

CO-OPERATIVES IN ONTARIO

LEGAL, FILING AND RECORD KEEPING REQUIREMENTS

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This guide contains information to help your co-op meet the legal requirements of the *Co-operative Corporations Act*. It will interest all members, but is especially important for directors.

This guide is intended only as a resource for your co-op; it is not meant to replace reading the Act or getting legal advice about your co-op's unique situation.

The *Co-operative Corporations Act* is available at www.e-laws.gov.on.ca.

(Ce document est disponible en français)
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WHAT'S INSIDE

All co-ops should have an up-to-date copy of the *Co-operative Corporations Act* (the “Act”), including its *Regulations*. The current Act was changed in 1994 to expand the powers of co-operatives and to give co-ops more ways to raise capital, and they create a framework for multi-stakeholder co-ops, a new type of co-op.

Throughout the guide, you will see notes in brackets, such as [The Act, Section 5] or [Regulation 178, Section 12.2]. These refer to the sections of the *Co-operative Corporations Act* (the “Act”) or the Regulations.

You can visit ServiceOntario e-laws at <http://www.e-laws.gov.on.ca> to obtain copies of the Act and Regulations

MEMBERSHIP

Open, voluntary membership is one of the basic principles of co-operatives. Anyone who can use a co-op's products and services and accept the responsibilities of membership can apply to become a member. In their by-laws, co-ops are free to define their own membership conditions as well as members' rights and responsibilities. However, these by-laws must themselves comply with the Act.

Becoming a Member

[The Act, Sections 1, 60, 61, and 63]

Subject to the co-operative's articles and by-laws, anyone 16 years of age or over may apply to join the co-op's board of directors.

Non-profit and business corporations may also be members of co-ops. Unincorporated associations may not be members directly. However, any of the unincorporated association's members may join a co-op and represent that association's interests.

Members agree to follow the co-op's by-laws and to comply with any conditions of membership. For example, a co-op may require members to pay a membership fee, buy a minimum number of shares, or make a member loan to the co-op.

In a **worker co-op**, only individuals employed by the co-op can be members. In this kind of co-op, at least 75% of all employees are members and at least 75% of permanent, full-time employees are members.

In a **multi-stakeholder co-op**, members have to belong to a specific stakeholder group and may not belong to more than one stakeholder group at the same time. Applications for membership in this kind of co-op have to be approved by the directors representing the appropriate stakeholder group.

Basic Rights of Members

[The Act, Sections 32, 70, 71 and 119]

A fundamental principle of co-operatives is democratic control by members. Some of the important members' rights given by the Act to reflect this principle include the right to:

- Elect and remove directors;
- Make motions;
- Present and vote on resolutions;
- Hear reports about their co-op's operations and financial status;
- Discuss any issue they have asked the directors to put on the agenda.

For more information on members' meetings, please refer to the "Members' Meetings" section of this guide.

Limited Liability of Members

[The Act, Sections 72, 73, 145, and 169]

An important feature of co-ops is that members have limited liability. Limited liability means that members are generally not responsible for their co-op's debts and liabilities. By joining and investing in a co-op, members risk losing only what they have invested.

However, to ensure that the protection of limited liability is not used by the co-op to avoid paying its debts, the Act states that members may be liable to the co-op's creditors if:

- Members have been paid by the co-op as a result of an amendment to the articles reducing its issued loan or share capital. These members may be liable to the co-op's creditors for the amount they were paid.
- Members have received any of the co-op's property before the co-op's creditors have been repaid on dissolution. Members may be liable to creditors for the amount received.

Members cease to enjoy the protection of limited liability if the total number of members falls below five (three in the case of worker co-ops). If a co-op does not meet these membership levels for more than six months, each member is responsible for the debts and liabilities incurred during this time. Members may avoid liability by sending a letter to the Financial Services Commission of Ontario protesting the co-op's exercise of its corporate powers without enough members. After notifying the co-op, the Financial Services Commission of Ontario may cancel its certificate of incorporation if the co-op refuses or neglects to bring the number of members up to the required level.

Leaving a Co-op

[The Act, Sections 64 and 67]

Co-operatives are voluntary associations. A person may choose to leave at any time by giving their co-op's secretary six months' notice. Since the main purpose of co-ops is to provide service to members, members usually have the right to get back their investment in the co-op when they leave. More specifically, within six months the co-op is generally required to:

- Redeem or buy back the member's shares at their par value plus a premium, if any. If the member agrees, the co-op may also redeem shares at less than par value.
- Pay the member all dividends that have been declared but not paid on their shares.
- Repay member and other demand loans made by the member to the co-op, along with any interest owing.

