

# *Eastern Gardens*

3045 Eastern Avenue \* Sacramento, CA 95821 \* 916-489-1604 \* Fax 916-489-1627

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## GENERAL MEMBERSHIP MEETING

October 23, 2009

Dear Members/Shareholders:

As directed by a resolution of the Board of Directors under Article IV, Section 3, Ms. Janice Hoberg, President, has called for a Special Meeting of the Membership on November 4, 2009, at 6:30pm in the clubhouse for the express purpose to review, discuss and vote upon amendments to Eastern Gardens Bylaws and Occupancy Agreement.

Records indicate that 1992 was the last time any amendments to the bylaws were done. There have been many changes within the past 17 years in California's Corporations Code on how corporations conduct their business practices not to mention Fair Housing Laws, even Eastern Gardens has seen many changes and turnover's since the last revisions were done. There was an effort in 2008 to bring our bylaws to current standards but failed. Once again, the 2009 Board strongly feels that revising its bylaws and occupancy agreement is vital and necessary due to the changing laws and business practices. For easier reading and understanding, the Board has downsized the amount of amendments and has selected only a few changes for the bylaws and occupancy agreement.

As a member of Eastern Gardens Cooperative, you are entitled in playing an active role in deciding its future which will help govern all members of the corporation. Every Member is encouraged to attend the membership meeting to discuss and vote upon those articles proposed for changes, per Article VIII, Section 1.

It's a wonderful privilege to have a choice and the right to voice your opinion. We encourage each Member to make the effort and attend the meeting. Provided for your convenience is information listing the proposed changes. Please take the time to carefully read about each amendment and plan to attend the meeting.

Please be advised, non-members, that is, resident adult family members living with EG Members, non-married significant others, and visiting guests will not be allowed to attend the Membership meeting. Care providers will only be allowed to attend if accompanied by the Member. Please bring your Membership Handbook.

**NOTE:** Listed are only those articles that are being considered for change, for example, (Article III, Section 9 of the Bylaws, "Membership"), not the entire article. A brief summary explains the change for each article and section followed by how it will read with the changes. To see the articles and sections in their entirety, please refer to your Membership Handbook. **Bold Italics** = Add; **Bold Strikethroughs** = Delete

Sincerely,

EASTERN GARDENS COOPERATIVE, INC.

*Janice Hoberg Frank Lenhart Donna Schmelz*

*Ed Healy Merritt Miller James Patrick*

Board of Directors

(OVER)

## Summary Explanation of Proposed Bylaw Amendments

Article III "Membership" of the Bylaws is amended as follows:

**NOTE: Bold Italics = Add**

Summary: Records indicate that in 1984 Eastern Gardens Termination Policy was in practice but not adopted into its bylaws or occupancy agreement. In 2008 per legal advice and to comply with the California Corporations Code the board amended the termination policy bringing it to current standards and is now recommending the addition of Section 9.1. to Section 9 of its bylaws. (See below)

1. In Section 9 "Termination of Membership for Cause" is amended to add the following language: Add in the first sentence, "***Section 9.1 of this article and the Occupancy Agreement, Article 4, Sections 1 & 2.***"
2. Add a new "***Section 9.1. Expulsion Procedures***" To Section 9 of the bylaws with the following language.

***Section 9.1 EXPULSION PROCEDURES. The procedures must be followed in any case where Eastern Gardens Cooperative, Inc. proposes to expel a member and terminate that person's membership in the Corporation.***

***(a) Cause for Expulsion and Termination***

- (1) Eastern Gardens Cooperative, Inc. may expel a member for any one of the reasons listed in Articles 14 and 15 of the Occupancy Agreement. Pursuant to Article III, Section 9 of the Bylaws, an expulsion from the corporation terminates an individual's membership in the Corporation.***
- (2) The management agent of Eastern Gardens Cooperative, Inc. shall initiate an expulsion by preparing a written notice of a proposed expulsion, and presenting a copy of the written notice to the Board of Directors with a statement from the management agent setting forth the reason(s) the management agent considers good cause for expulsion.***
- (3) The Board of Directors of Eastern Gardens Cooperative, Inc. shall review the findings of the management agent without reviewing the merits of the proposed expulsion at a Special Closed Session Meeting of the Board of Directors convened solely for the purpose of reviewing said notice. Only upon a majority vote of the Board of Directors will the management agent be authorized by the Board of Directors of Eastern Gardens Cooperative, Inc. to forward the notice unto the Member. Upon a majority vote of the Board of Directors, the management agent shall forward the notice of the proposed expulsion to the member in accordance with Section 9.1(b).***

