

## CO-OPERATIVES IN ONTARIO

### FILING REQUIREMENTS AND RECORD KEEPING

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This guide **Filing requirements and Record-Keeping** describes the forms and documents which the *Co-operative Corporations Act* and the *Regulations* require co-operatives to file. It also lists the records that co-operatives have to keep.

(Ce document est disponible en français)  
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## **FILING REQUIREMENTS AND RECORD KEEPING**

To meet its filing requirements, it may be useful for your co-op to have a copy of the *Co-operative Corporations Act* (the “Act”) and its *Regulations*. You can visit ServiceOntario e-laws at <http://www.e-laws.gov.on.ca> to obtain copies of the Act and Regulations.

This guide describes how to file:

- Audit Exemption Consent Forms
- Audit Exemption Resolution Forms
- Articles of Amendment
- Offering Statements
- Material Change Statements

Tables 1 to 4 in this guide summarize the documents and forms your co-op has to file.

You may use photocopies of any of the forms included in this guide for filing with the Financial Services Commission of Ontario.

## **CHANGE OF LOCATION**

If you move your head office from one municipality to another, you must file a certified copy of the by-law confirming the move with the Financial Services Commission of Ontario within 10 days of the members' resolution. (A certified copy of the by-law is a copy that bears the co-op's seal and has been signed by one of the co-op's officers.)

If you move your head office within a municipality, you must inform the Financial Services Commission of Ontario within 10 days of the members' resolution. For more information on change of location, see Section 14 of the Act.

## **AUDITED FINANCIAL STATEMENTS**

The Act requires all co-operatives with more than 50 members or more than \$500,000 in capital, assets, gross revenue, or gross sales to have their financial statements audited by a chartered accountant.

An auditor's report confirms that the figures in your financial statements present the financial position of your co-op fairly and that your accounting practices follow generally accepted accounting principles.

The auditor's report must be presented to the members at the same time as the financial statements.

For more information on audited financial statements, see Sections 123 to 127 of the Act.

## **AUDIT EXEMPTIONS**

### **AUDIT EXEMPTION CONSENT FORM**

Co-ops with **fewer than 16 members** and less than \$500,000 in capital, assets, gross revenue, or gross sales do not have to have their financial statements audited by a chartered accountant, as long as all the members agree to the exemption in writing.

If this is your co-op's situation, you should file an Audit Exemption Consent Form with the Financial Services Commission of Ontario.

A sample Audit Exemption Consent Form is included in this guide.

### **AUDIT EXEMPTION RESOLUTION FORM**

Co-ops with **16 - 50 members** and less than \$500,000 in capital, assets, gross revenue, or gross sales do not have to have their financial statements audited by a chartered accountant, as long as a special resolution allowing the exemption is passed. (A special resolution is a resolution that has been passed by the board of directors and confirmed by a vote of at least two-thirds of those present at a general members' meeting.)

If your co-op passes such a resolution, you must file an Audit Exemption Resolution Form with the Financial Services Commission of Ontario.

A sample Audit Exemption Resolution Form is included in this guide.

### **ARTICLES OF AMENDMENT**

Co-operatives have to file articles of amendment when they change their articles of incorporation.

For example, articles of amendment are required to:

- Change a co-op's name
- Raise or lower the authorized capital
- Raise or lower member fees or minimum member loans
- Reclassify classes of shares
- Change restrictions on powers
- Change the special provisions
- Convert to a co-op with or without share capital
- Amalgamate with another co-op or a subsidiary
- Convert to a business corporation or a non-profit corporation

Generally, these changes have to be approved by a special resolution to be valid. (A special resolution is a resolution that has been passed by the board of directors and confirmed by a vote of at least two-thirds of those present at a general members' meeting.) Some changes to the articles need different kinds of approval to be valid. Please check the Act or the *Legal Requirements* guide to find out more about the type of approval needed by your articles of amendment.

Once this special resolution is passed, you must file **two original signed copies** of the **Articles of Amendment Form** with the Financial Services Commission of Ontario within six months. A single set of forms may be filed for several changes. The cost for filing articles of amendment with the Financial Services Commission of Ontario is \$100.

Co-ops that change their names should file a **NUANS Report** (name search) and affidavit of solvency with the Financial Services Commission of Ontario when they file articles of amendment.

