

# **Part I. GETTING STARTED**

**Chapters 1 through 3**

---

This Publication is Not Fully Updated for Subsequent Changes in the Law or Other Information Provided Herein.

---

# Chapter 1. CHOICE OF ENTITY FOR DOING BUSINESS

## A. INTRODUCTION

Forming an appropriate legal entity to carry out the anticipated activities is one of the most important steps in getting an organization “off the ground.” The choice of entity has both short-term and long-term implications. In the short term, the “mechanics” (including costs) of the formation are dictated by the type of entity to be formed; in the long run, the flexibility and success, or the lack thereof, of the organization will be impacted by the legal vehicle originally chosen.

For the discussion here, it is assumed that the main purpose of the proposed organization is to benefit its members or owners by providing an entity by which a common activity may be engaged in more or less “at cost” (e.g., through the payment of “patronage refunds”). Profits may also be retained to further the activities of the organization; “dividends” related to any capital contributions are limited (by co-op law) or may be prohibited by a co-op’s bylaws or articles.

It is important to note that Section 12311(b) of the California Corporations Code generally prohibits the use of the words “cooperative” and “co-op” in the name of an organization unless it is incorporated (1) as a “generic” co-op under the California Consumer Cooperative Corporation Law, (2) as an “agricultural” co-op, (3) as a “limited equity” or “stock” real estate-related co-op, or (4) as a credit union. Thus, many organizations that might think of themselves as operating on a “cooperative” basis almost certainly will not be able to use that term in their name unless legally incorporated as one of the foregoing types of co-ops.

California and federal securities laws and regulations impact all the possible entity choices discussed here. Although co-ops incorporated under the California Consumer Cooperative Corporation Law generally have a “special” exemption (up to \$300 in nondebt securities per member), securities issues are generally more related to the facts surrounding any particular offering. For smaller organizations, however, *California* securities regulations in particular have to be recognized and complied with. Other than some summary information provided elsewhere in this publication, securities issues are outside the scope of this discussion.

Federal and California income tax laws also impact the various entities in differing ways (e.g., tax return filings, tax burdens), some of which are outlined below and elsewhere in this publication. Because of the complexities involved, an organization should probably seek professional assistance related to tax matters.

Although the focus of this publication is on organizations (typically made up of consumers or workers) ultimately incorporating under the California Consumer Cooperative Corporation Law, the discussion below briefly outlines other “general purpose” choices for organizing entities created for the mutual benefit of their members or owners. “Special purpose” organizations (e.g., housing and agricultural co-ops, credit unions) are outside the scope of this publication. Also, “limited partnerships” are not discussed since they are mainly used as an investment vehicle. At the end of this chapter, there is a discussion of the entity choices typically made by groups in specific business sectors.

---

Since this publication is probably most applicable to consumer and worker cooperatives, the advantages and disadvantages of incorporating under the California Consumer Cooperative Corporation Law will be discussed first. For the same reason, sample documents are provided only for organizations actually incorporating under the California Consumer Cooperative Corporation Law.

It should be noted that issues related to a *transformation* of an organization to another type of entity (e.g., a for-profit corporation changing to a cooperative corporation) are outside the scope of this publication. Professional advice should be sought for the specific situation involved.

## B. COOPERATIVE CORPORATIONS

“Cooperative” corporations are one of the many types of corporations that may be established in California. Although there are other cooperative laws (e.g., for housing and agricultural co-ops) in California, this publication is concerned only with the California Consumer Cooperative Corporation Law. In a sense, such law is a legal hybrid of partnership, for-profit corporation, and nonprofit corporation law.

Section 12201 of the Consumer Cooperative Corporation Law succinctly states that co-ops “are democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” This legal description identifies characteristics that distinguish cooperatives from other forms of business. Each member of a cooperative, no matter how many shares or memberships she or he has purchased, is generally entitled to only one vote. The primary objective of a cooperative is to provide benefits to its members, rather than a return on members’ capital investment. Unlike the similar nonprofit mutual benefit corporations, however, co-ops may distribute “surplus” to their members. Although consumer and worker cooperatives are rarely tax-exempt, surplus income may be distributed to members in such a way as to minimize corporate taxes.<sup>1</sup>

The California Consumer Cooperative Corporation Law is fairly flexible, partly because it is something of a legal hybrid. On the financial side, a co-op may distribute dividends on shares or memberships (unless the articles of incorporation or bylaws prohibit such dividends) and distribute patronage refunds to its members (based on their relative activity with the co-op).<sup>2</sup> Assuming that certain requirements of the Internal Revenue Code and related Treasury Regulations are met, patronage refunds are income tax-deductible to the co-op, thus often reducing the overall cost of doing business.