***(b) Notice of Proposed Expulsion from Eastern Gardens Cooperative, Inc.***

- (1) At which time Eastern Gardens Cooperative, Inc. proposes to expel a member from the corporation, the management agent upon a majority vote of the Board of Directors shall notify the member in writing that:
  - a. Eastern Gardens Cooperative, Inc. proposes to expel the member from the corporation for good cause setting forth all reasons for the expulsion.******
- (2) If upon receiving written notice from the management agent, the member agrees with the reasons as set forth in the notice, the member shall vacate the cooperative apartment by a specified date, which shall not be less than fifteen (15) days from the date of the notice.***
- (3) If the member disagrees with the reasons set forth in the notice, he or she need not move at that time, however, within ten (10) days of the notice the member must request, in writing, a hearing before the Board of Directors of Eastern Gardens Cooperative. The written request for a hearing shall be delivered to the Resident Manager of Eastern Gardens Cooperative, Inc.***
- (4) Upon receipt of the written request from the member requesting a hearing on the proposed expulsion, the President of the Board of Directors shall schedule a Special Meeting, to be held not less than (5) five days after receiving the request from the Resident Manager. If the member for good cause cannot attend the hearing on the scheduled date, he or she must notify the President of the Board of Directors within (2) two days of receiving the notice of the hearing and must specify in the response at least two alternate dates or times, both dates are to be within two days of the original hearing date, that the member can attend. The sole purpose of the meeting shall be to conduct the hearing.***
- (5) Prior to the hearing and during regular business hours, the member may examine and at the member's expense, copy the member's files and payment records in possession of Eastern Gardens Cooperative, Inc.***

- (6) *The hearing will be conducted in accordance with Section 9.1(c) of this procedure, a copy of which shall be enclosed with the notice to the member.*
- (7) *If the member does not request a hearing within the time stated and does not vacate the dwelling by the date specified, the member shall be expelled from Eastern Gardens Cooperative, Inc. and shall lose all right to reside in the dwelling. Upon being expelled as a member of Eastern Gardens Cooperative, Inc. his/her/their interest is terminated and if the dwelling is not vacated, the expelled member shall become a Tenant at Sufferance and Eastern Gardens Cooperative, Inc. may take whatever legal action necessary to evict the Tenant at Sufferance. (A Tenant at Sufferance arises when one comes into possession of property by lawful title, but wrongfully holds over after the termination of his/her interest. She/he has no estate or title by only naked possession without right and wrongfully, and stands in no privity to landlord and is not entitled to notice to quit, and is a bare licenses to which landlord owes merely a duty not wantonly or willfully injure him/her.)*
- (8) *The notice to the member must be sent:*
  - a. *By first class or registered mail;*
  - b. *At least 15 days before the proposed date of expulsion;*
  - c. *To the member's Eastern Gardens Cooperative, Inc. residence, or if the member is no longer residing at Eastern Gardens, at the last address that Eastern Gardens Cooperative, Inc. has for the member's place of residence.*

(c) **The Hearing**

- (1) *The hearing will be held in the Eastern Gardens Cooperative, Inc., Community Room or other mutually agreeable location and conducted before the Board of Directors of Eastern Gardens Cooperative, Inc. All state law and Bylaw provisions applicable to a Board Meeting shall apply to the hearing.*
- (2) *The hearing may be tape-recorded by either Eastern Gardens Cooperative, Inc., and/or the member.*
- (3) *The member, as well as Eastern Gardens Cooperative, Inc., may be represented by any individual, including an attorney. Each party shall pay its own cost of representation.*
- (4) *The member may call any witnesses, and may present any evidence orally and/or in writing, in support of the member's position that he or she should not be expelled as a member of Eastern Gardens Cooperative, Inc. Eastern Gardens Cooperative, Inc. or its representative, may question any witness called by the member.*
- (5) *Eastern Gardens Cooperative, Inc. may call any witnesses and may present any evidence, orally or in writing, in support of its position that the member should be expelled. The member, or his or her representative, may question any witness called by Eastern Gardens Cooperative, Inc.*
- (6) *The rules of evidence shall not be applicable to any testimony or evidence presented.*
- (7) *Upon completion of the presentation of evidence, the member and Eastern Gardens Cooperative, Inc. by and through any Board of Director may summarize their position.*
- (8) *The Board of Directors may continue a hearing, after it has started, to any other time convenient to the Board of Directors and the member. However, if the hearing is continued, that continuance shall not be for more than three (3) days.*
- (9) *Upon presentation of all the evidence, the Board of Directors shall vote on each allegation of Violation of the Occupancy Agreement and decide whether there is good cause to expel the member for violation of the Occupancy Agreement. The Board of Directors shall vote on whether to expel the member within three (3) days of completing the hearing. The Board of Directors may deliberate its decision in closed session. The member need not be present at the time of the Board of Directors decision.*

