cooperative projects should be arranged during the afternoon of the second day.

One Day Seminar Agenda

- 10:00 Opening
Describe the current local conditions including the number of local cooperatives formed, the support of the program offered by the city administration, the involvement, if any, of the city housing maintenance organization, problems with the local tax authorities, the status of opening bank accounts, and any local resolutions and decrees concerning HOAs.
- 10:30 Main concepts and stimulus of forming the HOA
- 10:45 Legal basis for formation and operation of HOA
- 11:15 forming the HOA
- 11:30 Tea break
- 11:50 The main principles in organization and operation of HOA. Relations between HOA and local administrations, housing-

- utility agencies and utility service suppliers.
- 12:30 Questions and answers
- 13:15 Lunch
- 14:30 Organization of financial-economic activity of HOA
- 14:50 Maintenance, contracting, solving of conflicts
- 15:20 Questions and answers
- 15:20 Tea break
- 16:00 Interrelations of the CAOs with:
1. local administration
 2. housing-communal agencies
 3. communal utility suppliers
- 16:40 **Meeting of the working groups**
Participants are divided into 5 groups and conduct the “business game” on the most common situations in HOA activity.
- 17:00 Closing of the workshop

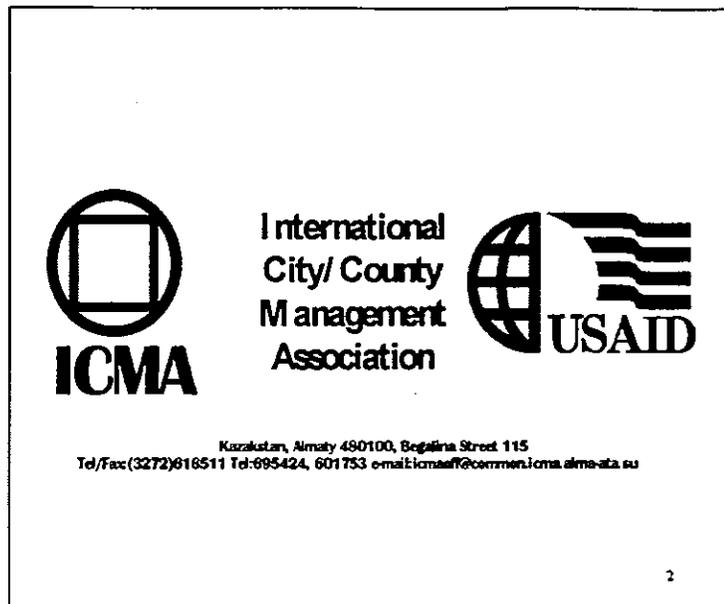
Two Day Seminar Agenda

Day 1

- 10:00 Opening
- 10:10 The realization of the program of HOAs formation
Describe the current local conditions including the number of local cooperatives formed, the support of the program offered by the city administration, the involvement, if any, of the city housing maintenance organization, problems with the local tax authorities, the status of opening bank accounts, and any local resolutions and decrees concerning HOAs.
- 10:30 The main concepts and incentives of the HOA
- 11:15 Forming the HOA
- 11:30 Tea break
- 11:55 The main principles of HOA in organization and operation. Relations between HOA and local administrations, housing-utility agencies and utility service suppliers.
- 12:25 Questions and answers
- 13:15 Lunch
- 14:30 Local officials discuss housing-related issues within their area of responsibility
- 15:30 Tea break
- 15:50 **Meeting of the working groups**
Participants are divided into 3 groups and conduct a “business game” concerning the formation of HOAs.
1. the officials of the administration and its departments
 2. the chairpersons of the HOAs
 3. the employees of the housing-maintenance economy
- 16:35 Working groups reports

Day 2

- 10:00 Organization of the economical and financial activity of HOAs
- 10:20 Maintenance, contracting, solving of conflicts
- 10:50 **Meeting of the working groups**
Participants are divided into 3 groups and conduct the "business game" on the most common situations in HOAs' activity
- 11:30 Tea break
- 11:50 Working groups reports
- 12:15 Questions-answers and opinions' exchange of the participants of the training course
- 13:30 Lunch
- 14:30 Visit to the 3-4 coops and work with the local chairpersons and members of the Boards
- 16:30 Closing of the workshop



WELCOME

International City/County Management Association (ICMA), funded by the United States Agency for International Development (USAID), offers a complete set of courses on starting and operating Homeowner Associations (HOAs). These courses are intended to teach people how to be responsible HOA board members.

This course is the general overview of the operation of HOAs for condominium and cooperative projects. Persons who are serving as Managers, chairs or who are active participants with an HOA or local officials involved with HOAs should consider taking the complete set of courses which include:

- HOA Organization and Operations
- HOA Accounting and Budgeting
- HOA Maintenance and Contracting
- HOA Problem Solving and Rules

Course Objective:

To acquaint the participants with the basic method of homeowner association budgeting and accounting techniques and procedures, including:

- Definition and Main Concepts
- Incentives for HOA formation
- Legal Basis for Formation and Operation of HOA
- Forming the HOA
- Organization and Operations
- Interrelations of HOA with local administration, housing communal agencies and communal utility suppliers
- Accounting & Budgeting
- Maintenance
- Contracting and Hiring Professionals
- Problem Solving and Rules

Introductions

- Talk with your neighbor for 10 minutes
- Find out about relevant background and interests
- Present information to group (1 minute each)



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INTRODUCTIONS

Participants should be seated in random order so that they are seated next to a person they do not know. If this is a course with the same participants, people should introduce someone different than the prior course(s) and include new information in the introduction. The participants should be paired off in groups of two. They should interview one another for about five minutes each.

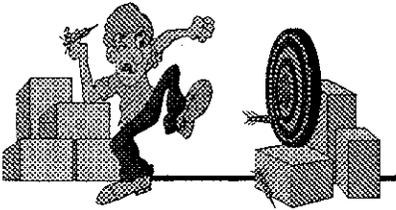
The following information should be obtained during the interviews:

- Name
- Position
- Name of HOA
- City/Rayon
- Number of apartments and buildings served by the HOA
- Professional background and experience
- Length of period involved with HOA
- Personal objectives for HOA
- Biggest problem facing their HOA

The introductions will take approximately one minute per person. This information will prove quite valuable in the seminar. It is important that notes be taken by the participant so that peers can be met and questions can be directed at appropriately knowledgeable participants.