Another important advantage for cooperatives is that no “permit” is needed from the California Department of Corporations for the sale of memberships or shares up to \$300 per member (if certain legal requirements are met).<sup>3</sup> Unlike nonprofit “mutual benefit” corporations, co-ops may issue unlimited shares of stock (or memberships) to any single member to help generate capital.

Like other types of corporations, co-ops tend to be better organized than unincorporated associations since articles of incorporation have to be filed with the Secretary of State and co-op law is extensive and relatively well defined. Also, as in other corporate and LLC (limited liability company) settings, individual members are not generally personally liable for the debts of the co-op.<sup>4</sup>

Although partnerships and limited liability companies have greater tax flexibility in allocating tax-related items to various partners and members, cooperatives (like partnerships and LLCs) may achieve, as explained above, a relatively tax-free status at the entity level through the distribution of tax-deductible patronage refunds to members. Such refunds are taxable to the members if their activity with the co-op is business-related (e.g., employment); if the activity is for “personal” purposes (e.g., buying food for the members’ own consumption), the refunds are not taxable to the members.

---

Relative to unincorporated associations and partnerships, the creation of a cooperative corporation is more involved (e.g., articles of incorporation with certain mandatory provisions must be filed with the Secretary of State.<sup>5</sup>) If “profits” are to be distributed to the members through “patronage refunds,” a co-op will have more complex accounting and tax problems than some other entities that may not (or do not) distribute such refunds. The distribution of tax-deductible patronage refunds can be particularly burdensome for smaller consumer co-ops with numerous members.

Because each member generally has only one vote in the affairs of a cooperative (no matter what her or his capital contribution may be), decision making in co-ops can be at times cumbersome, and the original “founders” may eventually lose “control” of the cooperative. In a related vein, the fact that voting power is not related to capital contributions (as in “regular” for-profit corporations), potential larger investors may be discouraged. Further, Section 12451 of the California Consumer Cooperative Corporation Law limits “distributions” to fifteen percent each year on capital contributions (including “membership fees”). Such distributions include dividends on shares or memberships (but not patronage refunds) as well as any amounts paid to members to repurchase capital contributions, to the extent such amounts exceed what the member has previously paid in and/or been allocated (i.e., through noncash patronage refunds or dividends).

### C. NONPROFIT “MUTUAL BENEFIT” CORPORATIONS

Nonprofit “mutual benefit” corporations may be established in California for any lawful purpose.<sup>6</sup> A nonprofit mutual benefit corporation is formed, like all other corporations, by filing articles of incorporation with the Secretary of State. A nonprofit mutual benefit corporation will not qualify for tax-exempt status since its primary goal is to provide direct benefits to individual members. It would also not qualify for favorable tax treatment as a cooperative (i.e., under Subchapter T of the Internal Revenue Code) since a nonprofit mutual benefit corporation is prohibited from making distributions to its members except to redeem memberships and upon dissolution.<sup>7</sup> An organization incorporated as a nonprofit mutual benefit corporation files corporate income tax returns like any regular for-profit corporation unless a specific tax-exempt purpose is established (e.g., a trade association or a power company, under Internal Revenue Code Section 501(c)(6) and (12)).

Unlike the situation of an unincorporated association or partnership, the members of a nonprofit mutual benefit corporation generally enjoy limited liability (assuming that corporate formalities are adhered to). Like other types of corporations and LLCs, “articles” are required to be filed with the Secretary of State to create the mutual benefit corporation. Because articles of incorporation must be filed with certain mandatory provisions<sup>8</sup> and because nonprofit corporation law is extensive and relatively well defined, the legal terrain is relatively cohesive and predictable.

Relative to cooperatives and profit-oriented entities, nonprofit mutual benefit corporations face certain obstacles in raising capital. For example, although mutual benefit corporations may levy dues and assessments on their members, members may generally acquire only a single membership in any “class” of memberships.<sup>9</sup> Secondly, any surplus assets (i.e., cash or property) may not be distributed to members except to redeem memberships or until the corporation is dissolved.<sup>10</sup> As a result, members receive no current income on their “investment.” Thus, growth is generally restrained, and, where it does occur, it’s often locked up in the corporation until dissolution. Also, unlike certain advantages the co-op option enjoys, the sale of memberships will more likely require a permit from the Department of Corporations, and the permit process may take several months and could be quite costly in legal and filing fees.<sup>11</sup>

---

## D. NONPROFIT “PUBLIC BENEFIT” CORPORATIONS

Nonprofit “public benefit” corporations are another possible option for organizations operating in California. Such corporations, while usually tax-exempt, face a number of legal constraints (found in both California corporate and federal income tax laws) under which most business-oriented organizations would not want to operate. Capital generation is a particularly salient problem, especially since assets and profits (if any) may not be distributed to members. Still, organizations formed for certain purposes (e.g., educational) possibly meeting tax-exempt criteria may find this “public benefit” status appealing.