(d) **Expulsion Notice**

- (1) *If no hearing was conducted and the member has not vacated the dwelling by the date of the proposed expulsion, the member shall become a Tenant at Sufferance and Eastern Gardens Cooperative, Inc. will seek its legal remedy to remove the Tenant at Sufferance from the dwelling.*
- (2) *If a hearing was conducted, and the member has been notified of the Board's decision, the member shall have (5) five days from the date of the notice of the Board of Directors decision in which to vacate the dwelling. If the expelled member does not vacate the dwelling within the time stated, the member's status becomes that of a Tenant at Sufferance and the expelled member is wrongfully holding the property after termination of his or her interest and Eastern Gardens Cooperative, Inc. shall seek its remedy at law to remove the Tenant at Sufferance from the dwelling.*

Article VI "Officers" is amended as follows:

Summary: **Section 1** – i) Deleting the sentence "one hundred or less", does not apply to Eastern Gardens. ii) In 1971 during Eastern Garden's incorporation and construction it entered into a financial agreement with HUD known as the Regulatory Agreement. Which stipulates in part as long as there is an outstanding mortgage; Eastern Garden's business practice, such as, the day-to-day operations its book keeping and all monies disbursed and/or received shall be outsourced to a management company. Existing language in the bylaws does not reflect our current business practices. Therefore, adding subsection (a) and its language to Section 1 of Article VI helps clarify the Treasurer's role and responsibilities and falls into compliance with the Regulatory Agreement as stipulated by HUD. **Section 7** – Bringing Section 1, as stated above, into compliance it then becomes necessary to change the language in section 7.

1. Section 1 "Designation" is amended to delete "In the case of a corporation of one hundred members or less". Add the subsection (a) with the following language:  
***(a) Exceptions to the officer's duties and responsibilities; if the Board of Directors make a decision by a majority vote of the board, provided that a quorum is present, to delegate or outsource the managing activities of the corporation to any management company, (i.e., the day-to-day operations including but not limited to, collection of rents, deposits, disbursements and purchases, bookkeeping, inspections, daily and preventative maintenance, apartment turnover, safety...etc.), it is understood that the activities and affairs of the corporation and all corporate powers shall be managed and exercised under the ultimate direction of the board.***
2. Section 7 "Treasurer" is amended as follows:
  - a) To delete the word "have" in the first sentence and add the language "***monitor the financial records***";
  - b) To delete the word "corporate" and add the language "***corporation which are delegated and/or outsourced pursuant to Section 1(a) of this Article***" in the second and third sentence;
  - c) To delete the language "funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Corporation. He or she shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Corporation in such depositories as may from time to time be designated by the Board of Directors."

Article X "Fiscal Management" is amended as follows:

Summary: Bringing Section 1 of Article VI "Officers" into compliance, as stated above, it then becomes necessary to change the language in Article X Sections 2 & 5.

1. Section 2 "Books and Accounts" is amended to delete "under the direction of the Treasurer and" in the second sentence.
2. Section 5 "Execution of Corporate Documents" is amended to delete "and all checks shall be executed on behalf of the Corporation by either the President or the Vice President and countersigned by either the Secretary or the Treasurer".

**NOTES:**

**Bold Italics = Add**  
**Bold Strikethrough = Delete**

How Bylaws will read showing  
inserts and deletions as  
indicated in above.

BYLAWS  
OF  
EASTERN GARDENS COOPERATIVE, INC.

ARTICLE III  
MEMBERSHIP

Section 9. TERMINATION OF MEMBERSHIP FOR CAUSE. In the event the Corporation has terminated the rights of a member under **Section 9.1. of this article and** the Occupancy Agreement, **Article 4 Sections 1 & 2**, the member shall be required to deliver promptly to the Corporation his or her membership certificate and his or her Occupancy Agreement, both endorsed in such manner as may be required by the Corporation. The Corporation shall thereupon at its election either (1) repurchase said membership at its transfer value (as hereinabove defined) or the amount the retiring member originally paid for the acquisition of his or her membership certificate, whichever is the lesser, or (2) proceed with reasonable diligence to effect a sale of the membership to a purchaser and at a sales price acceptable to the Corporation. The retiring member shall be entitled to receive the amount so determined, less the following amounts (the determination of such amounts by the Corporation to be conclusive):

**Section 9.1 EXPULSION PROCEDURES. The procedures must be followed in any case where Eastern Gardens Cooperative, Inc. proposes to expel a member and terminate that person's membership in the Corporation.**

