

Part II. BASIC CORPORATE DOCUMENTS

Chapters 4 through 6

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

Chapter 4. ARTICLES OF INCORPORATION

A. IN GENERAL

A corporation's articles of incorporation are analogous to a "constitution": they comprise the basic document that gives the cooperative its legal existence. The articles are filed with the California Secretary of State. Generally, the articles should be as simple and short as possible to minimize the need for any amendments, since amendments must generally be approved by both the board of directors and the members and must be filed with the Secretary of State. Too often, provisions are found in articles that could have been established in the bylaws, instead, where amendments are generally easier to effect (and no filings with the Secretary of State are required).

B. CONTENTS

1. Required Provisions¹

The California Consumer Cooperative Corporation Law requires certain information in the articles of incorporation. First, the articles must state the name of the co-op, and the name must include the word "cooperative" and some word or abbreviation indicating that the co-op is a corporation. Second, the following statements must appear: "This corporation is a cooperative corporation organized under the California Consumer Cooperative Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law." Third, the articles must state the co-op's initial agent for service of process (assuming a co-op just forming). Fourth, the articles must state whether the members' voting power and ownership interests are equal or unequal. Equal voting power and ownership interests mean one vote per member and one ownership unit per member, respectively. If the voting power or ownership interests are unequal, the articles must state the rules by which the voting power and ownership interests are determined or, instead, that the rules are described in the bylaws.

If a co-op is a "central organization" (i.e., a cooperative made up of co-op members), it may allow for voting power based on patronage or the number of members in its member co-ops, but only if its articles specifically provide for unequal voting. In no event, however, may a member of a central organization have less than one vote.

2. Provisions Needed to be Expressed²

Two types of provisions need to be stated in the articles of incorporation for the provisions to be effective. First, any limitation on the duration of the cooperative's existence must be stated. Second, if the co-op wishes to distribute its assets upon dissolution to a charitable trust, that also must be stated.

3. Optional Provisions

California Consumer Cooperative Corporation Law allows six other types of provisions in the articles³:

- (1) a further description of the co-op's purposes or a further statement limiting the purposes or powers of the co-op;

- (2) the names and addresses of persons appointed as initial directors;
- (3) provisions related to the transfer of memberships or shares;
- (4) provisions related to membership and share classes, and if more than one, a description of the rights, privileges, preferences, restrictions, and conditions attached to each class;
- (5) a provision giving the members the right to determine the consideration for which memberships or shares must be issued; and
- (6) any other lawful provision for the management of the activities of the co-op, including any provision which is required or permitted to be stated in the bylaws.

As a practical matter, a co-op is usually well advised not to include any unnecessary optional provisions in its articles since any article amendments needed later are generally more difficult to effect than bylaw amendments.

4. Effect of Current Co-op Law on Pre-existing Co-ops⁴

California Consumer Cooperative Corporation Law, which became effective January 1, 1984, generally applies to all California co-ops that were subject to the former “general purpose” co-op law, no matter when they were incorporated. The articles of incorporation of a co-op incorporated before 1984 do *not*, however, have to reflect the contents described above unless the co-op files an article amendment stating that it elects that its articles be in conformity with current law. Any amendment, however, may not state the co-op’s initial agent for service of process if the required statement to the Secretary of State has been filed. (See chapter 15, “Filings with the Secretary of State.”) Co-op law should be further consulted for the method of adoption of conformity-type amendments.

C. AMENDMENTS

1. Authorized and Prohibited Amendments

A cooperative may amend its articles of incorporation in any way so long as the articles, as amended, contain only those provisions that would be lawful as of the time the provisions are filed with the California Secretary of State.⁵ Although co-op law mandates certain provisions in a co-op’s articles, these provisions do not have to be adopted by a co-op that was incorporated before current co-op law went into effect (i.e., January 1, 1984).⁶

A cooperative may not, however, amend its articles to change any statement appearing in the original articles giving the names and addresses of the first directors or the initial agent for service, except to correct an error or to delete the information after the co-op has filed an annual statement with the Secretary of State.⁷

2. Adoption of Amended Articles

a. By Incorporators

Any amendment of the articles may be adopted in a written document signed by at least a majority of the incorporators, but *only* if the co-op has no members *and* no directors are named in the original articles or have been elected.⁸

b. By the Board and Members

Except where a class of membership or shares is affected, amendments to the articles of incorporation may generally be adopted if approved by the board of directors and the members, and it makes no difference which group approves first.⁹ The board by itself may approve certain article amendments, however, including an amendment deleting the names and addresses of the initial directors and agent for service, or any amendment when the cooperative has no members.¹⁰

Whenever the articles require the majority approval of a particular class of members or shares, or of a larger proportion of the votes of any class, or of a larger proportion (than a majority) of directors than is otherwise required by the California Consumer Cooperative Corporation Law, the article provision requiring the greater than majority vote may not be amended or repealed except by the particular class or the greater than majority vote, unless the articles themselves provide otherwise.¹¹

c. Approval by a Membership Class¹²

In addition to the above-required approvals, an amendment must also be approved by the members or shareholders of a particular class, whether or not the class is entitled by the articles of incorporation to vote on the matter, if the amendment would:

- (1) materially and adversely affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, transfer, or the obligations of that class in relation to other classes;
- (2) materially and adversely affect that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;
- (3) increase the number of memberships or shares authorized for any class;
- (4) cause an exchange, reclassification, or cancellation of all or a portion of the memberships or shares of that class; or
- (5) authorize a new class of memberships or shares.

3. Change of Corporate Status

A cooperative may amend its articles to change its status to that of a nonprofit public benefit or mutual benefit corporation, religious corporation, or for-profit business corporation, provided the co-op complies with all applicable provisions of the California Consumer Cooperative Corporation Law.¹³

4. Certificate of Amendment

a. Signed by Officer

When an amendment to the articles of incorporation is adopted, the cooperative must file with the California Secretary of State a “certificate of amendment,” which is an officer’s certificate stating: (1) the wording of the amendment or amended articles is in accordance with the California Consumer Cooperative Corporation Law (see below); (2) the amendment has been approved by the board of directors; (3) the amendment was approved by at least a quorum of the members or by all the members, as required; and (4) the facts entitling the board alone to approve the amendment.¹⁴

b. Signed by Incorporators

Where amendments to the articles of incorporation are adopted by the *incorporators*, the cooperative must file a certificate with the California Secretary of State signed and verified by a majority of the incorporators.¹⁵ (“Verified” means that the statements contained in the certificate are declared to be true by the incorporators executing the certificate in either (1) an “affidavit” signed by them under oath before a notary public or (2) a “declaration” in writing executed by them under penalty of perjury and stating the date and place of execution.¹⁶) The certificate must state that its signers constitute at least a majority of the incorporators, directors were not named in the original articles and have not yet been elected, the co-op has no members, and the incorporators adopted the amendments.¹⁷

c. Wording¹⁸

The “certificate of amendment” must establish the wording of the amendment or amended articles of incorporation by one or more of the following methods: by stating that (1) the articles are amended to read as stated in full in the certificate, (2) any provision in the articles, clearly identified, is eliminated or amended to read as stated in the certificate, and (3) the stated provisions in the certificate are added to the articles.

If the purpose of the article amendment is to reclassify, cancel, exchange, or otherwise change outstanding memberships or shares, the amended articles must state the effect on all outstanding memberships or shares.

d. Effect of Filing¹⁹

When the “certificate of amendment” is filed with the Secretary of State, the articles of incorporation are then amended in accordance with the certificate; any change, reclassification, or cancellation of memberships or shares caused by the amendment is then effective. A copy of the certificate certified by the Secretary of State is evidence of the performance of the conditions necessary to adopt the amendment.

5. Co-ops Formed for a Limited Period²⁰

A cooperative formed for a limited period of time may extend the term of its existence by amending its articles of incorporation to remove any provision limiting its existence. Special rules beyond the scope of this discussion are provided for this type of action.

6. Restated Articles of Incorporation²¹

A cooperative may restate in a single certificate its entire articles of incorporation as amended by filing with the Secretary of State an officer’s certificate entitled “Restated Articles of Incorporation of _____.” The certificate must state the articles, as amended, up to the date of filing, except that the following *must* be omitted: (1) the signatures and any acknowledgments of the incorporators; (2) any statements about the effect of prior amendments upon memberships; (3) any provisions of merger agreements (other than article amendments of the surviving corporation); (4) the names, addresses, signatures, and acknowledgments of the initial directors and agents for service of process. (The foregoing omissions are not themselves considered alterations or amendments of the articles.) If the officer’s certificate itself alters or amends the articles, the certificate must comply with the signature and wording requirements above.

If the certificate does not itself alter or amend the articles, it must be approved by the board and is subject to the rules concerning article amendments *not* requiring approval of the members. On the other hand, if the certificate itself *does* alter or amend the articles, it is subject to all the rules related to article amendments.

Restated articles properly filed with the Secretary of State supersede for all purposes the original articles and all previous amendments.

D. SAMPLE ARTICLES OF INCORPORATION

ARTICLES OF INCORPORATION OF [NAME OF COOPERATIVE]

Article 1. The name of this Corporation is _____.

Article 2. This Corporation is a cooperative corporation organized under the California Consumer Cooperative Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

Article 3. The name and address in the state of California of this Corporation's initial agent for service of process is _____, _____.

Article 4. The voting rights of each member of the Corporation are equal, and each member is entitled to one vote. The proprietary interests of each member of the Corporation are unequal, and the rules by which the proprietary interests are determined shall be prescribed in the Bylaws of the Corporation.

Article 5. The names and post office addresses of Directors who shall serve until the first annual meeting are:

Name	Address
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IN WITNESS WHEREOF, the undersigned, being the Incorporators and the initial Directors of this Corporation, have executed these Articles of Incorporation on _____, 20__.

Director

Director

Director

Director

Director

DECLARATION

We are the persons whose names are subscribed below. We collectively are all of the Incorporators of this Corporation and all of the initial Directors named in the Articles of Incorporation, and we have executed these Articles of Incorporation. The foregoing Articles of Incorporation are our act and deed, jointly and severally.

Executed _____, 20__, at _____, California. We, and each of us, declare that the foregoing is true and correct.

Director

Director

Director

Director

Director

E. SAMPLE COVER LETTER TO THE SECRETARY OF STATE

Secretary of State

1230 J Street

Sacramento, CA 95814

Re: Request to File Articles of Incorporation

I am enclosing the original and two copies of the Articles of Incorporation which are hereby submitted for filing. Please certify the two copies and return them to me in the enclosed self-addressed envelope

I am also enclosing a check for \$__.00, payable to the Secretary of State, to cover your filing fee of \$__.00.