Definition

- What is an HOA
- HOA responsibilities
- Why form an HOA in your building



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ISSUE: *Definition: what HOA's can and cannot do.*

Definition: A non-commercial organization engaged in activity contemplated by its bylaws: responsible for maintaining and operating the building in which organization members own their home. Only homeowners in a building can be members of that HOA.

The following are items HOA's typically can and cannot do:

CAN

- collect monthly maintenance and utility fees
- Maintain the property
- Preserve and protect the property
- Take legal actions against those who don't comply with the Bylaws
- Administer the HOA
- Organize owners to deal with many problems
- Hire and fire employees and

CANNOT

- Solve all problems
- Handle capital repairs without adequate resources
- Allow delinquent owners to continue not paying monthly fees

contractors

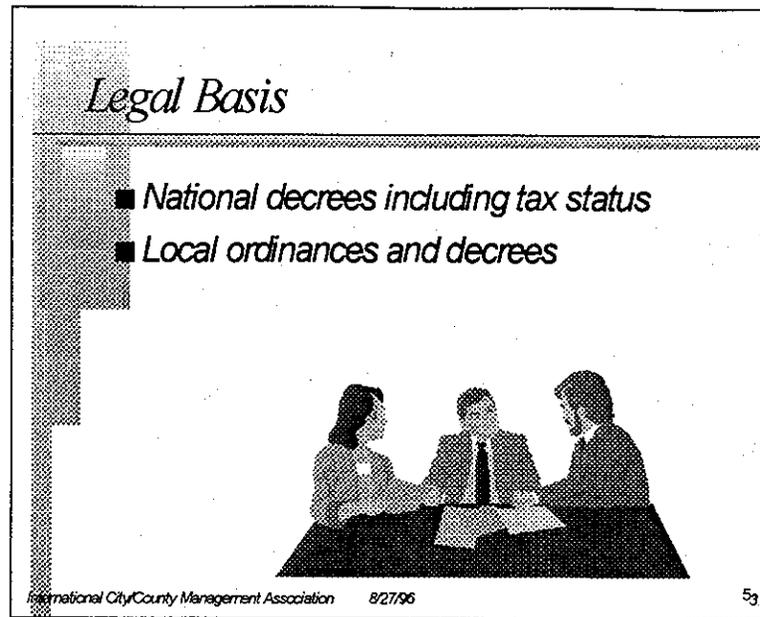
- Contract with utility providers

Why form an HOA in your building?

– because most local governments and enterprises no longer maintain buildings due to a shortage of funds and an official disbandment of housing agencies as of June 1, 1996, yet some homeowners continue to pay maintenance fees. If the fees went to an HOA, then the owners could control the amount and purpose of expenditure of their fees, ensure the appropriate maintenance of their building, and contract for utility services.

– a home is probably a family's most valuable financial asset. Through proper maintenance, the value of this asset will be preserved and enhanced.

– by participating in the work that needs to be done to maintain a building, homeowners can reduce their monthly maintenance fees. Work in lieu of payment can prevent those with inadequate incomes from becoming delinquents.



Issue: What are the laws of Kazakstan that affect HOAs?

HOUSING-RELATED LAWS AND HOAs

There are many laws issued in Kazakstan, but most of them do not affect your daily lives. The ones extracted below, and contained in ICMA's Guide Book to Establishing HOAs, from the constitution, national laws, presidential and Cabinet of Ministers Decrees, and national housing policy affect your pocket, your relations with your neighbors, and your home. As a result of these policy and legal changes, most of you now own your own apartment.

The constitution of Kazakstan adopted in August 1995, supported by several subsequent laws, brings private ownership of housing and land into existence for the first time. These laws also provide the foundation for, and enable the existence and operation of organizations of apartment owners, known as homeowner associations or cooperatives of apartments' owners (HOAs). These associations are formed by apartment owners to care for their commonly owned property - building and land.

The law in this area has evolved rapidly and continues to do so. The main thrust is to promote private homeownership with properly functioning HOAs, and in turn real estate markets to enable the purchase and sale of homes supported by property financing.

While the law requires certain taxes to be paid by HOAs, it exempts associations from the most burdensome taxes including income and value added taxes on their main source of funds - monthly fees.

The differences between condominiums, cooperatives and homeowner associations need to be understood:

In a cooperative, the association itself owns the building, the land, and the apartments and the "owner" has the right to live in an apartment as a member of the association.

In a condominium, the owner owns the apartment, and a prorata share of the common area, and is a member of the association.

In either case, the homeowner association is made up of the people who live in the building, and is the entity that operates, maintains, and is responsible for the land and the building.

The first law to review is the "Regulation on Privatization of the State Housing Fund" effective January 24, 1992. This regulation was the first major policy affecting housing that was issued in Kazakhstan after its independence. Some provisions of this regulation were later nullified, but the remainder including the ones listed are still in force. Article 26 gives owners of privatized apartments the right to decide how to maintain their building. It thus provides the foundation for homeowner associations, since owners making decisions about the maintenance of their building is the heart of the reason for the existence of homeowner associations.

The "Housing Code" which became effective in November 1992 is still in effect. It establishes the right to form HOAs to maintain the commonly owned property, and to protect the common rights.

The Decree "On the New Housing Policy" from September 1993, and the program that implements this policy, requires the revision of certain laws. This process has resulted in many of the legal changes discussed, and is still underway.

From December 10, 1993 there is a law on how local representatives and executive bodies should operate. It also gives an overview of how HOAs should interact with local government.

The "Civil Code," effective March 1995, is one of the key laws that is used to operate homeowner associations. It establishes HOAs as consumer cooperatives and makes them legal entities, with full standing under the law. The homeowner association as a legal entity makes a contract with apartment owners through the mechanism of the bylaws, and the bylaws require the owners to pay their homeowner association fees. Because this is a contract under the "Civil Code," if people do not pay the homeowner association fees, the homeowner association has the right under the "Civil Code" to take these people to court and seek relief by either selling the property or forcing the people to pay their fees.

The Cabinet of Ministers' Resolution #1299 dated October 4, 1995 firmly established the communal housing system in Kazakhstan, and sets out some very clear and necessary situations for homeowner associations. The major one of these transfers to HOAs the right to collect maintenance fees from built-in non-dwelling space owners and renters.

The law "On Land," issued in December 1995, contains the first definition of a "**condominium**". Further, it gives the right to homeowner associations to acquire land attached to its building. In a cooperative, the land owned by the homeowner association is owned by all the people undivided, so each person does not own just a small piece of it but all the people own the whole land. In a condominium situation, each owner owns a prorata piece of the land, in common ownership. The law also establishes that people who own their apartments can form a consumer cooperative to properly maintain their building. It would be worthwhile to read Article 26 of this law.

