

Part III. DIRECTORS, OFFICERS, and MEMBERS

Chapters 7 through 10

Chapter 7. THE BOARD OF DIRECTORS

A. DIRECTORS DEFINED¹

“Directors” are individuals who are elected, designated, or appointed to act as members of the governing body (“Board of Directors”) of a cooperative. The term “directors” also includes any “alternate” directors (see the last section of this chapter). Although the members of the governing body are usually called directors, some other designated term may lawfully be used.

B. AUTHORITY

Subject to the California Consumer Cooperative Corporation Law and any limitations in the articles of incorporation or bylaws relating to actions requiring membership approvals, the activities and affairs of a co-op are conducted and all corporate powers are exercised by and under the board of directors.² The directors, however, may delegate management of the co-op’s activities to any person or persons, management company, or committee (however composed), provided that the board retains ultimate control of the co-op’s affairs, activities, and corporate powers.³

C. SELECTION, REMOVAL, AND RESIGNATION

1. Term of Office

Unless a cooperative’s articles of incorporation or bylaws provide otherwise, the directors’ terms are for one year.⁴ The articles or bylaws, however, may not specify terms in excess of *four* years for elected directors.⁵ (Various provisions related to nonelected directors will also be referred to below.) The articles or bylaws may not be amended to extend the terms of a director or increase the number of directors without approval of the members.⁶ (Although a co-op must have at least three directors, there is no limit to the number of directors a co-op may have.⁷) Also, unless the articles or bylaws provide otherwise, a director remains in office until his or her term expires and a successor has been elected.⁸ Except for vacancies and removals (see below), a director may not be terminated before the end of her or his term.⁹

If the bylaws or articles provide for the selection of some or all of the cooperative’s directors other than by membership election, these directors remain in the office for the term indicated in the bylaws or articles.¹⁰ If no term is prescribed, they serve until the bylaw or article provision is amended or repealed by the approval of the members, the seats are declared vacant, or such directors are removed.¹¹

2. Resignations¹²

Any director may resign upon giving written notice to the chairperson of the board, the president or secretary of the cooperative, or the board of directors as a whole; the resignation is effective immediately unless it specifies some future time. When the resignation is effective at a future time, a successor may be elected to take office when the resignation is effective.

3. Vacancies

The board of directors may declare vacant the office of a director whose eligibility for election as a director (as may be described in the articles of incorporation or bylaws) has ended, who has failed to attend a specified number of meetings as prescribed by the bylaws, or who has been found by a court to be of unsound mind or guilty of a felony.¹³

4. Removal from Office

a. In General

Any and all directors may be removed without cause.¹⁴ If the cooperative has at least fifty members, removal must be approved by a majority of the members voting. If the co-op has less than fifty members, however, a majority of all the members must approve the removal.¹⁵ Any reduction in the number of directors authorized by the articles of incorporation or bylaws does not remove a director before her or his term has ended.¹⁶

b. Central Organizations

Where a cooperative's bylaws or articles of incorporation allow members to "cumulate" (defined later in this chapter) their votes for directors (i.e., in a "central organization" only), special rules apply.¹⁷ Unless the entire board of directors is removed, no director may be removed when the votes cast against removal (or not consenting to removal) would be enough to elect the director if voted cumulatively at an election where the same total number of votes were cast and all the directors authorized at the time of the directors' most recent election were being elected.¹⁸

c. Class Voting

Where the articles of incorporation or bylaws provide that the members of any membership (or share) class, voting as a class, are to elect one or more directors, these directors may be removed only by the vote of that class.¹⁹

d. Designated Directors

Where the articles of incorporation or bylaws provide that one or more persons may *designate* directors, the designated directors may be removed only in accordance with the related article or bylaw removal provision.²⁰ Where the bylaws or articles of incorporation have no provision for the designation of a *replacement* person, however, Section 12362(f)(2) of the California Corporations Code repeals the designation provisions.

5. Filling of Vacancies

a. In General

A "vacant" board seat means any authorized seat that is not currently filled, whether due to death, resignation, removal, a change in the number of seats authorized by the articles of incorporation or bylaws, or otherwise.²¹ Unless otherwise provided in the articles or bylaws, vacancies on the board of directors created for reasons other than removal may be filled by the majority of the remaining directors.²² Also, unless the articles or a bylaw approved by the members allow the board to fill the vacancy caused by the removal of a director, vacancies due to removal must be approved by the members.²³ In any event, the members may elect a director to fill any vacancy not filled by the board.²⁴

b. Nonelected Directors

Where a vacancy exists in a seat held by a nonelected director (i.e., where some or all of the directors are designated or selected in accordance with the bylaws or articles of incorporation and not elected by the members), the designation or selection of a new director must be made in accordance with the procedure stated in the articles or bylaws.²⁵ If no provision for replacement is made in the articles or bylaws, the articles or bylaws providing for the nonelective designation or selection are deemed to be repealed by co-op law²⁶ (i.e., the directors *must* be elected by the members).

D. NOMINATION AND ELECTION OF DIRECTORS**1. Reasonable Procedures**

A cooperative must provide its members with “reasonable” nomination and election procedures for directors.²⁷ The reasonableness of the procedures is determined by the nature, size, and operations of the co-op.²⁸ Of course, a candidate for director must meet any eligibility requirements stated in the articles or bylaws.²⁹

2. Solicitation of Votes

Where a cooperative distributes any material soliciting a vote for any nominee in any publication owned or controlled by the co-op (e.g., its newsletter), the co-op must make the same material and equal amount of space with equal prominence available to all other nominees.³⁰

Within ten business days of the written request of any nominee and her or his payment of mailing costs, the cooperative must mail to all members (or a portion of, if the nominee requests) any material furnished by the nominee which is reasonably related to the election.³¹ Instead, and within five business days of the nominee’s request, the co-op may (1) allow the nominee to inspect and copy the records of all members’ names, addresses, and voting rights *or* (2) direct the secretary to give the nominee (at a reasonable cost) the same information.³²

In general, a cooperative must publish and mail materials on behalf of nominees, regardless of the content of the material.³³ Also, without board authorization, no co-op funds may be spent to support a nominee after there are more people nominated than can be elected.³⁴

3. Ballots³⁵

Election of directors at a meeting does not have to be by written ballot unless the bylaws require the use of ballots. If a member demands the use of ballots at a meeting before the voting begins, however, ballots must be used.