Sincerely,

Enclosures

F. LEGAL SOURCES AND COMMENTS TO THE SAMPLE ARTICLES

With the exception of naming the initial directors, the sample articles of incorporation provided in this publication are possibly the simplest possible (under the California Consumer Cooperative Corporation Law) for a cooperative having unequal ownership interests among its members.

The articles of incorporation should be filed with the Secretary of State with the proper fee amount and a cover letter similar to the sample provided. Unless the articles are rejected for some reason, they are usually considered “filed” on the day they are received by the Office of the Secretary of State.

The following paragraphs include cross-references to the sample articles. Also provided are citations to the applicable sections of the California Consumer Cooperative Corporation Law and, where appropriate, discussions of common issues that incorporators should consider.

Article 1.

The name of a co-op must include the word “cooperative” and some word or abbreviation indicating that it is a corporation (e.g., “Inc.” or “Incorporated”).²²

Article 2.

Both sentences in this article are required by co-op law²³, and the exact wording used here must be used in the articles to be filed. A further description of a co-op’s purposes may be included, and the corporate purposes may be limited.²⁴

Article 3.

An agent for service of process is someone who is designated by the corporation to receive service of legal summons, court complaints, and other legal documents for the corporation. An agent for service of process with an address in California must be identified in the articles.²⁵ The agent can be either a natural person or another corporation.²⁶ The initial agent for service of process is often one of the original directors.

Article 4.

California Corporations Code Section 12310(d) requires the articles to state whether the voting power or proprietary interests of the members are equal or unequal. If unequal, the articles must state either the general rule or rules by which the voting power and proprietary interests of the members are determined or it must state that such rule or rules are described in the corporation’s bylaws. Equal voting power means one vote for each member. Equal proprietary rights means property rights apportioned on the basis of one proprietary unit per member.²⁷

Except for cooperatives comprised of other co-ops, each member is entitled to only one vote on any matter submitted to a vote of the members.²⁸

Article 5.

The names and addresses of the initial directors are not required to be stated in the articles. To avoid any later confusion regarding the identity of the initial directors (e.g., for the first meeting of the board of directors), it is recommended by the author that they be named in the articles wherever possible, in order for the board to hold its first meeting as soon as possible after it receives notification that the articles have been “filed.”²⁹

The number of directors may bear a relation to the likely number of members: a cooperative with potentially a large number of members may desire more directors than a co-op with only a few members. Also, an odd number of directors should be used wherever possible to lessen the possibility of “tie” votes.

Execution and Declaration

If the initial directors are named in the articles, the articles must be both signed and acknowledged by the directors.³⁰

Chapter 5. BYLAWS

A. IN GENERAL

While the articles of incorporation usually state only certain fundamental items related to a cooperative's existence, bylaws provide more detailed rules by which the co-op governs itself. While many of these rules could be put into the articles,¹ a co-op is usually best advised to put them in the bylaws, instead. This is particularly true since the bylaws are almost always easier to amend than the articles.

B. CONTENTS

1. Required²

Unless the number of directors is stated in the articles of incorporation, the bylaws must set the number or state a minimum and maximum number of directors, with the exact number to be established by board or member approval in a manner determined by the bylaws. A co-op must have at least three directors, however. Any "alternate" directors and the method and time of their selection must be specified in the bylaws, along with provisions stating the conditions of their service in place of directors.

2. Optional Provisions³

Bylaws may contain any provision not in conflict with any law or the articles of incorporation to manage and conduct the affairs of a cooperative. The bylaws may include, but are not limited to, the following provisions:

- (1) any of the last five listed optional provisions for articles (see chapter 4 of this publication);
 - (2) the time, place, and manner of calling, conducting, and giving notice of member, board of directors, and board committee meetings, and of conducting mail ballots;
 - (3) the qualifications, duties, and compensation of directors, the time of their election, and the quorum and frequency requirements for board and board committee meetings;
 - (4) the appointment of committees, comprised of directors or nondirectors, or both, by the board or any officer, and the authority of any committee;
 - (5) the appointment, duties, compensation, and tenure of officers;
 - (6) the way in which members "of record" are determined;
 - (7) the making of reports and financial statements to members;
 - (8) establishing, imposing, and collecting dues, assessments, memberships and shares, and membership or share transfer fees;
 - (9) determination of patronage versus nonpatronage income;
 - (10) the time and manner of patronage refunds;
 - (11) eligibility requirements, admission procedures, and procedures related to the admission, withdrawal, suspension, and expulsion of members (consistent with the discussion in chapter 9 of this publication);
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- (12) the establishment of a delegate system (see chapter 10 of this publication);
- (13) voting by organizational units (see chapter 10 of this publication);
- (14) limiting the number of members, in total or by class, of the co-op;
- (15) establishing an educational program related to the principles and techniques of cooperation;
- (16) indemnification; and
- (17) dissolution.

Finally, the bylaws may require, for any and all corporate actions, the vote of a larger proportion of the members or the members of any class, unit, or grouping or the vote of a larger proportion of the directors than is otherwise required by co-op law. Any bylaw provision requiring a greater proportion may not be altered, amended, or repealed except by that larger proportion, unless the bylaws themselves provide otherwise.

C. BYLAW CHANGES

1. Adoption, Amendment, and Repeal by the Board

Except for certain changes which must be approved by the members (see below) and unless the bylaws or articles of incorporation restrict or eliminate the power of the board of directors to adopt, amend, or repeal the bylaws, the board may adopt, amend, or repeal bylaw provisions unless the action would (1) materially and adversely affect the rights or obligations of members as to voting, dissolution, redemption, transfer, distributions (e.g., dividends), patronage refunds, patronage, property rights, or rights to repayment of contributed capital; (2) change the total number of members or shares authorized for any class; (3) effect an exchange, reclassification, or cancellation of memberships or shares; or (4) authorize a new class of membership or shares.⁴ (Related to the last two items of the foregoing list, the author presumes that *share* changes would be included, although the law is unclear.)

2. Adoption, Amendment, and Repeal by the Members

a. In General

In addition to the bylaw changes that must be approved by the members (below), co-op law provides that bylaws may generally be adopted, amended, or repealed by the approval of the members.⁵ Any adoption, amendment, or repeal, however, also requires the approval of the members (and presumably “shares”) of a class if the action would:

- (1) materially and adversely affect the rights or obligations of that class as to voting, dissolution, redemption, transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital, in a way different than the action affects another class;
 - (2) materially or adversely affect the same items as in (1) above of that class by changing the rights, privileges, preferences, restrictions, or conditions of another class;
 - (3) change the number of memberships (or shares) authorized for that class;
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- (4) increase the number of memberships (or shares) authorized for another class;
- (5) effect an exchange, reclassification, or cancellation of memberships (or shares) of that class;
or
- (6) authorize a new class of memberships (or shares).⁶

b. Required Member Approval

There are certain situations where co-op law prohibits bylaw amendments by the board of directors, requiring member action instead.⁷ The members must approve the following bylaw changes:

- (1) after members have been admitted, a bylaw specifying or changing in any way the number of directors;⁸
- (2) any extension of the term of a director or any provision related to the designation or selection of directors other than by election by the members;⁹
- (3) a Bylaw provision allowing the board of directors to fill vacancies in the board caused by *removal* of directors;¹⁰
- (4) to increase the quorum requirements for a membership meeting;¹¹ or
- (5) the repeal or amendment of a bylaw provision authorizing cumulative voting in a central organization.¹²

3. Larger than Majority Approvals

Generally, only a simple majority of a quorum of the board of directors, members, or members of any class (if necessary) needs to approve any adoption, amendment, or repeal of the bylaws.¹³ The bylaws, may require, however, that the vote of a larger proportion, or all, of the members (or members of any class, unit, or grouping) or the directors is required to approve the adoption, amendment, or repeal of any or all bylaw provisions.¹⁴

4. Amendment and Repeal by Others

California Corporations Code Section 12330(d) provides (as of 1996) that a cooperative's bylaws may allow that the repeal or amendment of the bylaws (or any specified parts of the bylaws) "occur only with the approval in writing of a *specified* person or persons other than the Board of Directors or members."

D. SAMPLE BYLAWS

The bylaws give legal guidance to the co-op on a routine basis. While the California Consumer Cooperative Corporation Law does not require any specific bylaw provisions, the sample bylaws presented below address the more common issues that confront co-op personnel, including directors and officers, and members. Although many of the sample provisions may be modified to fit a particular co-op's needs and desires, an attorney should be consulted to review proposed bylaws prior to adoption.

These sample bylaws provide for a single class of members and shares. Shares in these bylaws may be used for direct investment by members and to distribute any noncash portions of patronage refunds and dividends. Please note that most of the sample bylaw provisions are discussed in the section immediately following the sample bylaws.

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ARTICLE I. MEMBERSHIP

Section 1.01. Classification of Members.

The Corporation shall have one (1) class of members.

Section 1.02. Membership Qualifications.

Any person, including any organizations (except a subsidiary of the Corporation) may become and remain a member of this Corporation by:

- (a) Complying with such uniform conditions as may be prescribed by the Board of Directors;
- (b) Making full payment of any nonrefundable membership fee as set forth in Section 1.06 of these Bylaws;
- (c) Making full payment for _____ share(s); and
- (d) If a natural person, being a resident of California.

Section 1.03. Membership Application.

An applicant eligible for and desiring admission to membership in the Corporation shall file a written application for admission in whatever form and containing whatever information the Board of Directors shall prescribe.

Section 1.04. Acceptance of Members.

Applications for membership shall be reviewed by the Board of Directors or by a Membership Committee duly authorized by resolution to admit members. The application shall be accepted unless rejected in writing within thirty (30) days for reasons satisfactory to the Board. If accepted, the applicant shall be admitted to membership and shall be allowed to vote and hold office. If rejected, the applicant shall be entitled to a refund of any amounts paid for membership fees and shares.

Section 1.05. Transfers Prohibited.

No member may transfer his or her membership or any right arising therefrom.

Section 1.06. Membership Fee.

A one-time nonrefundable membership fee, in an amount set from time to time by the Board of Directors, may be charged to and collected from each member upon joining the Corporation.

Section 1.07. Bylaws and Articles to Prospective Members.

Each prospective member, upon application for membership, shall receive a copy of the Articles of Incorporation, Bylaws, and disclosure document of the Corporation.