The next law, "On the Mortgage of Real Estate" from January 1, 1996 establishes the right (in Article 5) to mortgage the whole property owned by an HOA to obtain a loan to do repairs on its building. It also allows for individuals to get a loan for their own apartment.

In the "Registration Law" that became effective on March 1, 1996, you will find what needs to be registered and the procedures for registering your ownership right. To get the state to recognize your ownership right, you need to register your ownership.

There is a new "Housing Law" that is with Parliament. It contains several definitions that are needed to clear up some of the confusion that

exists in this field, and it also gives certain powers and responsibilities to homeowner associations.

Three recent Cabinet of Ministers resolutions that impact HOAs include: #437 (April 12, 1996) "Concerning the Transition to New Principles of Payment for Maintenance and Housing Utility Services," #587 (May 13, 1996) "Concerning De-Monopolization of Housing Utilities and Calculations of Prices for Services," and #647 (May 27, 1996) "On Measures to Develop the Cooperatives of Apartment Owners and Owners of Commercial Space in the Apartment Buildings."

Resolution #437 further implements the Housing Policy Decree of September 1993. It sets December 1, 1996 as the target date for completing the process of forming HOAs for all apartment buildings.

Resolution #587 addresses the issues of utility services delivery. The HOAs should work out agreements with the service providers, including the concept that the HOA should only pay for the services it receives. If the service is not provided, then the HOA should not pay the provider. The Resolution also requires local governments to determine those apartment buildings that need capital repair, and establish a plan to finance the work.

Resolution #647 will stay in effect until the new Housing Code becomes effective. This resolution reiterates the concepts of homeowner associations, common ownership of all commonly used and indivisible property, the right of the HOA to the use of the land adjacent to its building, and the financial responsibility of owners for the maintenance of the common property on a prorata basis. Apartment owners can pay for utility services independently or through the association. Also, the registration of HOAs shall be free. Finally, a significant provision is that non-residential space users must participate in the common expenses of maintaining the building in conformity with the bylaws of the HOA.

Exercise: List four decrees or laws that heavily affect HOAs, and explain why you chose them.

HOAs AND TAXES ISSUES

Pursuant to Article 34, Paragraph 2 of the Presidential Decree "concerning tax and the Other Obligatory Payment to the Budget" dated July 1, 1995, Homeowner associations are exempt from taxation on income derived from the collection of fees for the maintenance and operation of their building and adjacent territory. HOAs are exempt because they are non-commercial organizations, also known in the law as consumer cooperatives, engaged in authorized activities specified by their bylaws. Through extensive discussions and communications with the ministries, it is now clear that there are to be no income taxes or value added taxes (VAT) on funds received by HOAs from maintenance fees and utility assessments that the association receives from its members in accordance with its bylaws.

An order dated June 18, 1996 forbids local authorities from imposing taxes which are not authorized by tax legislation on HOAs which are not authorized by tax legislation. As with all laws that are violated, if taxes are collected with disregard to this order, the HOA can apply to the court to get the local government to stop their illegal practice and to return any improperly collected taxes.

In conformaty with Point 3 of the Cabinet of Ministries' Resolution #1120 dated October 6, 1994, if the HOA has employees, the association must pay insurance tax to the pension fund for its employees. Further, in accordance with the tax law, HOAs must pay all other employee benefits including unemployment tax, and medical and life insurance premiums. It must also pay tax on the land it owns or for which it has use rights, value added taxes on any purchases it makes, and the built-in VAT for utility services.

Business income of the association will be taxed as if it were a normal for-profit enterprise. For example, if the association rented out space for a store or parking spaces or rented its land or basement for some other commercial enterprise, such income would be taxed.

As well, there are to be no taxes on reserves set aside by HOAs. If an HOA collects more than it needs for its operations and puts that money in its bank account, then those funds should not be taxed. However, the interest on that money will be taxed.

Exercise: How does an HOA prevent its monthly maintenance fee income from being taxed?

Forming the Homeowners Association

Overview

For homeowners to establish an HOA an organizational meeting should be held, a resolution passed to form the HOA, elections held to choose directors, and registration of the HOA completed with the local Justice Department. The Board of Directors then hires someone to manage the day-to-day operations, hire employees and contractors, and contracts for utility services.

Owners need the support of the local administration to be successful. The HOA concept is working successfully throughout Kazakstan. As of mid - 1996, there are nearly 3000 HOAs functioning in the country.

Several other factors should be in place to help HOAs be a success. A Housing Allowance Program should operate to help low-income owners make their monthly HOA payment. Utility meters should be installed to prevent HOAs and individual owners from paying for more services than they receive. Utility service providers should work with HOAs fairly and openly. The legal system must support HOAs so that they have the ability to enforce their rules and deal with debtors. A local licensing system should be established to enable HOAs to have access to legitimate contractors.

Nonetheless, an HOA is a voluntary effort on the part of owners. No one should force owners to establish an HOA for their building.

Specific Steps to Form an HOA

The steps to forming an HOA are shown on the following diagram "Creating New Homeowner Associations". Samples of all documents needed to form an association and applicable laws are contained in ICMA's Guidebook to Establishing HOAs.

First, interested owners should talk with their neighbors and owners of non-residential space (if any) about taking control of their building through the formation of an HOA. When sufficient interest has been developed, a meeting of all owners should be organized. At that meeting, owners should discuss the concept of the HOA, and vote to form an organization. If more than 50% vote for the HOA, then directors should be elected. There should be at least three directors, and more are

fine. However, there should be an odd number of directors. A resolution documenting the votes for formation and the election of directors should be created.