The directors may delay repaying a withdrawing member's investment if they believe that doing so all at once would not be in the co-op's best interests. This delay may not be longer than five

years and at least 20% of the member's investment must be repaid each year.

If the co-op agrees, members planning to leave may maintain some or all of their preference shares or loans in the co-op. Former members choosing to do this may ask the co-op to redeem their preference shares and repay their loans by giving six months' notice.

A co-op cannot repay a withdrawing member's investment if the co-op is insolvent or the board of directors believes that doing so would be harmful to the co-op's financial stability.

The co-op's articles may allow shares to be redeemed at less than par value if the directors believe it is necessary to the co-op's financial well-being. To do so, the directors must notify affected shareholders that they intend to redeem their shares at less than par value. The shareholders have the right to dissent to the redemption price of the shares or to retain ownership of them.

If the shareholder dissents to the price, the price is set by an arbitration process determined by the Regulations and the co-op's articles. The arbitration process contained in the Regulations requires the shareholder and co-op to agree on an arbitrator to determine the redemption price. If the shareholder and co-op cannot agree on a single arbitrator, then each party selects one arbitrator, who in turn together select a third arbitrator. The redemption price is then determined by a majority vote of the three arbitrators.

The co-op's articles may also permit the co-op to issue preference shares that it is not required to redeem when a member leaves the co-op. The shareholder's right to sell or transfer such shares has to be fully described in the articles and offering statement.

For non-profit housing co-ops, members planning to move out of their units have to give their co-ops advance notice of their intention to do so. The form and amount of notice a co-op may require is set out in its by-laws.

Terminating Membership

[The Act, Sections 32, 49, and 67]

Since co-ops depend on the support of active, committed members, the Act allows a co-op to terminate the membership of those who have not used its services for two years or more.

A co-op may also terminate a corporate membership if the member is about to be dissolved.

Upon terminating membership, the co-op must buy back the member's shares and repay member and other demand loans the member made to the co-op.

A co-op redeeming shares for these reasons must pay the member the book value or the par value of the shares, plus any premiums and unpaid dividends, whichever is lower.

A co-op may not terminate an individual or corporate membership if the co-op is insolvent or the board of directors believes that buying back members' shares or repaying loans would be harmful to the co-op's financial stability.

Expelling a Member

[The Act, Sections 66 and 67]

From time to time, co-ops may have to expel a member, usually when the member has broken an important by-law. Because expulsion is serious, the Act has procedures to ensure members are treated openly and fairly. **Non-profit housing co-ops have their own set of procedures to expel members.** These are described in the next section.

A co-op may expel a member by having a majority of the board of directors pass a resolution. For this resolution to be valid, the member must get written notice that the board has called a meeting to consider expelling him or her and its reasons for doing so. The board must give this notice at least 10 days before the date of the meeting. These meetings must be held at least 30 days before the co-op's annual meeting.

The member, or his or her representative, has the right to speak at such meetings and submit written statements to the board.

The co-op's secretary must notify the member of the board's decision within five days of the meeting.

Within one year of a member's expulsion, the co-op must:

- Buy back the member's shares at their par value, along with any premiums and unpaid dividends. However, the co-op articles may specify that the co-op is not required to redeem certain classes of preference shares in these circumstances. The characteristics of such shares must be described in the articles and offering statement.
- Repay member loans and other demand loans made by the member to the co-op, together with any interest owing on these loans.

A co-op may not expel a member if it is insolvent or the board believes that buying back the member's shares or repaying the member's loans would be harmful to the co-op's financial stability. This also applies to co-ops without share or loan capital.

Appealing an Expulsion

A member who has been expelled has the right to appeal his or her expulsion at the next general or annual members' meeting. At this meeting, a majority of the members may confirm or overrule the board's decision.

A member who wishes to appeal must notify the board of directors within 21 days of receiving their expulsion notice.

The member making the appeal has the right to have a written statement distributed (at the co-op's expense) together with the notice of the meeting at which their appeal will be considered. The board of directors must receive this statement at least seven days before the notice of the members' meeting is scheduled to be mailed.