4. Determination of Winning Candidates

Subject to any provisions related to voting by membership (or share) classes, candidates receiving the highest number of votes are elected.³⁶ For example, if three seats are up for election, the three highest vote-getters are elected.

5. Central Organizations and Cumulative Voting³⁷

Cumulative voting for directors is permitted only in “central organizations” (defined in the Introduction of this publication), and then only if the articles of incorporation or bylaws authorize it. Cumulative voting allows each member of a central organization entitled to vote in an election for directors to have a total number of votes equal to the total number of directors being elected multiplied by the number of votes the member otherwise has. The member may then distribute his or her votes among the candidates in any fashion, including “cumulating” them for one or more candidates. An article or bylaw provision authorizing cumulative voting may be repealed or amended only by approval of the members, although the article or bylaw provision may require something greater than a majority of the members or a class of members for its repeal.

A member of a central organization may not, however, cumulate votes for a candidate unless that candidate’s name has been placed in nomination before the vote *and* the member has given notice at the meeting before the vote that she or he intends to cumulate votes. Once any member does give notice that he or she will cumulate votes, then all members may do the same for that particular election. The candidates receiving the largest numbers of votes are elected (subject to allowable provisions concerning election by different classes of members).

E. BOARD MEETINGS

1. In General³⁸

All rules below related to meetings of the board of directors apply to any cooperative and to its incorporators or board committees unless the co-op’s articles of incorporation or bylaws provide otherwise.

2. Who May Call³⁹

Board meetings may be called by the chairperson of the board, president, vice-president, secretary, or any two directors.

3. Place⁴⁰

A board of directors meeting may be held anywhere so long as the place has been designated in the notice, the bylaws, or by board resolution. The directors may also participate in a meeting by way of a conference call or similar setup if all the directors can hear each other.

4. Notice⁴¹

“Regular” meetings of the board may be held without notice if the time and place of the meetings are fixed in the bylaws. Four days’ notice by first-class mail or forty-eight hours’ notice delivered personally (or by telephone or telegraph) is required for “special” board meetings; the articles of incorporation or bylaws may *not* eliminate this notice requirement for special meetings. A “notice” (or “waiver of notice”) does not have to specify the purposes of any board meeting. (Notice by mail is considered given when it is deposited in the mail.⁴²)

Notice of a meeting does not have to be given to any director who (1) signs a waiver of notice, a written consent to holding the meeting, or an approval of the minutes, or (2) attends the meeting

and does not protest the lack of notice. Any director not receiving proper notice may sign the waiver, written consent, or approval of minutes before or after the meeting; any waivers, consents, or approvals must be filed with the corporate records or made part of the meeting's minutes.

5. Quorum⁴³

Although a majority of the number of directors authorized in the articles of incorporation or bylaws represents the quorum needed to transact business, the bylaws or articles may not allow for a quorum representing less than one-fifth of the number of directors, or two, whichever is larger.

6. Continued Meetings⁴⁴

A majority of the directors present, whether or not a quorum is attained, may adjourn any board meeting to another time and place. If the meeting is adjourned for more than twenty-four hours, however, notice of the follow-up meeting must be given to all directors not present when the first meeting was adjourned.

7. Approval Requirement⁴⁵

Generally, when something must be "approved" by the board of directors, it must be approved or ratified by the vote of the board or a committee authorized to exercise board powers, except those powers reserved to the board alone (see Section G(2) of this chapter).

Subject to special situations involving board committees, conflicts of interest, or indemnification of corporate agents, all acts or decisions made by a majority of the directors at a duly held board meeting at which a quorum is present are acts of the board. The articles of incorporation or bylaws may not provide for less than a majority approval but may provide for approval of more than a majority. Where a quorum is initially present at a board meeting, the directors may continue to transact business even if one or more directors leave, provided that any action taken is approved by at least a majority (or a greater proportion, if otherwise required) of the necessary quorum.

F. BOARD ACTION WITHOUT A MEETING

Any board of directors' action may be taken without a meeting if all the directors consent in writing and the consent is filed with the minutes of the board.⁴⁶

G. BOARD COMMITTEES

1. In General⁴⁷

The board of directors may resolve, by at least a majority of directors where a quorum is present, to create one or more committees to serve at the pleasure of the board. Appointments to any committee must be by a majority of the directors then in office, unless the articles of incorporation or bylaws require the approval of a majority of directors authorized by the articles or bylaws. Any committee must be made up of at least two directors.

The bylaws may authorize one or more committees, each having two or more directors, and also provide that specified officers who are also directors must be members of any committee. In addition,

the board may appoint directors as alternate members of any committee to replace any directors absent from committee meetings. Unless the bylaws provide otherwise, the board may delegate to any committee all of its powers, with the exception of the seven actions listed below

2. Authority⁴⁸

Any board committee has all the authority of the board of directors, to the extent provided in board resolutions or the bylaws, except for:

- (1) actions requiring the members' approval;
- (2) filling vacancies on the board and committees;
- (3) setting of compensation for directors;
- (4) making any changes in the bylaws;
- (5) amending or repealing any board resolution which expressly denies the right of any committee to do so;
- (6) appointing of board committees or their members; and
- (7) spending the cooperative's funds to support a nominee for director after there are more people nominated than can be elected.

H. MINUTES AND RESOLUTIONS⁴⁹

The original or a copy of the minutes or resolutions of any board of directors or board committee meeting may be certified by the secretary or any assistant secretary of the cooperative. In any legal disputes, the certified document would provide supporting evidence of the meeting or resolutions.

I. DIRECTORS' STANDARDS OF CONDUCT

1. Standards of Performance⁵⁰

A director must perform the duties of a director (including any duties as a board committee member) in good faith, in a manner that the director believes to be in the best interests of his or her cooperative, and with sufficient care (including reasonable inquiry) as an ordinary person in a similar position would use in similar circumstances.

In the performance of her or his duties, a director may rely on information, opinions, reports, or statements (including financial) prepared or presented by:

- (1) officers or employees of the cooperative whom the director thinks are reliable and competent related to the matters presented;
 - (2) attorneys, accountants, etc., as to items that the director believes to be within the person's professional or expert competence; or
 - (3) a board committee upon which the director does not serve, as to matters within that committee's designated authority and where the director has confidence in the committee.
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A person who performs the duties of a director in accordance with the foregoing will have no liability based on a failure to discharge his or her obligations as a director. Further, the foregoing performance standards also apply to directors' duties regarding any acts or omissions in connection with the election, selection, and nomination of directors.