**(a) Cause for Expulsion and Termination**

- (1) Eastern Gardens Cooperative, Inc. may expel a member for any one of the reasons listed in Articles 14 and 15 of the Occupancy Agreement. Pursuant to Article III, Section 9 of the Bylaws, an expulsion from the corporation terminates an individual's membership in the Corporation.**
- (2) The management agent of Eastern Gardens Cooperative, Inc. shall initiate an expulsion by preparing a written notice of a proposed expulsion, and presenting a copy of the written notice to the Board of Directors with a statement from the management agent setting forth the reason(s) the management agent considers good cause for expulsion.**
- (3) The Board of Directors of Eastern Gardens Cooperative, Inc. shall review the findings of the management agent without reviewing the merits of the proposed expulsion at a Special Closed Session Meeting of the Board of Directors convened solely for the purpose of reviewing said notice. Only upon a majority vote of the Board of Directors will the management agent be authorized by the Board of Directors of Eastern Gardens Cooperative, Inc. to forward the notice unto the Member. Upon a majority vote of the Board of Directors, the management agent shall forward the notice of the proposed expulsion to the member in accordance with Section 9.1(b).**

**(b) Notice of Proposed Expulsion from Eastern Gardens Cooperative, Inc.**

- (1) At which time Eastern Gardens Cooperative, Inc. proposes to expel a member from the corporation, the management agent upon a majority vote of the Board of Directors shall notify the member in writing that:
  - a. Eastern Gardens Cooperative, Inc. proposes to expel the member from the corporation for good cause setting forth all reasons for the expulsion.****
- (2) If upon receiving written notice from the management agent, the member agrees with the reasons as set forth in the notice, the member shall vacate the cooperative apartment by a specified date, which shall not be less than fifteen (15) days from the date of the notice.**
- (3) If the member disagrees with the reasons set forth in the notice, he or she need not move at that time, however, within ten (10) days of the notice the member must request, in writing, a hearing before the Board of Directors of Eastern Gardens Cooperative. The written request for a hearing shall be delivered to the Resident Manager of Eastern Gardens Cooperative, Inc.**
- (4) Upon receipt of the written request from the member requesting a hearing on the proposed expulsion, the President of the Board of Directors shall schedule a Special Meeting, to be held not less than (5) five days after receiving the request from the Resident Manager. If the member for good cause cannot attend the hearing on the scheduled date, he or she must notify the President of the Board of Directors within (2) two days of receiving the notice of the hearing and must specify in the response at least two alternate dates or times, both dates are to be within two days of the original hearing date, that the member can attend. The sole purpose of the meeting shall be to conduct the hearing.**

