



Instructions for Preparing Your Co-op's By-Laws

The Registrar of Cooperatives (Registrar) requires that each co-op prepare and file By-laws within **18 months** of incorporation. As a new co-op, you will need to go through several steps before filing your by-laws.

Step 1: Incorporation – On incorporation, the co-op's first directors are the individuals listed in your articles as "incorporators". These first directors hold office until the first Annual General Meeting (AGM) of the co-op.

Step 2: Planning – The first directors need to have an organizational meeting to arrange the finances of the co-op and appoint new Officers. The first directors should also meet several times to plan the AGM, organize the co-op, recruit members, and prepare by-laws. These directors should complete a full set of new by-laws in advance of the AGM. Model by-laws are available on the Registrar's co-op forms webpage:

<http://www.mbfinancialinstitutions.ca/cooperatives/index.html>

Step 3: Member Approval – Once the Registrar's office has given pre-approval, it is time to call your first membership meeting, the AGM. At the AGM, the first directors' terms will expire and a new slate of directors will be elected. Our team can help with any questions about the AGM. The membership will need to cast votes in the following order:

- (1) Majority vote of members to approve the by-laws of the co-op.
- (2) Vote by secret ballot to elect the new slate of directors in compliance with the by-laws.
- (3) Majority vote to approve the auditors of the co-op or, if not required, a special 2/3^{rds} vote to dispense with the need for auditors.

The by-laws must be signed by a director or officer of your co-op, preferably the Secretary.

INSTRUCTIONS: USING THE MODEL

The model by-laws comply with *The Cooperatives Act*. The model can be modified to meet the needs of a specific co-op; however, the modifications should be kept to a minimum and must comply with the Act and the Articles of the Co-op. The Registrar encourages new cooperatives to prepare a draft version of by-laws and forward it to the office for “pre-approval” prior to the first AGM.

Depending on the type of co-op, you will want to use one of several models prepared by the Registrar. If your co-op is not a worker, housing, or multi-stakeholder co-op, and if your co-op issues shares, use the standard “Share Capital” Model By-laws.

If your co-op does not issue shares use the “Non-Share” Model By-Laws. If your co-op is a community service co-op, use the “Community Service” Model.

Section by section options/discussion

2.02 – Signing Authority: the list of persons with signing authority should be reviewed to match by-law 4.02. For example, if by-law 4.02 provides for a CEO, that person should likely be included as having signing authority.

2.03 – Information Available to Members: Section 29 of the Act has rules for disclosure. The basic rule is that a member does not have a right to see the ordinary business records or information of the co-op. Only the directors or officers (and usually managers) should have access to those records.

3.01 – Number of Directors: the model gives the board, after the first annual meeting, the power to set the number of directors. We recommend a range for flexibility; however, you can specify the actual number of directors. For example, the by-law can read:

3.01 The board is comprised of five (5) directors.

If you use this type of wording, ensure that the number of directors in by-law 3.01 matches the number in by-law 3.05(b).

3.03(f) – Director Qualifications: Note: restricting board membership of housing cooperatives to one person per residential unit is optional.

3.05(b) *First meeting of members*: insert the number of directors to be elected at the first meeting of members. After this first meeting, the board can decide to increase or decrease the number of directors, as long as the number is within the range in the articles and is not being changed to meet quorum.

By-law 3.05(b) recommends the members to elect directors to staggered terms that are set by the members at their first meeting. This means, for example, some directors can be elected to one-year terms, and others to two-year terms. The result is that only *some* of the directors are replaced each year ensuring continuity and experience on the board.

3.05(b) – Examples:

First and subsequent meeting of members

(b) The members must elect nine (9) directors at the first meeting of members. The three (3) candidates who receive the most votes are elected to 3-year terms. The three (3) candidates who receive the next highest number of votes are elected to 2-year terms. The three (3) candidates who receive the next highest number of votes are elected to 1-year terms. At each subsequent annual meeting, directors elected to replace those whose term of office has expired shall hold office for 3 years.

