



1,000 THINGS BOARDS & MANAGERS SHOULD KNOW

Good Governance Tip #13

Co-operatives & the Law

LEGAL RIGHTS & DUTIES

Directors are required to manage the affairs of the business ⁽³³⁽³⁾⁾. The President is responsible for making sure the legal responsibilities of managing the co-operative are brought to the attention of the directors.

Directors Shall

- ★ Approve or disapprove membership applications ^(25, R) and repayment of member's equity ^(R)
- ★ Appoint auditors, if the members fail to ^(4, 2), a President, Vice President, secretary, and treasurer ^(R), board members, when a vacancy occurs ^(33, 5, 7), and a manager ^(33, 3)
- ★ Direct those books of account that are kept ⁽⁴¹⁾, where the place of business is to be, the application and use of the seal ^(R), and that a percent of the surplus each year be directed to the reserve fund ^(R)
- ★ Meet immediately after every annual meeting ^(R)
- ★ Manage the affairs of the co-operative ⁽³³⁾
- ★ Call special meetings ^(R) and director meetings ^(R)
- ★ Cause minutes of director meetings and general meetings to be kept ^(33, 9)
- ★ Lay a financial statement and report before the annual meeting ^(41, 2)
- ★ Have power to pay part of the price of a commodity ^(34, 4)

Directors May

- ★ Transfer membership ^(R), shares ^(R), deceased member's equity to persons they deem entitled ^(28, 5), and member's equity as directed by the nomination of the member ^(28, 4)
- ★ Pay unclaimed member's equity to a charitable organization ⁽⁶¹⁾
- ★ Declare a director's office vacant ^(33, 5)
- ★ Delegate powers of the board to committees ^(R)
- ★ Expel any member who does not observe any of the by-laws ^(29, 2R)
- ★ Refuse payment of a member's equity ^(29, 1)
- ★ Determine the value of a member's equity when it is less than par
- ★ Appoint or remove managers, secretaries, treasurers, and to determine their powers and duties and to fix their salaries ^(R24)
- ★ Invest any monies ^(R24)
- ★ Determine who is entitled to sign bills, notes, cheques, etc ^(R24)
- ★ Remove directors who fail to qualify for office or fail to discharge duties of the office ^{(33 (5))}

The co-operative, as an identity, has rights and responsibilities under the law of a natural person. The board of directors assures that these duties and responsibilities are met.

They Are

- ★ Have its registered office in Nova Scotia ⁽²²⁾
- ★ Keep a register or members ^(24, 1), nomination of beneficiaries ^(24, 6), and proper book of accounts ^(31, 6)
- ★ Have a charge upon the shares and equity of any member for member's debts ^(26, 2)
- ★ Hold a general meeting within four months of the year end ^(20, 1)
- ★ Cause the minutes of the general meetings to be kept ^(21, 6)
- ★ Elect a board of directors no fewer than three ^(33, 2)
- ★ Not issue preference shares ^(20, 1)
- ★ Forward a copy of every special resolution to the Inspector for approval ^(32, 1)
- ★ Not be required to issue certificates for shares or membership ^(R)
- ★ Create a general reserve ^(R)
- ★ Not pay a patronage dividend, which will create or increase a deficit ^(36, 3)
- ★ Give notice to the Co-operatives Branch of the place of its registered office ⁽²³⁾
- ★ Give notice of special or general meetings ^(40, 5)
- ★ Send to the Co-operatives Branch each year a copy of the financial statements ⁽⁴²⁾ and a completed Annual Report to the Inspector of Co-operatives ⁽⁴²⁾
- ★ Make articles and by-laws ^(R)
- ★ Not permit the withdrawal of a member's equity when such withdrawal would impair the financial stability of the co-operative ^(29, 1C)
- ★ When selling land, get permission from a general membership meeting through a special resolution and have it registered

Co-operatives May

- ★ Elect delegates ^(32, 1)
- ★ Amend or alter the objects of its articles and by-laws ^(18, 1)
- ★ Require its members to lend its patronage dividends ^(38, 10)
- ★ With the sanction of a special resolution, amend its articles and by-laws ^(15, 1), change its name ^(19, 1), amalgamate ⁽⁴³⁾, and dissolve ^(44, 1)
- ★ Pay or not pay patronage dividends ^(36, 4, 5)

Members of co-operatives also have responsibilities and authorities under the Act.

They Are

- ★ Have one vote ^(31, 1)
- ★ Elect a board of directors ^(R)
- ★ Be given a copy of the articles and by-laws, if requested ^(R)
- ★ Be entitled to inspect the member's register ^(R)
- ★ Decide who votes when shares are held jointly ^(R)
- ★ Have the right to appear before a membership meeting to explain why they should not be excluded ^(29, 2)
- ★ Not be required to purchase shares in excess of par value ^(37, 2)
- ★ Not be required to purchase shares when the co-operative is insolvent ^(38, 2)
- ★ Appoint or remove auditors ⁽⁴⁰⁾

Members May

- ★ Request the Inspector to investigate the co-operative ^(5, 2B)
- ★ Form a co-operative (three members) ⁽⁶⁾
- ★ Nominate someone to receive shares upon their death ^(28, 1)
- ★ Withdraw from membership ^(29, 1)
- ★ Be excluded from membership ^(29, 2)
- ★ Elect directors or delegates ^(32, 3)
- ★ Remove directors at a general meeting ^(33, 5)
- ★ Make market contracts ^(34, 2)
- ★ Be required to lend all or part of their patronage dividends ^(38, 1)
- ★ Appoint one or more liquidators ^{(44 (11))}

In order to administer the Co-operative Associations Act, the Inspector of Co-operatives has duties and authorities.