Section 1.08. Shareholders and Members.

“Shareholder” and “member” and their plurals shall be synonymous terms throughout these Bylaws.

ARTICLE II. SHARES

Section 2.01. Share Issuance.

Shares may be issued for money paid in an amount as is determined from time to time by the Board of Directors and as share dividends, patronage refunds, or other changes affecting outstanding shares.

Section 2.02. Share Ownership.

Share ownership entitles a member to only one (1) vote in the affairs of the Corporation, irrespective of the total number of shares a member owns, and to all the rights of membership as described by statute, the Articles of Incorporation, and these Bylaws. Pursuant to Subsection (b) of Section 9.03 of these Bylaws, the Directors may declare noncumulative dividends on shares not to exceed any maximum rate established by statute.

Section 2.03. Share Receipt and Disclosure Document.

- (a) Nothing in this section shall restrict the Corporation from issuing identity cards or similar devices to members which serve to identify members qualifying to use facilities or services of the Corporation.
- (b) Except as provided in Subsection (c) of this Bylaw section, prior to issuing a share, the Corporation shall provide the purchaser of a share with a “disclosure document.” The disclosure document may be a prospectus, offering, circular, brochure, or similar document, a specimen copy of the share certificate, or a receipt that the Corporation proposes to issue. The disclosure document shall contain the information required by Section 12401 of the California Corporations Code.
- (c) The Corporation shall issue a receipt or written advice of purchase to anyone purchasing a share upon the member’s first purchase of a share. No disclosure document need be provided to an existing member prior to the purchase of additional shares if that member has previously been provided with a disclosure document which is accurate and correct as of the date of the purchase of additional shares.

Section 2.04. Prohibition on Transfer of Shares.

No shares of this Corporation may be assigned or transferred. Any attempted assignment or transfer shall be wholly void and shall confer no rights on the intended assignee or transferee.

Section 2.05. Partial Withdrawal.

A member having a monetary amount in his or her share account in excess of a monetary amount to be determined from time to time by the Board of Directors may cause the Corporation to purchase his or her excess share amount upon written request to the Board. Subject to Section 2.06 of these Bylaws, the Board must, within one (1) year of such request, pay the amount the member requests in cash or other property or both. The exact form of payment is within the discretion of the Board.

Section 2.06. Insolvency Delay.

The Corporation shall delay the purchase of shares as described in Sections 2.05 and 3.04 of these Bylaws if the Corporation, in making such purchase is, or as a result thereof would be, likely to be unable to meet its liabilities (except those whose payment is otherwise adequately provided for) as they mature.

Section 2.07. Unclaimed Equity Interests.

Any share of a member, together with any accrued and unpaid dividends and patronage distributions related to that member, that would otherwise escheat to the State of California as unclaimed personal property shall instead become the property of the Corporation if the Corporation gives at least sixty (60) days' prior notice of the proposed transfer to the affected member by (1) first-class or second-class mail to the last address of the member shown on the Corporation's records, and (2) by publication in a newspaper of general circulation in the county in which the Corporation has its principal office. No shares or amounts shall become the property of the Corporation under this section of the Bylaws if written notice objecting to the transfer is received by the Corporation from the affected member prior to the date of the proposed transfer.

ARTICLE III. TERMINATION OF MEMBERSHIP

Section 3.01. Voluntary Withdrawal.

A member shall have the right to resign from the Corporation and terminate his or her membership by filing with the Secretary of the Corporation a written notice of resignation. The resignation shall become effective immediately without any action on the part of the Corporation.

Section 3.02. Death or Dissolution.

A membership shall immediately terminate upon the death of a member or the dissolution of a member that is an organization.

Section 3.03. Expulsion.

- (a) A member may for failure to comply with these Bylaws, rules, or regulations of the Corporation, for failure to patronize the Corporation during the immediately preceding fiscal year of the Corporation in the amount of at least _____ dollars (\$____.00), or for any other justifiable reason, be expelled from the Corporation by resolution adopted by a two-thirds (2/3) vote of all members of the Board of Directors. Expulsion shall become effective immediately unless the Board shall, in the resolution, fix another time. On expulsion, the name of the member expelled shall be stricken from the membership register and all of his or her rights shall cease except as provided in Section 3.04 of these Bylaws.

- (b) Prior to expulsion of a member, the Board of Directors shall give such member at least fifteen (15) days notice prior thereto and the reasons thereof. Such member shall have the opportunity to be heard, orally or in writing, not less than five (5) days before the effective date of expulsion by the Board.
- (c) The notice required pursuant to Subsection (b) of this section of these Bylaws may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last known address of the member shown on the Corporation's records.

Section 3.04. Settlement of Share Interest.

If a membership is terminated for any reason set forth in this Article of the Bylaws, the share interest held by the member shall be purchased by the Corporation, subject to Section 2.06 of these Bylaws, within one (1) year of the date of termination to the extent of the paid-up value of the member's shares on such date. The Board of Directors, in so settling the member's share interest, shall have the right to set off any and all indebtedness of the member to the Corporation. The paid-up value of the member's share interest is the monetary amount of such interest (including fractional shares) that the member has been issued in accordance with Section 2.01 of these Bylaws.

ARTICLE IV. MEMBERSHIP MEETINGS AND MEMBERS

Section 4.01. Location.

Meetings of members shall be held at the principal office of the Corporation.

Section 4.02. Regular Annual Meetings.

A regular meeting of members shall be held annually on the first _____ in _____ at ___:00 p.m. for the purpose of transacting any proper business, including the election of Directors, that may come before the meeting. If the day fixed for the regular meeting falls on a legal holiday, the meeting shall be held at the same time and place on the next day.

Section 4.03. Special Meetings.

Special meetings of members for any lawful purpose may be called by the Board of Directors, the President, or by five percent (5%) or more of the members.

Section 4.04. Time for Notice of Meetings.

Whenever members are required or permitted to take action at a meeting, a written notice of the meeting shall be given not less than ten (10) nor more than ninety (90) days before the date of the meeting to each member who is entitled to vote on the record date for notice of the meeting. In the case of a specially called meeting of members, within twenty (20) days after receipt of a written request, the Secretary shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the Board of Directors not less than thirty-five (35) nor more than ninety (90) days after receipt of the request.

Section 4.05. Method of Giving Notice.

Notice shall be given either personally or by mail or other written communication to the address of a member appearing on the books of the Corporation or provided by the member. If no address appears or is given, notice shall be given at the principal office of the Corporation.

Section 4.06. Record Date for Notice.

The record date for determining the members entitled to notice of any meeting of members is thirty (30) days before the date of the meeting.

Section 4.07. Contents of Notice.

The notice shall state the place, date, and time of the meeting. The notice of a regular meeting shall state any matters that the Board of Directors, at the time of giving notice, intends to present for action by the members. The notice of a special meeting shall state the general nature of the business to be transacted. The notice of any meeting at which Directors are to be elected shall include the names of all nominees at the time of giving notice.

Section 4.08. Waivers, Consents, and Approvals.

The transactions of a meeting, whether or not validly called and noticed, are valid if a quorum is present and each of the absent members who is entitled to vote, either before or after the meeting, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

A member's attendance at a meeting shall constitute a waiver of notice of and presence at the meeting, unless the member objects at the beginning of the meeting. However, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice but not included, if an objection is made at the meeting.

Section 4.09. Quorum at Meeting.

The lesser of two hundred fifty (250) members or members representing five percent (5%) of the voting power shall constitute a quorum at a meeting of members. Any Bylaw amendment to increase the quorum may be adopted only by approval of the members. When a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting and entitled to vote shall be the act of the members, unless provided otherwise by these Bylaws or the law. The only matters that may be voted upon at any regular meeting actually attended by less than one-third (1/3) of the voting power are matters notice of the general nature of which was given pursuant to the first sentence of Section 4.04 of these Bylaws.

Section 4.10. Loss of Quorum at Meeting.

The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of the members required to constitute a quorum.

Section 4.11. Adjournment for Lack of Quorum.

In the absence of a quorum, any meeting of members may be adjourned by the vote of a majority of the votes represented in person, but no other business may be transacted except as provided in Section 4.10 of these Bylaws.

Section 4.12. Adjourned Meetings.

The corporation may transact any business at an adjourned meeting that could have been transacted at the original meeting. When a meeting is adjourned to another time or place, no notice is required if the time and place are announced at the original meeting. If the adjournment is for more than forty-five (45) days or if a new record date is fixed, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 4.13. Voting of Memberships.

- (a) Each member of the Corporation is entitled to one (1) vote on each matter submitted to a vote of the members.
- (b) If a membership stands of record in the names of two (2) or more persons whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, persons entitled to vote under an agreement, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same membership, unless the Secretary is given written notice to the contrary and furnished with a copy of the instrument or order appointing them or creating the relationship, the vote of one (1) joint holder will bind all, when only one (1) votes, and the vote of the majority will bind all, when more than one (1) joint holder votes.
- (c) The record date for determining the members entitled to vote at a meeting or cast written ballots is twenty (20) days before the date of the meeting or the day on which the first ballot is mailed or solicited.
- (d) Cumulative voting shall not be permitted for any purpose.
- (e) Voting by proxy shall not be permitted for any purpose.

Section 4.14. Use of Written Ballots at Meetings.

A combination of written ballot and personal voting may be used at any regular or special meeting of members, and may be used for the election of Directors. Prior to the meeting, the Board of Directors may authorize distribution of a written ballot to every member entitled to vote. The ballots shall be distributed in a manner consistent with the provisions of Sections 4.05, 4.17(b), and 4.19 of these Bylaws. When ballots are distributed, the number of members voting at the meeting by written ballot shall be deemed present at the meeting for purposes of determining a quorum but only with respect to the proposed actions referred to in the ballots.

Section 4.15. Contents of Written Ballot Used at Meetings.

Any written ballot used at a meeting shall set forth the proposed action to be taken, provide an opportunity to specify approval or disapproval of the proposed action, and state that unless revoked by the member voting in person, the ballot will be counted if received by the Corporation on or before the time of the meeting.

Section 4.16. Action by Ballot without Meeting.

Any action that may be taken at any regular or special meeting, including election of Directors, may be taken without a meeting through distribution of a written ballot to every member entitled to vote on the matter. The Secretary shall cause a vote to be taken by written ballot on any action or recommendation proposed in writing by at least twenty percent (20%) of the members.

Section 4.17. Written Ballot Used without Meeting.