Because tax-exempt status is usually difficult for most “cooperatively”-run entities to achieve (since individual members instead of the public at large are the intended beneficiaries), nonprofit public benefit corporations are not emphasized in this publication.

## E. LIMITED LIABILITY COMPANIES AND GENERAL PARTNERSHIPS

“Limited liability companies” (LLCs) are membership organizations normally established to be taxed as if they *were* a partnership. Such tax status is considered an advantage because of the flexibility and single level (i.e., “pass-through”) of taxation it offers. Unlike a general partnership, where individual partners face unlimited *personal* liability for partnership activities, the LLC member’s liability is generally limited to his or her investment in the organization. The favored tax flexibility, however, can result in complex accounting and tax issues, especially where relatively large numbers of members or partners are routinely joining and leaving the organization. LLCs and partnerships are managed by the members and partners themselves or by chosen managers.

Currently, an LLC is annually subject to both an \$800 California “minimum” tax and a California “fee” on gross receipts in excess of \$250,000, assuming it is taxed as a partnership. In the alternative, an LLC may “elect” (under the “check-the-box” rules of the Internal Revenue Code) to be taxed as a “C” corporation for both federal and California purposes, but it would then be subject to “double taxation” (of both earnings of the corporation and of dividends to shareholders). Conceivably, an LLC could be taxed as a “cooperative” (i.e., subject to Subchapter T of the Internal Revenue Code), but the very reasons it chose *not* to be a co-op in the first place (e.g., to avoid “democratic” control) would probably preclude this treatment. Assuming that a “co-op”-type group wanted to be taxed as a partnership, an LLC would probably be best utilized by a relatively small and stable group.

Finally, unlike a general partnership that has to make no filings with the state of California upon its creation, an LLC has to file “articles of organization” with the Secretary of State. Analogous to corporate bylaws, a partnership or LLC needs to have an “agreement” among the partners or members; although not required, the agreement should be in writing.

## F. FOR-PROFIT CORPORATIONS

A “regular” for-profit corporation is generally established to make a profit for its shareholders based upon their relative shareholdings. In a for-profit corporation, shares of stock are issued in exchange for capital contributions, with voting power of individual shareholders related to the number of shares they own. Thus, unlike cooperatives, for-profit corporations are not concerned with “democratic” (i.e., one person, one vote) voting rights. Further, corporate stockholders are generally concerned with the

---

dividends received on and the growth in value of their shares of stock, and these factors are less likely to concern co-op members (who are usually more interested in cost-saving transactions with their co-op).

“S” corporations are simply corporations that have “elected” under the Internal Revenue Code to be taxed similarly to partnerships (and most limited liability companies), that is, the entity itself is not subject to federal income taxes, only the owners are. Like any other corporation (and LLC), however, the shareholders generally have limited personal liability. Unlike LLCs and partnerships (both of which have tremendous flexibility in allocating income, deductions, and credits), “S” corporations must distribute “pass-through” items on the basis of relative shareholdings. Although “S” corporations in general have a less complex tax situation than LLCs or partnerships, they may face a somewhat more complicated and restrictive tax situation than cooperatives. For example, “S” corporations are limited to 75 shareholders and may not issue more than one class of stock.

## G. UNINCORPORATED ASSOCIATIONS

An unincorporated association is probably the simplest legal form that a “membership” organization might take. An unincorporated association consists of a group of persons who have joined together for some common purpose. In some ways, the association is like a corporation. For example, it may hold and transfer property and register names and insignias with the Secretary of State.<sup>12</sup> An unincorporated membership association (with two or more members) that did not attain tax-exempt status would be taxed as a partnership for federal and state purposes unless it elects to be taxed as a corporation.<sup>13</sup>

Unincorporated associations are relatively easy to form. No filings with the state of California are required upon formation, and no particular documents are required of the association itself. In relation to the corporate options discussed below, however, privacy and ease of the legal aspects of formation and dissolution are the main advantages to this form. It might best be used in a “tentative” situation (e.g., where it is unclear whether the unincorporated association is really economically viable) or where only a relatively few members are involved.