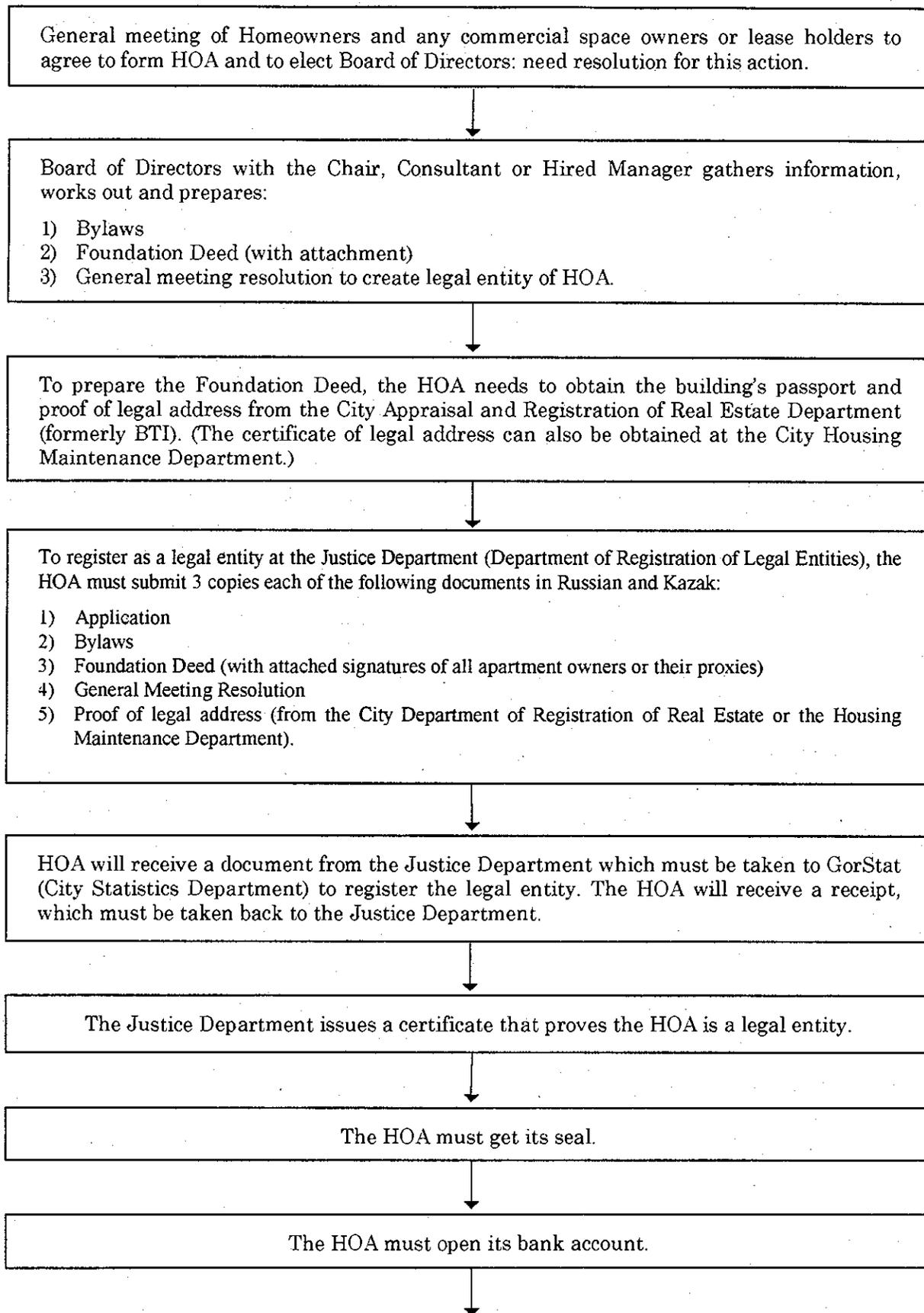
The newly elected board should then create a set of bylaws, using the sample in the book. Each item in the sample should be considered by the Board, and revised to fit the new organization's particular situation. A Foundation Deed should be prepared, with the signature of all owners. If an owner refuses to sign the Foundation Deed, then the owner should be persuaded to sign a document acknowledging that he is aware of the HOA's formation, but that he chooses not to sign the Foundation Deed at this time. That owner must sign an agreement with the HOA to pay for his commonly-supplied utilities to the HOA or directly to the suppliers, and to pay the HOA for common-area maintenance. He will no longer pay anyone else for common-area maintenance. All owners may pay directly to the service provider or the HOA for his own separately metered services.

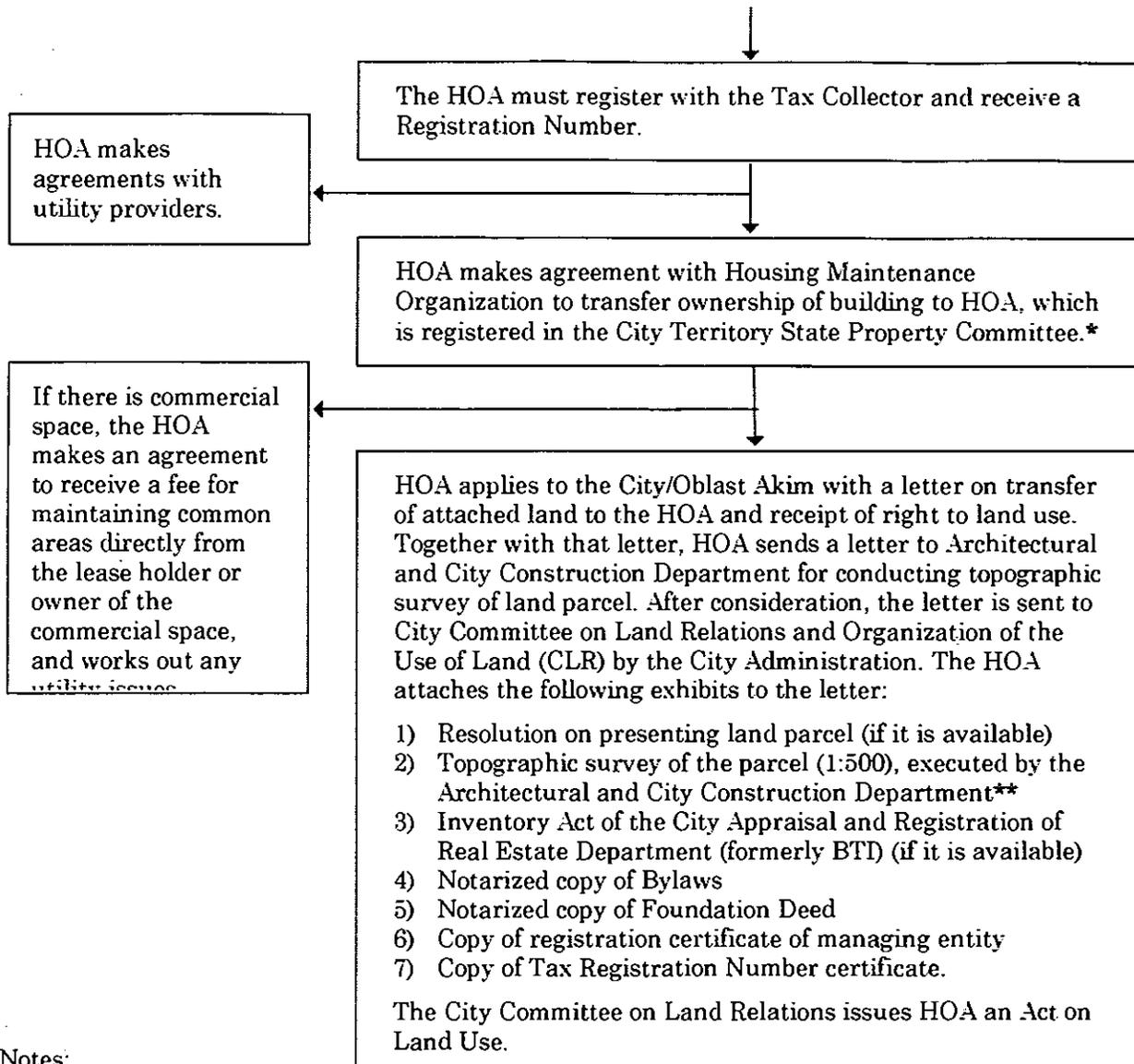
The appropriate documents should be taken to the Justice Department to register the new HOA. After receiving its certificate, which proves it is a registered legal entity, the HOA must get its seal, and open a bank account. Then the HOA must register with the local Tax Collector and obtain a Registration Number.

