

The COOPERATOR[®]

The Co-op & Condo Monthly

Focus on... Energy & The Environment

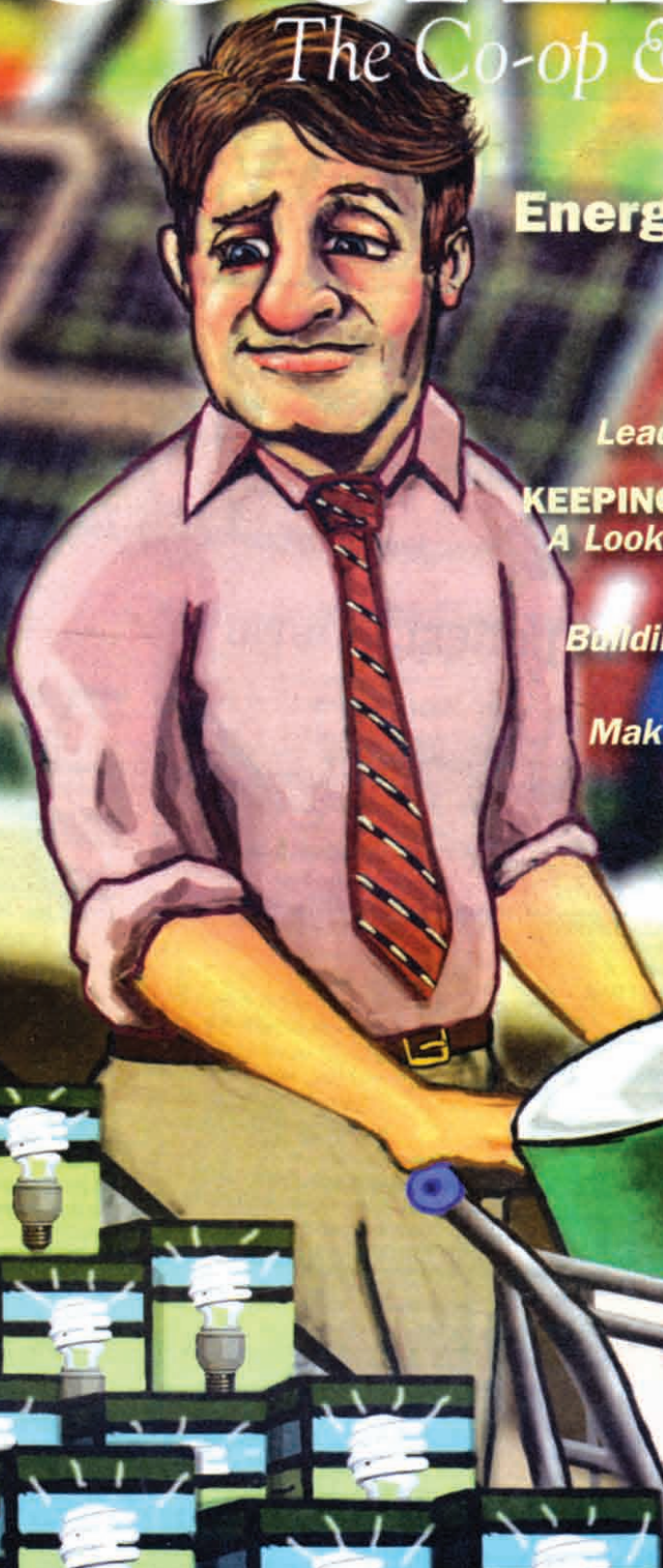
THE GREEN SCENE
Citywide Green Initiatives

ENERGY PRICES
Leading More Buildings to Co-Generate

KEEPING AN EYE ON YOUR BOTTOM LINE
A Look at Energy Cost Saving Strategies?

GREENER LIVING
Buildings Go Green for Savings and More

LET'S GO GREEN
Making the Case for Eco-Friendly Living



Running a Business in a Co-op

Q I am a shareholder in a Westchester County 73-unit cooperative, two of which are commercial units generating approximately two percent of the co-op's income. The president of our five-member board of directors has been president for over eighteen years. Several years ago he became a realtor and since that time has been a very active agent in both our community and in our co-op. This past year he purchased one of the two commercial spaces to open a real estate office that will be paying only the regular shareholder rate as its maintenance.

Is this appropriate? What advice can you offer shareholders?

—Skeptical Shareholder

A “The situation you describe is not unusual relative to the occupation of sitting board members of a cooperative corporation. In your case, a board member is both a real estate broker and shareholder of commercial space in your cooperative. As with all issues regarding board members, you must first look to the bylaws of the cooperative,” says attorney Mark L. Hankin of the Manhattan-based law firm of **Hankin, Handwerker & Mazel, PLLC.**



Mark L. Hankin

“Most bylaws contain a provision that no board member shall receive any compensation for his services as a board member. The Business Corporation Law Section 717 expands this concept and imposes a fiduciary duty of loyalty and good faith upon board members, which prohibits the use of their position as board members to gain a private and/or personal advantage. At the same time, the courts in New York state have held these bylaw and statutory provisions and permit personal gain by a board member, if it is in the best interest of the cooperative; if full disclosure is made; and, if consent of the entire board of directors is obtained.

“In your situation, I must assume that board members in your cooperative are aware, as you are, that the president is and has been acting as a real estate broker and have consented to his acting as same. I must further assume that the board members reviewed his application for purchase of the commercial space and voted to approve it. Assuming they acted in good faith and on behalf of all the shareholders in the cooperative, the board's decision to allow him or her to act as a real estate broker relative to cooperative units, and purchase the commercial space in the cooperative for real estate purposes, was and is valid and legal. Naturally, there is no prohibition against his or her acting as a real estate broker in your community.

“There are certain remedial measures that a board can take to avoid the potential for breach of loyalty and conflict of interest by any particular sitting board member. In your situation, the real estate broker should not be allowed to participate and vote on a purchase and/or sale of a cooperative unit that he or she has a direct pecuniary interest. The owner of the commercial space should not be allowed to participate and vote on any issue regarding the commercial space. These measures avoid the conflict and the appearance of impropriety. As to the amount of maintenance paid for the commercial space by the board member, each shareholder pays a specific amount based upon an allocation set forth in their proprietary lease. The fact that the owner of the commercial space uses the space for profit does not change the allocation.”