In relation to corporate options, the disadvantages of an unincorporated association are significant. Perhaps most importantly, except for specified types of debts, individual members may be held personally liable for all sorts of association liabilities.<sup>14</sup> Also, because there are no requirements of corporate-type documents analogous to articles of incorporation and bylaws, an unincorporated association can be chaotic and disorganized, hindering its ability to function as a viable entity. To minimize this latter problem, “articles of association” and bylaws are often used. Adoption by an unincorporated association of these documents would probably do little or nothing to solve the potential liability problems for individual members, however. Further, in contrast to certain advantages enjoyed by the cooperative option, it is probably more likely that an unincorporated association would have to “qualify” the sale of any “memberships” with the California Department of Corporations. Qualification can be a costly and time-consuming process for an organization of any type or size.

Finally, in a more general sense, California statutory law related to unincorporated associations is limited to a few provisions, making the legal environment relatively undefined in relation to other options.<sup>15</sup> While some may consider this an advantage, such a vacuum in the law can create a host of problems for the organization and its members.

---

## H. SUMMARY AND CONCLUSIONS

Obviously, the ultimate choice of legal form will depend on the facts and circumstances of the particular organization. For a very small organization with no long-term goals, an unincorporated association may be the best choice, at least at its outset. The nonprofit “mutual benefit” corporation could be effectively used where raising capital may never be particularly important, or when tax-exempt status is desired and possible to attain. “Public benefit” corporations would seem to have relatively narrow uses, due to the various restrictions and limitations placed on them by both tax and corporate legal structures.

When “democratic” control is important (or profit *less* important), the cooperative corporation option provides a relatively flexible financing vehicle and also offers certain favorable “securities” (particularly for smaller co-ops) and tax advantages (especially for larger co-ops). Where flexibility, profits, and capital are particularly important, partnerships, LLCs, and for-profit corporations may offer the more favorable vehicles to the owners. For example, control of a for-profit corporation is generally determined by the number of voting shares each shareholder owns, and nonvoting investors are often present.

In any event, a group forming an organization should consult competent counsel to assist it in making an effective choice of entity and to ensure that the proper documents are generated and appropriate filings are made with governmental agencies.

Finally, because this publication is specifically oriented toward organizations that actually incorporate under the California Consumer Cooperative Corporation Law, sample documents are provided only for organizations incorporated under this law.

---



## Chapter 2. PRE-OPERATIONAL MATTERS

While the following outline does not necessarily list all the items that need to be considered when forming a cooperative, it does list major items confronting any new co-op before it begins operations.

### A. BEFORE INCORPORATION

#### 1. General Orientation

This discussion assumes that it has been decided to incorporate a co-op under the California Consumer Cooperative Corporation Law, that is, that a co-op corporation is the legal entity most appropriate to conduct the business of the members. As discussed above, professional advice should be sought in selecting the most appropriate entity to conduct the proposed activities. If a cooperative corporation is the entity chosen, the incorporators should review the sample minutes of the first meeting of the board of directors to orient themselves to many of the initial steps that will need to be addressed. To legally form a cooperative, California Corporations Code Section 12300 requires that one or more persons, known as the “incorporators,” sign and file with the Secretary of State “articles of incorporation.”

#### 2. Corporate Name

The incorporators should decide on a name of the co-op, which must include the word “cooperative” *and* some word or abbreviation that will indicate that the co-op is a corporation (e.g., Inc., Incorporated, etc.).<sup>1</sup>

When a name is decided upon, its availability for use should be checked with the California Secretary of State. A name-check may be done by telephone or online; if the name is available, it may be reserved with the Secretary of State for a 60-day period for a small fee.<sup>2</sup>

#### 3. Initial Board Members and Officers

The incorporators should next decide who will comprise the initial board of directors. The initial directors, who may also be the incorporators, will serve until directors are elected by the members at the first annual meeting (or by written ballot). Either the articles of incorporation or the bylaws must set the number of directors, or a minimum (not less than three) and maximum number of directors, with the exact number to be fixed by the board or members in a manner provided in the bylaws.<sup>3</sup> Generally, a cooperative should provide for an odd number of directors to help minimize the possibility of tie votes. The bylaws (or articles of incorporation) may set out the eligibility requirements for directors,<sup>4</sup> and most cooperatives would probably want to require directors to be members of the co-op.

The incorporators should also consider who should be selected as the first officers of the co-op, since officers should be designated at the first meeting of the board of directors. The designation of the first corporate secretary is particularly important, since that officer is responsible for maintaining various corporate documents, records, minutes of corporate meetings, etc.

#### 4. Bylaws

The incorporators should agree on the contents of the cooperative’s initial bylaws so operations can

---

begin as soon as possible after incorporation. The bylaws are perhaps the most important corporate document, and this publication's sample bylaws and related discussions should be carefully reviewed. Many of the issues facing a newly forming co-op (e.g., membership qualifications, distributions, etc.) will be resolved in the bylaws. In reviewing bylaw issues, some groups decide that they do not want to operate in a co-op format, or in a corporate format. Thus, bylaws should be agreed upon *before* incorporation, wherever possible, to help ensure that a cooperative legal structure is consistent with the goals of the incorporators and that the co-op does not soon have to be “transformed” into another type of organization.