At this point, the HOA can negotiate and sign a contract with utility service providers. The HOA should also work with the local administration to have the building transferred to the Balance of the HOA. After receiving the building, the HOA should make an agreement with the owners or lease holders of non-residential space regarding maintenance fees and utilities.

After gaining possession of the building, the HOA should apply to the local administration to gain rights to the attached land. The rights should be registered and an act issued to the HOA. Then the process of forming, registering, and gaining rights to the building and land is complete.

Creating New Homeowner Associations (HOAs)





Notes:

* The sample agreement should be at the Housing Maintenance Organization or organization that substitutes for it.

** The topographic survey should include:

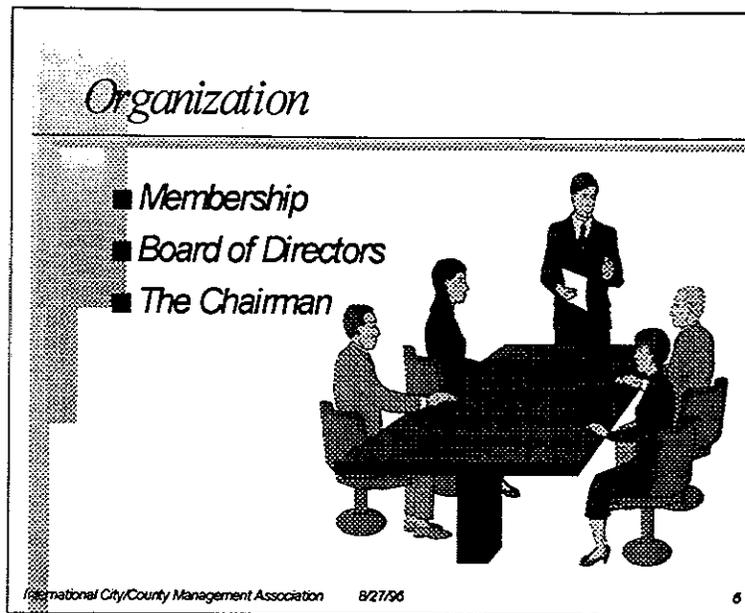
- location of the buildings and constructions;
- conclusion of Architectural and City Construction Department proving that no further construction on this territory is planned;
- adjacent land users;
- coordination of borders with adjacent land users.

HOUSING CONSTRUCTION COOPS

May reregister with the Justice Department to become an HOA. Need:

- application for registration;
- former Bylaws, new Foundation Deed, GorStat registration card, and General Assembly Resolution about change;

- then reregister with City Appraisal and Registration of Real Estate Department (formerly BTI);
- create a Transfer Deed for the building from old to new owner.



Issue: What is the organizational structure of an HOA?

The organization of an HOA consists of **three** parts:

- 1) Membership
- 2) Board of Directors
- 3) The Chairman or Manager

1. Membership - Each owner who owns a unit in a building has a right to be a *member* of that building's HOA. Only owners are members and no non-owners are members. Membership is concurrent with ownership. For non-privatized apartments still owned by the local administration, the member is the local administration, and it should be treated as any other member.

Members have the obligation to pay their assessments. Members have several rights, which include *the right to adopt Bylaws, to vote at annual meetings, and to elect the Chairperson and the Board of Directors* of the HOA. The membership has *the right to vote for or against special assessments and to approve the annual budget.*

An original owner who refuses to become a member of the HOA must still pay their monthly utility and maintenance fees to the HOA. Even

so, the owner will have no say in the affairs of the HOA, which means he or she will not be able to decide on how their fees will be spent. Further, a non-member will need to pay the HOA a 20 percent VAT on their monthly fee.

Should the need arise for a special assessment to pay for the cost of an expensive repair or improvement to the property, the **bylaws** normally require a vote of the membership to authorize a special assessment. An increase of the assessments, above the amount or percentage specified in the bylaws, requires a vote of the membership. Otherwise the Board of Directors is able to increase the fee without approval.

Members generally have the right to expel or remove one or more members of the Board of Directors.

If the conduct of one or more members of the Board of Directors warrants their removal from office, the **bylaws** will usually specify the procedures by which the owners may accomplish this.

Vacancies on the Board of Directors are filled by casting votes, in person or by proxy. Generally, candidates with a plurality of votes fill the vacancies. Consult the individual HOA's **bylaws** for more specifics.

2. Board of Directors - The Board of Directors, with an odd number of three or more members, is responsible for decision-making in three basic areas:

- A) Business Decisions
- B) Governance Decisions
- C) Community Decisions

A. Business decisions - The Board of Directors makes decisions regarding administrative, financial, and property maintenance matters for the purpose of preserving and enhancing the community. Since the HOA is a legal entity and can sue and be sued, the organization should be run by the Board as a business for the benefit of all the owners. The

Board should be responsive to the membership's capabilities, desires, and direction. The most important matter for the Board is the development of the annual budget and its presentation to the annual meeting of the general assembly.

B. Governance decisions - An example is a rule regarding pets. The Board of Directors must **enforce** the community's governing documents, adopt and enforce rules over areas for which they have jurisdiction (usually common areas - spelled out in the by-laws), and decide issues of policy for the owners.

