



ARTICLES AND BYLAW DEVELOPMENT QUESTIONS

CO-OP FUNCTION OR PURPOSE

What types of services will the cooperative provide? Purchasing? Processing? Marketing? Distribution?

STATE AND FEDERAL GUIDELINES

It is critical that the cooperative work with someone knowledgeable who can provide an overview of the State and Federal requirements that guide or impact the development of articles or bylaws. There may be specific tax requirements or advantages that will guide the development of your articles and bylaws. Also, often Federal and State regulations and requirements do not align with each other which will require legal counsel and interpretation.

THE QUICK START

Often a new business can use very simple “boiler-plate” Articles of Incorporation and Bylaws to file with the appropriate State and Federal agencies to get legally established and started. Sometimes this may be necessary in a new organization or business’ development. Then the cooperative can work through key issues and questions such as the ones listed below to complete more relevant and usable guiding documents. These “improved” documents can then be voted on and submitted to the State and/or Federal agencies as “amended” or “re-stated” articles and bylaws.

MEMBERSHIP-ELIGIBILITY QUESTIONS

- 1) **Geographic**-What are the geographic boundaries for membership and participation?
- 2) **Farm or Business Type**-What are the specific requirements of what types of farms or businesses that can join as members?
- 3) **Protocol for Joining**-Purchased share amount required; signed agreement to abide by articles, bylaws, and policies; accepted by Board or Membership? Majority, super majority, or unanimous vote?
- 4) **New Members or Limitation of Members**-New members meet protocol listed above. Does the co-op need to limit amount of members for any period of time such as the first year of start-up?
- 5) **Levels of Membership**-Is there anything about your business model that would require different levels of membership based on the types of services required?

SALE OF SHARES QUESTIONS

Do you know what your share value(s) will be and how many you will be offering? If so, this will need to be incorporated into the Articles of Incorporation. This may be done as an amendment to the cooperative’s articles after the cooperative is legally established if necessary.

MEMBERSHIP-VOTING QUESTIONS

- 1) **Quorum**-How many members will constitute a valid vote of the membership?
- 2) **Acceptance or Change of Bylaws**- Who decides and how? Membership or Board? Majority, super majority, or unanimous?
- 3) **Election of Officers**- Who decides and how? Membership or Board? Majority, super majority, or unanimous?
- 4) **Removal of Officers**- Who decides and how? Membership or Board? Majority, super majority, or unanimous?
- 5) **Acceptance or Termination of Membership**- Who decides and how? Membership or Board? Majority, super majority, or unanimous?
- 6) **Capital Contributions, Patronage Refunds**- Who decides and how? Membership or Board? Majority, super majority, or unanimous?

DIRECTOR AND OFFICERS-QUESTIONS

- 1) **Board Composition**-Number and allocation (how many, all commodities or farm types represented); non –farmer (voting positions); advisory (non-voting) positions; regular positions such as chair, vice chair, secretary, and treasurer; non-regular positions such as facilitator and records keeper?
- 2) **Election Date**-Annual meeting? 30 days prior or 30 days post fiscal year-end?
- 3) **Term**-Staggered for first election (3 yr. 2 yr. 1 yr.) three year terms afterward?
- 4) **Nomination and Election Procedures**-Detailed in the bylaws or established in Board policy; Must be a member in good standing; Board appointed Nominating Committee; general membership write-in process; vote at Annual Meeting; vote by mail?
- 5) **Resignation**-Written notice to board, chair, or facilitator; oral notice at board meeting?
Board Vacancies-Remaining board members fill vacancy by majority, super majority, or unanimous vote?
- 6) **Removal of Directors**-Unexcused absences or missing more than x meetings in a row or per year; performance related issues identified by either board or member initiated process (who, how many-what % of membership or board, method-petition); hearing process; majority, super majority, or unanimous vote of other board members)?
- 7) **Absence of Officer**-If an officer must be absent, the Board can delegate the powers/duties of that officer by a majority, super majority, or unanimous vote of other board members?
- 8) **Committees**-Board can establish committees as it deems necessary. On the Board has decision making authority unless it specifically delegates authority by resolution? Bylaw amendment?