Terminating Membership and Occupancy Rights in Non-Profit Housing Co-operatives [The Act, Sections 171.8, 171.9, and 171.23]

The Act sets out two ways of terminating membership in a non-profit housing co-op, depending on whether or not a member has occupancy rights. Specifically:

- If a member does not have occupancy rights, the co-op may terminate membership and expel him or her in the same way as described in the “Terminating Membership” and “Expelling a Member” sections.
- If the member has occupancy rights, the co-op may terminate these only if it terminates his or her membership at the same time. Occupancy rights and membership may be terminated only if the member no longer lives in a member unit or for grounds stated in the by-laws. These grounds cannot be unreasonable or arbitrary.

The Act sets out detailed procedures to ensure that members facing termination of membership and eviction are treated fairly and openly by the co-op. These procedures include the following key elements:

- Membership and occupancy rights can be terminated only by a majority of the directors at a board meeting.
- The member has to be notified in advance of the board meeting and the reasons the board plans to terminate his or her membership and occupancy rights.
- The member has the right to appear at the meeting in person and be represented by a lawyer or other representative.
- The member must be told that he or she has the right to appeal the board’s decision at a members’ meeting.
- The member also has the right to have a written statement distributed to all members, at the co-op’s expense, before the meeting at which the appeal will be heard. The statement may be up to 5,000 words. The board can refuse to distribute the statement if it appears that the statement is not related to the appeal or the co-op’s affairs.
- The members may by majority vote either confirm, reverse, or modify the board’s decision. If the vote results in a tie or there is no quorum when the vote is taken, then the board’s decision stands.
- The co-op may actually evict a member only by getting a writ of possession from a court. The member has the right to be heard by the court before it issues such a writ.

Except for fixed-term leases of less than a year, membership and occupancy rights cannot be terminated on the grounds that their term has expired. These rights can be terminated only if the

person consents to their expiry in writing.

Membership and occupancy rights for a fixed term of less than one year expire if the co-op gives the person at least 30 days written notice of their expiry before the end of the term. The by-laws may state a longer notice period. If the person would like to continue to enjoy membership and occupancy rights, he or she must notify the co-op in writing of their wishes within 30 days of receiving the co-op's notice. The by-laws may state a longer notice period.

BY-LAWS

[The Act, Sections 23, 24, and 70]

By-laws are co-ops' internal rules. They deal with such things as how members are admitted, how meetings are held, how directors are elected, the length of directors' terms, the responsibilities of directors and officers, and the appointment and role of auditors. By-laws are subject to the articles and the Act. If there is a conflict between the by-laws and the articles, the articles prevail. If there is a conflict between the by-laws and the Act, the Act prevails.

In most cases, a by-law is first proposed and passed by a majority of directors at a board meeting. The by-law does not come into effect until it is confirmed by at least two-thirds of the votes cast at a members' meeting. The co-op's articles may require a higher proportion of votes to adopt by-laws.

In multi-stakeholder co-ops, by-laws have to pass by the directors and be confirmed by at least two-thirds of the members of each stakeholder group voting at either a general members' meeting or separate meetings of each stakeholder group.

MEMBERS' MEETINGS

Regular, well-organized and well-advertised members' meetings are essential to keep members involved in running their co-op. Because members' meetings are so important, the Act states how often meetings are to be held, what kind of notice is to be given, and what essential business is to be done. The Act also sets procedures for members themselves to call meetings when they disagree with the board of directors.

Annual Meetings

[The Act, Sections 77, 127, and 128]

A co-op must hold its first annual meeting within 18 months of its incorporation. After that, annual meetings must be held at least every 15 months.

At annual meetings, members have the right to:

- Hear and examine the auditor's report on their co-op's financial position and the results of its operations for the past year;
- Get copies of their co-op's financial statements;
- Discuss any other issue on the agenda related to the co-op's business.

Although not required to do so, co-ops usually elect directors at their annual meetings.

Other Members' Meetings

[The Act, Section 78]

Other members' meetings may be called by the directors at any time to deal with anything affecting the co-op.

Members' Requisitions

[The Act, Sections 70, 71, and 79]

A members' requisition is a petition asking the directors to do certain things. All requisitions must be signed by a certain percentage of members and be delivered to the co-op's head office. Members may make requisitions to:

- Call a Members' Meeting
 - The requisition must state the reasons for the meeting and be signed by at least five percent of the members. If the directors do not call a meeting within 30 days of receiving the requisition, any member who signed the requisition may call the meeting. Notice of this meeting must be circulated within 60 days of the requisition's delivery. The meeting has to be called in accordance with the co-op's by-laws. If the by-laws require more than 21 days' notice for other types of meetings, then 21 days is sufficient notice for meetings requisitioned by members.