You will find a sample Articles of Amendment Form in this guide.

For more information on changes to articles of incorporation, see Sections 151 to 154 of the Act.

### **OFFERING STATEMENT**

An offering statement gives people interested in investing in your co-operative the information they need to make an informed decision. Above all, the offering statement informs prospective investors about the risks involved in purchasing the co-op's securities. It also includes, for example, a description of the co-op's business, how it will use the money it raises, the names and positions of its directors and officers, how the co-op finances its operations, and up-to-date financial statements.

Generally, co-ops must file an offering statement with the Financial Services Commission of Ontario when planning to sell securities to more than 35 people, or when the sale of securities increases the number of security holders in the co-op to more than 35. **If the issue of securities does not increase the number of security holders to more than 35, you do not have to prepare an offering statement.**

In addition, co-operatives are not required to file offering statements if they are planning to:

- Issue shares or loans to members as a condition of membership and,
- The value of the securities issued to any one member does not exceed \$1,000 per year,
- The total amount of membership shares and member loans held by any member does not exceed \$10,000;
- Issue new shares or member loans to members by using members' patronage returns;
- Use dividends to issue new shares.

If your co-op has to file an offering statement, you must do so before soliciting shares, member loans, or other securities. Every prospective security holder has to be given an offering statement and a copy of any material change statement (see below) before purchasing co-op securities. Offering statements should also be available for inspection at the co-op's head office.

You can obtain the template for an offering statement from the Ontario Co-operative Association's website at [www.ontario.coop](http://www.ontario.coop).

When filing your co-op's offering statement with the Financial Services Commission of Ontario, please make sure to send **two original signed copies** and the filing fee of \$50.

For more information on offering statements, see Sections 34 to 37 of the Act and Section 12 of the Regulations.

### **MATERIAL CHANGE STATEMENT**

A material change statement informs prospective investors of changes in your co-operative's financial position which may influence their decision to invest.

“**Material change**” means a change in a co-op's business, operations, or assets that may be expected to affect its gross revenue or sales by more than 10%, or its net income or loss by more than 25%. Changes that are expected to affect the co-op's gross revenue or gross sales by less than \$20,000 or its net income or loss by less than \$10,000 are not considered to be material changes.

Examples of material changes include:

- Signing a long-term sales contract
- Significant unexpected costs to replace equipment
- Sale of a large portion of assets or purchase of new assets
- Major shifts in sales of the co-op's products or services
- Substantial rise in production costs
- Variation in wholesale cost of products supplied to members

Co-ops have to file a material change statement with the Financial Services Commission of Ontario if a material change occurs while the co-op is issuing securities under an offering statement. The material change statement has to be filed within 30 days of the change.

The co-op also has to attach a copy of the material change statement to the offering statement and

send a copy of the material change statement to anyone who purchased securities under the offering statement before the material change occurred. Because this information is likely to be of interest to all members, co-ops may want to send them a copy as well.

For more information on material change statements, see subsections 35(4), (5), (6) of the Act and Section 12 of the Regulations.

### **SHARE AND LOAN CERTIFICATES**

Persons who buy shares or make loans to a co-operative are entitled to receive a share certificate or loan certificate.

A share or loan certificate shows the total number of shares held or loans made by each person. It is not necessary to prepare a certificate for each share or loan.

All certificates have to state:

- The name of the co-op and the fact that it is incorporated under the *Co-operative Corporations Act*;
- The name of the person to whom the share or loan certificate is issued;
- The restrictions, if any, on the transfer of the security;
- Whether the co-op has a lien on the shares or loans.

Share certificates have to state:

- The number and class of shares represented, and their par value;
- The dividend rate, if any.
- Certificates issued for **preference** shares should either state the rights, conditions, or restrictions attached to that class of shares, or they should state that a copy of the full text describing those rights, conditions, or restrictions, is readily available from the co-op.

Loan certificates have to state:

- The amount, maturity date, and annual rate of interest on the loan;
- Whether the loan is secured by assets, inventory, or accounts receivable.

You will find sample share and loan certificates in this guide.

For more information on share and loan certificates, see Sections 44 to 48 of the Act.