2. Conflicts of Interest⁵¹

a. Defined

A contract or other transaction between a cooperative and one or more of its directors or between a co-op and another organization in which a co-op director has a *material financial interest* is not void or voidable simply because the director or the other organization is a party to the transaction or because the director is present at the board or committee meeting which adopts the transaction. This is true, however, only if:

- (1) the material facts related to the transaction and the director's interest are fully disclosed or known to the co-op's members, the transaction is approved by the members in good faith, and the "interested" director does not vote on the transaction; or
- (2) the material facts of the transaction and the director's interest are fully disclosed or known to the board or board committee, and the board or board committee authorizes, approves, or ratifies the transaction in good faith without counting the vote of the interested director, and the transaction is fair to the co-op at the time it is adopted; or
- (3) the person who claims the validity of the transaction proves the transaction was fair and reasonable at the time of its adoption.

Just because a cooperative director is also a director of another corporation or because a co-op director is also a member-patron of the co-op on the same basis as all other members does not mean that a material financial interest exists. Also, just because a director is receiving compensation from the co-op does not mean that she or he may not be involved in fixing the compensation of another director in that director's capacity as a director, officer, or employee of the co-op.

Further, a mere "common" directorship does not make a transaction void or voidable just because the director is present at the board of directors or board committee meeting which adopts the transaction, if:

- (1) the material facts of the transaction and the common directorship are known to the board of directors or board committee and the transaction is adopted in good faith without counting the vote of the director, or the transaction is approved by the members in good faith; or
- (2) the transaction is fair and reasonable to the cooperative at the time of its adoption.

b. Quorum

"Interested" directors may be counted in determining whether a quorum is present at a meeting of the board or a board committee that adopts a transaction in which a director is interested.⁵²

3. Loans to or Guarantees of Directors and Officers⁵³

Unless prohibited by the bylaws or articles of incorporation, a cooperative may loan money or property to, or guarantee an obligation of, any director or officer of the co-op, if:

- (1) the board believes the loan or guaranty may reasonably benefit the co-op; and
- (2) prior to adopting all or part of the transaction, the loan or guaranty is either approved by the members (not counting the vote of the director or officer if he or she is also a member) or approved by the majority of all directors then in office (not counting the vote of the benefited director).

The above conditions do not apply, however, to situations where the cooperative is merely advancing money to a director or officer for any expenses reasonably anticipated to be incurred in the performance of the director's or officer's duty and where the director or officer would be entitled to reimbursement in any case.

The above conditions also do not apply to the payment of any life insurance premiums on the life of a director or officer if repayment to the cooperative is secured by the proceeds of the policy and the cash surrender value.

4. Director Liability for Certain Acts⁵⁴

a. Civil Liabilities

Except for situations where a director reasonably relied on information, etc., provided by others (see "Standards of Conduct" above), cooperative directors who approve any of the following actions are liable individually and collectively to the co-op or its creditors:

- (1) the payment of any "distribution" (see chapter 12 of this publication) or the purchase or redemption of memberships or shares where the distribution, purchase, or redemption would violate any restriction in the bylaws or articles of incorporation, or the law, or would likely cause the co-op to be unable to meet its liabilities as they became due;
- (2) the making of any loan or guarantee contrary to the conditions stated in the above discussion; and
- (3) the distribution of assets after the dissolution of the co-op has begun without paying or adequately providing for all known liabilities of the co-op (excluding any claims timely filed with the proper court).

A director who is present at a board of directors or board committee meeting where an action described above is approved is liable whether he or she votes to approve the action or abstains from voting.

b. Criminal Acts and Penalties

In addition to liability for the acts listed above, directors, as well as others (e.g., officers) may be subject to criminal penalties under the California Consumer Cooperative Corporation Law for acts such as the fraudulent issuance of memberships, distributions, or reports.⁵⁵ While a detailed listing of these crimes is outside the scope of this discussion, directors should be aware of their existence.

J. ALTERNATE DIRECTORS

The California Consumer Cooperative Corporation Law allows "alternate" directors, but *only* if the bylaws specify the manner and time of their election and the conditions of their service in place of regular directors.⁵⁶

Chapter 8. CORPORATE OFFICERS

A. IN GENERAL

1. Required and Other Officers

A cooperative must have a chairperson (of the board) or a president, or both, a secretary, and a chief financial officer. It may also have any other officers (e.g., a vice-president) whose titles and duties are stated in the bylaws or determined by the board of directors and as may be needed to sign various documents (e.g., banking agreements).¹ Officers, unless otherwise provided in the articles of incorporation or bylaws, are chosen by and serve at the pleasure of the board, and are subject to any employment contract rights.² Also, officers may or may not be employees of the co-op. The president (or the chairperson if there is no president) is the “chief executive officer” of the co-op, and any number of offices may be held by the same person unless the bylaws or articles provide otherwise.³ Either the president or the chairperson must be chosen from those directors elected by the members.⁴ Finally, any officer may resign at any time by giving the co-op a written notice of resignation.⁵

2. Duties and Responsibilities

Cooperatives vary widely in the duties and responsibilities they assign to officers. In some cases, the officers are named merely to take care of necessary formalities such as signing various documents on behalf of the co-op. In other cases, the officers take an active role in the activities of the co-op and may even be full-time employees. In any event, all documents or agreements between the co-op and any other person or organization that are signed by an officer of the co-op will probably bind the co-op even if the officer was not authorized to sign them, unless the person or organization actually knew the officer had no such authority.⁶ The following lists of traditional duties and responsibilities assume that the president, vice-president, secretary, and chief financial officer are full-fledged participants in the affairs of the co-op.⁷

B. PRESIDENT

The president is the chief executive officer of a cooperative and has (1) general supervision, direction, and control over the business and officers of the co-op, (2) general powers and duties of management usually vested in the office of the president of a corporation, and (3) other powers and duties prescribed by the board of directors or the bylaws. Within the authority and in the course of his or her duties, he or she generally:

- (1) presides at all meetings of the members and the board, and is a member of all board committees;
 - (2) signs, with the secretary or the treasurer, any membership or share certificates of the co-op;
 - (3) signs corporate instruments on behalf of the co-op;
 - (4) is subject to direction from the board, appoints and removes, employs, and discharges, and prescribes the duties and fixes the compensation of all agents and employees of the co-op other than the officers (although these functions may be delegated by the president or the board to specified persons in the various levels of management); and
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- (5) unless otherwise directed by the board and subject to its control, acts and votes, on behalf of the co-op, at all meetings of the shareholders of any corporation in which the co-op holds shares.