- Circulate Members' Resolutions
 - Five percent of the members may ask the directors to notify all members of any resolution that is going to be considered at an upcoming members' meeting. The members may also ask the directors to attach to this notice a statement about the resolution or any other matter that will be discussed at the meeting. This statement cannot be longer than 1,000 words.
 - The co-op or someone believing they would be harmed by the statement may apply to a court for an order to prevent the statement's circulation. Such an order will be issued if the court decides the statement is intended to secure needless publicity for defamatory purposes. The directors are not required to circulate the statement if a court order is obtained.
 - Requisitions about circulating notice of a resolution must be delivered to the co-op's head office at least 21 days before the relevant meeting.
 - Requisitions about circulating statements must be delivered to the co-op's head office at least 14 days before the meeting.
 - Members making such requisitions must deposit enough money with the co-op to cover the cost of circulating notices or statements. The co-op must refund this money unless a majority of the members at the meeting vote not to do so.
- Call a Directors' Meeting to Pass a By-Law or Resolution
 - Ten percent of the members may ask the directors to call a directors' meeting to pass a by-law or a directors' resolution. The requisition must state the by-law or resolution that the directors are being asked to pass.
- Within 21 days of the delivery of the requisition, the directors must:
 - Call a directors' meeting and pass the by-law or resolution;
 - Call a members' meeting to confirm the by-law or resolution, unless the resolution does not require confirmation by the members.
 - If the directors do not do these things, any member who signed the requisition may call a members' meeting to pass the by-law or resolution. The meeting has to be called in accordance with the co-op's by-laws. If the by-laws require more than 21 days' notice for other meetings, then 21 days is enough notice for calling this meeting. Any by-law or resolution passed in this way is valid.
- If the by-law or resolution contained in the requisition is not confirmed at the members' meeting, a similar requisition cannot be made for at least two years.
- The co-op must reimburse the members who signed the requisition for reasonable expenses, unless a majority of members at the meeting refuse to do so. The co-op may also reimburse these expenses by holding back any remuneration owed to the directors

who failed to act on the requisition.

Notice

[The Act, Section 75]

Each member is entitled to receive proper notice of the date, time, place, and reason for upcoming members' meetings. Notices may be delivered by mail or, if allowed in the co-op's by-laws, by hand. Notices must be delivered at least 10 days before meetings, but not more than 50 days.

Location

[The Act, Section 74]

Members' meetings should be held at the co-op's head office. However, the by-laws may allow members' meetings to take place anywhere in Ontario. Members' meetings may also be held outside Ontario if the articles allow it.

Voting

[The Act, Sections 1, 24, and 76]

Each member has only one vote.

Because co-ops are democratically controlled by their members, proxy voting is not allowed. In other words, a member may not send someone to vote on their behalf. However, corporate members may appoint directors or officers to vote on their behalf. Representatives of corporate members have only one vote.

When a co-op's members are divided into member groups, these groups may elect delegates who in turn vote on their behalf in elections of directors. Member groups may be created on the basis of common interest or geography. The number of delegates that each member group can elect may be based on the number of members in each group or the amount of business each group does with the co-op, or a combination of the two. Delegates must be members, directors, or officers of the co-op.

In a multi-stakeholder co-op, members may vote as members of specific stakeholder groups in addition to voting at general members' meetings. Stakeholder groups may be set up on the basis of common interest or geography. The co-op's articles state the number of directors each stakeholder group can elect. The articles and by-laws may also set out other important matters requiring the approval of stakeholder groups.

If two or more members jointly hold a co-op's membership shares, they are counted as one member and have only one vote.

Resolutions

[The Act, Sections 104 and 124]

Members make many of their decisions by accepting or rejecting written resolutions or proposals at a members' meeting. Usually, one member or the board introduces (or moves) a resolution and another member supports (or seconds) it. The resolution is then discussed by the members and a vote is taken. To be passed, a resolution must be approved by a majority of the members

present at the meeting.

Members' resolutions may deal with things like removing a director or auditor before his or her term expires, and electing a new director or auditor in his or her place.

Special Resolutions

[The Act, Section 1]

For many important issues, a special resolution is required instead of an ordinary resolution. For example, special resolutions are required to:

- Change a co-op's articles of incorporation;
- Adopt by-laws;
- Approve the merger of one co-op with another;
- Approve the sale, lease, or transfer of all or most of the co-op's property.

A co-op's articles or by-laws may also require special resolutions for other matters.

A special resolution is passed by the directors and approved by at least two-thirds of the members present at a members' meeting. The co-op's articles may require a larger majority of members to approve special resolutions.

