

Guideline for Cooperative Bylaws

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Bylaws are like the “owners manual” for a cooperative business. Bylaws will differ by type of co-op (worker, producer, consumer, etc.), by industry, and by state. Familiarize yourself with your state statutes. Use the process of developing bylaws as an opportunity for a group to define the details of who they are and what they aspire to become.

Differences between articles of incorporation, bylaws, and board resolutions:

Articles of incorporation

The articles of incorporation are filed with the state and entitle the cooperative to operate as a legal entity. Articles state the legal name of the co-op, its principle location of business, its purpose, its period of duration (usually perpetual), its capital structure (stock or non-stock co-op), and what happens to proceeds upon dissolution. Rarely does a co-op alter its articles, and to do so requires filing papers with the state.

Bylaws

While almost any activity can be covered by a bylaw, only broad issues of long term significance to the membership should be covered. Bylaws are generally not filed with the state. However the membership and the board agree to abide by the guidelines of the bylaws for operating their business. Bylaws can be changed over time, but doing so requires a majority vote of the membership.

Board resolutions

Policy and operating decisions should be recorded via resolutions voted upon during board meetings, not in the bylaws. Resolutions may include the cost of the membership fee, changes in the personnel handbook, or the amount of the annual patronage refund. Due to the fluctuating needs of the business, it is common for a board to pass one or two resolutions during its meetings.

In general, bylaws include the following elements:

1. Corporate affairs or organizational agreement

This section often recaps what is outlined within the articles of incorporation. This is an opportunity to include a clear, concise statement of purpose for which the cooperative is formed and the powers which the co-op may exercise. Make sure the bylaws agree with the articles of incorporation.

You may wish to include this handy phrase:

The articles of incorporation are hereby made a part of these bylaws. In case of any inconsistency between the articles of incorporation and these bylaws, the provisions of the articles of incorporation are controlling.

2. Membership

- a. Include specific statements of who is eligible for membership, the classes of membership, the requirements to become a member, and voting rights.
- b. Cover rules regarding suspension or termination of membership and compensation for investments in the co-op. (For example, will initial membership fees be returned?)
- c. Will the co-op offer capital stock? If so, spell out specific requirements.

3. Membership Meetings

Not surprisingly, this section may be referred to mostly frequently. Be sure to address:

- a. Details of the annual meeting.
- b. Special membership meetings, including requirements for calling a special meeting.
- c. Rules regarding the notice of meetings.
- d. Rules concerning voting (absentee ballots, voting by proxy, etc.)
- e. Number and percentage of membership which constitutes a quorum (this is very important).

4. Board of Directors

Another frequently referred to section of the bylaws. Include:

- a. Number and qualifications of the board directors. Generally boards have an odd number of directors (not odd directors). For efficiency, many new co-ops start with a small board (say five or seven directors) and may increase the board size over time to better reflect the changing demographics of the membership (for example, proportional representation).
- b. Election of directors. Be sure to address length of term and whether you wish to have term limits (or a mandatory time off the board before running for office again). You may wish to build in a rotation system for staggered terms so that you don't have a mass exodus of experience in a single year.
- c. Filling board vacancies. (Do you want the board to appoint a temporary director until the next annual meeting? Should names be drawn from a list of runners up in the last board elections?)
- d. Removal of directors (either by the board or the membership). This gets messy. It's easier to have this discussion before personalities become involved.
- e. Reimbursement and compensation of directors. (Check your state statutes.) You may wish to include a clause stating that no board member may vote upon reimbursement for their services – this is a decision for the membership.
- f. Conflict of interest. Here's a handy phrase:

It shall be the duty of all board directors to make prompt and full disclosure to the board of any personal, professional, or financial conflict of interest in a matter under discussion. When a conflict of interest is disclosed, the board member must not participate in the discussion or vote on the relevant issue.

- g. Details about the board meetings (how often they will meet, rules concerning special board meetings, notice of board meetings, quorum, etc.) Here is a

handy phrase in case the board wishes to hold an emergency meeting and doesn't have time to call a special board meeting (called an action without a meeting):

Any action required or permitted to be taken at a meeting of the board of directors may be taken by written action signed by all of the directors. The written action is effective when signed by all of the directors and shall have the same force and effect as a unanimous vote at a meeting.

- h. A section describing the general duties of the board of directors, the relationship with management, and the duty to the membership.
- i. Describe the duties of the manager or the executive director (reports directly to the board, responsible for daily operations and implementing policy, etc.). Encourage the board to avoid micromanaging by keeping their “nose in the business, but their fingers out.”

5. Board Officers

- a. Define the duties of the president, vice president, secretary, treasurer, and alternates
- b. How and when are officers selected? (Will this be directly voted upon by the membership? Will the board decide among themselves who will serve as officers? What will be the duration of the officer terms?)

6. Finances

Please consult your state's statutes. Be sure to cover:

- a. Apportionment of net proceeds (both net margins and losses).
- b. Distribution of proceeds.
- c. General policies for patronage refunds and reserves.
- d. Equity records – take this from the IRS code. Be sure to cover equity redemption for terminating members, deceased members, and unclaimed equity.
- e. Consent to patronage distributions. This phrase is critical for a co-op to remain in compliance with the IRS. Another handy phrase:

“Consent to patronage distributions” means that all members will report their co-op patronage refunds and retained capital equity to the IRS as earnings. Each year members will receive a 1099 form itemizing their patronage refunds earned in that year. Each member of this cooperative as of the effective date of this by-law who continues as a member after such date, and each person who shall after such date become a member shall, by such act alone, consent that the amount of any distribution with respect to patronage occurring in any fiscal year of the cooperative and which are made in written notices of allocation (as defined in 26 USCA 1388), and which are received by said member from the cooperative, will be taken into account by said member at their stated dollar amounts in the manner provided in 26 USCA 1384(a), less any amount which may be excluded under 26 USCA 1385(b) in the taxable year in which such written notices of allocation are received by said member.

7. Administration and miscellaneous

As the name implies, this is the catch all category. You could include items such as:

- a. When your fiscal year begins.
- b. Meetings will be governed by Robert's Rules of Order (optional).
- c. Will you have a corporate seal or not?
- d. Indemnification and insurance statement (basically that the co-op will cover insurance and reimburse a director for expenses incurred due to a legal proceeding).
- e. Financial review – Will you have an annual audit (a good idea).
- f. Option for the co-op to have advisory councils, committees, etc.
- g. Severability. Here is a handy phrase:

If a court of competent jurisdiction judges any section, clause, provision, or portion of these by-laws void or invalid, the remainder of these by-laws will not be affected.

8. Amendments to the bylaws

State the procedure for amending the bylaws (whether initiated by the membership or the board).

9. Dissolution

What are the rules and procedures to follow if the co-op goes out of business? Check your state statutes! Think through how proceeds would be divided (among the remaining members, among the entire membership over the life of the co-op, given to a charity, etc.) It's easier to have this discussion now before the heat of the moment.

References:

Frederick, Donald A. *Sample Legal Documents for Cooperatives* USDA Cooperative Programs. Cooperative Information Report 40. 1999.
<http://www.rurdev.usda.gov/rbs/pub/cir40/cir40rpt.htm>

University of Wisconsin Center for Cooperatives. *Guidelines for Cooperative Bylaws*.
<http://www.uwcc.wisc.edu/info/bylaw.html>

And thanks to the many co-ops across Wisconsin and the country that I have cut and paste well written sections from their bylaws.