C. Community decisions - The Board must promote harmony through maintenance programs, clear policies, regular communication with owners, conflict resolution, and hearings of appeals regarding management and Board decisions that are protested by individuals or groups of owners.

1. The Chairman - The Chairman is responsible for the day-to-day operations of the HOA. He/she implements and carries out the directions of the Board of Directors. The Chairman will often make decisions regarding how best to accomplish maintenance tasks (within the parameters defined by the Board of Directors); determine how best to obtain supplies and repair materials; deal with owners regarding maintenance needs and their accounts; and make arrangements with contractors or individuals who have been selected to perform tasks for the HOA. The chair can be elected by the General Assembly or the Board of Directors, depending on the bylaws.

Exercise: List the responsibilities of Members, Board of Directors, and the Chairman for your HOA. Describe who does what and how often.

Accounting and Budgeting

- Why make a budget
- The budget process
- Collections
- Income and expense journals
- Monthly reviews



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ISSUE: The HOA Board is responsible for HOA money, budgeting, and record-keeping.

Why make a budget?

The HOA Board of Directors is responsible for the maintenance of the commonly-owned building and land. To accomplish its duties, the HOA needs to buy supplies and have people to do work. To pay for the supplies and work, the HOA needs money. To determine how much money it needs for the year, and consequently how much each owner must pay, the HOA Board needs to work out a budget.

A budget is a *financial plan*. It provides an **estimate** of income and expenses. The budget provides an organization with information it can use to determine whether or not expenditures can be made, helps determine when additional cost estimates or alternative sources of services or products need to be obtained, and can provide *trend* information useful in setting future assessments and expense allotments.

How to Budget

Budgets consist of two main parts: *income* and *expenses*. These are further divided into **operating** income and expenses and **capital**

reserve (or replacement) income and expenses. Examples of operating expenses include:

- utilities (gas, electricity, oil, water, telephones, etc.)
- small, recurring maintenance items (i.e., patching asphalt, cleaning stairwells or hallways, replacement of light bulbs, pest control, minor building repairs, etc.)
- administrative costs (copies, postage, taxes, legal fees, accounting costs, insurance, management, employee salaries, etc.)

Operating *income* is the portion of the HOA's income that is allocated to cover the operating expenses.

The easiest way to remember which items are capital reserve items is that they usually involve *replacement* of something. Examples would include:

- Replacement of sections of asphalt in the **parking lot** (as opposed to just patching the asphalt)
- Replacement of **stairs**
- Replacing entire sections of **roofing** (again, as opposed to just making a patch over a leak)
- Installation of any new, previously non-existent facility (i.e., building **an addition** for a recreation room, or adding additional parking spaces)

Reserve *income* is that portion of the HOA's income which is earmarked or designated as being for reserve savings or future expenditures.

Typically, reserve incomes have to be accumulated over a period of years before sufficient funds are available to make these large purchases.

Steps To Budgeting

1. Survey the need
 - based on bylaws
 - resident desires and needs
 - building and grounds repairs needed

- utility costs and use
- 2. Prepare specifications and take bids for work to be done by others. Determine costs of work to be done in-house.
- 3. Compare to prior year costs.
- 4. Talk with other HOAs to determine their costs.
- 5. Combine all data available to make a "best estimate" of the HOA's future expenses. Determine the amount of any "other" income not from monthly fees.
- 6. Calculate the per unit monthly maintenance and utility assessments based on estimated costs and "other" income.
- 7. Determine if the fees are acceptable to the owners. If so, finalize budget for presentation to the General Assembly at the annual meeting. If the fees are too high, revise downward by returning to Step 2 and reducing the expected work.

Collection - Collection of assessments is very important for the HOA to be able to conduct its business and to help ensure the enjoyment of the property by the owners. In the ideal world, owners would all pay assessments in full and on time every month (or whenever due). Unfortunately, this rarely happens and it often becomes necessary to take other measures to collect the funds the HOA needs to function. Some methods that can be used:

- Communication. Explain to owners why they need to pay.
- Peer pressure. Other owners who become aware of an owner who has not paid the assessments may be able to persuade that person to pay. Possibly, the owner who is unwilling or unable to pay the assessments could trade something of value or a service to another owner who could then pay them, thus enabling the delinquent owner to pay the debt.
- Trade service to the Association. Possibly an individual who cannot pay the assessments could perform work for the HOA, such as keeping the hallways clean, changing burned out light bulbs, performing bookkeeping or record-keeping services, or cutting the

grass. The monetary value of the service could then be credited as a payment toward the assessment.

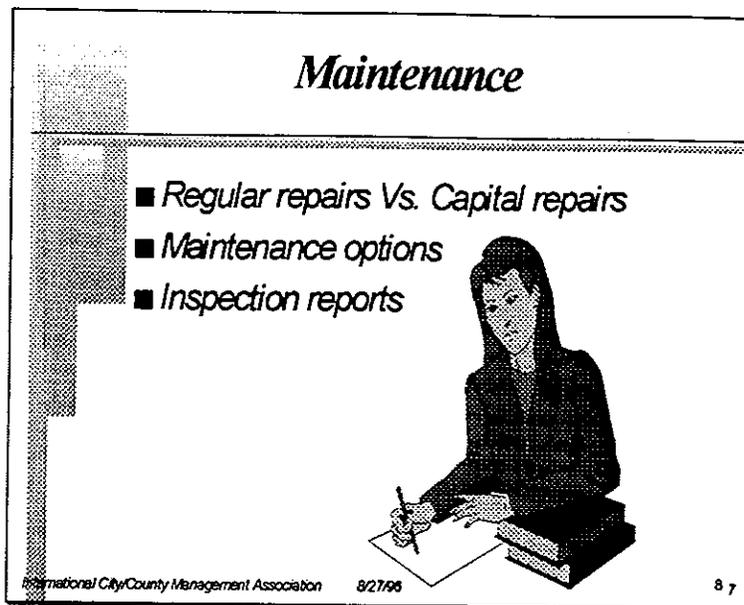
- Get a subsidy or pension. It is possible that someone in the HOA can assist an individual to obtain a pension or housing allowance. This would then allow the individual to have the funds to pay the assessments.
- Suggest that an owner have another person live with them and use the money to pay the fee.
- Legal action. The association can take court action against an individual who is delinquent in paying his/her assessments. This is generally the least satisfactory approach, and should be used if nothing else works. But do not let delinquencies go too long before taking action.