In a multi-stakeholder co-op, a special resolution is passed by the directors and confirmed by at least two-thirds of the members of each stakeholder group voting at either a general members' meeting or separate meetings of each stakeholder group.

Minutes

[The Act, Section 114]

Minutes are records of meetings. Co-ops are required to keep minutes of all meetings of members, directors, and any executive committees. Minutes should include the date, time, place, and agenda of the meeting, text of resolutions, results of votes, records of carried and failed motions, and the names of movers, seconders, chairpersons, recorders of minutes, and any other participants. Minutes of members' meetings are available for inspection by all members; minutes of directors' meetings and executive committee meetings are not.

DIRECTORS

[The Act, Sections 89, 96, and 108]

Directors are the co-op's legal representatives; the decisions they make and the actions they authorize are the co-op's. Directors are elected by members to set the general policy of the co-op and to hire and supervise management, if any. In smaller co-ops, directors often manage the co-op's business themselves. Directors are also responsible for such things as approving new members, passing by-laws, and ensuring that accurate records are kept.

In conducting the co-op's affairs, directors are legally required to act honestly, in good faith, and in the co-op's best interests. In conducting the co-op's business, directors must also exercise the same care and skill that they would apply in conducting their own affairs.

Qualifications

[The Act, Sections 85, 87, and 89]

All directors must be members of the co-op. Because directors are liable for a co-op's actions, they must be at least 18 years old. Directors may not be bankrupt. A majority of the board of directors must be resident Canadians.

Electing Directors

[The Act, Sections 90 and 91]

Directors are usually elected at annual general members' meetings, although this is not required by the Act.

Members cast votes for each director's position to be filled. If three positions are available, then each member has to vote for three different candidates. No candidate can receive more than one vote from any one member.

Directors may be elected for terms of up to five years. There is no limit on the number of terms a director may serve, although a co-op could set one in its by-laws.

Directors may be elected on a rotating basis. This means that not all directors are elected or re-elected at the same time. In addition, at least two directors have to retire from office each year. For example, if a board has nine directors, three might be elected every year. Electing directors this way gives new directors a chance to work with and learn from experienced directors.

Number of Directors

[The Act, Sections 85, 88, 92, and 93]

All co-operatives must have at least three directors. In their articles, co-ops may specify that the number of directors will vary between a minimum and a maximum. In this case, the exact number of directors has to be set by special resolution. This can also be done by a resolution of the board if so authorized by a special resolution.

If vacancies occur on the board and a quorum of directors remains, the directors may appoint qualified people to fill the vacancies for the rest of the terms. A co-op's articles may instead

require vacancies to be filled by election at a member's meeting.

If the number of directors in office is less than a quorum, the remaining directors must immediately call a members' meeting to fill the vacancies. If no directors remain in office, any member may call this meeting.

Removing Directors **[The Act, Section 104]**

Members may remove any director before the end of his or her term by a majority vote at a members' meeting called for that purpose. At the same meeting, the members may elect a new director to serve for the rest of the term.

In a multi-stakeholder co-op, members of a stakeholder group may remove any director elected by that group before the expiry of his or her term. This has to be done by a majority vote at a stakeholder group meeting called for that purpose. At the same meeting, members may elect a new director to represent the stakeholder group for the rest of the term.

Directors' Liability **[The Act, Sections 17, 100, 101, 102, and 103]**

Although a co-op's incorporation gives individual members the protection of limited liability, directors could be personally liable for mismanaging the co-op's affairs or approving illegal or criminal actions. For example, directors who:

- Approve actions which cause environmental damage may face fines and/or criminal charges.
- Buy back shares, repay loans, or declare and pay dividends in a way prohibited by the Act are liable to the co-op for the amount involved.
- Employ staff despite knowing that the co-op cannot afford to pay them is liable for up to six months wages and 12 months' vacation pay.
- Approve a type of financial assistance to directors, members, and employees that is not normally available to all members are liable to the co-op and its creditors for any losses.

Directors who are on record as not approving such actions may have less liability or none. Section 101 of the Act sets out the procedures directors have to follow in recording their dissent.

In addition to the liability they may have under the *Co-operative Corporations Act*, directors may have liabilities imposed on them by other Acts. Directors who are unsure about the legality or financial prudence of a proposed action may want to consult a lawyer or financial advisor.