- (5) *Prior to the hearing and during regular business hours, the member may examine and at the member's expense, copy the member's files and payment records in possession of Eastern Gardens Cooperative, Inc.*
  - (6) *The hearing will be conducted in accordance with Section 9.1(c) of this procedure, a copy of which shall be enclosed with the notice to the member.*
  - (7) *If the member does not request a hearing within the time stated and does not vacate the dwelling by the date specified, the member shall be expelled from Eastern Gardens Cooperative, Inc. and shall lose all right to reside in the dwelling. Upon being expelled as a member of Eastern Gardens Cooperative, Inc. his/her/their interest is terminated and if the dwelling is not vacated, the expelled member shall become a Tenant at Sufferance and Eastern Gardens Cooperative, Inc. may take whatever legal action necessary to evict the Tenant at Sufferance. (A Tenant at Sufferance arises when one comes into possession of property by lawful title, but wrongfully holds over after the termination of his/her interest. She/he has no estate or title by only naked possession without right and wrongfully, and stands in no privity to landlord and is not entitled to notice to quit, and is a bare licenses to which landlord owes merely a duty not wantonly or willfully injure him/her.)*
  - (8) *The notice to the member must be sent:*
    - a. *By first class or registered mail;*
    - b. *At least 15 days before the proposed date of expulsion;*
    - c. *To the member's Eastern Gardens Cooperative, Inc. residence, or if the member is no longer residing at Eastern Gardens, at the last address that Eastern Gardens Cooperative, Inc. has for the member's place of residence.*
- (c) **The Hearing**
- (1) *The hearing will be held in the Eastern Gardens Cooperative, Inc., Community Room or other mutually agreeable location and conducted before the Board of Directors of Eastern Gardens Cooperative, Inc. All state law and Bylaw provisions applicable to a Board Meeting shall apply to the hearing.*
  - (2) *The hearing may be tape-recorded by either Eastern Gardens Cooperative, Inc., and/or the member.*
  - (3) *The member, as well as Eastern Gardens Cooperative, Inc., may be represented by any individual, including an attorney. Each party shall pay its own cost of representation.*
  - (4) *The member may call any witnesses, and may present any evidence orally and/or in writing, in support of the member's position that he or she should not be expelled as a member of Eastern Gardens Cooperative, Inc. Eastern Gardens Cooperative, Inc. or its representative, may question any witness called by the member.*
  - (5) *Eastern Gardens Cooperative, Inc. may call any witnesses and may present any evidence, orally or in writing, in support of its position that the member should be expelled. The member, or his or her representative, may question any witness called by Eastern Gardens Cooperative, Inc.*
  - (6) *The rules of evidence shall not be applicable to any testimony or evidence presented.*
  - (7) *Upon completion of the presentation of evidence, the member and Eastern Gardens Cooperative, Inc. by and through any Board of Director may summarize their position.*
  - (8) *The Board of Directors may continue a hearing, after it has started, to any other time convenient to the Board of Directors and the member. However, if the hearing is continued, that continuance shall not be for more than three (3) days.*
  - (9) *Upon presentation of all the evidence, the Board of Directors shall vote on each allegation of Violation of the Occupancy Agreement and decide whether there is good cause to expel the member for violation of the Occupancy Agreement. The Board of Directors shall vote on whether to expel the member within three (3) days of completing the hearing. The Board of Directors may deliberate its decision in closed session. The member need not be present at the time of the Board of Directors decision.*
- (d) **Expulsion Notice**
- (1) *If no hearing was conducted and the member has not vacated the dwelling by the date of the proposed expulsion, the member shall become a Tenant at Sufferance and Eastern Gardens Cooperative, Inc. will seek its legal remedy to remove the Tenant at Sufferance from the dwelling.*
  - (2) *If a hearing was conducted, and the member has been notified of the Board's decision, the member shall have (5) five days from the date of the notice of the Board of Directors decision in which to vacate the dwelling. If the expelled member does not vacate the dwelling within the time stated, the member's status becomes that of a Tenant at Sufferance and the expelled member is wrongfully holding the property after termination of his or her interest and Eastern Gardens Cooperative, Inc. shall seek its remedy at law to remove the Tenant at Sufferance from the dwelling.*

ARTICLE VI  
OFFICERS

Section 1. DESIGNATION. The principle officers of the Corporation shall be President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of Directors. The Directors may appoint an assistant treasurer, and an assistant secretary, and such other officers as in their judgment may be necessary. ~~(In the case of a corporation of one hundred members or less~~ The offices of Treasurer and Secretary may be filled by the same person.)

*(a) Exceptions to the officer's duties and responsibilities; if the Board of Directors make a decision by a majority vote of the board, provided that a quorum is present, to delegate or outsource the management activities of the corporation to any management company, (i.e., the day-to-day operations including but not limited to, collection of rents, deposits, disbursements and purchases, bookkeeping, inspections, daily and preventative maintenance, apartment turnover, safety...etc.), it is understood that the activities and affairs of the corporation and all corporate powers shall be managed and exercised under the ultimate direction of the Board.*

Section 7. TREASURER. The Treasurer shall ~~have~~ **monitor the financial records responsibility for** of the ~~corporate corporation which are delegated and/or outsourced pursuant to Section 1(a) of this Article funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Corporation. He or she shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Corporation in such depositories as may from time to time be designated by the Board of Directors.~~

ARTICLE X  
FISCAL MANAGEMENT

Section 2. BOOKS AND ACCOUNTS. Books and accounts of the Corporation shall be kept ~~under the direction of the Treasurer and~~ in accordance with the Uniform System of Accounts prescribed by the FHA Commissioner. The amount of the Carrying Charges required for payment on the principle of the mortgage of the Corporation or any other capital expenditures shall be credited upon the books of the Corporation to the "Paid-in Surplus" account as a capital contribution by the members.

Section 5. EXECUTION OF CORPORATE DOCUMENTS. With prior authorization of the Board of Directors, all notes and contracts, including Occupancy Agreements, shall be executed on behalf of the Corporation by either the President or the Vice President, ~~and all checks shall be executed on behalf of the Corporation by either the President or the Vice President and countersigned by either the Secretary or the Treasurer.~~

**NOTE:** Bold Italics = Add

## Summary Explanation of Proposed Occupancy Agreement Amendments

Article 4 "Termination of Membership" the Occupancy Agreement is amended as follows:

Summary: Records indicate that in 1984 Eastern Gardens Termination Policy was in practice but not adopted into its bylaws or occupancy agreement. In 2008 per legal advice and to comply with the California Corporations Code the board amended the termination policy bringing it to current standards and is now recommending the addition of Section 9.1. to Section 9 of its occupancy agreement. (See below)