### **5. Shareholder Disclosure Document and Receipt**

The membership “disclosure document” is based mainly upon the articles of incorporation and the bylaws. This document needs to be prepared at the outset since it is required (by law) to be given to people before they are accepted as members,<sup>5</sup> including those accepted at the first meeting of the board of directors. Also, some form of “receipt” needs to be created, since a receipt must be given to anyone purchasing his or her first membership or share.<sup>6</sup>

### **6. Incorporation Fees**

Next, the incorporating group should decide on how to pay the various incorporation fees. A small filing fee is required in order to file the articles of incorporation with the Secretary of State. Some attorney's fees are also likely to be incurred. The amount of the attorney's fees will depend on the degree of the cooperative's structural complexity, particularly the membership and share structures. Whoever advances such fees on behalf of the co-op will probably expect to be reimbursed by the new cooperative shortly after incorporation.

### **7. Shares**

The incorporators should also decide how and for how much the initial shares or memberships will be sold. The group should attempt to structure the cooperative's share transactions so that the co-op will not need to apply for a permit to issue its initial shares.<sup>7</sup> (This is discussed in more detail in chapter 11 of this publication, and an attorney should be consulted before any shares are issued.) A membership or share issuance price should also be decided upon. The price will often be inversely related to the number of equity units a member may initially be required to purchase (i.e., the higher the price, the fewer the number of units). Particularly where members may own more than one unit, the price per unit may be set at a specific amount (to avoid confusion or complex valuation issues).

The share price may be set in the bylaws, or the bylaws may allow the board to set (and change) the price. The incorporators should consider setting a “permanent” price in the bylaws (to avoid any later confusion over price), and the bylaws may allow the board to vary the number of shares required to be initially purchased. It should be noted that co-op law does *not* require shares to be issued. Because capital is of crucial importance to most co-ops and shares are fairly simple to understand, however, this *Sourcebook* assumes throughout that shares, in fact, will be issued.

A cooperative is not required to issue any shares, or it may issue more than a single class of shares. When more than a single class of memberships or shares is issued, the complexity of either or both of the articles and bylaws, as well as the disclosure document, is increased. Some co-ops may want

---

or need to issue one or more additional share classes to attract more investment in the organization. Shares may not be lawfully issued until after the co-op is incorporated.

It should be noted that other “units” of equity ownership could be utilized instead of “share” ownership. Shares are assumed throughout this *Sourcebook*, however, since shares provide the most common description of equity ownership. On the other hand, some (particularly smaller) cooperatives may decide that *no* ownership units of any kind are needed or desired (i.e., all equity in the co-op would be owned “in common”).

## **8. Loans**

Loans to a cooperative are *not* exempted from the “permit” process with the California Department of Corporations by the special co-op “equity” exemption. Although another exemption (or exemptions) may be available, an attorney should be consulted before any loans are taken. (This is discussed in more detail in chapter 11 of this *Sourcebook*.)

## **9. Federal Securities Regulation**

The above discussions of shares and loans pertain to California law only. An attorney should be consulted regarding the applicability of federal securities regulation, particularly the antifraud provisions (and possibly the laws of other states). In most situations involving small cooperatives doing business only in California, however, shares or loans will probably not need to be federally registered (or subject to the laws of other states), particularly if only California residents are allowed to become and remain members.

## **10. Bank Accounts**

The incorporators should investigate which bank or banks will be used by the cooperative for checking and savings accounts, since one or more accounts will almost certainly have to be opened shortly after incorporation and before operations begin. An employer identification number will need to be obtained from the Internal Revenue Service before a bank account can be opened.

## **11. Licenses and Permits**

The incorporators should make at least a preliminary determination of what licenses and permits the cooperative will need to acquire either before or shortly after beginning operations. For example, a business license will almost certainly be required, and sales tax and health permits may be needed; a consumer food co-op may also need a license to sell alcoholic beverages.

## **12. Articles of Incorporation**

The articles of incorporation should be prepared and filed with the Office of the Secretary of State in Sacramento. The articles must be signed by one or more persons acting as the incorporators. A small fee must accompany the original and two copies of the articles. If the initial directors are named in the articles (which is recommended wherever possible), the directors must sign and acknowledge the articles.<sup>8</sup> Generally, the articles are “filed” as of the date they are received by the Secretary of State.<sup>9</sup> A co-op’s existence begins when the articles are filed with the Secretary of State.<sup>10</sup>

---

## B. AFTER INCORPORATION

### 1. The First Board Meeting

Sample minutes of the first meeting of the initial directors are provided in this *Sourcebook*. While other items may be added to the agenda of this meeting, items included in the sample minutes should be acted upon before actual operations begin.