DIRECTORS' MEETINGS

[The Act, Sections 93, 95, and 96]

Directors' meetings may be held at any time to deal with the co-op's business. Meetings have to be called and attended by a quorum of the board. Unless the articles or by-laws provide otherwise, a majority of the board makes up a quorum. However, a quorum cannot be less than two-fifths of the board. A majority of the directors attending meetings must be resident Canadians.

Executive Committees

[The Act, Section 97]

Subject to restrictions in the by-laws, directors can set up executive committees to exercise any powers of the board.

To have executive committees, the co-op must have more than six directors. The directors elect the members of executive committees from among themselves. Such committees must have at least three members. A majority of executive committee members must be resident Canadians. A majority of the members present at executive committee meetings must also be resident Canadians. A quorum of an executive committee cannot be less than a majority of the members of the committee.

Notice

[The Act, Section 95]

Directors should receive notice of the time, place, and general purpose of a meeting. The form and method of delivery of the notice can be dealt with in a co-op's by-laws. If it is not, then each director should receive at least ten days' written notice by mail.

Location

[The Act, Section 94]

Directors' meetings should be held at the co-op's head office, although the by-laws may allow directors' meetings to be held elsewhere. In any fiscal year, the majority of directors' or executive committee meetings must take place in Canada. In such instances, the Directors must be physically present in Canada.

The by-laws may allow meetings of directors or executive committees to take place by conference call if all the directors agree.

Minutes

[The Act, Section 114]

Minutes of all directors' and executive committee meetings must be kept.

Disclosure of Interest in Contracts

[The Act, Section 98]

Directors may find themselves in situations where their personal interests make it difficult for them to act in the co-op's best interests. For example, say a co-op needs to buy machinery

distributed by one its director's businesses. That director would be in the awkward position of trying to get the best deal for the co-op while trying to make a sale for his or her own company.

For reasons like this, the Act requires directors to disclose any interests they may have in contracts involving the co-op. Directors with such interests have to declare them at a directors' meeting. This is necessary only if the director's interest in a contract is material (tangible benefits are likely) and the contract is of a kind not available to all members.

For example, in a marketing co-op where a normal part of the co-op's business is to buy peaches from members, directors who sell peaches to the co-op would not be required to disclose an interest in this type of contract. However, if the co-op were about to buy land from a director, and buying land from members is not a usual part of the co-op's business, then the director would have to declare his or her interest in this contract to the board.

If a director is required to declare his or her interest in a possible contract, the declaration must be made at the directors' meeting when the contract is first considered. Co-ops may want to pass by-laws requiring directors to leave meetings where matters involving important material interests of theirs are discussed.

If a director acquires an interest after the co-op has signed the contract, he or she must declare it at the next directors' meeting.

The co-op has no claim on any benefits enjoyed by the director if the contract was in the co-op's best interests at the time it was signed, and if the director acted in good faith, properly declared his or her interest in the contract, and did not vote on the contract. Such contracts cannot be nullified by the co-op.

In addition, a contract in which a director is interested cannot be nullified by the co-op if the director has notified the members of his or her interest and the contract was confirmed by a special resolution at a members' meeting.

OFFICERS

[The Act, Sections 105, 106, 107, and 108]

The officers of a co-operative include the chair of the board, president, treasurer, secretary, and general manager. Every co-op has to have a president and a secretary. Co-ops may have other officers as set out in their by-laws or directors' resolutions.

If a co-op wants to have a chair of the board, a by-law must be passed stating the chair's responsibilities and how he or she is to be elected or appointed by the directors. The by-laws may assign the chair any or all duties of other officers.

Unless the articles or by-laws state otherwise, the president is elected by the directors from among themselves. The president and the chair of the board are the only officers who must also be directors of a co-op. The secretary and other officers may be either appointed or elected by the directors.

Like directors, officers are required to act honestly, in the co-op's best interest, and to take reasonable care in conducting the co-op's business.

President

[The Act, Sections 75 and 106]

Unless the by-laws state otherwise, the president usually chairs members' meetings and signs official documents in the name of the co-op. If the by-laws assign any of the president's responsibilities to the chair, they must state the president's remaining duties.

Secretary

[The Act, Sections 66, 101, and 171.8]

The secretary is responsible for such things as accepting notices on behalf of a co-op, giving notices to members on behalf of the board of directors and signing notices to terminate a person's membership.

Officers' Liability

[The Act, Section 17]

Officers are responsible to a co-op and its creditors for any losses that result from approving a type of financial assistance to directors, members, or employees that is not normally available to all members.