1. Add the following language to the first paragraph, **Section 1.**
2. Add a new section with the following language, **Section 2 "Expulsion Procedures"**  
**(See proposed bylaw amendments Article III Section 9.1 for entire language that is to be added)**

Article 5 "Premises are to be Occupied by Designated Occupants" the Occupancy Agreement is amended as follows:

Summary: The Board has received verbal and written complaints concerning individuals who have taken possession of their apartment unit but have not physically moved-in, (i.e., years). In response to the concerns of the general membership on this issue, the Board researched its options and has listed them as stated below, (i.e., per legal advice, HUD/Fair Housing laws and the California Corporations Code),

1. Add the following language to the first paragraph, **Section 1.**
2. Add two new sections with the following language:  
**Section 2. Dwelling Unit: *The Member upon receiving possession within 60 days of signing the Occupancy Agreement must physically occupy and live-in said dwelling unit (apartment) and the dwelling unit (apartment) must be the Member's primary place of residence, (Civil Code Sec 1940-1954.1.) In addition, said dwelling unit shall be referred to as Member's Primary Residency and will be defined as:***
  - 1) ***Receiving mail and tax returns at the apartment unit, i.e., (US Postal Service or other means), and***
  - 2) ***Must physically occupy and reside in dwelling unit (apartment).***
3. Add a new section with the following language:  
**Section 3. Extended Absence or Abandonment:**
  - 1) ***The Member not residing or is absent from the apartment unit longer than 60 continuous days, or longer than 180 continuous days for medical reasons, the Member must provide medical documentation from their medical provider and submit it to Management and, in addition, obtain written permission from Management/Board of Directors. If the Member is not able to provide medical documentation for reasons not to occupy, as stated in Section 2 of this Article, given under this Agreement, the Corporation shall avail itself of such legal remedies for breaches on the part of the Member.***
  - 2) ***If abandonment of an apartment unit occurs the Corporation shall avail itself of such legal remedies and refer to federal, state and local laws, and other policies and rules as stated in the Bylaws and Occupancy Agreement of Eastern Gardens Cooperative, Inc.***

Article 12 "Repairs"

Summary: In reference to drapes and interior painting, correcting the language will help clarify the intent of the article.

1. Article 12 (c) is amended to delete the word "of" and add the language "***with exception to***" the following items...

Article 18 "Subordination Clause" the Occupancy Agreement is amended as follows:

Summary: The language in this paragraph which references Eastern Garden's (EG) original loan at the time of its construction has long been paid-off. This was due in part when EG refinanced in December of 2004 and paid-off its original loan. The language here continues to confuse new/current members when they sign their Occupancy Agreement, which reads to believe that we still have an outstanding loan amount of \$1.6m with Advance Mortgage Corporation. Removal of this language would help clarify the intent of the article. In addition, Members can obtain a copy of the finances if they have questions concerning EG's current mortgage.

1. Delete the language in the middle of paragraph, "under date of December 1, 1971, payable to Advance Mortgage Corporation in the principle sum of \$1,600,600 with interest at 7 per centum".

**NOTES:**

**Bold Italics = Add**  
**Bold Strikethrough = Delete**

How O.A. will read showing inserts  
and deletions as indicated above.

EASTERN GARDENS COOPERATIVE, INC.  
OCCUPANCY AGREEMENT

ARTICLE 4  
TERMINATION OF MEMBERSHIP

**Section 1.** "After submitting a 30-day written Notice...."

**Section 9.1 EXPULSION PROCEDURES.** *The procedures must be followed in any case where Eastern Gardens Cooperative, Inc. proposes to expel a member and terminate that person's membership in the Corporation.*

**(a) Cause for Expulsion and Termination**

- (1) *Eastern Gardens Cooperative, Inc. may expel a member for any one of the reasons listed in Articles 14 and 15 of the Occupancy Agreement. Pursuant to Article III, Section 9 of the Bylaws, an expulsion from the corporation terminates an individual's membership in the Corporation.*
- (2) *The management agent of Eastern Gardens Cooperative, Inc. shall initiate an expulsion by preparing a written notice of a proposed expulsion, and presenting a copy of the written notice to the Board of Directors with a statement from the management agent setting forth the reason(s) the management agent considers good cause for expulsion.*
- (3) *The Board of Directors of Eastern Gardens Cooperative, Inc. shall review the findings of the management agent without reviewing the merits of the proposed expulsion at a Special Closed Session Meeting of the Board of Directors convened solely for the purpose of reviewing said notice. Only upon a majority vote of the Board of Directors will the management agent be authorized by the Board of Directors of Eastern Gardens Cooperative, Inc. to forward the notice unto the Member. Upon a majority vote of the Board of Directors, the management agent shall forward the notice of the proposed expulsion to the member in accordance with Section 9.1(b).*