- (a) Any ballot used without a meeting shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Corporation.
- (b) The form of written ballot distributed to ten (10) or more members shall afford an opportunity to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time of distribution, to be acted on by the ballot. The form must also provide that whenever the person solicited specifies a choice with respect to any matter, the vote will be cast in accordance with that choice.
- (c) A written ballot cannot be revoked. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Section 4.18. Solicitation of Written Ballots.

Ballots shall be solicited in a manner consistent with Sections 4.05, 4.17(b), and 4.19 of these Bylaws. The solicitations shall indicate the number of responses needed to meet the quorum requirement and specify the time by which the ballot must be received to be counted. Ballots other than for the election of Directors shall state the percentage of approvals necessary to pass the measure.

Section 4.19. Withholding Vote.

In an election of Directors, any form of written ballot, which names the candidates for Director and which the member has marked “withhold” (or otherwise indicated that the authority to vote in the election of Directors is withheld) shall not be used for voting in that election.

Section 4.20. Appointment of Inspectors of Election.

In advance of any meeting of members, the Board of Directors may appoint inspectors of election to act at the meeting and any adjournment. If inspectors are not appointed or if any appointed persons fail to appear or refuse to act, the chairperson of the meeting may and, on the request of any member, shall, appoint inspectors at the meeting.

Section 4.21. Duties of Inspectors of Election.

The inspectors shall determine the number of memberships outstanding and the voting power of each, the number represented at the meeting, and the existence of a quorum. They shall receive votes, ballots, and consents, hear and determine all challenges and questions regarding the right to vote, count and tabulate all votes and consents, determine when the polls will close, and determine the result. They may do those acts which are proper to conduct the election or vote with fairness to all members. The inspectors shall perform these duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical.

ARTICLE V. DIRECTORS

Section 5.01. Number.

The corporation shall have _____ () Directors, collectively known as the Board of Directors.

Section 5.02. Qualifications.

The Directors of the Corporation shall be members of the Corporation and residents of California.

Section 5.03. Nomination.

- (a) The Board of Directors shall prescribe reasonable nomination and election procedures for the election of Directors given the nature, size, and operations of the Corporation. The procedures shall include: (1) a reasonable means of nominating persons for election as Directors, (2) a reasonable opportunity for a nominee to communicate the nominee's qualifications and the reasons for the nominee's candidacy to the members, (3) a reasonable opportunity for all nominees to solicit votes, (4) a reasonable opportunity for all the members to choose among the nominees.
 - (b) When the Corporation distributes any material soliciting a vote for any nominee for Director in any publication owned or controlled by the Corporation, it shall make available to each other nominee, in the same material, an equal amount or space with equal prominence to be used by the nominee for a purpose reasonably related to the election. The Corporation shall mail within ten (10) business days to all members any material related to the election which a nominee for Director has furnished, upon written request and payment of mailing costs by the nominee, or allow the nominee to obtain the names, addresses, and voting rights of members within five (5) business days after the request.
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Section 5.04. Election.

The Directors shall be elected at the annual meetings or by written ballot in accordance with Sections 4.16–4.19 of these Bylaws. The candidates receiving the highest number of votes up to the number of Directors to be elected shall be elected.

Section 5.05. Terms of Office.

The terms of office for Directors shall be ___() years. Each Director shall hold office until the expiration of the term for which elected and until the election and qualification of a successor.

Section 5.06. Compensation.

The Directors shall serve without compensation except that they shall be paid in advance or reimbursed by the Corporation for their actual and reasonable expenses incurred in the performance of their duties as Directors of the Corporation. Officers of the Corporation may also be paid in advance or reimbursed for such expenses.

Section 5.07. Call of Meetings.

Meetings of the Board of Directors may be called by the President, any Vice-President, the Secretary, or any two Directors.

Section 5.08. Place of Meetings.

Meetings of the Board of Directors may be held at any place designated in the notice of the meeting, or, if not stated in a notice, by resolution of the Board.

Section 5.09. Presence at Meetings.

Directors may participate at meetings of the Board through the use of conference telephone or other communications equipment, as long as all participating Directors can hear one another. Participation by communications equipment constitutes presence at the meeting.

Section 5.10. Regular Meetings.

Regular meetings of the Board of Directors shall be held, without call or notice, at the principal office of the Corporation immediately following the annual meeting of members, as set forth in Section 4.02 of these Bylaws.

Section 5.11. Special Meetings and Notice.

Special meetings shall be held on four (4) days' notice by first-class mail or forty-eight (48) hours notice delivered personally or by telephone or telegraph. Notice of regular or special meetings need not be given to any Director who signs a waiver of notice, a written consent to holding the meeting, or an approval of the minutes (either before or after the meeting), or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to that Director. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 5.12. Quorum at Meetings.

A majority of the authorized number of Directors constitutes a quorum for the transaction of business.

Section 5.13. Acts of Board at Meetings.

Unless provided otherwise in the Articles of Incorporation, these Bylaws, or by law, every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present is the act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for the meeting or a greater number required by the Articles, these Bylaws, or by law.

Section 5.14. Adjournment of Meetings.

A majority of the Directors present, whether or not a quorum is present, may adjourn to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of adjournment.

Section 5.15. Action without Meeting.

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all Directors individually or collectively consent in writing to the action. The consents shall be filed with the minutes of the proceedings of the Board. Action by written consent has the same force and effect as a unanimous vote of the Directors.

Section 5.16. Executive Committees.

- (a) The Board of Directors may create one or more committees to serve at its pleasure by resolution adopted by a majority of the number of Directors then in office when a quorum is present. Each committee shall consist of two (2) or more Directors appointed by a majority vote of the Directors then in office.
 - (b) Any executive committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except with respect to the following actions:
 - (1) The approval of any action for which the approval of the members or a majority of all members is required by law;
 - (2) The filling of vacancies on the Board or in any committee that has the authority of the Board;
 - (3) The fixing of compensation of the Directors for serving on the Board or on any committee;
 - (4) The amendment or repeal of Bylaws or the adoption of new Bylaws;
 - (5) The amendment or repeal of any resolution of the Board which by its express terms are not amendable or repealable;
 - (6) The appointment of committees of the Board or the members of such committees:
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- (7) The expenditure of corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected.

Section 5.17. Resignation of Directors.

Any Director may resign effective upon written notice to the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of the resignation. If a resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 5.18. Removal of Directors.

Any or all Directors may be removed without cause by the members. If the Corporation has fewer than fifty (50) members, the removal shall be approved by an affirmative vote or written ballot of a majority of all the votes entitled to be cast. If the Corporation has fifty (50) or more members, the removal shall be approved or ratified by the affirmative vote of a majority of all the votes represented and voting at a duly held meeting at which a quorum is present, or by written ballot, or by the affirmative vote or written ballot of any greater proportion of the votes as required in these Bylaws or by law.

Section 5.19. Cause of Vacancies on Board.

Vacancies on the Board of Directors shall exist on the death, resignation, termination of membership, or removal of a Director; whenever the authorized number of Directors is increased; whenever the Board declares an office vacant pursuant to Section 5.20 of these Bylaws; and on the failure of the members to elect the full number of Directors authorized.

Section 5.20. Declaration of Vacancies.

The Board of Directors may declare vacant the office of any Director whose eligibility for election has ceased, who has been declared of unsound mind by a final order of court, who is convicted of a felony, or who has not attended _____ () or more consecutive regular or special meetings of the Board.

Section 5.21. Filling Vacancies on Board.

Except for vacancies created by removal of a Director pursuant to Section 5.18 of these Bylaws, vacancies may be filled by a majority of the Directors then in office, whether or not less than a quorum, or by a sole remaining Director. Vacancies created by the removal of a Director may be filled only by approval (as defined by Section 12224 of the California Corporations Code) of the members. The members may elect a Director at any time to fill any vacancy not filled by the Directors.

ARTICLE VI. OFFICERS

Section 6.01. Titles.

The officers of the Corporation shall be a President, Secretary, Chief Financial Officer, and any other officers with such titles and duties as determined by the Board of Directors and as may be necessary to enable it to sign instruments. The President is the Chief Executive Officer of the Corporation. The same person may hold any number of offices. The President shall be chosen from among the Directors elected by the membership of the Corporation.

Section 6.02. Appointment and Resignation.

The officers shall be chosen by the Board of Directors and serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time on written notice to the Corporation without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

ARTICLE VII. CORPORATE RECORDS AND REPORTS

Section 7.01. Required Records.

The Corporation shall keep adequate and correct books and records of account and minutes of the proceedings of its members, Board of Directors, and committees of the Board. It shall also keep a record of the members, including the names, addresses, and number of shares held by each. The minutes shall be kept in written form. Other books and records shall be kept either in written form or in any other form capable of being converted into written form.

Section 7.02. Annual Report.

- (a) For fiscal years in which the Corporation has, at any time, more than twenty-five (25) members, the Corporation shall notify each member yearly of the member's right to receive an annual financial report. The Board of Directors shall promptly cause the most recent annual report to be sent to a member on written request. The annual report shall be prepared no later than one hundred twenty (120) days after the close of the Corporation's fiscal year.
 - (b) The annual report shall contain in appropriate detail all of the following: (1) a balance sheet as of the end of the fiscal year, an income statement, and a statement of changes in financial position for the fiscal year; (2) a statement of the place where the names and addresses of the current members are located; and (3) the statement required by Section 7.03 of these Bylaws.
 - (c) The annual report shall be accompanied by any pertinent report by independent accountants, or, if there is no such report, by the certificate of an authorized officer of the Corporation that the statements were prepared without audit from the books and records of the Corporation.
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Section 7.03. Annual Statement of Transactions and Indemnifications.

In addition to the annual report described in Section 7.02 of these Bylaws, the Corporation shall furnish annually (pursuant to Section 12592 of the California Corporations Code) to its members and Directors a statement of the transactions and indemnifications to interested persons. If the Corporation does not issue an annual report pursuant to Section 7.02 of these Bylaws, such statement shall be mailed or delivered to members within one hundred twenty (120) days after the close of the fiscal year.

ARTICLE VIII. INSPECTION RIGHTS

Section 8.01. Articles and Bylaws.

The corporation shall keep at its principal office in California the original or a copy of its Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the members at all reasonable times during office hours. If the Corporation has no office in California, it shall furnish on the written request of any member a copy of the Articles or Bylaws as amended to date.

Section 8.02. Books and Records.

