



## Bylaws and Operating Agreements A Guide for Worker Cooperatives

After working with professionals to determine which entity type is right for your worker cooperative, the next step is to work with professionals to develop your governing documents. Bylaws and operating agreements should include high-level information about the governance of the organization. They clarify and codify the democratic governance and ownership of your cooperative, help provide a structure through which the cooperative can grow, and provide a last resort for conflict resolution if relationships break down. In general, a company's bylaws or operating agreement should cover the following issues:

### Corporation (bylaws)

- Responsibilities of the directors and officers
- The number or range of numbers of directors
- The manner of calling meetings of the stockholders and directors (including the required notice)
- The maintenance of corporate records
- The issuance of reports to stockholders
- Voting and proxy procedures
- The regulation of the transfer of stock and other general corporate matters

### LLC (operating agreement)

- Percentage of members' ownership
- Voting rights and responsibilities
- Powers and duties of members and managers
- Distribution of profits and losses
- Holding meetings
- Buyout and buy-sell rules (procedures for transferring interest when members chose or in the event of a death)

The governing documents for a worker cooperative are structured differently from that of a conventional company, so it is best to work both with cooperative developers and lawyers who are familiar with the form. These documents codify your organization's democratic values and practices. Some of worker cooperative specific issues addressed by governing documents include:

- **Membership:** member eligibility, admission, removal
- **Capital:** internal capital accounts, distributions, patronage definition, guidelines for amount of retained earnings
- **Board of directors:** election process, representation of members
- **Investment:** initial contributions of members, outside investment (if any)
- **Dissolution:** demutualization disincentives, asset distribution

To prepare, you should consider these and other cooperative principles and practices your governing document may address. This resource, [Questions to Consider before Talking to a Lawyer](#), lays out many of the decisions the founding members will need to make when developing their governing documents. It can help you to put your bylaws or operating agreement into plain language before meeting with professionals.

The document should not include policies related to its day-to-day operation, such as dress code or



other information that would typically be in an employee handbook. However, it is also important to be comprehensive to ensure that the organization is run in accordance with the values of its founding members. At some worker cooperatives, for example, the democratic management of the company should be codified in the governance documents. At others, management can be fluid and adapt to the style and preferences of current leaders. They should explicitly allow for the creation of other policies by the board and the membership in order to more clearly govern the cooperative.

Be aware of your state's default provisions in the corporate or LLC statute. Default provisions fill in gaps where the governing documents are silent, and can have unintended consequences.

## Sample Bylaws and Operating Agreements

The sample bylaws and operating agreements described below can be found at [this link](#). They are intended as a starting point for developing cooperative governing documents. However, these resources are in no way intended to be legal advice. As with any legal decision, it is important to consult with a lawyer.

### Cooperative Corporation:

- For California, these sample bylaws prepared by the Green Collar Communities Clinic (GC3) of the East Bay Community Law Center (EBCLC) and by the Sustainable Economies Law Center (SELC) based on Bylaws created by Tim Huet of Arizmendi Association of Cooperatives and adapted by Jenny Kassin of Cutting Edge Counsel) can serve as a starting point. They include a provision for a modified consensus-based decision making which may or may not be relevant to your organization.
- For other states, the ICA Group Model Bylaws for either one or multiple classes of stock can be used as a starting point.

### C Corporation:

- C corporations can have more than one class of stock. The ICA Group Model Bylaws for either one or multiple classes of stock can be used as a starting point.

### S Corporation:

- S corporations can only have class of stock. The ICA Group Model Bylaws for one class of shares can serve as a starting point.

### LLC:

- As a default, LLCs are taxed as partnerships and cannot have retained earnings that are not allocated to members' accounts, which may limit the company's growth. To maintain the benefits of this model while also allowing for retained earnings, the Democracy at Work Institute worked with David Smathers Moore of Teamworks Cooperatives, Inc. to develop an operating agreement template for an LLC with a permanent capital member. This agreement can also be modified to remove references to the permanent capital member for a straightforward LLC-taxed-as-a-partnership template.
- LLCs can also be taxed as a corporation. The Democracy at Work Institute worked with counsel to develop this sample operating agreement, which modifies the ICA Group Model Bylaws to be suitable for an LLC.

DISCLAIMER: This resource is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.