C. VICE-PRESIDENT

In the absence or disability of the president, the vice-president performs all the duties of the president and has all the powers of, and is subject to all the restrictions on, the president. The vice-president has other powers and performs other duties as may be prescribed by the board of directors in the bylaws.

D. SECRETARY

The secretary generally has the following duties and responsibilities:

- (1) retains custody of the corporate seal and affixes it in appropriate cases to all corporate documents;
 - (2) retains custody of the records of the co-op and sees to it that the books, reports, statements, certificates, and all other documents and records required by law are properly kept and filed;
 - (3) ensures that all notices are given in accordance with the provisions of the bylaws or as required by the California Consumer Cooperative Corporation Law (in the secretary's absence, disability, or neglect or refusal to act, notice may be given and served or caused to be served by the president, the vice-president, or the board);
 - (4) acts as secretary at all membership and board meetings and records, or causes to be recorded, all actions taken at the meetings in the minute book (in case of the secretary's absence, disability, or neglect or refusal to act, this duty may be performed by any other person as may be appointed by the person presiding at the meeting);
 - (5) keeps written minutes of the proceedings of the members, board, and board committees in a book to be kept for that purpose at the principal executive office of the co-op;
 - (6) retains the original or a copy of the articles of incorporation, certified by the Secretary of State, with all amendments to date in the minute book;
 - (7) keeps at the co-op's principal executive office the original or a copy of the bylaws as amended to date, which must be open to inspection by the members at all reasonable times during office hours;
 - (8) retains at the co-op's principal executive office a record of the co-op's members showing the names and addresses of all members and the number of shares (or other equity credits) held by each;
 - (9) certifies as a true copy a copy of the bylaws of the co-op, or of the minutes of any meeting of the incorporators, members, directors, board committee, or other body, or of any resolution adopted by the board, board committee, or the members when requested to do so by the board, any director individually, board committee, the president, or other officer of the co-op (or when so required by law);
 - (10) signs, with the president or vice-president, any membership or share certificates of the co-op, unless co-signed by the chief financial officer;
 - (11) facilitates inspection rights; and
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- (12) performs any and all other functions and duties that may be specified in the bylaws and, in general, performs all the duties incident to the office of secretary and other duties as may be assigned by the board.

E. CHIEF FINANCIAL OFFICER

The chief financial officer generally has the following duties and responsibilities:

- (1) oversees all funds and securities of the cooperative, and deposits funds in the name of the co-op;
- (2) receives and gives receipts for monies due and payable to the co-op;
- (3) disburses or causes to be disbursed the co-op's funds as directed by the board, taking proper vouchers for all disbursements;
- (4) keeps and maintains adequate and accurate books and records of account either in written form or in any other form capable of being converted into written form;
- (5) renders to the president and directors, upon request, an account of all transactions and the financial condition of the co-op;
- (6) prepares or causes to be prepared the annual financial report (see chapter 14 of this publication);
- (7) provides the inspection rights of members and directors related to accounting and financial records;
- (8) signs, with the president or vice-president, any membership or share certificates of the co-op (unless the certificates are signed by the secretary of the co-op);
- (9) gives to the co-op, if required by the board or the president, a bond in a sum satisfactory to the board, for the faithful performance of the duties as chief financial officer and for the restoration to the co-op (in the event of the chief financial officer's death, resignation, retirement, or removal from office) of all books, papers, vouchers, money, and other property of whatever kind in her or his possession or under her or his control belonging to the co-op; and
- (10) performs any and all other functions and duties required of the chief financial officer as may be specified in the bylaws and, in general, performs all the duties related to the office of chief financial officer and any other duties assigned by the board.

F. LOANS TO OR GUARANTEES FOR OFFICERS

See the discussion in chapter 7, which applies to *both* directors and officers in an identical manner.

G. CRIMES AND PENALTIES

While outside the scope of this discussion, a cooperative's officers may be subject to criminal penalties similar to those for fraudulent actions by directors.⁸ (See the discussion in chapter 7 of this publication.)

Chapter 9. MEMBERS AND MEMBERSHIPS: IN GENERAL

A. DEFINITIONS

1. Members¹

A cooperative “member” is any person who, according to the articles of incorporation or bylaws, has the right to vote for directors or possesses an ownership interest in the co-op. A “person” may be a natural person or an entity (i.e., a corporation, partnership, or some other type of organization), although many co-ops are made up of either individuals only or organizations only.

The articles of incorporation or bylaws may confer all or some rights of a member upon any persons who are not allowed to vote for directors. Also, just because a person is a “delegate” (see chapter 7 of this publication), has selection or designation rights concerning directors (see chapter 7), or is a director, does not necessarily indicate that he or she is also a member.

2. Membership

“Membership” refers to the rights conferred upon a cooperative member by the California Consumer Cooperative Corporation Law and the co-op’s articles of incorporation and bylaws,² including share ownership.

B. ELIGIBILITY

Subject to any eligibility requirements or exclusions provided for in its articles of incorporation or bylaws, a cooperative may admit any person (including an organization) to membership, *except* its own subsidiary corporation.³ Unless the bylaws or articles provide otherwise, memberships may be issued for no or any “consideration” (e.g., a specific amount of money to buy a share) the board establishes.⁴

C. VOTING POWER AND PROXIES

Except in “central organizations” (defined in the Introduction of this publication), the voting power of those members having voting rights must be equal.⁵ Generally, this means that each cooperative member will have one vote in the affairs of the co-op. Of course, the co-op could provide for one or more additional membership classes with no voting power. In certain unusual situations, however, even nonvoting members have the right to vote.⁶ As to any members who are not generally permitted voting power in the co-op, the issuance of memberships or any shares to those members would not be eligible for the co-op exemption from California securities qualification.⁷ (See chapter 11 of this publication.) Also, voting by proxy is prohibited under the California Consumer Cooperative Corporation Law.⁸

A “central organization” cooperative may have unequal voting procedures based on the number of its members’ members, patronage of its members, or both.⁹

D. TRANSFER OF MEMBERSHIPS¹⁰

Unless the articles of incorporation or bylaws provide otherwise, no member may transfer his or her membership or any right she or he has as a result of the membership. This prohibition also presumably applies to any shares held by the member. Where transfer rights within a membership class have been provided, however, no restrictions on them are binding for those memberships issued before the restrictions were adopted unless the persons holding those memberships voted in favor of the restriction.