**(b) Notice of Proposed Expulsion from Eastern Gardens Cooperative, Inc.**

- (1) *At which time Eastern Gardens Cooperative, Inc. proposes to expel a member from the corporation, the management agent upon a majority vote of the Board of Directors shall notify the member in writing that:*
  - a. *Eastern Gardens Cooperative, Inc. proposes to expel the member from the corporation for good cause setting forth all reasons for the expulsion.*
- (2) *If upon receiving written notice from the management agent, the member agrees with the reasons as set forth in the notice, the member shall vacate the cooperative apartment by a specified date, which shall not be less than fifteen (15) days from the date of the notice.*
- (3) *If the member disagrees with the reasons set forth in the notice, he or she need not move at that time, however, within ten (10) days of the notice the member must request, in writing, a hearing before the Board of Directors of Eastern Gardens Cooperative. The written request for a hearing shall be delivered to the Resident Manager of Eastern Gardens Cooperative, Inc.*

- (4) Upon receipt of the written request from the member requesting a hearing on the proposed expulsion, the President of the Board of Directors shall schedule a Special Meeting, to be held not less than (5) five days after receiving the request from the Resident Manager. If the member for good cause cannot attend the hearing on the scheduled date, he or she must notify the President of the Board of Directors within (2) two days of receiving the notice of the hearing and must specify in the response at least two alternate dates or times, both dates are to be within two days of the original hearing date, that the member can attend. The sole purpose of the meeting shall be to conduct the hearing.**
- (5) Prior to the hearing and during regular business hours, the member may examine and at the member's expense, copy the member's files and payment records in possession of Eastern Gardens Cooperative, Inc.**
- (6) The hearing will be conducted in accordance with Section 9.1(c) of this procedure, a copy of which shall be enclosed with the notice to the member.**
- (7) If the member does not request a hearing within the time stated and does not vacate the dwelling by the date specified, the member shall be expelled from Eastern Gardens Cooperative, Inc. and shall lose all right to reside in the dwelling. Upon being expelled as a member of Eastern Gardens Cooperative, Inc. his/her/their interest is terminated and if the dwelling is not vacated, the expelled member shall become a Tenant at Sufferance and Eastern Gardens Cooperative, Inc. may take whatever legal action necessary to evict the Tenant at Sufferance. (A Tenant at Sufferance arises when one comes into possession of property by lawful title, but wrongfully holds over after the termination of his/her interest. She/he has no estate or title by only naked possession without right and wrongfully, and stands in no privity to landlord and is not entitled to notice to quit, and is a bare licenses to which landlord owes merely a duty not wantonly or willfully it injure him/her.)**
- (8) The notice to the member must be sent:**
  - a. By first class or registered mail;**
  - b. At least 15 days before the proposed date of expulsion;**
  - c. To the member's Eastern Gardens Cooperative, Inc. residence, or if the member is no longer residing at Eastern Gardens, at the last address that Eastern Gardens Cooperative, Inc. has for the member's place of residence.**

**(c) The Hearing**

- (1) The hearing will be held in the Eastern Gardens Cooperative, Inc., Community Room or other mutually agreeable location and conducted before the Board of Directors of Eastern Gardens Cooperative, Inc. All state law and Bylaw provisions applicable to a Board Meeting shall apply to the hearing.**
- (2) The hearing may be tape-recorded by either Eastern Gardens Cooperative, Inc., and/or the member.**
- (3) The member, as well as Eastern Gardens Cooperative, Inc., may be represented by any individual, including an attorney. Each party shall pay its own cost of representation.**
- (4) The member may call any witnesses, and may present any evidence orally and/or in writing, in support of the member's position that he or she should not be expelled as a member of Eastern Gardens Cooperative, Inc. Eastern Gardens Cooperative, Inc. or its representative, may question any witness called by the member.**
- (5) Eastern Gardens Cooperative, Inc. may call any witnesses and may present any evidence, orally or in writing, in support of its position that the member should be expelled. The member, or his or her representative, may question any witness called by Eastern Gardens Cooperative, Inc.**
- (6) The rules of evidence shall not be applicable to any testimony or evidence presented.**
- (7) Upon completion of the presentation of evidence, the member and Eastern Gardens Cooperative, Inc. by and through any Board of Director may summarize their position.**
- (8) The Board of Directors may continue a hearing, after it has started, to any other time convenient to the Board of Directors and the member. However, if the hearing is continued, that continuance shall not be for more than three (3) days.**
- (9) Upon presentation of all the evidence, the Board of Directors shall vote on each allegation of Violation of the Occupancy Agreement and decide whether there is good cause to expel the member for violation of the Occupancy Agreement. The Board of Directors shall vote on whether to expel the member within three (3) days of completing the hearing. The Board of Directors may deliberate its decision in closed session. The member need not be present at the time of the Board of Directors decision.**