### **KEEPING RECORDS**

Section 114 of the *Co-operative Corporations Act* requires every co-op to keep these records:

- Copy of articles of incorporation and any amendments to them
- Copy of by-laws and all resolutions
- Alphabetical list of all current members, as well as members during the previous 10 years, including their addresses at the time
- Alphabetical list of all current security holders, as well as security holders during the previous 10 years, including their addresses at the time
- List of all past and present directors, including their residence addresses while

- directors and periods in office
- Accounting records of all financial transactions
  - Minutes of meetings of members, directors, and any executive committee

**SUMMARY: FILING REQUIREMENTS AND FEES**

**TABLE 1: AUDITED FINANCIAL STATEMENTS**

<b>TYPE OF INFORMATION</b>	<b>PROCEDURE</b>
<p><b>Audit exemptions:</b></p> <p>Co-ops with fewer than 16 members and less than \$500,000 in capital, assets, gross revenue, or gross sales do not have to file audited financial statements.</p> <p>Co-ops with 16-50 members and less than \$500,000 in capital, assets, gross revenue, or gross sales do not have to file audited financial statements.</p>	<p>To be exempted from having their financial statements audited by a chartered accountant, members of these co-ops are required to give their written consent by filing an <b>Audit Exemption Consent Form</b> with the Financial Services Commission of Ontario.</p> <p>To be exempted from having their financial statements audited by a chartered accountant, members of these co-ops are required to pass a special resolution and file an <b>Audit Exemption Resolution Form</b> with the Financial Services Commission of Ontario.</p>

**TABLE 2: OFFERING STATEMENTS**

<b>TYPE OF INFORMATION</b>	<b>FEES</b>	<b>PROCEDURE</b>
<p>Co-ops planning to issue securities (shares, debentures, member loans) are required to prepare an offering statement to give potential investors the information they need to make an informed decision.</p> <p>An offering statement describes the risks associated with investing in the co-op's securities and includes a description of the co-op's business, how it will use the money it raises, the names and positions of its directors and officers, how the co-op finances its operations, and up-to-date financial statements.</p> <p>(See Sections 34 to 37 of the Act and Section 12 of the Regulations)</p>	<p>No fee for an issue of securities worth less than \$50,000</p> <p>\$50 fee for an issue of securities worth \$50,000 or more</p>	<p>Co-ops offering securities to more than 35 people, or co-ops issuing securities which will increase the number of security holders to more than 35, have to file two original signed copies of their offering statement with the Financial Services Commission of Ontario.</p> <p>Co-ops with more than 35 security holders which issue securities on an ongoing basis have to file <b>two signed original copies</b> of their <b>offering statement</b> every year.</p> <p><b>OTHER EXEMPTIONS:</b></p> <p>An offering statement is not required if:</p> <ul style="list-style-type: none"> <li>● Shares or loans are issued to members as a condition of membership and,               <ul style="list-style-type: none"> <li>(a) the amount issued is not more than \$1,000 per member per year, and</li> <li>(b) the total amount held by any member is not more than \$10,000.</li> </ul> </li> <li>● Patronage returns are used to issue shares or member loans to members.</li> <li>● Dividends are used to issue new shares.</li> </ul>

<p><b>Changes to the facts in your Offering Statement:</b></p> <p>Co-ops which undergo a material change in their financial situation while offering securities under an offering statement have to prepare a <b>material change statement</b> and send it to the Financial Services Commission of Ontario, members of the co-op, and current and prospective investors.</p> <p>A material change in a co-op's business, operations, or assets is one that could affect its gross revenue or sales by more than 10%, or its net income or loss by more than 25%.</p> <p>(See Section 35 of the Act and Section 12 of the Regulations)</p>	<p>No fee.</p>	<p>Co-ops which undergo a material change while offering securities under an offering statement have to file <b>two original signed copies</b> of their <b>material change statement</b> with the Financial Services Commission of Ontario within 30 days of the change.</p> <p>The material change statement also has to be:</p> <ul style="list-style-type: none"> <li>● Attached to the offering statement;</li> <li>● Sent to every purchaser of the securities offered under the offering statement.</li> </ul>
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**TABLE 3: COMMON CHANGES**