E. MEMBERSHIP CLASSES¹¹

A “class” of membership refers to those members that (1) are identified in the articles of incorporation or bylaws as being a different type of membership or (2) have the same rights (within the class) related to voting, dissolution, redemption, distributions, and transfer. All memberships in a cooperative must have identical rights, privileges, preferences, restrictions, and conditions *unless* the articles or bylaws provide otherwise. A uniform formula determining certain rights within a class (e.g., as to dividends) does not, however, imply differing rights. These rules would also seem to apply to classes of shares in a co-op, especially since “shareholders” and “members” are synonymous terms in co-op law.

F. CESSATIONS AND REDEMPTIONS OF MEMBERSHIPS

1. Resignation from a Failure to Renew Membership¹²

A cooperative member may resign from membership at any time, although the articles of incorporation or bylaws may require reasonable notice before the resignation is effective. A resigning member, however, is not relieved from any amounts he or she owes to the co-op for services, fees, contractual obligations, etc. Also, any membership issued for a period of time (e.g., a year) expires at the end of the period unless the membership is renewed.

2. Expulsion, Termination, or Suspension¹³

A member of a cooperative may not be expelled, suspended, or terminated except according to the requirements below; any attempt to do so will be void if such requirements are not met. First, any expulsion, suspension, or termination must be done in good faith and in a fair and reasonable manner. The three criteria below, if met, will legally ensure that a fair and reasonable manner is used:

- (1) the procedures have been described in the articles of incorporation or bylaws or in materials required by the articles or bylaws to be sent annually to all members;
- (2) the procedures include fifteen days’ prior notice to the member and the reasons for the expulsion, suspension, or termination; and
- (3) the procedures provide an opportunity for the member to be heard orally or in writing at least five days before the effective date by the person or group who may set aside the expulsion, termination, or suspension.

Second, certain notice requirements must be met. While notice to the member may be given by any reasonable method to provide actual notice, any notice by mail must be sent by first-class or registered mail to the last address of the member shown in the cooperative’s records.

Of course, a termination, expulsion, or suspension of a member for *improper* reasons is not made valid simply because the cooperative complies with the above procedures. (A person may challenge her or his expulsion, termination, or suspension through legal proceedings begun within one year of the co-op's action.)

3. Redemption

a. In General

Unless the cooperative's articles of incorporation or bylaws provide otherwise, memberships (or shares) are *not* redeemable.¹⁴ This means that the co-op may not give back to the member any amount he or she paid for the membership or any share, even if the member is resigning or is being terminated, suspended, or expelled.¹⁵ Co-ops issuing shares will probably want the articles or bylaws to provide for redemption rights, however, particularly if share transfer is severely restricted or prohibited *and* the co-op wants to encourage member investment. Obviously, members are likely to be discouraged from investing in shares if they are both nontransferable and nonredeemable. Co-ops issuing shares may also wish to provide that members may redeem *some* of their shares without terminating membership.

b. Restrictions on Redemption

Neither a cooperative nor its subsidiary corporation may purchase or redeem memberships, if, as a result, the co-op would likely be unable to meet its liabilities as they became due.¹⁶ Further, a co-op's articles of incorporation, bylaws, or other agreements may place additional restrictions on the purchase or redemption of memberships.¹⁷ Presumably, these rules apply to shares or other capital credits held by members.

c. Wrongful Redemptions

Any members who have their memberships redeemed under improper circumstances, and where those members know the redemptions are improper, are liable to the cooperative for any amounts received, plus interest.¹⁸

G. VALUATION OF MEMBERSHIP INTERESTS

The articles of incorporation or bylaws must state the way in which each member's capital contribution to the cooperative is determined *and* the time and manner of any repayment if the articles or bylaws allow repayment.¹⁹ This is often done in the bylaws by stating a specific price for each share or membership or allowing the board of directors to set share or membership prices. Further, if a member is entitled to any monetary interest in the co-op's capital apart from any capital he or she has contributed, the articles or bylaws must state the way in which a member's interest in the noncontributed capital is valued and the time and manner of the co-op's purchase of that interest, if required.²⁰ An example of a member's noncontributed capital interest would be his or her claim on the accumulated nonallocated profits (i.e., "retained earnings") of the co-op.

H. DUES, ASSESSMENTS, AND FEES

If a cooperative's articles of incorporation or bylaws so allow, co-op members may be charged dues, fees, or assessments.²¹ Generally, a member may avoid paying any of them if he or she promptly resigns from membership upon learning of them.²² Further, unless the dues, fees, or assessments are called to

the attention of the member and agreed to in writing by the member, the article or bylaw provisions by themselves do not create a liability for the member.²³

Cooperatives often charge members some type of fee to join or annual dues. Fees are often used to cover administrative processing of new memberships, and dues are sometimes used to help cover ongoing administrative costs in maintaining membership records. Again, however, dues or fees may *not* be charged unless the articles of incorporation or bylaws specifically provide for them (including allowing the board of directors to establish such charges).

I. IDENTITY CARDS

A cooperative may issue identity cards or similar items to help identify members who are eligible to use the co-op's facilities or services.²⁴

J. RECORD DATES OTHER THAN FOR NOTICE AND VOTING

There may be times when a “record date” related to members' rights *other than* notice and voting is needed. As with the other record dates (see chapter 10 of this *Sourcebook*), unless the bylaws provide otherwise, the board may set in advance a record date for determining which members are entitled to exercise any rights related to some other lawful action.²⁵ The record date for this purpose must be no more than sixty days prior to the action.²⁶ If no record date is fixed by the bylaws or the board, members as of the close of the business day on the day the board adopts the resolution related to the action or the sixtieth day prior to the date of the action, whichever is later, are entitled to exercise their rights.²⁷

Chapter 10. MEMBERSHIP MEETINGS AND VOTING

A. REGULAR AND SPECIAL MEETINGS¹

Unless the bylaws designate or provide a means to select a meeting place, meetings of the members must be held at a cooperative's principal office. A "regular" meeting must be held annually. The election of any directors needed to be elected must be held at the annual meeting (unless a written ballot is to be used), and any other proper business may be transacted at the annual meeting.