The accounting books and records and minutes of proceedings of the members, the Board of Directors, and committees of the Board shall be open to inspection on the written demand of any member at any reasonable time, for a purpose reasonably related to that person's interests as a member.

Every Director has the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind, and to inspect the physical properties of the Corporation.

Section 8.03. Inspection of Membership List.

(a) Subject to the Corporation's right to set aside a member's demand for inspection pursuant to Section 12601 of the California Corporations Code and the power of the court to limit inspection rights pursuant to Section 12602 of the California Corporations Code, and unless the Corporation provides a reasonable alternative pursuant to Section 8.03(c) of these Bylaws, a member may do either or both of the following:

- (1) Inspect and copy the record of all the members' names, addresses, and voting rights, at reasonable times, on making a written demand five (5) business days in advance which states the purpose for which the inspection rights are requested;
- (2) Obtain from the Secretary, upon written demand and tender of a reasonable charge, a list of names, addresses, and voting rights of those members entitled to vote for the election of Directors, as of the most recent record date for which it has been compiled, or as of a date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of ten (10) business

days after the demand is received or after the date specified as the date as of which the list is to be compiled.

- (b) The rights set forth in Subsection (a) of this Bylaw section may be exercised by any member or members possessing five percent (5%) or more of the voting power for a purpose reasonably related to the members' interest as members. The Corporation may deny access to the membership list where it reasonably believes that the information therein will be used for another purpose or where the Corporation provides a reasonable alternative pursuant to Section 8.03(c) of these Bylaws.
- (c) The Corporation may within ten (10) days after receiving a demand, deliver a written offer of an alternative method of achieving the purpose identified in the demand without providing access to or a copy of the membership list. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in a demand made pursuant to Section 8.03(a) of these Bylaws shall be a reasonable alternative, unless the Corporation fails to do the things that it offered to do within a reasonable time after acceptance of the offer. Any rejection of the offer shall be in writing and indicate the reasons the proposed alternative does not meet the proper purpose of the demand.

ARTICLE IX. SURPLUS ALLOCATIONS AND DISTRIBUTIONS

Section 9.01. Fiscal Year.

The fiscal year of the Corporation shall end at the close of the business day on the last day of the month of _____ of each year.

Section 9.02. Surplus and Patronage Defined.

- (a) "Surplus" shall be defined as the excess of revenues and gains over expenses and losses for a fiscal year. Such surplus shall be determined in accordance with generally accepted accounting principles and shall be computed without regard to any patronage refunds, capital allocations, dividends, or income taxes.
- (b) "Patronage" shall be defined as _____.

Section 9.03. Annual Allocations and Distributions of Surplus.

- (a) Before any dividends or patronage refunds are distributed for each fiscal year, any surplus should first be allocated to any deficit in the accounting of "retained earnings" of the Corporation.
 - (b) After any deficit in retained earnings has been eliminated, the Board of Directors may declare a dividend upon shares at a rate not to exceed any maximum rate established by Section 12451 of the California Corporations Code (taking into account any other "distributions" as defined by Section 12235 of the California Corporations Code). No such dividends shall be cumulative.
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- (c) The Directors may [or “shall”: see “Legal Sources and Comments” at the end of these Sample Bylaws] then uniformly distribute all the remaining surplus attributed to patronage of the members of the Corporation to such members as described in the following paragraphs of this subsection of these Bylaws. For the purposes of this subsection of the Bylaws, the remaining patronage surplus shall be computed consistent with Subchapter T of the Internal Revenue Code, related Treasury Regulations, and related court and other relevant interpretations.
 - (1) Any remaining patronage surplus attributed to the members and to be distributed to them shall be the total remaining patronage surplus attributed to both member and nonmember business (not reduced by dividends on shares but reduced by allocations to eliminate a deficit in retained earnings) multiplied by the ratio of member patronage to total patronage.
 - (2) A member is entitled to a patronage refund, if such is distributed, in the amount of the remaining patronage surplus, as determined by Paragraph (1) of this subsection of these Bylaws, multiplied by the ratio of such member’s patronage with the Corporation to the patronage of all members with the Corporation.
 - (d) Any dividends declared or patronage refunds paid or allocated pursuant to this section of the Bylaws may be in the form of shares, in whole or in part, subject to Subsections (e) and (f) of this section of these Bylaws.
 - (e) If a member owns three hundred dollars (\$300.00) or more in shares as of the end of the fiscal year for which dividends are declared or patronage refunds are to be paid or allocated, such member shall receive all of her or his dividends and patronage refunds in cash. The three hundred dollar (\$300.00) amount shall be known as a member’s “Fair Share.”
 - (f) If the cash payment to a member for such member’s dividends and patronage refunds together would total less than one dollar (\$1.00), the Board of Directors shall distribute such dividends and patronage refunds to the member wholly in shares.
 - (g) Each person who becomes a member of this Corporation consents to include in his or her gross income for federal income tax purposes the amount of any patronage refund paid to him or her by this Corporation in money or by written notice of allocation (as defined in the Internal Revenue Code), except to the extent that such a patronage refund is not income to the member because (i) it is attributable to the purchase of personal, living, or family items, or (ii) it should properly be treated as an adjustment to the tax basis of property previously purchased. The term “patronage refund,” as used herein, shall have the same meaning as the term “patronage dividend,” as used in the Internal Revenue Code.
 - (h) For the purpose of allocating and distributing any annual surplus, the entire operations of the Corporation shall be considered as a unit; provided that by resolution of the Board of Directors, the Corporation may distribute patronage refunds on the basis of the business transacted by each of the departments or divisions into which the operations of the Corporation shall be divided by the Board for the purpose of such allocation.
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ARTICLE X. BYLAW CHANGES

Section 10.01 Bylaw Changes by the Board.

The Bylaws shall be adopted, amended, or repealed by the Board of Directors unless the action would:

- (a) materially and adversely affect the rights or obligations of members as to voting, dissolution, redemption transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital;
- (b) increase or decrease the number of members or shares authorized in total or for any class;
- (c) effect an exchange, reclassification, or cancellation of all or part of the memberships or shares;
- (d) authorize a new class of memberships or shares;
- (c) change the number of Directors or establish a variable number of Directors;
- (f) extend the term of a Director beyond that for which the Director was elected or increase the terms of the Directors;
- (g) allow all or any portion of the Directors to hold office by virtue of designation or selection rather than by election by the members: and
- (h) allow the Board to fill vacancies occurring in the Board by reason of the removal of Directors.

Section 10.02. Bylaw Changes by the Members.

Where the Board of Directors is denied the right to adopt, amend, or repeal these Bylaws pursuant to Section 10.01 of these Bylaws, these Bylaws shall be adopted, amended, or repealed by approval of the members.

CERTIFICATE OF SECRETARY OF [NAME OF CORPORATION]

I hereby certify that I am the duly elected and acting Secretary of this Corporation and that the foregoing Bylaws constitute the Bylaws of this Corporation, as duly adopted by the Board of Directors on _____, 20__.

Dated: _____, 20__.

[signature]

[typed name], Secretary

E. LEGAL SOURCES AND COMMENTS

Information related to most sections of the sample bylaws is provided here. All “Code Section” references are to the California Corporations Code, which includes the California Consumer Cooperative Corporation Law (sometimes referred to below as “co-op law”).

Section 1.01. Classification of Members

Either the bylaws (preferably) or the articles of incorporation would need to be more complex in order to provide for multiple classes of members or shares. Most smaller cooperatives probably have no real need for more than one class of members or shares. Unless one or more different classes are established and described in the articles or bylaws, it is assumed that all members and shares have the same rights and obligations as all the other members and shares. Legal counsel should be sought before multiple classes are established.

Section 1.02. Membership Qualifications

Code Section 12403 allows a co-op to admit any “person” (i.e., a natural person or an organization) to membership, except that a “subsidiary” corporation of the co-op may not be a member. A co-op may limit those who may become members through membership qualification provisions. To help a co-op avoid the applicability of federal security registration, members should be limited to California residents wherever possible.

Section 1.05. Transfers Prohibited

Unless the articles of incorporation or bylaws provide otherwise, transfers of memberships and shares are prohibited by co-op law. As a practical matter, for a co-op issuing shares, such transfers should be prohibited. (See the discussion of sample bylaw Section 3.04 below and Code Section 12410(a)(1).)

Section 1.06. Membership Fee

One-time nonrefundable membership fees are sometimes useful in covering expenses related to the administrative processing of new members. A cooperative also might consider charging annual dues to help defray recurring membership costs (e.g., newsletters). Code Section 12441 allows the imposition of such fees and dues; to be effective, such dues and fees should be provided for in the bylaws.

Section 1.07. Bylaws and Articles to Prospective Members

This section not only recognizes that members should be given copies of a cooperative’s basic corporate documents, but that it is generally *required* to do so if the co-op is to distribute tax-deductible patronage refunds. (See Internal Revenue Code Section 1388 (c)(2)(B) and Treasury Regulations Section 1.1388-1(c)(3)(ii).)

Section 2.01. Share Issuance

By changing the wording, a cooperative also could issue shares for other types of consideration (e.g., services, property, etc.), as allowed by Code Section 12400. To avoid “valuation” problems, however, a co-op may want to limit consideration to money paid.

Section 2.02. Share Ownership

Unless a cooperative is a “central organization” (e.g., having two or more co-ops in its membership), co-op law mandates that each member is entitled to only one vote in the affairs of the co-op. (See Code Sections 12256, 12314, and 12480.)

Section 2.03. Share Certificates and Disclosure Document

Because cooperatives are *not* required to issue share or membership certificates, these sample bylaws assume such certificates will not be issued. It is important to note that, while certificates are not required to be issued, co-op law *does* require that a “disclosure document” be given to each applicant for membership. (The sample disclosure document of this publication is correlated to the sample articles of incorporation and bylaws.) The required contents of the document are listed in this bylaw section. Also, in accordance with co-op law, Subsection (c) of this bylaw section requires that, since share or membership certificates are not to be issued, a member be given some form of receipt or other written document for his or her initial share purchase. If membership or share certificates are to be issued, co-op law requires certain information on the certificates. (See Code Section 12401.)

Section 2.04. Prohibition on Transfer of Shares

To minimize potential complex securities regulation and internal administrative problems, membership and share transfers should be prohibited, even between members.

Section 2.05. Partial Withdrawal

If investment in a cooperative is to be encouraged, a member should be allowed to withdraw at least part of her or his share investment without having to terminate membership. Termination of membership would usually mean that the co-op would then have to refund *all* of the member’s share account. (See sample bylaws Section 3.04.) For convenience, the “amount to be determined from time to time by the board” should be set at the same amount as the “fair share” of sample bylaws Section 9.03(e).