TYPE OF CHANGE	FEES	PROCEDURE
<p>CHANGES TO ARTICLES OF INCORPORATION</p> <p>Basic changes such as altering the minimum member loan or the special provisions</p> <p>(See Sections 151, 153, 154 and 155 of the Act)</p>	<p>\$100</p>	<p>Co-ops that adopt a resolution to change any of their articles of incorporation should file <b>two original signed copies</b> of the <b>Articles of Amendment Form</b> with the Financial Services Commission of Ontario within 6 months of the members' resolution.</p>
<p>Change in the name of your co-op</p> <p>(See Sections 151 and 153 of the Act)</p>	<p>\$100</p>	<p>Co-ops that adopt a resolution to change their names should file <b>two original signed copies</b> of <b>Articles of Amendment Form</b> with the Financial Services Commission of Ontario within 6 months of the members' resolution.</p> <p>The articles of amendment should be accompanied by <b>two copies</b> of a document proving that the co-op is not insolvent (<b>Affidavit of Solvency</b>) and by a <b>NUANS Report</b> (name search).</p>
<p>Change in the number of directors</p> <p>(See Section 88 of the Act)</p>	<p>No fee</p>	<p>Co-ops that adopt a resolution to change the number, or the minimum or maximum number, of their directors should file a <b>certified copy of the by-law</b> authorizing the change with the Financial Services Commission of Ontario no later than 10 days after the members' resolution.</p>

TYPE OF CHANGE	FEES	PROCEDURE
<p>OTHER CHANGES:</p>		

<p>Moving the registered head office <u>within</u> a municipality</p> <p>(See Section 14 of the Act)</p>	<p>No fee</p>	<p>Co-ops in this situation should inform the Financial Services Commission of Ontario within 10 days of the members' resolution.</p>
<p>Moving the registered head office <u>from one municipality to another</u></p> <p>(See Section 14 of the Act)</p>	<p>No fee</p>	<p>Co-ops in this situation should file a <b>certified copy of the by-law</b> confirming the move with the Financial Services Commission of Ontario within 10 days of the members' resolution.</p>

**TABLE 4: DOCUMENT SEARCHES AND COPIES**

<b>TYPE OF INFORMATION</b>	<b>FEES</b>	<b>PROCEDURE</b>
Document search	\$5	Co-op members and officers can ask the Financial Services Commission of Ontario whether a document is on file with the Ministry.
Copies of documents	50 cents/pg (Minimum charge: \$5)	Co-op members and officers can request copies of documents, articles, and orders on file under the Act.
Certificate of status	\$25	Co-op members and officers can request a certificate proving that they are incorporated.
Certification of file contents	\$10	Co-op members and officers can request certified copies of the documents, articles, and orders in their file.

## **ENCLOSED MATERIALS**

- Audit Exemption Consent Form
- Audit Exemption Resolution Form
- Articles of Amendment (form available online on our website)
- Membership Share Certificate
- Preference Share Certificate
- Loan Certificate

**AUDIT EXEMPTION CONSENT FORM  
FOR CO-OPS WITH LESS THAN 16 MEMBERS**

**WHEREAS** \_\_\_\_\_ has:  
(name of co-operative)

- a) fifteen members or less;
- b) capital not exceeding \$500,000 as shown on the financial statement of the co-operative for the preceding year; and
- c) assets not exceeding \$500,000 and sales or gross operating revenues not exceeding \$500,000, as shown on the financial statement of the co-operative for the preceding year.

**THEREFORE** we, being all members of \_\_\_\_\_  
(name of co-operative)  
\_\_\_\_\_ hereby consent to exemption from audit requirements outlined in Section 123 of the Co-operative Corporations Act, RSO, 1990 as amended.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

**AUDIT EXEMPTION RESOLUTION FORM  
FOR CO-OPS WITH BETWEEN 16 AND 50 MEMBERS**

**WHEREAS** \_\_\_\_\_ has:  
(name of co-operative)

- a) more than fifteen but fewer than fifty one members;
- b) capital not exceeding \$500,000 as shown on the financial statement of the co-operative for the preceding year; and
- c) assets not exceeding \$500,000 and sales or gross operating revenues not exceeding \$500,000, as shown on the financial statement of the co-operative for the preceding year.

The Special Resolution confirming the above is set out below and forms part of this exemption.