Income and Expense Journals - Accurate, detailed record-keeping of income and expenses must be maintained so that the HOA knows the status of funds and expenditures at all times. Owners who ask should be allowed to examine the financial statements or books. The questions that income and expense journals must answer are: who, what, when, how, and how much. Additional financial records include a cash flow summary, showing all income and expenses summarized by category, and a balance sheet, showing what the HOA owns and owes.

Monthly Reviews - The Board of Directors has an obligation to review the income and expenses for each month, as well as the cash flow summary and balance sheet. The Board should compare the income and expenses to the budget. This comparison can be done either by use of a formal written report that summarizes the transactions of the previous month and reiterates the budget figures, or by just reviewing copies of the income and expense journals and comparing them to a copy of the budget. The purpose of reviewing financial statements is to see if the work is getting done, if management is meeting the Board's goals, and if there are adequate resources.

When expenses are greater than anticipated, or when income is less than anticipated, the Board of Directors should question why. They should also help create solutions to either reduce expenses or increase income as the situation dictates. A review of delinquent accounts should be a part of this process, with decisions made on the appropriate action for each delinquent account.

Exercise: Devise a sample Annual Budget and 6 month income and expense summary.



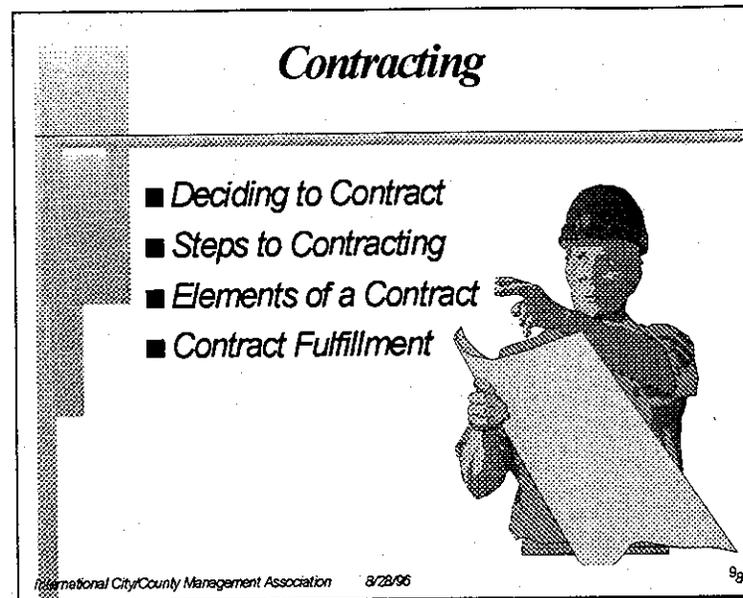
ISSUE: *The Board is responsible to the Owners for maintaining the commonly-owned property.*

The HOA Executive Board is responsible for keeping the commonly-owned buildings and grounds in good repair. Through the budgeting process, the Board sets policy and priorities for work to be done during the year. The association hires a manager to carry out the planned activity. The manager is responsible for regular repairs... normal day-to-day maintenance and upkeep, and capital repairs... major replacements, refurbishments and additions.

All maintenance can be fulfilled by association employees, outside contractors (including individuals, companies or housing maintenance organizations), or volunteers. It is up to management to decide who will do the work, and to see that it is accomplished properly, on time, and within budget.

To ensure that the Board's policies and priorities are being implemented properly, the Board should request and receive monthly maintenance reports from management. As part of its monthly Budget, and Income and Expense review, the Board should review the reports to check on management's progress and activity, and to become informed about upcoming problems and issues.

Exercise: *Identify three different maintenance projects: one appropriate for volunteers, one for HOA employees, and one for a contractor.*



ISSUE: *The HOA Board needs to get maintenance and repair work done by knowledgeable and skilled people, at the best possible value.*

Deciding to contract

The HOA should establish a policy that the need for services or repairs above a certain price, length of time, or frequency must be handled on a bid basis. Three or more bids should be received and reviewed before awarding a contract or deciding to do the work with HOA employees or volunteers. In all other cases, HOA management should directly arrange for the repairs or supplies.

The advantages of using HOA employees include a lower cost in many cases, and people who know and work directly with building residents, and get to know individual buildings. Further, the HOA has direct control of the workers.

The disadvantages of using employees are they may not have the materials or equipment that are needed to do the job properly, and the work is done without warranty guarantee.

The advantages of hiring an independent company are that it is often a larger organization, there should be a high level of skill and expertise among its personnel, its equipment and materials should be appropriate

and more readily available, and there is a good chance of having an enforceable warranty or guarantee.

The disadvantages of hiring a company are that sometimes it may be hard to find one, they generally charge more, and the residents may not be able to get the same level of service from a company as from an HOA employee.

Steps to Contracting

If management decides to consider using a contractor to do work on HOA property, then a definite process should be followed to hire the contractor. The key steps include:

1. Clearly identify the work to be accomplished. Create a detailed package of materials with appropriate drawings and material specifications to fully describe the work. Get professional help from an architect, engineer or other consultant as necessary.
2. Advertise, and personally notify contractors who can do the work, that a package of materials is available. The HOA can charge for the package to help defray costs and to limit interest to serious bidders only.
3. Hold a bidders conference to answer all questions.
4. Set a date by which **sealed** bids must be received. On that date, open all bids in public. There should be at least three bids.
5. Review the bids, prices, qualifications and references of the bidders, and go to see their work.
6. Choose the lowest priced, qualified bidder to do the work.
7. Negotiate and sign a contract.

Elements of a Contract

A *contract* is a legal, binding document between two or more consenting parties. Each of the parties has *obligations* under the terms of the contract: one party has an obligation to provide a product or service to the other party, and the second party has an obligation to pay for the goods or services provided by the first party.

The following **elements** should be included in the contract:

- Who -- full name, address, and phone number of all parties involved.

- What is to be done -- attach drawings and material specifications. If appropriate, detail how materials will be selected and approved.
- Time of contract -- start and completion dates.
- Total dollar amount of contract, how and when payment will be made, and who pays taxes. Provide for a partial holdback of funds (e.g., a 10 percent "retainage") until 30 to 60 days after job completion to ensure the work was properly done.
- Signatures of responsible parties.

OTHER PROVISIONS

- Penalties for failure to comply with terms.
- Details of provision and storage of materials and tools.
- Responsibility for damage.
- Money or collateral put up by the contractor to guarantee satisfactory performance and completion.
- Provision of appropriate licenses by the contractor.
- Guarantee or warranty.
- Procedures if more extensive repairs are needed.