Section 2.06. Insolvency Delay

If share redemptions are to be allowed, this section reflects the restraints imposed by Code Section 12453.

Section 2.07. Unclaimed Equity Interests

With this bylaw provision, a cooperative may retain any unclaimed equity interests of a member after three years of no contact with such member. Otherwise, the equity amounts would be reported to and paid over to the State of California. Code Section 12446 *mandates* the procedures provided by this bylaw section.

Section 3.01. Voluntary Withdrawal

Code Section 12430 provides that a member has the right to “resign from membership at any time, although the articles of incorporation or bylaws may require reasonable notice before the resignation is effective.”

Section 3.02. Death and Dissolution

This bylaw provision reflects the language of Code Section 12410(a)(2).

Section 3.03. Expulsion

Fair and reasonable expulsion procedures are required by statute, and this bylaw section follows specific procedures described in Code Section 12431 as being reasonable. Most expulsions in cooperative settings are likely to be due to the “inactivity” standard of this bylaw section. A minimum patronage requirement allows a co-op to terminate memberships of those persons who are not at least minimally participating in the co-op. Because consumer co-ops in particular sometimes have problems meeting quorum requirements, terminating relatively inactive members can be an important issue.

Section 3.04. Settlement of Share Interest

To avoid the potentially awkward situation where a former member (due to termination) would perhaps indefinitely hold shares in the cooperative because of the transfer prohibition, this bylaw section provides that the share interest must be redeemed upon termination of membership. Also, the co-op is allowed to deduct from the interest of the former member any amounts he or she may owe the co-op. The substance of this bylaw section is required by Code Sections 12430(b) and 12445.

Section 4.01. Location

Code Section 12460(a) provides that membership meetings may be held anywhere that is stated in or fixed by the bylaws; if no such place is fixed or stated, the meetings must be held at the principal office of the co-op.

Section 4.02. Regular Annual Meetings

Although membership meetings may be held more often, an *annual* meeting is required by Code Section 12460(b). Also, although the annual meeting may be held at any time, an appropriate time for the meeting might be at about the same time that the required annual report must be made available to members, i.e., within one hundred twenty days of the end of the cooperative's "accounting" year. (See sample bylaws Section 7.02.)

Section 4.03. Special Meetings

Code Section 12460(e) allows the bylaws to specify any other persons who may call a special meeting of the members, besides the ones mentioned in this sample bylaw provision.

Section 4.04. Time for Notice of Meetings

It is important that "notice" of a meeting be properly given so that later procedural challenges of the results of any voting may be avoided. This section follows the language of Code Section 12461(a),(c).

Section 4.05. Method of Giving Notice

This bylaw section tracks the requirements of Code Section 12461(b) related to proper notice.

Section 4.06. Record Date for Notice

This bylaw section determines which members are entitled to notice of a membership meeting. In the alternative, Code Section 12481(a) allows the board of directors to set each particular record date.

Section 4.07. Contents of Notice

Code Section 12461(a) requires that the notice to members contain the items of information described in this bylaw section.

Section 4.08. Waivers, Consents, and Approvals

This section follows the language and requirements of Code Section 12461(e).

Section 4.09. Quorum at Meeting

Code Section 12462(a) provides these quorum requirements unless the bylaws provide otherwise. These sample bylaws provide that membership approval on any vote is by simple majority. While the bylaws or articles of incorporation may require approval by more than a majority of the members, a cooperative with a relatively large number of members would probably be well advised not to require approvals by more than a majority. See also Code Sections 12224 and 12331 related to majority and super-majority approvals. Code Section 12462(b) requires the "less than one-third" rule of this sample bylaws section.

Section 4.10. Loss of Quorum at Meeting

Code Section 12462(c) provides that a meeting may continue under the conditions stated in this sample bylaws section.

Section 4.11. Adjournment for Lack of Quorum

Code Section 12462(d) provides conditions for adjournment as provided in this bylaw section.

Section 4.12. Adjourned Meetings

Code Section 12461(d) provides the minimum rules as described in this bylaw section, but also allows the bylaws to set more stringent notice requirements, if desired.

Section 4.13. Voting of Memberships

Except in the case of cooperatives that are “central organizations” as defined in Code Section 12256 (i.e., those whose membership includes other co-ops organized under co-op law), each member of a co-op is entitled to only one vote in the corporate affairs. Although a co-op may want to limit each membership to one person, Subsection (b) of this sample bylaws section provides a voting procedure where a single membership is made up of more than one person or organization. The record date for determining which members are entitled to vote cannot be more than sixty days before the meeting or before written ballots are mailed or solicited. See Code Sections 12480–12484 for more details related to voting.

Section 4.14. Use of Written Ballots at Meetings

Although a cooperative generally does not have to provide for written ballots, such ballots *must* be used for “referendums.” (See sample bylaws Section 4.16.) In any event, if a relatively large number of members were involved, most co-ops would probably find written ballots the more convenient voting procedure. See Code Section 12463 for more details regarding the use of written ballots.

Section 4.15. Contents of Written Ballot Used at Meeting

Code Section 12461(h) is the basis of this sample bylaws provision.

Section 4.16. Action by Ballot without Meeting

Although the articles of incorporation or bylaws may prohibit voting outside of meetings, except where at least twenty percent of the members force a vote (Code Section 12463(a) and (f)), cooperatives with relatively large numbers of members may want to conduct votes only by mail since quorums may be difficult to achieve otherwise.

Section 4.17. Written Ballot Used without Meetings

Code Section 12464(a) provides procedures for voting by written ballots. This sample bylaws section describes the California Consumer Cooperative Corporation Law’s prescribed form of a written ballot, where the ballot is to be distributed to ten or more members of a cooperative having at least one hundred members. Failure to comply with Subsections (a) and (b) of this sample bylaws provision will not invalidate a corporate action but may be a basis for challenging the vote. Code Section 12463(d) provides that a written ballot cannot be revoked unless the articles of incorporation or bylaws provide otherwise.

Section 4.18. Solicitation of Written Ballots

Code Section 12463(c) states the solicitation requirements for written ballots, and this sample bylaws section closely follows the statutory language.

Section 4.19. Withholding Vote

Code Section 12464(b) provides the statutory basis for this bylaw provision. Failure to comply will not necessarily invalidate an election but may open it to challenge.

Section 4.20. Appointment of Inspectors of Election

Code Section 12483(a) provides for the appointment of “election inspectors.” Although the board of directors may always provide for election inspectors, such inspectors are *not* required to be appointed unless a member so requests. It is wise for a cooperative to appoint inspectors for any election.

Section 4.21. Duties of Inspectors of Election

Subsections (b) and (c) of Code Section 12483 describe the required duties of election inspectors. This sample bylaws provision tracks the statutory language almost verbatim.

Section 5.01. Number

Unless provided for in the articles of incorporation, the bylaws must state the exact number of directors or set a minimum and maximum number of directors, the exact number of which may be established by the board or the members. To avoid confusion, a fixed number of directors is usually preferable. In any event, a cooperative must have at least three directors. Code Section 12331(a) provides these rules.

Section 5.02. Qualifications

While most cooperatives probably require that directors also be members of the co-op, California’s Consumer Cooperative Corporation Law does not require such membership. Also, although not provided for in these sample bylaws for simplicity’s sake, “alternate” directors are permitted by Code Section 12331(a), and Code Section 12360(d) permits all or some of the directors to hold office other than by election by the members. (Code Section 12360(c) states that the bylaws or articles of incorporation may set qualifications.) California residency is required in this sample bylaws provision (since these sample bylaws require all directors to be members and, thus, to be California residents) to minimize potential securities regulation problems.

Section 5.03. Nomination

These procedures are required by Code Sections 12470, 12473, and 12474 to help ensure fair and open elections. Although the specific procedures of Subsection (a) of this bylaw section are no longer required by the California Consumer Cooperative Corporation Law, they have been retained for the purposes of these sample bylaws.

Section 5.04. Election

Code Section 12460(b) requires that in any year that directors are to be elected, the election must be held at the regular annual meeting of members (unless the directors are chosen in some other manner). Except in the case of those cooperatives that are “central organizations” as defined in Code Section 12256 (those whose membership includes other co-ops organized under co-op law), “cumulative” voting procedures are not permitted (Code Section 12484).

Section 5.05. Terms of Office

Code Section 12360(a) requires that the terms of elected directors be fixed (not to exceed four years) in the articles of incorporation or the bylaws; these sample bylaws provide for two-year terms. To simplify the sample bylaws, no “staggering” of terms is provided. The initial directors serve only until the first annual membership meeting, as provided in the sample articles of incorporation and Code Section 12360(b).

Section 5.06. Compensation

Although cooperative directors are generally not paid for their services as directors, they are often reimbursed for certain “out-of-pocket” expenses they incur in their role as directors. Code Section 12375(b) requires that co-ops be *allowed* to reimburse reasonable and necessary expenses if they so desire.

Section 5.07. Call of Meetings

Code Section 12351(a)(1) allows a cooperative to expand or contract the identified people who may call a meeting of the board of directors.

Section 5.08. Place of Meetings

Code Section 12351 allows cooperatives much flexibility regarding “regular” and “special” meetings of the board of directors, although Subsection (a)(2) states that the articles of incorporation or bylaws may not dispense with notice of special meetings.

Section 5.09. Presence at Meetings

Code Section 12351(a)(6) provides for the types of participation described in this bylaw section, but Subsection (a) itself allows cooperatives to vary or even prohibit these types of electronic meetings.

Section 5.10. Regular Meetings

Code Section 12351(a)(2) allows “regular” meetings (without notice) to be fixed in the bylaws. Such a meeting should be held at the time of the annual membership meeting.

Section 5.11. Special Meetings and Notice

The statutory language of Code Section 12351(a)(2) does not include “fax” transmissions. The articles of incorporation and bylaws may not dispense with the notice requirements of “special” meetings of the board of directors.

Section 5.12. Quorum at Meetings

Code Section 12351(a)(7) provides that a majority of the board of directors constitutes a quorum, unless the articles of incorporation or bylaws provide otherwise. A quorum of less than twenty percent of the directors, or less than two directors, whichever is larger, is prohibited.