"Special" meetings of the members may be called only by the board or the president (or the chairperson), unless the bylaws specify that certain additional persons may call a special meeting.

B. NOTICE OF MEETINGS

1. When Notice Is Given

Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting must be given to each member who, on the "record date" (see below) for notice for the meeting, is entitled to vote at that meeting.² Further, the notice must be given at least ten days but not more than ninety days before the date of the meeting.³ If the notice is given by mail but not by first-class, registered, or certified mail, the notice must be placed in the mail at least twenty days before the meeting (e.g., in the case of the "bulk" mailing of a newsletter).⁴

2. Record Date for Notice⁵

Unless the bylaws provide otherwise, the board may fix, in advance, a "record" date to determine which members are entitled to notice of any meeting. The record date must be no more than sixty and no less than ten days before the date of the meeting. If no record date is fixed, members as of the close of business on the day preceding the day on which notice is given (or if notice is waived, at the close of business on the day preceding the day of the meeting) are entitled to notice. The same record date will apply to any continuation of an adjourned meeting unless the board fixes a new record date.

3. Contents

The notice must state the place, date, and time of the meeting.⁶ In the case of a "special" meeting, the notice must also describe the general nature of the business to be transacted; for a "regular" meeting, the notice must specify the matters that the board of directors, at the time the notice is given, intends to present at the meeting to the members for action.⁷ Any approval by the members at a regular meeting, however, concerning removal of directors, the filling of vacant board seats, director conflicts of interest, amendments to the articles of incorporation, or a plan of distribution upon dissolution, except where unanimous approval is required, is valid only if the general nature of the proposal was stated in the notice (or in any written waiver of notice).⁸

Further, where a cooperative may conduct member meetings with a quorum of less than one-third of the voting power, the only matters that may be voted on at a regular meeting where less than one-third of the voting power is in attendance are those whose general nature was described in the notice.⁹ The notice of any meeting at which directors will be elected must also include the names of all nominees as of the time that notice is given to the members.¹⁰

4. How Notice Is Given¹¹

Notice must be given to members either personally, by mail, or by other means of *written* communication. Any written notice must be sent to the member's address that appears in the cooperative's records or has been given by the member to the co-op for notice purposes. If no address is available for a member, the co-op has two options: the notice may be posted at the co-op's principal office *or* it may be published at least once in a newspaper of general circulation in the county of the principal office.

5. Evidence of Notice

To provide evidence that notice was properly given, the secretary may sign an affidavit to that effect.¹²

6. Future Notices When Returned¹³

When any notice sent to a member at the address appearing in the cooperative's records is returned and marked by the post office that it was unable to deliver the notice to the member at that address, a special rule applies to any future notice. The notice will be considered given without being mailed if it is available to a member upon written demand at the principal office of the co-op for a one-year period from the date it is given.

7. Special Meetings

When a "special" meeting is properly requested (see sample bylaw Section 4.03 regarding how this is done), the meeting must be held at a time fixed by the board of directors at least thirty-five days but not more than ninety days after receipt of the request.¹⁴ Proper notice, of course, must be given to all members entitled to vote at the meeting.

8. Continued Meetings¹⁵

Generally, notice does not have to be given for a meeting adjourned to another place or time if the place and time are announced at the original meeting. The cooperative may transact any business at the continued meeting that it could have transacted at the original meeting. Notice of the continued meeting does have to be given if (1) the bylaws require notice for a continued meeting, (2) the adjournment is for more than forty-five days, or (3) a new record date is set for the continued meeting.

9. Validity Where Notice Is Not Proper

Sometimes a cooperative will find that it must call a member meeting on such short notice that proper notice is impossible or the notice that was given was in some way faulty. California Consumer Cooperative Corporation Law provides methods of dealing with these problems.¹⁶ The transactions of any meeting, no matter how it is called and noticed and no matter where it is held, are valid if

(1) a quorum is present, and (2) either before or after the meeting, each member entitled to vote but not present at the meeting signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes.¹⁷ All waivers, consents, and approvals must be filed with the co-op's corporate records or made part of the meeting's minutes.¹⁸ Of course, these procedures may be practical only for co-ops with relatively small numbers of members; larger co-ops should be especially careful that notice is properly given.

The attendance of a person at a meeting is in itself presence and a waiver of notice, except when the person objects at the beginning of the meeting to the transaction of any business because of improper notice or the unlawful calling of the meeting.¹⁹ Also, attendance is not a waiver of any right to expressly object at the meeting to the consideration of matters that should have been included in any notice (see above).²⁰

Except where unanimous approval of all members entitled to vote is obtained, the written waiver of notice must include the general nature of any proposal related to removal of directors, filling vacant board seats, director conflicts of interest, amendments to the articles of incorporation, or a plan of distribution upon dissolution.²¹ Also, except for the items listed in the preceding sentence or unless the bylaws or articles provide otherwise, neither the business to be transacted nor the purpose of any regular or special meeting needs to be specified in any written waiver of notice, consent to holding the meeting, or approval of the minutes.²²

C. WRITTEN BALLOTS USED AT A MEETING

To facilitate voting at a meeting of the members, a cooperative may wish to use written ballots. Written ballots at a meeting are particularly useful where relatively large numbers of members are present (e.g., making hand-counts or voice-votes difficult). Unless prohibited by the articles of incorporation or bylaws, before any regular or special meeting, the board of directors may authorize the distribution of written ballots to all members entitled to vote at the meeting.²³ The ballots must (1) describe the action proposed to be taken, (2) allow a member to indicate approval or disapproval, and (3) state that unless a member revokes the ballot by voting in person at the meeting, the written vote will be counted if it is received by the co-op at or before the time of the meeting.²⁴ Any members voting at the meeting through unrevoked written ballots are considered present at the meeting for quorum purposes (see below in this chapter), but only with respect to the proposed action referred to in the ballots.²⁵