Contract Fulfillment:

Upon completion of the work, determine that the work was satisfactorily completed before full payment is made. A professional can be used to assist with final inspection of the work. If the work is found to be satisfactory after the retainage period, pay the remainder owed and release any collateral. If there are problems, have them fixed prior to final payment.

Exercise: Make up a set of specifications for a project.

***Problem Solving, Rule Making
and Enforcement***

- Steps to analyzing problems
- Compromise
- Adopting rules
- Publishing
- Remedies
- Enforcement



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ISSUE: Problems can arise when many people live close to one another. The HOA, in some cases, can resolve such problems.

Keeping the property in good repair is the prime function of the HOA. Another key function of the HOA is to help keep social order among the many residents. This can involve resolving problems between people

While many problems can be resolved directly by the two people who have the problem, sometimes rules are needed to govern behavior. To be effective, rules must be agreed to by most of the HOA members, and fairly enforced. Compromise is another effective tool to resolve problems between people, and management can often negotiate a resolution to a problem between reasonable people. If the association must be involved, the following concepts are suggested as a process to follow.

Steps to analyzing and resolving a problem

1. Discuss and identify the problem
2. Discuss and identify many possible solutions and their costs
3. Compare the relative merits of the various solutions and the cost of each
4. Choose the best solution
5. Implement the solution in terms of cost and effectiveness

6. Set up a plan to monitor the results
7. Review the progress

Compromise:

The key to finding solutions to problems between people is compromise. One has to understand the nature of a problem to be able to find solutions with which everybody can live. Often solutions can be found by very carefully analyzing the problem and the various possible solutions. Initially, people will think there is no way they can agree, but after exploring the nature of the problem and the possible solutions, a reasonable compromise can often be found.

Adopting Rules

If a rule is needed to resolve a problem, the first step to adopting a rule is to follow the above process. It is important to make sure the rule is:

1. Enforceable
2. Fair and equitable
3. Reasonable
4. Not contrary to regulations or laws.

Publishing

After an HOA adopts a rule, it is important to inform the members. A little known, obscure rule will not prove beneficial. The rules and policies of the HOA should be made well-known to all the members.

Remedies

The first step to enforcement is consensus. It is important that the members of the HOA agree with the rule. If an HOA has a rule or policy with which a vast majority of the residents disagree, it will be very difficult to enforce since the best method of enforcement is peer pressure.

If all but one or two people in an HOA agree on a certain policy or rule, the others often will be able to pressure the one or two into compliance. Many HOAs suspend privileges or services if a resident does not abide by the rules. Some HOAs fine people when they do not abide by the

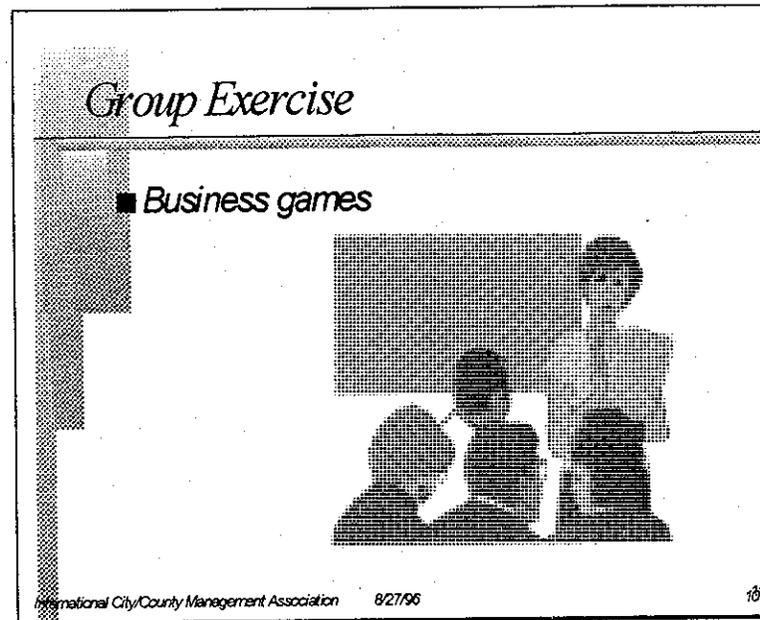
rules. In other cases, there are legal remedies through the courts to enforce the rules.

Enforcement

Rules must be enforced with **fairness**. The steps to follow to assure fair enforcement process are:

1. Inform all the residents of all the rules and regulations.
2. When accusing a resident of a violation, make sure he or she is informed of what he/she is accused.
3. Allow the accused to present his side of the issue to an independent group who is not predisposed to make a decision for or against the individual.
4. Using all available information, make a decision regarding the rule violation, and an appropriate penalty.
5. Allow for a review of the decision of the initial group in the event that a compromise cannot be reached or the accused disagrees with the decision.

Exercise: Make up a rule using the 7 steps of analyzing and resolving a problem to address complaints about loud noise or pets.



Group Exercises:

1. If this is a two day seminar, Exercise A should be done on the 1st day in the afternoon.
Divide the participants into three groups:
 1. City Administration,
 2. Maintenance Workers,
 3. HOA Members.A seminar leader should lead each group in a discussion and have participants answer the listed questions

2. Exercise B should be done for one day seminars in the afternoon, and for two day seminars, in the morning of the second day.



WHAT HAS BEEN LEARNED

- Definition and Main Concepts
- Incentives for HOA formation
- Legal Basis for Formation and Operation of HOA
- Forming the HOA
- Organization and Operations
- Interrelations of HOA with local administration, housing communal agencies and communal utility suppliers
- Accounting & Budgeting
- Maintenance
- Contracting and Hiring Professionals
- Problem Solving and Rules

How can the information discussed help directors to do their job, and serve homeowners more effectively?

How can this course be improved?

What kind of future training should ICMA provide?

**Where to Get More
Information**

Contact ICMA for:

- Free monthly newsletter
- Other training sessions
- Books, articles
- Electronic sources
- Consulting services



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CONTACT ICMA FOR MORE INFORMATION

ICMA publishes various booklets, provides courses, and issues a monthly newsletter to which people can subscribe for free. Call, e-mail, fax, or visit **ICMA** for more information at:

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E-mail address: icmaoff@common.icma.alma-ata.su
or contact the nearest **ICMA regional coordinator:**

We encourage class participants to attend additional courses, and to share the knowledge that they gained with others, for example by writing an article for their local newspaper or teaching a class regarding homeowner associations.

Interested persons can e-mail (in English) Paul Mengert, an HOA consultant to ICMA, at: PMengert@aol.com