Duties of Directors

- 1) **Fiduciary**-entrusted to protect the members and cooperative's interest
- 2) **Management of Business**-general supervision and control; make all policies, oversight of employees; accounting and records (including minutes, board resolutions, and action); protection of assets.
- 3) **Bonds and Insurance**-Insuring adequate protection for the business entity and member interest in terms of liability, property, and fidelity bonding (if necessary)
- 4) **Financial Review**-What are the requirements for financial review (disinterested certified public accountant and audit of financial records) and care of tax matters?
- 5) **Depository**-Is the Board empowered to select banks and open bank accounts?
- 6) **Indebtedness**-Board can take on debt to operate business on behalf of members?

Duties of Officers

- 1) **General**- Regular positions such as chair, vice chair, secretary, and treasurer; non-regular positions such as facilitator and records keeper?
- 2) **Establish Duties**-Who presides over the meetings; who has signatory authority; who contracts with the CPA or accountant; who provides direct oversight to the operations manager or staff; what is the hierarchy of authority or back-up plan in the event an office can't fulfill a duty; who keeps minutes and ensures all legal requirements are met and documents are secured?

MEETINGS-QUESTIONS

Membership Meetings

- 1) **Annual Meeting**-What is the purpose (keep members informed and take care of organizational and business needs); what happens (review of current financials, board elections, other voting matters); and when is the meeting (within 90 days of fiscal year end)?
- 2) **Location**-Where will the meetings be held?
- 3) **Special Meetings**-Who can call (the Board or XX% of the members by petition)?
- 4) **Notice**-How much lee time should membership have (10 days, 14 days); how should they be informed (mail, e-mail, phone)?
- 5) **Quorum**-What percentage of membership constitutes a quorum; are proxies allowable?
- 6) **Action by Consent**-Can the appropriate quorum vote in a manner other than a meeting (via mail)?
- 7) **Designation of Representative**-One farm, one vote?
- 8) **Proxy and Mail Ballots**-Voting by mail (proxy ballot) instead of or as well as voting at Annual Meeting; ballot must come from established address of business entity?

Board Meetings

- 1) **Regular Board Meetings**-How frequently should the board be required to meet?
- 2) **Location**- Where will the meetings take place?
- 3) **Quorum**-50% plus one?
- 4) **Voting**-By proxy or e-mail?
- 5) **Manner of acting**-This means that a decision made by a quorum of the board as per the bylaws represents a decision of the entire Board of Directors. These are usually made by resolution and recorded in the minutes.
- 6) **Presumption of Assent**- A Director who is present when a vote or resolution is based is assumed to support the vote or resolution unless the Director specifically votes "no" or abstains, which is then recorded in the minutes.
- 7) **Special Board Meetings**-Can be called by the chair or any 2 directors?
- 8) **Notice of Special Meetings**-How much lee times (3 days, 5 days) and how should the Board be informed (mail, e-mail, phone)?

OPERATIONS QUESTIONS *(to be completed at a later date)*

- 1) Character of Business-
- 2) Margins-
- 3) Member Contributions
- 4) Cash Reserve Requirements
- 5) Use of Funds

- 6) Unclaimed Funds
- 7) Apportionment of earnings

INDEMNIFICATION-This means to secure against hurt, loss, or damage, or to make compensation to for incurred hurt, loss, or damage. This section is put into the bylaws in order to better manage risk by providing instruction about categories of fiduciary responsibility, how they are considered or handled, and who handles them. This section provides a framework to protect the cooperative and its members, board of directors, officers, and staff.

PARLIAMENTARY AUTHORITY-Will the cooperative used an established method of conducting its meetings and voting procedures such Robert's Rules of Order (there are plusses and minuses with this and a forming cooperative should work with its attorney on this).

AMENDMENTS-Who can make amendments to the articles or bylaws (only by the members, or by the Board) and how will they be made? Considerations include the method of voting (via mail, at a regularly scheduled or specially-called meeting, quorum and majority or supermajority requirements, etc.)

FISCAL YEAR-The fiscal year is established for accounting, tax, and fiduciary purposes. Is it a calendar year or do you orient the fiscal year to "business weeks" (Sunday through Saturday) with the year ending the closest Saturday to December 31?