Written ballots that are to be used at a meeting must be distributed in a manner identical to a notice (see the discussion earlier in this chapter) and in the form of written ballots used in place of a meeting²⁶ (see below in this chapter). Also, except in the case of a "central organization" using cumulative voting procedures, written ballots used at a meeting may be used for the election of directors, unless prohibited by the articles of incorporation or bylaws.²⁷ ("Central organizations" using cumulative voting procedures may not distribute written ballots for the election of directors.²⁸)

D. WRITTEN BALLOTS USED WITHOUT A MEETING

1. In General

Cooperatives sometimes experience difficulties in achieving quorums at membership meetings. The reasons for this vary: the physical dispersion of members, relatively large numbers of members,

member apathy, etc. Also, membership meetings can be relatively expensive to undertake (e.g., publicity, location rental, travel expenses, child care, etc.). Thus, while a co-op must hold at least a regular *annual* meeting, the co-op may find it advantageous to use written ballots unrelated to any particular meeting to help ensure that enough people vote (to attain a quorum) and possibly to reduce administrative costs.

2. Requirements²⁹

Except in the case of the election of directors by a “central organization” using cumulative voting procedures or unless prohibited by the articles of incorporation or bylaws, any action which may be taken at a regular or special meeting of the members may be taken without a meeting *if* the cooperative distributes a written ballot to every member entitled to vote on the matter. The ballots must state the proposed action, allow the member to indicate approval or disapproval of the proposal, and indicate a reasonable time within which the ballot must be returned to the cooperative.

Approval of the action is achieved only when (1) the number of votes cast by ballot within the specified time period at least equals the quorum required to be present at a meeting and (2) the number of affirmative votes at least equals the number needed to approve the action.

Written ballots must be solicited consistent with the requirements stated in this chapter. All solicitations must indicate the number of responses needed to meet quorum requirements, and all ballots not related to the election of directors must state the required approval percentage. Also, the solicitations must specify the time by which the ballot must be received to be counted.

3. Generally Irrevocable³⁰

A written ballot used in place of a meeting may not be revoked, unless otherwise provided in the articles of incorporation or bylaws.

4. Election of Directors³¹

Directors may be elected by a written ballot in place of a meeting, but *only* if election by ballot is specifically allowed by the articles of incorporation or bylaws. (Again, a central organization using cumulative voting procedures may not use a written ballot to elect directors.) When directors are to be elected by a written ballot and the articles or bylaws describe a nomination procedure, that procedure may provide for a date for closing nominations before the printing and distribution of the written ballots.

E. FORM OF WRITTEN BALLOT

Whether used at a membership meeting or *instead* of a meeting, the form of the written ballot is the same.³² Any ballot distributed to at least ten members of a cooperative having at least one hundred members must provide (1) the member the opportunity to specify on the ballot itself her or his choice between approval and disapproval of each matter or group of related matters and (2) subject to reasonable specified conditions, that the vote or votes will be cast in accordance with the member’s choice.³³

In any election of directors, a member may indicate on the ballot that he or she chooses not to vote.³⁴

F. REFERENDUMS

If at least twenty percent of a cooperative's members propose in writing some action or recommendation, the Secretary must provide for a vote by written ballot (in accordance with the rules for a written ballot) in place of a meeting.³⁵

G. QUORUM REQUIREMENTS³⁶

1. In General

Unless a quorum is at least initially present at a membership meeting, a valid vote may *not* be taken. Thus, cooperatives must be careful to ensure that, for any vote, a quorum is present. Unless the bylaws set a different number, a quorum is attained if the *lesser* of at least two hundred fifty members or members representing at least five percent of the voting power are at the meeting either in person or by written ballot (see the discussion earlier in this chapter). If a quorum is present, the affirmative vote of a majority of the voting power represented at the meeting, entitled to vote and voting, is the act of the members unless the vote of a greater number or voting by classes is required by California Consumer Cooperative Corporation Law, the articles of incorporation, or bylaws.

2. Special Rule for Small Quorums

If the cooperative may conduct a meeting with a quorum of less than one-third of the voting power, the only matters that may be voted on at any regular meeting actually attended by less than one-third are those matters which have been generally described in the notice of the meeting.

3. Loss of a Quorum

Once a duly held and called meeting has begun with a quorum present, the members may transact business until adjournment, even if a quorum is lost when some members leave the meeting. Any action taken (other than adjournment), however, must be approved by at least a majority of the number of members making up a quorum. In the absence of a quorum, any meeting may be adjourned by a vote of the majority of the votes represented in person.

4. Effect of Disqualified Voters

Whenever a member is disqualified from voting on any matter, she or he may not be counted in determining whether a quorum exists or whether there are enough affirmative votes to approve the action being voted upon.

H. VOTING

1. General Rule of One Vote Per Membership

Except in the case of a "central organization" cooperative, each membership (even if composed of more than one person) entitled to vote has one vote on any matter presented to it for a vote.³⁷ Unless otherwise provided in the articles of incorporation or bylaws, where two or more persons have an indivisible interest in a single membership (e.g., a married couple), the following rules apply unless the secretary is given written notice and legal evidence of a different arrangement: if only one

person votes, that vote binds all; if more than one votes, the vote of the majority binds all.³⁸ *For ease of administration wherever possible, both worker and consumer co-ops should consider allowing each membership to consist of only one person.*

2. Central Organizations³⁹

Cooperatives that are “central organizations” are allowed to have unequal voting powers among members, but only if the articles of incorporation establish voting power based on the number of members in each member co-op, the patronage of each member co-op with the central organization, or both. Each member co-op must have at least one vote, however. As noted earlier in this *Sourcebook*, a central organization is a co-op having at least one member incorporated under the California Consumer Cooperative Corporation Law.

3. Voting by Proxy Prohibited⁴⁰

Cooperatives are prohibited from using proxy voting techniques (i.e., where a member may assign his or her voting rights to some other person).