**(d) Expulsion Notice**

- (1) *If no hearing was conducted and the member has not vacated the dwelling by the date of the proposed expulsion, the member shall become a Tenant at Sufferance and Eastern Gardens Cooperative, Inc. will seek its legal remedy to remove the Tenant at Sufferance from the dwelling.***
- (2) *If a hearing was conducted, and the member has been notified of the Board's decision, the member shall have (5) five days from the date of the notice of the Board of Directors decision in which to vacate the dwelling. If the expelled member does not vacate the dwelling within the time stated, the member's status becomes that of a Tenant at Sufferance and the expelled member is wrongfully holding the property after termination of his or her interest and Eastern Gardens Cooperative, Inc. shall seek its remedy at law to remove the Tenant at Sufferance from the dwelling.***

**ARTICLE 5**

**PREMISES ARE TO BE OCCUPIED BY DESIGNATED OCCUPANTS**

**Section 1.** Said premises shall be occupied by the designated person(s) on this Occupancy Agreement only. Having said premises occupied by more than said member(s) constitutes a breach of this Agreement. Eastern Gardens Management is to be notified in the event guests stay more than one week.

**Section 2. Dwelling Unit:** *The Member upon receiving possession within 60 days of signing the Occupancy Agreement must physically occupy and live-in said dwelling unit (apartment) and the dwelling unit (apartment) must be the Member's primary place of residence, (Civil Code Sec 1940-1954.1.) In addition, said dwelling unit shall be referred to as Member's Primary Residency and will be defined as:*

- (a) *Receiving mail and tax returns at the apartment unit, i.e., (US Postal Service or other means), and***
- (b) *Must physically occupy and reside in dwelling unit (apartment).***

**Section 3. Extended Absence or Abandonment:**

- (a) *The Member not residing or is absent from the apartment unit longer than 60 continuous days, or longer than 180 continuous days for medical reasons, the Member must provide medical documentation from their medical provider and submit it to Management and, in addition, obtain written permission from Management/Board of Directors. If the Member is not able to provide medical documentation for reasons not to occupy, as stated in Section 2(a), (1) & (2) of this Article and Section 2(b), (1), the Corporation, given under this Agreement, shall avail itself of such remedies for breaches on the part of the Member.***
- (b) *If abandonment of an apartment unit occurs the Corporation shall avail itself of such remedies and refer to federal, state and local laws, (HUD Occupancy Handbook, Chapter 6), and other policies and rules as stated in the Bylaws and Occupancy Agreement of Eastern Gardens Cooperative, Inc.***

**ARTICLE 12  
REPAIRS**

**By Member.** The member agrees to repair and maintain his/her dwelling unit at his/her own expense as follows:

- (a) Any repairs or maintenance necessitated by his/her own negligence or misuse;**
- (b) Any redecoration of his/her dwelling unit; and**
- (c) Any repairs, maintenance or replacements required on any items not approved by the Corporation, **with exception to** the following items: drapes and interior painting.**

ARTICLE 18  
SUBORDINATION CLAUSE

The project, of which the above-mentioned dwelling unit is a part, was constructed or purchased by the Corporation with the assistance of a mortgage loan advanced to the Corporation by a private lending institution with the understanding between the Corporation and the lender that the latter would apply for mortgage insurance under the provisions of the National Housing Act. Therefore, it is specifically understood and agreed by the parties hereto that this agreement and all rights, privileges and benefits hereunder are and shall be at all times subject and subordinate to the lien of a first mortgage and the accompanying documents executed by the Corporation **under date of December 1, 1971, payable to Advance Mortgage Corporation in the principle sum of \$1,600,600 with interest at 7 per centum**, and insured under the provisions of the National Housing Act, and to any and all modifications, extensions and renewals thereof and to any mortgage or deed of trust made in replacement thereof and to any mortgage or deed of trust which may at any time hereafter be placed on the property of the Corporation or any part thereof. The member hereby agrees to execute, at the Corporation's request and expense, any instrument which the Corporation or any lender may deem necessary or desirable to effect the subordination of this Agreement to any such mortgage, or deed of trust, and the member hereby appoints the Corporation and each and every officer thereof, and any future officer, his or her irrevocable attorney in-fact during the term hereof to execute any such instrument on behalf of the member. The member does hereby expressly waive any and all notices of default and notices of foreclosure of said mortgage which may be required by law.