

Bylaws & Incorporation

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Overview

- Benefits of Incorporation for Co-ops
- Pro's and Con's of different corporate forms
- Articles of Incorporation
- How to Draft Bylaws

Not Included

- How to get Tax Exemption
- Specific advice for your state
- AA batteries
- Actual Legal Advice – get your own attorney!

What is a Corporation?

- A legal entity defined by state laws.
- A number of people (or other entities) can share in the ownership.
- Shareholders/members can share ownership while limiting their individual financial liability.
- Bylaws define rights and responsibilities of members.
 - ! The Bylaws are an agreement among members that doesn't change as members come and go.

A Legal Entity

- Created by filing “Articles of Incorporation” with a state office
 - ! i.e. in MI: Dept. of Licensing and Regulatory Affairs
- Can enter into binding contracts with other entities
- Can own assets, employ employees, be party to legal actions
- Other legal rights generally afforded to persons
 - ! *Thanks, Citizens United...*

Articles of Incorporation

FILING FEE See Page 5 for filing fee
 OPTIONAL EXPEDITED SERVICE + \$25.00

DO NOT STAPLE

Sec. 185.05
Wis. Stats.

State of Wisconsin
Department of Financial Institutions
Division of Corporate and Consumer Services



ARTICLES OF INCORPORATION - COOPERATIVE

Executed by the undersigned for the purpose of forming a Wisconsin cooperative under Ch. 185 of the Wisconsin Statutes:

Article 1. Name of the cooperative:

(must include the term "cooperative" or an abbreviation thereof)

Article 2. Its term of existence shall be perpetual OR _____ (term in years).

Article 3. The cooperative is organized to engage in any lawful activity within the purposes for which a cooperative association may be organized under Chapter 185 of the Wisconsin Statutes.

Article 4. *(The cooperative must maintain either a principal office or a registered agent in Wisconsin. Select, mark (X) and complete the appropriate item)*

<p>A. <input type="checkbox"/> The address of the cooperative's principal office in Wisconsin is: <i>(Provide complete address, including street and number, city, county, state and ZIP code)</i></p> <p>_____</p>	OR	<p>B. <input type="checkbox"/> The name and address of the cooperative's registered agent in Wisconsin is: <i>(Provide complete address, including street and number, city, county, state and ZIP code)</i></p> <p>_____</p>
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Article 5. The number of directors constituting the board of directors shall be fixed by bylaw OR shall be _____ (number).

Article 6. The classes of members are all of a single class OR designated by the following classes:

Article 7. The cooperative is organized without capital stock OR with capital stock.

Article 8. (OPTIONAL) (See instructions)

The cooperative is authorized to issue _____ (number) shares of capital stock of the following description:

Number of Shares	Class	Par Value	Rights & Preferences

Article 9. Upon liquidation, the cooperative's assets shall be distributed on the following basis:

Article 10. *(Select, mark (X) and complete the appropriate item)*

<p>A. <input type="checkbox"/> These articles of incorporation may be amended to change the foregoing basis for distribution of assets upon liquidation of the cooperative.</p>	OR	<p>B. <input type="checkbox"/> Pursuant to sec. 185.033 of the Wisconsin Statutes, no changes may be made to the foregoing basis for distribution of assets upon liquidation of the cooperative.</p>
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Boards, Officers, Directors

- Board of Directors makes decisions for a corporation
- Officers can act on behalf of a corporation
- The limits of authority for Directors and Officers is defined in Bylaws and Policies.
- Directors and Officers are not liable for corporate debts or torts. (usually!)

Exceptions to Director Protection

- Negligence (Duty of Care)
 - ! in good faith,
 - ! in the best interest of the corporation
 - ! with the care that ordinarily prudent persons in a similar position would exercise in similar circumstances.
- Payroll and Sales Tax
- Fraud
- Direct Supervision (“Vicarious Liability”)
- Tort claims by the corporation/membership
- Directors & Officers Insurance

Specific Benefits for Housing Co-op

- Can have members sign enforceable lease/member agreements with the co-op
- Can put bills, utilities in the co-op's name. Individual members not liable.
- Protect the democratic rights of members
- Put property and mortgage in name of co-op

Why Not Incorporate?

- Loss of individual control
 - ! Project becomes a separate legal entity, subject to bylaws, director elections, etc.
- Corporate taxation (unless exempt)
 - ! Taxed on “profits”. Accounting matters.
 - ! Member patronage exemptions (Schedule T)
- Costs: filing fees, tax prep, record keeping
- “Owner-Occupied” Benefits
 - ! **Taxes** (property exemptions?, personal interest/tax deductions?)
 - ! Loan terms
 - ! Zoning/Licensing

Types of Corporations

- C-Corp / S-Corp
- Profit / Non-profit
- Stock / Non-Stock
- Membership / Directorship
- Cooperative
- B Corp
- LLC?

Pause For Questions



Bylaws!

- Define the financial and fiduciary relationships between members, directors, and officers.
- Define decision making processes:
 - ! Who, How, What
 - ! General Membership
 - ! Board
 - ! Semi-autonomous sub-groups (Houses)
- Define how to amend the bylaws.

Who Cares About Your Bylaws?

- State Courts
 - ! If there is a legal action about control of the co-op.
- The IRS & local tax agencies
 - ! If you apply for tax-exemption.
- Prospective Members
 - ! If they care about democracy.
- Lenders & Funders
 - ! To understand your structure
 - ! To verify that it really is a co-op

Key Parts of the Bylaws

- Membership
- Board of Directors
- Officers
- Member Equity/Patronage
- Financial Restrictions
- Amending the Bylaws

Membership

- Eligibility
- Process for Acceptance
- Rights & Responsibilities
- Process for Termination

Board of Directors

- Process for Election
- Terms of Office
- Process for Removal
- Meetings
 - ! Frequency, or authority to call
 - ! Notice of Meetings
 - ! Quorum
 - ! Voting Rules
- Restrictions on Powers

Officers

- Typically: President, Treasurer, Secretary
- Duties and Powers
- Election
- Term of Office
- Removal

Member Equity

- Amount Required
- Allowance for increases or decreases
- Process for pay-out

Financial Restrictions

- If not-for-profit, restrictions on:
 - ! Private gain
 - ! Sale of assets
- Disposition of assets when dissolving
- Specific rules for decisions on:
 - ! Purchasing real property
 - ! Taking on debt

Amending the Bylaws

- Who can amend
- Process for proposal and decision



What's Wrong With These Bylaws?

Highlight Reel

- Incorporation is necessary for giving a co-op an independent, legal existence.
- Incorporation protects individuals.
- Most housing co-ops use:
 - ! Nonprofit, membership, C-Corp
 - ! “cooperative”, if applicable
 - ! Equity \$0 or appreciation is limited.
- Bylaws are not too scary.