4. Election Inspectors

a. Appointment

Prior to any meeting of the members, the board of directors may appoint one or three election inspectors to act at the meeting and any continuation of that meeting at some other time or place.⁴¹ If the board does not appoint election inspectors or if the inspectors fail to appear or refuse to act at the meeting, the chairperson of the meeting may, or must on at least one member’s request, appoint the one or three inspectors.⁴² If appointed on the request of a member, the majority of the members present in person at the meeting must determine whether there will be one or three inspectors.⁴³

Inspectors do not have to be appointed unless a member so requests. To avoid any confusion caused by inspectors not being appointed until the meeting is already under way, the board should probably always appoint inspectors well before any meeting. Advance appointment will almost certainly help inspectors better perform their required tasks.

b. Duties

The inspectors must (1) determine the number of memberships outstanding and the voting power of each (e.g., one vote in non-central organizations), (2) determine the number of memberships represented at the meeting, (3) determine whether a quorum exists, (4) receive votes, ballots, or consents, (5) hear and determine all challenges and questions arising in relation to voting rights, (6) count and tabulate all votes or consents, (7) determine when voting closes, (8) determine the results, and (9) perform all acts otherwise necessary to conduct the election or vote fairly.⁴⁴

Inspectors must perform their duties impartially, in good faith, to the best of their abilities, and as expeditiously as practical.⁴⁵ If there are three inspectors instead of one, the decisions, acts, or certificates of a majority control, and any report or certificate of the inspectors is supporting evidence as to their decisions or acts.⁴⁶

5. Approvals by or of the Members

Any reference to “approval of” or “approval by” the members means approved by or ratified by (1) the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (with the affirmative votes also being a majority of the required quorum), (2) a written ballot as described earlier in this chapter, or (3) the affirmative vote or written ballot of a greater proportion of the votes of any class of membership, unit, or grouping of members as may be provided in the bylaws or by the California Consumer Cooperative Corporation Law for any member action.⁴⁷ (Section 12216 of the California Corporations Code provides that in “central organizations” that allow members to cast more than one vote, the majority or supermajority approval required is based upon the total number of votes entitled to be cast.)

In general, a cooperative is probably wise to make member action as easy as possible. This can be accomplished by avoiding or minimizing supermajority approvals and by any requirement that at least a majority of *all* members affirm an act or decision (see below).

6. Approvals by or of All the Members

Sometimes California Consumer Cooperative Corporation Law or a cooperative’s bylaws or articles of incorporation may require approval by *all* members, not just the approval of a quorum of the members. This means that approval must be obtained from a majority of all members entitled to vote at either a meeting or by written ballot.⁴⁸

Approval by or of all members includes the affirmative vote of a majority of the outstanding memberships of each class, unit, and grouping of members (on the subject matter being voted on) and also includes the affirmative vote of any greater proportion of any of the foregoing if the greater proportion is required by the bylaws or co-op law.⁴⁹ (See California Corporations Code Section 12216 concerning disqualified voters and “approvals” in certain central organizations.)

Again, to avoid potentially disruptive situations, a cooperative should probably avoid requiring the approval of all members (especially where supermajority approvals are required) unless it is required (as in certain situations) to do so by co-op law.

7. Record Dates for Voting

a. In General

“Record dates” are important because they provide a cutoff point related to certain rights of members. This is especially important for cooperatives with relatively large numbers of members since it would otherwise be very difficult to determine who would be eligible to vote immediately before a meeting or an election. A record date provides the secretary, election inspectors, and others some “breathing room” in this respect. For example, the bylaws or the board of directors may provide that to vote at a meeting or by written ballot, a member would have had to be a member for at least ten days before the vote. This would allow time for the administrative processing of a new member. In this example, a member joining the co-op five days before an election would have no voting rights in that election. A record date set before an election also indirectly serves the purpose of denying voting rights to those new members who might not yet be informed about the issues related to the election.

b. Voting at a Meeting

Unless the bylaws provide for a record date for determining which members may vote at a meeting, the board of directors may fix the date in advance.⁵⁰ The bylaw or board record date must be no more than sixty days before the meeting, and the record date will also apply to any continuation of an adjourned meeting unless the board of directors fixes a new record date.⁵¹ If neither the bylaws nor the board fixes a record date, members on the day of the meeting (or the continued meeting) who are otherwise eligible to vote may vote.⁵² Obviously, if no record date at least a few days before the meeting is fixed in the bylaws or by the board, the secretary and any election inspectors may encounter problems in sorting out voting rights, especially in cooperatives with relatively large numbers of members.

c. Voting by Written Ballot

For voting by written ballot (instead of having a meeting), unless the bylaws provide for a record date, the board of directors may determine the date.⁵³ The record date provided by the board or the bylaws must be no more than sixty days prior to when the first ballot is mailed or solicited.⁵⁴ If no record date is fixed, those members as of the day the first ballot is mailed or solicited and who are otherwise eligible to vote may vote.⁵⁵ Again, the cooperative would be well advised to set a record date before the day ballots are mailed or solicited, and that date would need to be determined by the bylaws or the board.

I. DELEGATES

A cooperative's bylaws may provide for "delegates" having some or all the authority of members.⁵⁶ Where delegates are provided for, the bylaws must state the terms of office, any reasonable method for selection and removal, and any reasonable methods for the calling, noticing, and holding of delegate meetings.⁵⁷ Unless they are elected directly by the membership, delegates must be elected by a body or bodies directly elected by the membership.⁵⁸ Delegates may act at a meeting in person or by written ballot, but not by proxy.⁵⁹ Also, delegates maybe called some other name (e.g., "representatives").⁶⁰

Cooperatives whose memberships are relatively large in number or highly dispersed, or both, may find delegate representation more feasible than the direct involvement of members.

J. VOTING BY UNITS

A cooperative's bylaws may provide for voting by its members or delegates on the basis of "chapters" or other organizational units, or by region or some other geographical grouping.⁶¹

K. VOTING BY ORGANIZATIONAL MEMBERS

Where a cooperative member is *not* an individual, the member may authorize in writing at least one individual to vote in its behalf on matters regarding a membership vote.⁶²

L. CERTIFICATION OF MINUTES AND RESOLUTIONS

An original or copy of the minutes of any meeting or resolutions adopted by the members and certified by the secretary to be true is supporting evidence of a meeting duly held, the adoption of any resolutions, and any matters stated in the minutes or resolutions.⁶³

M. "GOOD FAITH" PROTECTIONS

Co-op law has specific provisions (as of 1996) for dealing with situations related to acceptances and rejections of members' ballots, consents, and waivers. Such provisions protect the corporation where it acts in "good faith" with respect to its members. While outside the scope of discussion in this publication, more information is provided in Section 12466 of the California Corporations Code.