**BE IT ENACTED** that \_\_\_\_\_  
(name of co-operative)

\_\_\_\_\_ confirms that the above statements are true and are

**CERTIFIED** to be a true copy of the audit exemption resolution \_\_\_\_\_  
(name of co-operative)

\_\_\_\_\_, duly passed by the Board of Directors  
at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_ and confirmed by two-thirds of the votes cast at a meeting of members held  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Secretary, Officer or Director

Co-operative Corporations Act  
ARTICLES OF AMENDMENT

OF

\_\_\_\_\_  
(name of co-operative)

INCORPORATED ON \_\_\_\_\_  
(date of incorporation)

1. The following is a certified copy of the resolution amending the articles of the co-operative:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The above amendment has been duly authorized as required by subsections 151 (1), (2), (3) **OR** (4) of the Co-operative Corporations Act.
3. The resolution authorizing the amendment was confirmed by the members of the co-operative on \_\_\_\_\_.
4. These articles are executed in duplicate for delivery to the Minister.

CERTIFIED

\_\_\_\_\_  
(name of co-operative)

BY:

\_\_\_\_\_  
(signature) (description of office)

\_\_\_\_\_  
(signature) (description of office)

## SAMPLE MEMBERSHIP SHARE CERTIFICATE

You can buy standard blank share certificates in bookstores and office supply shops. However, you can also prepare your own certificates using the sample below which is specifically for co-operatives.

No.:**[certificate number]**

**[number]** of shares

Incorporated under the Ontario Co-operative Corporations Act

**[name of co-operative]**

This certifies that **[name of purchaser]**  
is the registered holder of **[number of shares]**  
fully paid **Membership Shares** in the

**[name of co-operative]**

The co-operative has a lien on the shares represented by this Certificate for any debt the member owes the co-operative.

**The transfer of these shares is restricted.** [Indicate what the restrictions are. For example: **Shares may be transferred only with the consent of the board of directors.**]

This Certificate is signed by the authorized officers of the co-operative, as witnesses of the above.

Date: **[date of issue of share certificate]**

**[signature]**  
(president)

**[signature]**  
(treasurer or secretary)

## SAMPLE PREFERENCE SHARE CERTIFICATE

You can buy standard blank share certificates in bookstores and office supply shops. However, you can also prepare your own certificates using the sample below which is specifically for co-operatives.

No.:**[certificate number]**

**[number]** of shares

Incorporated under the Ontario Co-operative Corporations Act

**[name of co-operative]**

This certifies that **[name of purchaser]**  
is the registered holder of **[number and class of shares]**  
fully paid **Preference Shares** in the

**[name of co-operative]**

The class or series of shares represented by this Certificate has rights, privileges, restrictions, or conditions attached to it. The co-operative will give a shareholder, on demand, a full copy of the text of those rights, privileges, restrictions and conditions.

The co-operative has a lien on the shares represented by this Certificate for any debt the shareholder owes the co-operative.

[Describe any restrictions on the transfer of these shares. For example: **Shares may be transferred only with the consent of the board of directors.**]

This Certificate is signed by the authorized officers of the co-operative, as witnesses to the above.

Date: **[date of issue of share certificate]**

**[signature]**  
(president)

**[signature]**  
(treasurer or secretary)

## SAMPLE LOAN CERTIFICATE

No.: [certificate number]

Amount of loan: [loan amount]

Incorporated under the Ontario Co-operative Corporations Act

[name of co-operative]

This certifies that [name of lender]  
has submitted [amount] dollars to be invested as a demand member loan which may be repaid at any time on presentation of this loan certificate to the

[name of co-operative]

Interest is to be paid [monthly, yearly], and calculated on a [daily, weekly, monthly] basis, taking into account all new loans and repayments during the [month or year] at a rate determined by the Board of Directors.

**This loan is:**

[sample 1:] **not secured by any assets, inventory, or accounts receivable.**

[sample 2:] **secured by the assets, inventory, and accounts receivable of the co-op.**

**This loan is not guaranteed or insured by any government agency.**

**The transfer of this loan is restricted.** [indicate what the restrictions are:] [sample 1:]

**This loan may not be transferred.**

[sample 2:] **This loan may be transferred only with the consent of the board of directors.**

This Certificate is signed by the authorized officers of the co-operative, as witnesses to the above.

Date: [date of issue of loan certificate]

[signature]  
(president)

[signature]  
(lender)

[signature]  
(treasurer or secretary)