

The Cooperatives Act – All About By-laws

Pursuant to subsection 10(2) of the *Cooperatives Act*, SNB 2019, c. 24, and set out in RULE COOP-001 *General*, the by-laws of a cooperative must include provisions dealing with the following matters:

- (a) the name of the cooperative and the address of its registered office;
- (b) the date of its fiscal year end;
- (c) for the purposes of paragraph 6(1)(d) of the *Act*, the maximum interest rate on any membership loan;
- (d) for the purposes of paragraph 6(1)(e) of the *Act*, the maximum dividend rate on any membership share;
- (e) for the purposes of subsection 13(3) of the *Act*, the restrictions on the cooperative's powers to borrow and to secure the payment of money;
- (f) for the purposes of paragraph 21(1)(a) of the *Act*, the method for a person to apply for membership in the cooperative;
- (g) for the purposes of paragraph 21(1)(b) of the *Act*, the criteria that a person must satisfy for approval as a member of the cooperative, including:
 - i) if the cooperative has membership share capital, the minimum number of membership shares for which a member must subscribe, including any minimum amount required to be paid on account of the subscription price of the shares and terms of payment for those shares, and, if any, the maximum number of shares, or the maximum percentage of the issued and outstanding shares, that any one member may own,
 - ii) if the cooperative requires membership loans from its members as a condition of membership or of continuing membership, the amount of the membership loan a member has to provide, the terms and conditions of the membership loan, including any minimum amount on account of a membership loan, and
 - iii) the amount of any annual or other periodic membership fee a member must pay;
- (h) for the purposes of subsection 50(8) of the *Act*, the number of members or the percentage of the total number of members required to form a quorum at meetings of the members;

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- (i) the notice required for annual and special meetings of members and meetings of investment shareholders;
- (j) the procedure to request a special meeting of members;
- (k) the manner in which a member may withdraw from the cooperative;
- (l) the process or procedures for the elections of directors;
- (m) the method of filling any vacancy on the board of directors;
- (n) the method of disposition of part of the surplus in proportion to the business done with members and with non-members; and
- (o) for the purposes of subsection 165(1) of the *Act*, the method of delivery of notices and documents.

Continuous housing cooperatives

Pursuant to section 116 of *the Act*, and set out in RULE COOP-001 *General*, the by-laws of a continuing housing cooperative must also include provisions dealing with the following matters:

- (a) obligations of a member to pay housing charges of the cooperative;
- (b) the manner in which housing charges are to be determined;
- (c) the establishment of occupancy requirements of a housing unit of the cooperative; and
- (d) the establishment of approval requirements of a budget of the cooperative.

Pursuant to section 117 and subsection 118(2) of the *Act*, a continuous housing cooperative may also wish to have by-laws that:

- (a) provide that a member may make a request that the termination of his or her membership be considered at the next special or annual meeting of members of the cooperative only within seven days after receiving the notice of termination.
- (b) include provisions allowing it to remove and store or dispose of personal property of a member or former member that is left in a housing unit of the cooperative after the member or former member ceases to occupy the housing unit without having made arrangements satisfactory to the cooperative for the prompt removal of the property.

Worker cooperatives

Pursuant to section 124 of the Act, and set out in RULE COOP-001 *General*, the by-laws of a worker cooperative must also include provisions dealing with the following matters:

- (a) the conditions of membership in the cooperative;
- (b) the minimum percentage of permanent employees who are required to be members of the cooperative;
- (c) any probationary periods for members of the cooperative; and
- (d) the allocation of sub-contractual work to non-members.

If cooperatives wish to permit any of the following below items, they must include provisions to do so in their by-laws.

- (a) Allow members to participate and vote in a meeting of the members by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the cooperative makes available such a communication facility.
- (b) Allow a director of the cooperative to participate and vote in a meeting of the directors of the cooperative by means of a telephonic, electronic or other communication facility if the facility permits all persons participating in the meeting to communicate adequately with each other during the meeting, if the cooperative makes available such a communication facility.
- (c) Allow members to vote on dividends and or patronage returns as proposed by the board of directors.
- (d) Allow voting by mail on any matter.
- (e) Limit the number of consecutive three-year terms that directors may serve to two terms instead of three terms.
- (f) Prohibit the delivery of electronic notices.
- (g) Provide for charges on investment shares as per subsection 38(3) of the Act.
- (h) Allocate and credit or pay, as a patronage return, part of the surplus referred to in subsection 45(1) of the Act to patrons of the cooperative who are not members at the same or lesser rate than allocated and credited or paid to members.