RECORDS

[The Act, Sections 114, 115, 117, and 118]

Generally, co-operatives are required to keep these records at their head office:

- Copies of the articles of incorporation and any amendments to them, by-laws, resolutions, and special resolutions;
- An alphabetical register of members and security holders over the last ten years, including addresses at the time;
- A register of all transfers of securities;
- A register of past and present directors, including terms served and addresses;
- Accounting records of financial and other transactions;
- Minutes of meetings of all members, directors, and any executive committee.

The register of security holders and register of transfers of securities may be kept at any other location in Ontario, if so authorized by a directors' resolution.

All or part of a co-op's accounting records may be kept at any place where the co-op carries on its business. At the head office, however, directors must have access to the accounting records they need to assess the co-op's quarterly financial position.

Examination of Records

[The Act, Sections 114, 115, 118]

Directors may examine the following records at the co-op's head office during normal business hours: articles of incorporation; by-laws and all resolutions; register of members, directors, and security holders; register of transfers of securities; accounting records; and minutes of members', directors', and executive committee meetings.

Members have the right to examine and make extracts from the following records during the co-op's normal business hours: articles of incorporation; by-laws and all resolutions; register of members, directors, and security holders; register of transfers of securities; and minutes of members' meetings.

DISTRIBUTION OF SURPLUS

A co-op's surplus is what is left of its earnings after operating expenses are paid, but before the payment of taxes. The Act allows co-ops to use their surplus in the ways discussed in this part of the guide.

Reserve Funds and Dividends on Shares

[The Act, Section 54]

Co-ops' by-laws may allow them to set aside part or all of their surplus to create reserve funds or pay dividends on shares.

Patronage Returns

[The Act, Section 55]

Co-ops often distribute their surplus to members as patronage returns, based on how much business they have done with the co-op. In calculating patronage returns, allowances can be made for the type, volume, or quality of the goods or services involved. For example, in a marketing co-operative where the sale of grapes contributes proportionately more to the co-op's surplus than the sale of peaches, the co-op could choose to pay a higher patronage return rate on grapes.

In a worker co-op, patronage returns may be paid, credited, or allocated to members based either on the number of hours worked or the total compensation paid each year.

In non-profit housing co-ops, the surplus that may be distributed as patronage returns cannot include any proceeds from the sale of the co-op's assets. Non-profit housing co-ops having operating agreements with the Ministry of Municipal Affairs and Housing or the Canada Mortgage and Housing Corporation should refer to those agreements for additional guidelines about patronage returns.

If stated in the by-laws, patronage returns may also be distributed to non-members at a rate the same as or less than that for members. The by-laws may also state that no patronage return will be distributed on goods or services.

Mandatory Reinvestment of Patronage Returns

[The Act, Section 56]

The by-laws may require members to reinvest part or all of the patronage returns they receive in a fiscal year. Members may be required to use their patronage returns to buy more shares in the co-op or to make further member loans. Members cannot be required to reinvest patronage returns if their co-op is insolvent.

SECURITIES

Offering Statements

[The Act, Section 34 to 37, Reg. 178, Section 12]

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, even co-ops with more than 35 security holders are not required to file offering statements if they are only planning to:

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

If your co-op has to file an offering statement, then 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.

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 the business, operations, assets or liabilities of the co-operative that would reasonably be expected to have a significant adverse impact on the financial position of the co-operative or that might prevent the co-operative from achieving the purpose of an offering but does not include:

1. A change that affects the co-operative's gross revenue or gross sales by less than \$20,000.

2. A change that affects the co-operative's net income or loss by less than \$10,000.

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

[The Act, Section 44 to 48]

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.

Dividends

[The Act, Section 58; Reg. 178, art. 12.2]

Dividends on **membership shares** cannot be higher than the prime rate of a financial institution identified in the by-laws plus two percent. There is no cap on dividends that may be paid on **preference shares**. Co-ops can now set a cap in their by-laws if they wish to do so.

Interest

[The Act, Sections 49 and 56, Reg. 178, art. 12.2]

The most interest that can be paid on member loans is the prime rate of a financial institution identified in the by-laws plus two percent. This cap also applies to members' patronage returns that must be loaned to a co-op. There is no cap on the interest that can be paid on other types of loans.

Redemption of Preference Shares

[The Act, Section 31]

If the articles state that a co-op can redeem (buy back) part of a shareholder's preference shares without the holder's consent, then the board of directors has to choose the shares either by lot, in proportion to the number of shares held by each shareholder, or in some other way agreed to by the board and shareholders. Co-operatives may not redeem shares if they are insolvent or if redeeming shares would make them so.