The Inspector Shall

- ★ Approve or not approve articles of incorporation and by-laws ^(5, 2), special resolutions ^(32, R), amalgamation agreements ^(43, 4), agreements for co-operation, joint venture, reciprocal, concession, etc ^(16, 1), and sale, mortgage, lease, etc of property of the co-operative ^(16, C)
- ★ Perform such duties as may be required or directed by the Minister ^(5, 2, F)
- ★ Prepare and deliver each year a report showing the number of co-operatives and the financial standing of each co-operative ^(5, 2, D)
- ★ Receive and file all returns and reports required from each co-operative ^(5, 2, C)
- ★ Investigate, inspect, and examine co-operatives when requested by members ^(5, 2, B)
- ★ Endorse a Certificate of Incorporation ^(12, 1)
- ★ Transmit to the Registrar one copy of the articles of incorporation and by-laws for filing ^(12, 1)
- ★ Return unapproved articles of incorporation and by-laws to a proposed co-operative with a statement of their reasons for not approving ^(12, 2)
- ★ Transmit to the Registrar special resolutions, once approved for filing ^(32, 1)
- ★ Return unapproved special resolutions to the co-operative with reasons for not approving ^(32, 2)
- ★ Cause a notice of dissolution to be filed with the Registrar, if the Inspector approves the resolution, and advertise the dissolution in the Royal Gazette ^(44, 4)
- ★ Proceed with dissolution when there's reasonable cause to believe that the co-operative is not in business ^(45, 1, 2)

The Inspector May

- ★ Call a general meeting when the co-operative is in default ^(20, 2)
- ★ Examine officers, agents, and servants regarding the affairs of the co-operative ^(5, 3)
- ★ Investigate, inspect, inquire, and examine into the affairs of the business of any co-operative ^(5, 2B)
- ★ Require that 25 percent of the member's equity in the co-operative is represented at a vote for dissolution ^(44, 5)
- ★ Call another meeting if 25 percent of the member's equity in the above ^(44, 5) was not present ^(44, 6)
- ★ Refuse dissolution proceedings ^(44, 7)
- ★ Require progress reports in the case of dissolution ^(44, 8)
- ★ Designate, upon dissolution, where surplus funds may be directed ^(60, 1, 2)

- ★ Dissolve a co-operative ^(44, 1)
- ★ Designate the conditions of contribution to the general reserve ^(R)

The Act Regulations are available at www.gov.ns.ca/snsmr/coop/links/asp

SPECIAL RESOLUTIONS & PROCEDURES

Special resolutions are directions from the members which are approved by the Inspector of Co-operatives and registered in the public file of the Registrar of Joint Stock Companies. These resolutions, required by the Co-operative Associations Act, assure the members a voice in the important decisions of their co-operative. To assure that members have an opportunity to voice their opinion and vote on the resolution, it is required that the members:

- ★ Receive ten days notice of the meeting
- ★ Receive the intent of the resolution to be presented

When the resolution is registered (forwarded to the Inspector within fifteen days of passing, certified by the secretary that the meeting was properly held), and filed (forwarded to the Inspector, after his approval, to the Registrar), the resolution is available for anyone to examine. It becomes a public document available at the office of the Co-operatives Branch, Truro, or the Registrar of Joint Stock Companies, Halifax, or at the website www.gov.ns.ca/snsmr/rjsc. Special resolutions are required to:

- ★ Raise or borrow money ^(32, L)
- ★ Sell, mortgage, lease, or dispose of property ⁽¹⁶⁾
- ★ Acquire a business or any part of a business ⁽¹⁶⁾
- ★ Acquire or hold membership in any company or association ^(16, H)
- ★ Amalgamate two or more co-operatives ⁽⁴³⁾
- ★ Alter or amend articles or incorporation and/or by-laws ⁽¹⁸⁾
- ★ Change the name of the co-operative ⁽¹⁹⁾
- ★ Dissolve a co-operative ⁽⁴⁴⁾

When the Inspector of Co-operatives receives the special resolution, they confirm that it has been properly drafted and that the co-operative is in 'good standing' (that the necessary submissions have been forwarded by the co-operative and that, to the best of their knowledge, the co-operative is being run on a co-operative basis). The Inspector then approves the resolution and forwards it to the Registrar for filing. After the Registrar confirms to the Inspector that the special resolution has been filed, the Inspector forwards a confirmation of registration to the co-operative. The Co-operatives Branch keeps detailed files on each co-operative, including copies of the special resolutions registered. This office may be a valuable reference for co-operatives doing research or wishing to update their records. For further information, contact the Inspector of Co-operatives at 35 Commercial Street, Truro, NS, B2N 3H9, phone (902) 893-6190, fax (902) 893-6108, or e-mail at skibbenr@gov.ns.ca.

For further information on this and other related topics, as well as many co-operative development subjects such as governance, finance and marketing, strategic planning, management, etc, contact the Nova Scotia Co-operative Council at the address below. Our knowledgeable staff of Business Development Officers, located in Truro, Sydney, and Yarmouth are available to assist you in all areas of co-operative development. You can also visit us on the web at www.nasco-opcouncil.ca.



Nova Scotia Co-operative Council

Making a Difference in Nova Scotia Communities

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