Section 5.13. Acts of Board at Meetings

Code Section 12351(a)(8) requires that at least a majority of directors is required to approve an act of the board. Many cooperatives would probably not want supermajority approvals required by the articles of incorporation or bylaws. Code Section 12350 states that the management of a co-op is ultimately the responsibility of the board of directors. Although the board may delegate the management of the co-op, the board still retains ultimate responsibility.

Section 5.14. Adjournment of Meetings

Code Section 12351(a)(4) permits adjournment of a meeting of the board of directors to another time and place, unless the articles of incorporation or bylaws provide otherwise.

Section 5.15. Action without Meeting

Code Section 12351(b) permits board of directors’ actions without a meeting.

Section 5.16. Executive Committees

Code Section 12352 provides for the establishment of committees with the authority of the board of

directors, with the exceptions as listed. Such committees may be established in the bylaws or by board resolution. The bylaws, however, may restrict the use of such committees (under Subsection (c) of Code Section 12352). See also Code Section 12331(c)(4) related to committee makeup and authority.

Section 5.17. Resignation of Directors

Code Section 12364(c) provides the right of resignation to all directors in language very similar to this provision of the sample bylaws.

Section 5.18. Removal of Directors

Where a cooperative has fewer than fifty members, Code Section 12362(a)(1) requires that the majority of all members (not just the majority of a quorum) must approve removal.

Section 5.19. Cause of Vacancies on Board

Code Section 12363 also provides that directors and members can sue in court to remove directors for fraudulent or dishonest acts or for gross abuse of authority or discretion.

Section 5.20. Declaration of Vacancies

Code Section 12361 allows the board of directors to declare vacancies for the reasons stated in this sample bylaws provision. Any specified number of missed meetings should probably take into account how often the board of a particular cooperative will meet.

Section 5.21. Filling Vacancies on Board

Code Section 12364(a) allows the articles of incorporation or bylaws to vary this provision, although members may elect a director for any vacancy not filled by the directors.

Section 6.01. Titles

Code Section 12353(a) requires that a cooperative have officers, including a chairman of the board and/or a president, a secretary, and a chief financial officer, and that the titles and duties of the officers must be stated in the bylaws or determined by the board of directors. “Chief financial officer” is now generally used throughout the entire California Corporations Code in place of the term “treasurer.”

Unless the articles of incorporation or bylaws provide otherwise, any number of offices may be held by the same person, although the chairman of the board *or* the president must be directors elected by the members.

Section 6.02. Appointment and Resignation

Code Section 12353(b) provides that the manner in which officers are chosen and their terms may be specified in the articles of incorporation or the bylaws (preferably the latter). Typically, officers are appointed by the board of directors. Officers are often more likely to be employees of a cooperative rather than directors. Officers’ duties tend to be more “operational” than the more policy-oriented nature of board actions.

Section 7.01. Required Records

Code Section 12590 requires that membership records (including names, addresses, and each member’s class and number of membership units) as well as adequate and accurate accounting records be maintained (either in writing or some other format that is capable of being converted to written form). It also requires written “minutes” of all member, board, and board committee meetings.

Section 7.02. Annual Report

Code Section 12591 provides that the “annual report” is not required for a cooperative having fewer than twenty-six members at all times during the fiscal year covered by the report. This sample bylaws provision is included to alert co-ops of the requirements of co-op law. Please note that the “statement of changes in financial position” is now a “statement of cash flows”; the statutory language has not yet been amended to conform to changes in accounting principles.

An income statement shows the income and expenses for whatever period (e.g., a twelve-month period) is being reported upon, while the related balance sheet shows the assets, liabilities, and members’ equity as of the end of the last day of the period covered by the income statement. The statement of cash flows, the other required financial statement, shows how cash was generated and used in the operating, financial, and investing activities of the co-op.

Section 7.03. Annual Statement of Transactions and Indemnifications

Code Section 12592 provides that the “annual report” must include information regarding transactions with, and indemnification of, “interested persons” (e.g., directors and officers).

Section 8.01. Articles and Bylaws

Code Section 12340 requires the availability of the articles of incorporation and bylaws, as described in this sample bylaws provision.

Section 8.02. Books and Records

This sample bylaws provision is taken almost verbatim from Code Section 12603.

Section 8.03. Inspection of Membership List

Code Section 12600 delineates the rights of a member regarding the membership list of a cooperative, and this sample bylaws provision incorporates its mandates.

Section 9.01. Fiscal Year

Although any fiscal year not exceeding twelve months (except in the case of the 52/53-week option) may be adopted by a cooperative, certain factors should be taken into consideration in choosing the fiscal year. First, if a 52/53-week fiscal year is to be adopted, the co-op should consult a tax accountant or attorney regarding the tax rules surrounding such an alternative. Second, the fiscal year preferably should end on (or, in the case of a 52/53-week year, about) the last day of some calendar quarter (i.e., March 31, June 30, September 30, or December 31). Such a date should be (1) the one in which any “inventory” to be counted will be at a relatively low point or (2) the *last* of the four dates that fall within twelve months of the date of incorporation, or (3) the end of the calendar year. Tax rules require that any inventories (for resale) be physically counted at reasonable intervals. Although a retail or wholesale co-op would probably want to count inventory more often, the inventory should be counted on or very near the last day of the fiscal year (for both accounting and tax reasons).

Section 9.02. Surplus and Patronage Defined

“Surplus” is defined in order to determine what amount is available for any dividends and patronage refunds at the end of the fiscal year. The surplus is generally determined in accordance with “generally accepted accounting principles,” which imply the “accrual” (rather than the “cash”) basis of accounting. Code Section 12591(a) at least implies that accrual basis statements are required, because of both the titles and types of financial statements required in the “annual report.”

“Patronage” should be defined as whatever activity the members are engaged in with their cooperative (e.g., workers as employees, consumers as purchasers). Tax-deductible patronage refunds (distributed from the surplus) are based on the relative patronage of each member to all members of the cooperative.

Section 9.03. Allocations and Distributions of Surplus

Please note that the following “subsections” correlate to the subsections of this sample bylaws provision.

- (a) To help restore working capital following “loss” years, a cooperative should retain any current surplus needed to eliminate any “deficit” (i.e., the accumulated total net losses and distributions of dividends and patronage refunds) in “retained earnings” (i.e., assets less liabilities and contributed capital).
- (b) Unless a cooperative prohibits the distribution of dividends or shares, the board of directors may declare a dividend of up to fifteen percent of the value of the co-op’s shares (Code Section 12451), assuming a surplus is available after the elimination of any deficit and that share redemptions are based upon original amounts paid or allocated. If a co-op wishes to encourage members to invest in the co-op, dividends should be an option. Even if a surplus is available and dividends are not prohibited, the board must still determine the amount, if any, of dividends to be paid.
- (c) Code Section 12201 provides for the distribution of patronage refunds. *The third word of the sample bylaws Subsection (c), is all-important* (see p. 59). For patronage refunds to be tax-deductible, tax law requires that the bylaws, articles of incorporation, or some other document *mandate* in advance that the cooperative distribute patronage refunds. (See Internal Revenue Code Section 1388(a)(2) and Treasury Regulations Section 1.1388-1(a)(1).) A smaller consumer co-op, for example, probably will not want to be initially obligated to pay patronage refunds because the related administrative costs could very well be much greater than any tax savings generated by mandatory refunds.

The Internal Revenue Code becomes all-important in structuring a cooperative’s patronage refunds. Only “patronage-sourced” income may be distributed as tax-deductible patronage refunds, as such income is defined in Section 1388(a)(3) of the Internal Revenue Code, Treasury Regulations Section 1.1388-1(a), and various interpretations by the Internal Revenue Service and the courts. Also, the “ordinary income” portion of the gain from the disposition of a co-op’s equipment must generally be distributed in accordance with the patronage of those persons who were members during the year when depreciation deductions were taken by the co-op. (See IRS Revenue Ruling 74-84.) Because such a distribution would be very burdensome for a co-op with a relatively large number of members, however, this sample bylaws subsection excludes such a distribution. (See Treasury Regulations Section 1.1382-3(c)(3).)

Tax-deductible patronage refunds must also be paid to members on the basis of the volume of business done with each member (Internal Revenue Code Section 1388(a)(1), (3); Treasury Regulations Section 1.1388-1(a)(i),(ii)) and determined by reference to the patronage-based “net earnings” of the cooperative (Internal Revenue Code Section 1388(a)(3); Treasury Regulations Section 1.1388-1(a)(1)(iii)).

This subsection of the sample bylaws does not obligate a cooperative to distribute patronage refunds, and the co-op may wish to delete this subsection and Subsections (g) and (h), and revise Subsections (d) through (f) to delete references to refunds if the co-op does not want to obligate itself to distribute refunds. If tax-deductible refunds are desired, however, the word “may” *must* be changed to “shall,” and professional assistance should be retained to ensure that all other requirements are met to ensure the tax-deductibility of the refunds. (See Internal Revenue Code Sections 1381–1388 and the related Treasury Regulations.)

For tax years beginning after October 22, 2004, a co-op is no longer required to reduce the amount available for tax-deductible patronage refunds by the amount of dividends on shares, assuming that the bylaws or articles of incorporation do not provide otherwise.

- (d) Additional shares or debt may be issued to members for the purpose of distributing dividends and refunds. Shares should be used, however, for the cooperative to be able to later take advantage of the co-op exemption related to unclaimed member *equity* interests. (See chapter 13 of this publication.) At least twenty percent of any refunds must be distributed in *cash* within eight and one-half months following the close of the fiscal year, however, in order for the entire refund amount (i.e., the noncash and cash portion) to be tax-deductible (Internal Revenue Code Sections 1382(d) and 1388(c)(1)). Please note that the option of distributing “nonqualified” refunds is outside the scope of this discussion; such refunds are deductible only as cash is actually distributed.
- (e) By paying *all* dividends and refunds in cash to members already owning at least three hundred dollars in shares, this bylaw subsection provides an incentive for members to invest in the cooperative. If the co-op wishes to take advantage of California’s co-op equity exemption from securities “qualification” (Code Section 25100(r)), this bylaw subsection helps ensure that no member owns more than three hundred dollars in shares after any given distribution. Normally, the amount set here would be the same amount as set by the board of directors pursuant to Section 2.05 of these sample bylaws.
- (f) This bylaw subsection allows a cooperative to avoid costs associated with writing checks for amounts of less than one dollar. Although a larger amount might be chosen, professional advice should be sought to ensure that any larger amount would not jeopardize the tax-deductibility of any patronage refunds (since at least twenty percent of tax-deductible refunds need to be distributed in cash).
- (g) For any cooperative distributing tax-deductible patronage refunds, this subsection is necessary (Internal Revenue Code Section 1385(b)). All or some members of some co-ops will have to pay income taxes on the refunds, while few if any members would be taxed in others. On the other hand, any and all *dividends* on capital contributions (e.g., shares) are taxable. The nature of the particular co-op will generally determine whether members will be taxed or not (i.e., whether “patronage” is of a business *or* of a personal nature).
- (h) This provision serves notice that the cooperative may determine, allocate, and distribute its surplus on an organization-wide basis unless the board of directors resolves otherwise. Using an organization-wide basis usually simplifies the accounting, allocation, and distribution procedures related to any surplus.