First and subsequent meeting of members

(b) The members must elect five (5) directors at the first meeting of members. The two (2) candidates who receive the most votes are elected to 3-year terms. The two (2) candidates who receive the next highest number of votes are elected to 2-year terms. The one (1) candidate who receives the next highest number of votes is elected to a 1-year term. At each subsequent annual meeting, directors elected to replace those whose term of office has expired shall hold office for 3 years.

First and subsequent meeting of members

(b) The members must elect five (5) directors at the first meeting of members. The three (3) candidates who receive the most votes are elected to 2-year terms. The two (2) candidates who receive the next highest number of votes are elected to a 1-year term. At each subsequent annual meeting, directors elected to replace those whose term of office has expired shall hold office for 2 years.

3.05(b) simpler approach:

First and subsequent meetings of members

(b) The members must elect five (5) directors at the first meeting of members to one-year terms. Directors are elected to one-year terms at each subsequent meeting of members.

If the cooperative wants to further limit the term for the directors, following could be added:

Example: No director can serve for more than two (2) consecutive 3-year terms.

3.08 – Ceasing to Hold Office: by-law 3.08(e) is optional, but recommended. Some cooperatives may prefer to relax or remove the attendance requirement. The other parts should not be changed without first discussing the changes with the Registrar's office.

3.11(a) Exercise of Authority – the model currently allows the chairperson of board meetings (usually the president) to vote alongside the other directors. The model also says that tie votes fail. Some organizations prefer having non-voting chairpersons who only have a tie-breaking vote. The alternative model for by-law 3.11(a) would provide:

Resolutions

(a) The board or a committee of the board may exercise the powers of the Cooperative by passing ordinary resolutions (majority vote) at their meetings. The chairperson of a meeting is not entitled to vote unless there is a tie. In the case of a tie vote, the chairperson is entitled to cast the deciding vote.

3.14 – Time and Place of Meeting: the by-laws do not need to specify that meetings must be held in Manitoba – this is optional and can be removed.

3.15 – Notice of Meeting: the three-day period for notice of a meeting is merely a suggestion. If directors want flexibility, the by-law can read:

3.15 The board may meet on such notice as the board may determine. A director may waive any notice requirement. This by-law is subject to section 200 of the Act.

*Note: sections 200 and 202(3) of the Act have a list of agenda items that must be included in notices to directors.

Remuneration of Directors and Officers: (These notes do not apply to housing cooperatives) the current model is silent on the issue of remunerating directors or officers. Section 216 of the Act says that if the by-laws are silent, the board can fix whatever remuneration they want.

A new by-law 3.19 should be added if the members do not want directors to have this power. The by-law could specify how remuneration is determined (e.g. it could be limited to expenses only or pay per meeting) or it could prohibit remuneration if the co-op intends to have a volunteer board.

Committees (Section Four) – in the model, committees of directors can only be delegated power by the board. If the co-op wants to have committees with more independent or specific powers, the co-op should review this section.

4.02 – Officers: the list of officers can be changed – the model list is merely an example. One individual can occupy more than one office. The roles and responsibilities of an officer should be outlined in the Co-op's internal policy document.

6.01 – Membership Qualifications: it is important that by-law 6.01 comply with the provision of your Articles on membership qualification. The best option is to make this by-law identical to the section 5 of the Articles of Incorporation. This by-law can cause complications if not done carefully. ***Worker co-ops:** insert a probation period for membership.

Non-share co-ops – membership fees: *The model currently states that the membership fees are non-refundable and payable on a one-time basis. If you want your co-op to charge refundable or annual fees, that is an option. We do not recommend making membership fees payable more than once a year.*

The model also requires you to set a specific fee in the By-laws. If you want greater flexibility, the by-laws can state that the member must pay “a non-refundable fee on a _____ (one-time or annual) basis as set from time to time by resolution of the Board”.

6.03 – Transfer of Membership Shares or Memberships: If the Articles say “No transfer is valid” or explicitly defer to the by-laws, then there is an option to write the by-law as follows:

6.03 No transfer of membership or membership shares is valid for any purpose

6.05 – Withdrawal of Membership: indicate how many days notice that a member can give for withdrawal. Some cooperatives will be impacted if a member withdraws and the co-op must repurchase membership shares. A longer waiting period may be warranted in those cases. Read by-law 6.05 together with by-law 6.12.