Co-ops may create classes of preference shares that they are not required to redeem when a member leaves or is expelled from the co-op. The characteristics of such shares have to be described in the articles and offering statement.

Premium on Preference Shares

[The Act, Section 30.1, Reg. 178, art. 12.3]

Co-ops may pay a premium on top of the par value of preference shares which they redeem. The premium is calculated using a formula contained in the articles, but may not be more than 10 percent per year (compounded) or the percentage increase in the Consumer Price Index (all items) as published by Statistics Canada, whichever is greater. Premiums cannot be paid on membership shares.

DISSOLUTION

Members may voluntarily dissolve their co-op at any time. To ensure that a co-op meets its obligations to members, creditors, and investors, the Act sets procedures that have to be followed to dissolve a co-op and distribute its property.

Voluntary Dissolution **[The Act, Section 163]**

Voluntary dissolution first requires members' approval. A majority of the members have to vote for a resolution to dissolve the co-op at a members' meeting. The articles may state a different proportion of votes to confirm the resolution, but it cannot be less than half of the members. Alternatively, all the members may consent to the dissolution in writing.

If the co-op has been incorporated for less than two years and has not done any business, issued shares, or accepted member fees or loans, all of the incorporators may authorize the dissolution.

Distribution of Property **[The Act, Sections 5, 171.2, and 162]**

When a co-op is dissolved or wound up it has to pay its debts and liabilities before it distributes any of its property. The articles or by-laws may state that, after paying its debts and liabilities, the co-op may distribute its remaining property:

- Equally among the members;
- Among the members based on their patronage returns over the last five fiscal years;
- To one or more co-operatives or charitable organizations.

Unless a co-op's articles or by-laws deal with the distribution of remaining property, it is to be distributed equally among all members.

Non-profit Housing Co-operatives

Non-profit housing co-ops may not distribute any of their property to members on dissolution. After paying their debts and liabilities, non-profit housing co-ops' remaining property has to be distributed among one or more non-profit housing co-ops or charitable organizations.

ARTICLES OF AMENDMENT

[The Act, Section 151 to 154]

Along with the *Co-operative Corporations Act*, a co-op's articles of incorporation form its basic legal framework. Over time, your co-op may want to change its articles to respond to members' different needs or developments in the co-op's business. For example, your co-op might want to change the articles that deal with its shares, membership fees, or name.

Articles can be changed or amended by filing articles of amendment within six months of making a change.

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

To be valid, articles of amendment have to be authorized by a special resolution. A certified copy of the resolution has to be attached to the articles of amendment.

Certain changes to the articles require specific approval. As well as a special resolution, the written consent of 60 percent of the members is needed to authorize articles of amendment that convert the co-op into a:

- Business Corporation under the Business Corporations Act;
- Corporation under Part III of the Corporations Act.

Non-profit housing co-ops are not allowed to amend their articles so that they are no longer non-profit housing co-ops.

If the articles of amendment change the rights of preference shareholders or create a new class of preference shares that rank equally with or ahead of existing preference shares in any way, the Act requires:

- A special resolution authorizing the articles of amendment;
- Consent of the preference shareholders affected. This consent can be:
 - In writing, by all affected preference shareholders.
 - By two-thirds of the votes cast by affected preference shareholders at a meeting called for that purpose.

MAINTAINING CO-OPERATIVE STATUS **[The Act, Sections 1, 143, and 144]**

In order to keep their legal status as co-operatives, co-ops must respect the basic co-operative principles, such as one member, one vote. In addition, since the main purpose of co-ops is to provide a service to members, co-ops must do most of their business with members.

Generally, if a co-op is not operating on a co-operative basis or has not done at least half of its business with members over the preceding three years, the Financial Services Commission of Ontario may change the co-op's legal status. Specifically, the co-op may be changed either to a corporation subject to the Business Corporations Act or to a corporation without share capital subject to Part III of the Corporations Act.

Worker co-ops may lose their co-operative status if more than half of the full- and part-time employees were not members over most of a three-year period. In this case, the worker co-op may also be changed to a corporation subject either to the Business Corporations Act or the Corporations Act.

Before any co-op's legal status can be changed in these ways, the co-operative will have an opportunity to be heard.

Since non-profit housing co-ops cannot be changed into any other type of co-op or corporation, the Act requires them to do at least half of their business with members over any three-year period.

AUDITED FINANCIAL STATEMENTS
[The Act, Sections 123 to 127]

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

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.

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 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.

**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