- (i) Permit the transfer of the membership shares of deceased members upon proof of death as per subsection 28(1) of the *Act*.
- (j) Allow a person under 19 years of age to be admitted to membership in a cooperative and be entitled to vote as per subsection 51(2) of the *Act*.
- (k) Allow joint memberships as per subsection 26(1) of the *Act*.
- (l) Allow up to one third of directors to be non-members as per section 63 of the *Act*.
- (m) Have classes of membership as per section 29 of the *Act*. This by-law must contain the different classes and the terms and conditions associated with each class membership.
- (n) Any restrictions on redemption of membership shares as per subsection 41(2) of the *Act*.
- (o) Establish an amount below which a patronage return is not payable to any person as per subsection 45(6) of the *Act*.
- (p) As per section 46 of the *Act*, provide that all, or any part that the board of directors determines, of the patronage return of each member in respect of each fiscal year be applied to the purchase for the member of membership shares or investment shares in the cooperative. The by-law shall provide for the giving of notice to each member of the number of membership shares or investment shares purchased, or to be purchased, for the member, the manner of issuance of the shares, the payment for the shares out of the patronage returns of members and, if applicable, the issuance and forwarding of certificates or statements to members representing the shares issued.
- (q) As per section 47 of the *Act*, provide that all, or any part that the board of directors determines, of the patronage return of each member in respect of each fiscal year be taken as a membership loan, on the terms and conditions set out in a by-law referred to in subsection 36(2). The by-law shall provide for the giving of notice to each member of the amount of the membership loan taken out using all or part of a member's patronage return and, if applicable, the issuance and forwarding of statements representing that amount to members.
- (r) As per subsection 51(4) of the *Act*, allow the election or appointment of delegates to represent classes of members, the members who have so elected or appointed those delegates shall not exercise the power of membership at any annual or special meeting while the election or appointment remains in force and any reference in this *Act* to members is, with respect to the exercise of that power, to be read as a reference to delegates.
- (s) Set out other times that the board of directors must present the financial statements to the members other than the annual meeting as per subsection 82(3) of the *Act*.

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Should any cooperative desire a provision other than what is provided in the Act or RULE COOP-001 General for any of the following, it must be included in the by-laws:

- (a) Dispute resolution as per section 11 of RULE COOP-001 *General*.
- (b) Withdrawing from membership as per section 22 of the *Act*.
- (c) Repurchase of membership shares by the cooperative as per section 42 of the *Act*.
- (d) The end date for the term of a director that filled a vacancy as per subsection 68(6) of the *Act*.
- (e) Whether they wish to prohibit or modify the rule that a resolution in writing signed by all the members entitled to vote on that resolution is as valid as if it had been passed at a meeting of those members as per section 51 of the RULE COOP-001 *General*.
- (f) Whether they wish to prohibit or modify the rule that a resolution in writing signed by all the investment shareholders entitled to vote on that resolution is as valid as if it had been passed at a meeting of those investment shareholders as per section 52 of the RULE COOP-001 *General*.
- (g) Delivery of a notice of a meeting of the board of directors as per section 58 of the RULE COOP-001 *General*.

In addition to any other by-laws authorized or required to be made under and subject to this *Act*, a cooperative may make by-laws respecting its internal organization and the conduct of its business.

Any information provided here is for educational and informational purposes only. FCNB considers this information reliable as of the time of posting; however, the *Cooperatives Act* should always be consulted for the most current information. It is the cooperative's responsibility to ensure that its by-laws meet its specific needs and are in compliance with the *Cooperatives Act* or any other applicable laws. If you are uncertain or confused about any aspect of preparing your by-laws, you may wish to seek legal advice.