### 2. Accounting Records

A competent accountant or bookkeeper should be retained to set up the cooperative's "general ledger" and all "journals" necessary to support the ledger. Many co-ops make the mistake of postponing this action until well after operations have begun, and it is often a costly mistake: many business failures are due to inadequate management information and financial records. Adequate accounting records are also necessary to generate the financial reports a co-op is required by law to prepare (see chapter 14).<sup>11</sup>

### 3. Membership Records

Cooperatives are required to maintain accurate membership records, including the names and addresses of all members and how much capital each member has invested.<sup>12</sup> The co-op's secretary should see that such records are immediately established and accurately maintained. Because many co-ops have relatively large numbers of members (especially consumer co-ops), membership records may soon be a major problem for a new co-op unless adequate procedures are established before operations begin. As a practical matter, computer data processing of membership records is virtually mandatory for any new co-op with a potentially large membership.

### 4. Employer Requirements

A cooperative should file Form SS-4 with the Internal Revenue Service to obtain an employer identification number. This number is needed before any employees are compensated by the co-op. Co-op personnel should also contact the Internal Revenue Service and California's Employment Development Department for information and forms to properly report compensation and pay payroll-related taxes, and unemployment and disability insurance. Proper reporting and payment of payroll-related taxes is very important, since co-op personnel may be held personally liable for such taxes.

Cooperatives (as well as all other businesses) are required to file annual Forms 1099-MISC for any *nonemployee* business service provider who is *not* incorporated (and to any attorney, whether or not incorporated), if her or his compensation from the co-op exceeds \$600.00 in a given calendar year. In addition, California has separate reporting requirements related to such nonemployee service provider; the Employment Development Department should be contacted for further details.

---

---

## Chapter 3. FIRST MEETING OF THE BOARD OF DIRECTORS

### A. IN GENERAL

As soon as practical after incorporation, the initial directors should meet to perform certain acts to help get operations of the new cooperative started. Two of the most important acts are adoption of the bylaws and the appointment of officers. The board of directors generally should adopt the initial bylaws on its own initiative, since there are no members or related voting procedures prior to the adoption of the bylaws.

Although additional items may be added to the agenda of the board's first meeting, it is important that the initial directors of a co-op act upon the agenda items presented in the "sample" minutes presented below. The items presented in the minutes here are either self-explanatory or are discussed in chapter 2 of this *Sourcebook*.

All of the initial directors should sign a "Waiver of Notice and Consent to Holding of the First Meeting of the Board of Directors" (see the sample waiver in this publication) to avoid any problems concerning the adequacy of "notice" of the meeting.

Even before the initial board meeting, the incorporators would be well advised to consult an attorney regarding at least the share issuance item of the minutes, due to the complexities of securities regulation. In order for the cooperative's equity exemption from qualification to apply at the outset, none of the initial members may receive shares in excess of \$300.00. (For any number of reasons, the co-op may not need this exemption, or another exemption might be used.) The named members will be the first members of the co-op, assuming that they comply with the membership requirements as set forth in the bylaws. Since the sample bylaws require directors to be members, the directors should pay for and be issued shares at this first meeting, after adopting forms for a membership application, a disclosure document, and a "receipt" for a share purchase.

Although a corporate "seal" (item "12" of the sample minutes) is of little or no legal importance today, many banks still require it when a corporation opens a bank account. The adoption of a seal is thus provided for in the minutes. For the seal to be adopted at the initial board meeting, it must be obtained prior to the meeting but after the incorporation filing, since the seal will include the date of the incorporation as well as the corporate name. A seal can be obtained at many office supply stores.

---

## B. SAMPLE WAIVER OF NOTICE OF THE FIRST MEETING

NOTE: It is especially important that this waiver be signed by all of the initial directors prior to the initial board meeting since proper “call” and “notice” procedures are not yet in effect.

### WAIVER OF NOTICE AND CONSENT TO HOLDING OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF [NAME OF COOPERATIVE]

We, the undersigned, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, being all of the initial Directors of [name of co-op], a California Cooperative Corporation, waive notice of the first meeting of the Board of Directors of the cooperative, and consent to the holding of a special meeting of the Board at \_\_\_\_\_, California, on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ , at \_\_\_\_ [A.M./P.M.], for the purpose of transacting any and all business, including the election of officers, adoption of Bylaws, adoption of a corporate seal, issuance of shares, adoption of the forms of the membership disclosure statement and receipt, and any other action that may be required or appropriate to complete the organization of the Corporation.