6.08 – Meaning of “for cause”: each co-op may have different criteria for terminating membership. The wording of the model is optional and may be varied.

6.12 – Repurchase of Membership Shares (*Share Capital Model only*): this by-law can be changed to give a specific time period for the repurchase of shares. However, the maximum time period under the Act is one (1) year.

Keep in mind that the time period for repurchasing shares only begins on the effective date of withdrawal or termination of a membership. If a member gives a month`s notice of withdrawal under by-law 6.05, the time period for repurchasing shares *begins* at the end of that one month notice period.

***Worker Co-ops:** a special by-law 6.14 deals with the conditions on which the co-op can lay-off members who are employees of the co-op. If there is a lack of work, you should think about adding a priority to this by-law (e.g. lay-offs are in the order of seniority). **Please see 291 of The Act for further clarification.**

Joint Memberships: the model does not allow two or more persons to have a joint membership in the co-op. Joint memberships can be permitted under the by-laws so long as those joint members only have one vote and receive patronage returns jointly. The following is some recommended language for joint membership that can be added to Section 6 of the by-laws:

Joint membership

6.13 *Two or more persons may apply for joint membership in the Cooperative. Despite section 1 and subject to by-laws 6.14 to 6.17, where the Cooperative has joint memberships, a reference in the by-laws to a ‘member’ includes persons who have a joint membership.*

Patronage Returns

6.14 *When calculating the business done with members of the Cooperative under by-law 7.04, the Cooperative must make one calculation as to the business done with all holders of a joint membership.*

Voting and Participation as Directors

6.15 *The persons who hold a joint membership together have one (1) vote. Only one person among the persons who hold a joint membership may sit as a director at any one time.*

Withdrawal of Joint Membership

6.16 *For an application to withdraw from the Cooperative under by-law 6.05 to be valid, it must be made by all holders of a joint membership. Despite by-law 6.06, the death or dissolution of a person who is a holder of a joint membership cannot be deemed as a withdrawal of the joint membership.*

Termination of Joint Membership

6.17 *For the purposes of by-law 6.07, an action that constitutes ‘for cause’ includes the action or omission of one holder of a joint membership even if the other(s) holder(s) of a joint membership did not commit the action or omission.*

7.02 – Minimum Reserve: the by-laws should either specify a minimum percentage (%) of money to be held as a General Reserve or be changed to specify that the board may set the percentage.

The by-laws can be changed to add other or specific reserves.

7.03 – Allocation of Surplus: Note: Not for profit housing cooperatives may chose to add the by-law allowing use of surplus to reduce housing charges for its members.

Note – Patronage to non-members: Section 7 in the model by-laws uses the term 'patron' (or non-member workers for worker co-ops) to specify that non-members can earn patronage returns. This acknowledges that not all users of a co-op's services must be members (unless, of course, the co-op decides otherwise). If you wish to limit patronage returns to members only, all references to 'patrons' should be removed.

7.07 – Priority of Payment: when setting out a priority for paying back shares or loans to members, note that the model is merely a sample list and does not need to be followed.

8.01 – Annual Meetings: The AGM must be held within 15 months of the last AGM. A cooperative may choose to add the following sentence to the proposed wording.

Meeting must be held within ____ months of the Cooperative's financial year end.

8.02 – Special Meetings: the 5% figure in this by-law can be changed. The maximum percentage of members` signatures that can be required in this by-law is 20% (Section 240(1) of *the Act*).

8.05 – Notice of Meetings: this by-law can specify different dates; however, if the by-law is silent, the notice shall be given no earlier than 21 days and no later than 50 days before the meeting (section 226). The board has an obligation to give notice to everyone who is on the members` register as per section 225 of the Act.

8.08 – Quorum: this by-law must comply with section 233 of the Act. The model sets a low bar for quorum. This can be raised, but quorum should not be set any higher than 50% of the membership.