Section 10.01. Bylaw Changes by the Board

A cooperative may place more restrictions on, or even eliminate, the power of the board of directors to make bylaw changes. See Code Sections 12330, 12331(b), 12360(a)(d), and 12364(a) for more

detailed and specific information regarding bylaw changes and restrictions upon the board related to such changes.

Section 10.02. Bylaw Changes by the Members

Where the board of directors is denied the right to adopt, amend, or repeal the bylaws pursuant to Subsections (a) through (h) of Section 10.01 of these sample bylaws, the bylaws are to be adopted, amended, or repealed *only* by approval of the members. Please note that Sections 10.01 and 10.02 of these sample bylaws do *not* provide for changes by “others” other than the board or members. (See Section C(4) of this chapter for more information.)

Chapter 6. MEMBER-RELATED DOCUMENTS

A. MEMBERSHIP AND SHARE CERTIFICATES

1. In General

Under the California Consumer Cooperative Corporation Law, a cooperative may, but is not required to, issue membership or share “certificates.”¹ A membership or share certificate is a document describing an ownership interest in the co-op.² If certificates are issued, they must provide the same information required in the “disclosure document” described below.³ Of course, it is probably to the co-op’s advantage to *not* issue a membership or share certificate each time it issues one or more shares to a member; the co-op may simply issue a single disclosure document instead (in addition to the required “receipt”; see below).

2. Effect of Bylaw and Article Amendments⁴

If the bylaws or articles of incorporation are amended so that any information required on the membership or share certificate is no longer accurate, the board of directors may cancel the outstanding certificates and substitute new certificates in conformity with the amended articles or bylaws.

When new certificates are issued due to article or bylaw changes, the board of directors may order current certificate holders to surrender or exchange the old certificates for the new ones within some reasonable time period fixed by the board. The board may also mandate that a holder of the old certificate will not be entitled to exercise any membership rights until the certificate is surrendered. The suspension of rights, however, may occur only after notice of the surrender order is given to the holder.

If a cooperative does not issue new certificates as described above and if a member who has been transferred a membership (or share) certificate by another member was not provided with a disclosure document that was accurate as of the date of transfer, the co-op must provide a disclosure document to the member to whom the certificate was transferred. (The disclosure document is discussed in more detail later in this chapter; a sample document is also provided.)

3. Required Certificate, Receipt, or Written Advice

The cooperative must issue a membership or share certificate, receipt, or written advice of purchase to anyone purchasing his or her first membership or share of any class.⁵ This requirement implies that a member may purchase more than one membership of any one class and, thus, strongly implies that “memberships” are equated with “shares” under co-op law.

4. Replacement Certificates⁶

A cooperative may issue a new membership or share certificate to replace one that has been lost, stolen, or destroyed. The co-op may require the member whose certificate is missing to give the co-op a bond (or other sufficient security) to reimburse the co-op for the costs of any problems related to missing or replacement certificates.

5. Disclosure Document

a. Required Contents

Whether or not a cooperative issues membership or share certificates, it must provide each new member with a “disclosure document” before membership becomes effective.⁷ The disclosure document may be in the form of a prospectus, offering, circular, brochure, specimen copy of membership certificate, or receipt.⁸ In any format, however, the document *must* contain the following information:⁹

- (1) a statement that the organization is a cooperative corporation;
- (2) a statement that a copy of the articles of incorporation and bylaws must be furnished to each member or potential member upon written request; the co-op’s office address, and the address where the request should be directed;
- (3) any restrictions imposed upon the transfer of memberships (or, implicitly, shares);
- (4) any dues, assessments, membership fees, or transfer fees and the conditions under which they may be imposed;
- (5) the amount and nature of any required contributions of services to the co-op;
- (6) whether and under what circumstances a membership (or share) is redeemable at the option of the member or the co-op; and
- (7) the rules by which the voting power and proprietary rights are determined if the voting power or proprietary rights of members are unequal.

Instead of detailing items (3) through (7) above, the disclosure document may state that the information will be provided free to a member or potential member upon her or his written request.¹⁰ The disclosure document must then also provide the cooperative’s office address and the address to which the request must be sent.¹¹

b. Subsequent Membership Purchases

A disclosure document is not required to be provided to an existing member prior to the purchase of *additional* memberships (or shares) if the member has previously been provided with a disclosure document that is accurate as of the date that the additional memberships (or shares) are purchased.¹²

B. SAMPLE MEMBERSHIP DISCLOSURE DOCUMENT

Legal sources and comment related to this sample form are found at the end of this chapter. NOTE: The following sample conforms to the sample articles of incorporation and sample bylaws of this *Sourcebook*.

MEMBERSHIP DISCLOSURE DOCUMENT FOR [NAME OF COOPERATIVE]

1. Cooperative Status

_____ is a cooperative corporation organized under the Consumer Cooperative Corporation Law of California.

2. Copy of Articles and Bylaws

A copy of the Corporation's Articles of Incorporation and its Bylaws will be furnished without charge to each member upon written request. Requests should be sent to [address], the Corporation's office address.

3. Assignment or Transfer

No share or membership of this Corporation may be assigned or transferred. Any attempted assignment or transfer shall be wholly void and shall confer no rights on the intended assignee or transferee. (See Bylaw Sections 1.05 and 2.04.)

4. Membership Fee

A one-time nonrefundable membership fee, in an amount set from time to time by the Board of Directors, may be charged to and collected from each member upon joining the Corporation. (See Bylaw Section 1.06.)

5. Partial Withdrawal of Shares

A member having a monetary amount in his or her share account in excess of a monetary amount to be determined from time to time by the Board of Directors may cause the Corporation to purchase his or her excess share amount upon written request to the Board. Subject to Section 2.06 of these Bylaws, the Board must, within one (1) year of such request, pay the amount the member requests in cash or other property or both. The exact form of payment is within the discretion of the Board (Bylaw Section 2.05).

6. Termination of Membership

Sections 3.01 through 3.04 of the Bylaws of the Corporation provide as follows:

Section 3.01. Voluntary Withdrawal

A member shall have the right to resign from the Corporation and terminate his or her membership by filing with the Secretary of the Corporation a written notice of resignation.

The resignation shall become effective immediately without any action on the part of the Corporation.

Section 3.02. Death or Dissolution

A membership shall immediately terminate upon the death of a member or the dissolution of a member that is an organization.

Section 3.03. Expulsion

- (a) A member may, for failure to comply with the Bylaws, rules, or regulations of the Corporation, for failure to patronize the Corporation during the immediately preceding fiscal year of the Corporation in the amount of at least ____ dollars (\$____.__), or for any other justifiable reason, be expelled from the Corporation by resolution adopted by a two-thirds (2/3) vote of all the members of the Board of Directors. Expulsion shall become effective immediately unless the Board shall, in the resolution, fix another time. On expulsion, the name of the member expelled shall be stricken from the membership register and all of his or her rights shall cease except as provided in Section 3.04 of these Bylaws.
- (b) Prior to expulsion of a member, the Board of Directors shall give such member at least fifteen (15) days' notice prior thereto and the reasons therefor. Such member shall have the opportunity to be heard, orally or in writing, not less than five (5) days before the effective date of expulsion by the Board.
- (c) The notice required pursuant to Subsection (h) of this section of these Bylaws may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last known address of the member shown on the Corporation's records.

Section 3.04. Settlement of Share Interest

If a membership is terminated for any reason set forth in this Article of the Bylaws, the share interest held by the member shall be purchased by the Corporation, subject to Section 2.06 of these Bylaws within one (1) year of the date of termination to the extent of the paid-up value of the member's shares on such date. The Board of Directors, in so settling the member's share interest, shall have the right to set off any and all indebtedness of the member to the Corporation. The paid-up value of the member's share interest is the monetary amount of such interest (including fractional shares) that the member has been issued in accordance with Section 2.01 of these Bylaws.

7. Member's Proprietary Interest

A member's proprietary interest in the Corporation is equal to the unredeemed (1) total of money received by the Corporation in exchange for all shares purchased by such member, and (2) the monetary amount of any shares allocated to a member by the Corporation. (See Article 4 of the Articles of Incorporation and Bylaw Sections 2.01, 2.02, 2.05, 3.04, and 9.03.) A member or former member's proprietary interest does not include amounts transferred to the Corporation pursuant to Section 2.07 of the Bylaws (related to "unclaimed" equity interests).

C. LEGAL SOURCES AND COMMENTS

A cooperative must give each prospective member a copy of a “disclosure document” whether or not it issues share or membership “certificates” (California Corporations Code Section 12401(a),(b)). A receipt, certificate, or written advice or purchase must also be given to a member upon his or her first purchase of a membership of any “class.” (California Corporations Code Section 12401(e).)

If the articles of incorporation or bylaws are amended in any way that affects the accuracy of the information in the disclosure document, both existing and prospective members must be given an updated document. (Code Section 12401(e).)

The sample Membership Disclosure Document contains the information required by law for a cooperative using the sample articles of incorporation and sample bylaws provided in this *Sourcebook*. Variations from the sample articles or bylaws may require changes in the sample membership disclosure document. Legal sources for the specific provisions of the sample membership disclosure document are as follows (“Code Section” refers to the California Corporations Code):

1. *Cooperative Status*

Code Section 12401(b)(1).

2. *Copy of Articles and Bylaws*

The address of both the co-op’s office and the place where a request for a copy of the articles of incorporation and bylaws should be sent (if different) should be inserted. (Code Section 12401(b)(2)).

3. *Assignment or Transfer*

Code Section 12401(b)(3).

4. *Membership Fee*

Code Section 12401(b)(4).

5. *Partial Withdrawal of Shares*

Code Section 12401(b)(6).

6. *Termination of Membership*

Code Section 12401(b)(6).

7. *Member’s Proprietary Interest*

Code Section 12401(b)(7).