We, the undersigned, request that this waiver and consent be filed with the corporate records or be made a part of the minutes of the meeting for the purpose of showing that the business transacted at the meeting is valid and of the same source and effect as if the meeting were held after regular call and notice.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

---

## C. SAMPLE MINUTES OF THE FIRST BOARD MEETING

### MINUTES OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF [NAME OF COOPERATIVE]

#### 1. Identification of Meeting Directors Present and Action Taken

The Board of Directors of the cooperative met for the first time on \_\_\_\_\_, 20\_\_.  
The following named Directors were present, and are all the persons named as Directors in  
the cooperative's Articles of Incorporation filed in the Office of the California Secretary of  
State: \_\_\_\_\_.

\_\_\_\_\_ was chosen to act as temporary President, and \_\_\_\_\_  
\_\_\_\_\_ was chosen to act as temporary Secretary.

A signed waiver of notice and consent to hold this first meeting of Directors was presented  
and ordered filed with the minutes of this meeting.

On motions made and seconded, the following resolutions were unanimously adopted or  
adopted by a majority of the Directors:

#### 2. Minutes and Books

RESOLVED, that the Secretary of the cooperative shall record, or cause to be recorded, all  
proceedings of the Board of Directors, Board Committees, and members in a book to be kept  
for that purpose at the principal executive office of the cooperative;

RESOLVED, FURTHER, that the minutes of all meetings of the Board of Directors, Board  
Committees, and members shall include the following information in addition to a record  
of the proceedings: the time and place of the meeting; whether it is regular or special and,  
if special, how it was authorized; what notice of the meeting was given; the names of those  
present and absent from Board and Board Committee meetings; and the number of members  
present at meetings of members; and

RESOLVED, FURTHER, that the Secretary of the cooperative is directed to procure a minute  
book and any other books and records that may be required by the cooperative.

#### 3. Articles of Incorporation

RESOLVED, that a copy of the Articles of Incorporation of the cooperative bearing the file  
stamp and certification of the California Secretary of State shall be inserted in the minute  
book of the cooperative.

---

#### 4. Bylaws

RESOLVED, that the Bylaws presented to and considered at this meeting are hereby approved and adopted as the Bylaws of the cooperative: and that the Secretary of the cooperative is directed to certify one copy of the Bylaws and keep that copy at the cooperative's principal executive office where it shall be open to inspection by the members at all reasonable times during office hours, and to certify another copy of the Bylaws and insert that copy in the minute book of the cooperative.

#### 5. Officers

RESOLVED, that the following named persons are hereby elected to the offices of the cooperative as set forth below:

Name	Office
_____	President
_____	Vice-President
_____	Secretary
_____	Chief Financial Officer

The above officers shall serve at the pleasure of the Board.

#### 6. Membership Disclosure Document and Records; Conditions of Membership

RESOLVED, that the cooperative hereby adopts the membership application, membership disclosure document, and "receipt" presented to this meeting as the forms that will be used by the cooperative, and that the Secretary is directed to attach a copy of such forms to the minutes of this meeting:

RESOLVED FURTHER, that the cooperative hereby adopts the following uniform conditions of membership, pursuant to Section 1.02 of the Bylaws: \_\_\_\_\_  
\_\_\_\_\_.

RESOLVED, FURTHER, that a record of all memberships and shares issued or canceled shall be kept by the Secretary in a separate corporate book to be known as the "Record of Members and Shares of the Cooperative," and the Secretary is instructed to procure such a book.

#### 7. Attorney and Incorporation Costs

RESOLVED, the sum of \$\_\_\_\_\_ was advanced for attorney's fees and other costs in forming the cooperative, and that the cooperative received the benefit of the services and expenditures thereof; and

RESOLVED, FURTHER, that \_\_\_\_\_ be reimbursed for such advancements by the



cooperative in the amount of \$\_\_\_\_\_, and that any further amounts due on account of attorney's fees or other costs connected with the formation of the cooperative, the issuance of memberships and shares by the cooperative, or its qualification to transact business, shall be a liability of the cooperative whether or not the services were performed before or after the date of this meeting.

**8. Issuance of Memberships and Shares Without Permit**

RESOLVED, that until the Board of Directors sets another amount, as provided in Section 3.01 of the Bylaws, all shares will be issued for \$\_\_\_\_\_ each. Fractional shares may be issued to members only in relation to transactions other than their minimum share purchase to qualify for membership.

RESOLVED FURTHER, that inasmuch as the cooperative is authorized by its Bylaws to issue only one class of shares, this cooperative, acting pursuant to Subdivision (r) of Section 25100 of the California Corporations Code, hereby issues \_\_\_\_\_ of its shares in exchange for cash at a price of \$\_\_.00 per share to the following named persons in the number of shares set forth opposite their respective names:

Name of Member	Number of Shares
_____	_____
_____	_____
_____	_____

RESOLVED, FURTHER, that on \_\_\_\_\_, 20\_\_, upon receipt by the cooperative of the consideration to be paid for its shares, the officers of the cooperative are directed to issue to each of the persons named in these minutes the number of shares set forth opposite their respective names above, related to each person's respective membership in the cooperative; and

RESOLVED, FURTHER, that until the Board of Directors sets another amount, as provided in Section 2.01 of the Bylaws, all shares will be issued for \$\_\_\_\_\_ each. Fractional shares may be issued to Members only in relation to transactions other than their minimum share purchase to qualify for Membership.

**9. Licenses and Permits**

RESOLVED, that the officers of the cooperative are directed to procure in the name of the cooperative such licenses and permits as may be required to conduct the business of the cooperative by any federal, state, county, or municipal governmental ordinance, regulation, or law, and to do all things necessary or convenient to qualify the cooperative to transact its business in compliance with the laws and regulations of any appropriate federal, state, county, or municipal governmental authority.

### **10. Corporate Data Statement**

RESOLVED, that the appropriate officers of this cooperative shall, within 90 days after the date that the Articles of Incorporation of the cooperative were filed with the California Secretary of State, to wit within 90 days after \_\_\_\_\_, 20\_\_, and annually thereafter during the applicable filing period as that term is defined in Section 12570(c) of the California Corporations Code, on a form prescribed by the Secretary of State, file with the Secretary of State the statement containing the information required by Section 12570 of the California Corporations Code; and

REVOLVED, FURTHER, that the Secretary of the cooperative is directed to procure without delay from the California Secretary of State copies of the form prescribed by that office for the filing of the statement required by Section 12570 of the California Corporations Code.

### **11. Deposit Accounts**

RESOLVED, that \_\_\_\_\_, a deposit institution, is hereby selected and designated as a depository of funds of this cooperative, and that a checking account be established and maintained by and in the name of this cooperative at the office of this institution, on and subject to such terms and conditions as the President and Secretary of the cooperative and the institution may agree; and

RESOLVED, FURTHER, that all checks, drafts, and other instruments for the payment of money earned or accepted by this cooperative for payment from such account or at such office of the institution be signed on behalf of this cooperative by \_\_\_\_\_, one of the officers of the cooperative, or any person or persons so authorized by the Directors of the cooperative; and

RESOLVED, FURTHER, that any checks, drafts, or other instruments for the payment of money, endorsed on behalf of this cooperative for deposit with or collection by said deposit institution, may be so endorsed in the name of the cooperative by written or stamped endorsement and without designation of the signature of the person making such endorsement; and

RESOLVED, FURTHER, that the Secretary of the cooperative is hereby authorized and directed to certify to the deposit institution that these resolutions have been duly adopted, and are in conformity with the Articles of Incorporation and the Bylaws of the cooperative, and to further certify to the institution the names and specimen signatures of the present officer(s) or other person(s) of the cooperative authorized to sign on such account, and if and when any change is made in the identity or authority of such officers or other person(s), the fact of such change and the name and specimen signature of each new officer(s) or other person(s); and

RESOLVED, FURTHER, that the deposit institution is required and authorized to honor, receive, certify, or pay any instrument signed or endorsed in accordance with these resolutions

---

and the certification provided for by these resolutions then in effect, including any such instrument drawn or endorsed to the personal order of, or presented for negotiation, deposit, or payment by, any officer signing or endorsing the same; and

RESOLVED, FURTHER, that these regulations and each certification herein provided for shall remain in full force and effect, and the deposit institution is authorized and requested to rely and act thereon until it shall receive, at its office to which the certified copy of these resolutions is delivered, either a certified copy of a further resolution of the Board of Directors amending or rescinding these resolutions, or a further certification of the names and signatures of the officer or other person(s) authorized to sign on such account.

**12. Corporate Seal**

RESOLVED, that the corporate seal presented at this meeting is adopted as the corporate seal of the cooperative, and that the Secretary is instructed to impress such seal on the minutes of this meeting opposite the place where this resolution appears.

**13. Principal Executive Office**

RESOLVED, that the principal executive office of this cooperative shall be established and maintained at \_\_\_\_\_, California.

**14. Adjournment**

The president asked whether there was any further business to come before the Directors at this meeting, and there being no response, the meeting was adjourned at \_\_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary

**APPROVAL OF MINUTES**

The foregoing minutes are approved as the acts of the Directors of the cooperative:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

This Publication is Not Fully Updated for Subsequent Changes in the Law or Other Information Provided Herein.