

# Cooperatives Act

This publication is intended to provide general information only and is not a substitute for legal advice

In Alberta, cooperatives are regulated by the *Cooperatives Act* and its related regulation.

## What's new?

In March 2021, Service Alberta amended legislation governing meeting requirements for organizations in Alberta, including the *Cooperatives Act*, to allow participation through electronic means, unless their bylaws state otherwise or prohibit electronic meetings.

These amendments also make changes regarding electronic meeting notices and votes. These changes expand access for members of organizations by clearly allowing such tasks remotely using digital technology. Additional details are available on Page 2 and 3 of this document.

Recent amendments allow virtual meetings and electronic voting for cooperative director, members and investment shareholders, unless the cooperative's bylaws expressly provide otherwise.

**Changes effective retroactively to August 15, 2020**

## What is a cooperative?

A cooperative is a business organization started by people who want to use services or buy goods as a group, have an equal say in how the business is operated and share in any profits the business makes.

Cooperatives are different from business corporations in that they are governed internally by seven international principles for such businesses:

- Voluntary and open membership
- Democratic member control

- Member economic participation
- Autonomy and independence
- Education, training and information
- Cooperation among cooperatives
- Concern for community

Alberta-based cooperatives must be incorporated and out-of-province cooperatives wanting to do business in Alberta must be registered under the *Cooperatives Act*. There is a \$100 filing fee in each case.

The *Cooperatives Act* does not apply to the Alberta Wheat Pool, United Farmers of Alberta and similar organizations registered under their own legislation in Alberta, as well as rural electrical, water and gas associations registered under the *Rural Utilities Act* and credit unions registered under the *Credit Union Act*.

## Highlights of the legislation

### Detailed Articles of Incorporation

Articles of Incorporation must be developed as part of the incorporation process. This document outlines the rules under which a cooperative is to operate. The legislation outlines what must be included in the articles.

### Bylaws

The *Cooperatives Act* and regulation identify what must be included in bylaws. Bylaws approved by the cooperative must be filed with the Director of Cooperatives.

### Members' rights

Members have access to financial reports and other information about how the cooperative operates. They have access to the board and can call

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meetings and present proposals to be discussed at these meetings. The legislation also identifies prohibited practices, several of which deal with directors' actions (e.g. adopting bylaws, record keeping, filing requirements and disclosing interest).

### **Membership provisions**

Cooperatives must set membership qualifications in their bylaws. The legislation specifies membership provisions regarding admission and withdrawal.

### **Board of director's roles and responsibilities**

The duties and responsibilities of the board of directors in a cooperative are outlined in the legislation. Under the legislation, cooperatives can indemnify their directors when they carry out their responsibilities in good faith.

### **Receivership and dissolution options**

The legislation provides the board with options for disposing of assets when cooperatives are dissolved. It also has provisions to assist cooperatives if they are placed into receivership by appointing a receiver or receiver manager to oversee the cooperative's operations.

### **Investment shares**

The *Cooperatives Act* gives cooperatives the ability to issue investment shares as an additional way of raising capital. However, if a cooperative issues investment shares, the legislation limits the number of directors that represent investment shareholders so the members will remain in control of the board of directors.

### **Insider trading**

The legislation prohibits directors, officers or members from profiting by trading investment shares based on insider information and imposes penalties for doing so.

### **Provisions for specific cooperatives**

The legislation meets the special needs of four specific types of cooperatives – housing,

employment, multi-stakeholder and new generation cooperatives.

## **Bylaws and electronic meetings**

The March 2021 amendments allow cooperatives to hold director, member or investment shareholder meetings electronically, unless the bylaws of the cooperative require in-person meetings or otherwise prohibit electronic meetings

Cooperatives have the ability to amend their bylaws to provide for specific forms of electronic attendance at meetings and carry out voting in a manner that reflects their particular circumstance.

For clarity, "electronic" is defined as attending or holding a meeting using a method of electronic or telephonic communication enabling all persons attending to hear and communicate with each other instantly. This includes teleconferencing and computer network-based or internet-based communication platforms.

The notice of the meeting must set out the date and time and the information required for electronic access to the meeting.

Unless the bylaws provide otherwise, meetings that are not held entirely by electronic means must be held at a location within Alberta as determined by the directors of the cooperative.

## **Electronic voting**

A means of voting must be provided if there are matters to be decided upon that require a vote.

Unless the bylaws provide otherwise, a person who is entitled to vote at a meeting and who attends the meeting by electronic means may vote electronically, by telephone or by another method made available by the cooperative.

The amendments do not mandate electronic voting, but gives cooperatives the ability to define, limit or prohibit electronic participation through bylaws.

Voting does not require an electronic voting component, unless the cooperative chooses to implement one.

Options for voting could include the use of a ballot vote, for example, that is emailed out to all eligible voters to decide on matters.

Cooperative voting held entirely by electronic, telephonic or other method must be made available to each person entitled to vote, permit the verification of the vote, and permit the tallied votes be presented to the cooperative without it being possible for the cooperative to identify how each person voted.

## Proxy voting

Members of a cooperative cannot vote by proxy. However, if the cooperative has a delegate system, these delegates can vote on behalf of the members who elected them.

Investment shareholders have the ability to vote directly or by proxy. A proxy holder or alternate may attend a meeting by electronic means or other method the cooperative has made available. Unless the proxy holder or alternate proxy holder has conflicting instructions from more than one investment shareholder, they may vote at a meeting in respect of any matter by a show of hands or if attending by electronic means, by any electronic, telephonic or other method that the cooperative has made available.

## Incorporating a cooperative

The *Cooperatives Act* requires the Director of Cooperatives to approve incorporation once a statutory declaration of intent is submitted with supporting documents. A minimum of three people are required to start a cooperative.

The document *Articles of Incorporation Requirements* identifies what must be included in the articles. A completed NUANS (Newly Upgraded Automated Name Search) report regarding the cooperative's chosen name must be submitted with

the incorporation documents. This report must be no more than 91 days old and must contain all six pages. In Alberta, private companies prepare NUANS reports.

Cooperatives don't have to prove their viability by submitting a feasibility study or business plan with their incorporation documents. However, it's in a cooperative's best interest to make sure it assesses its ability to succeed by preparing a business plan before incorporating.

Forms and instructions for incorporating or registering cooperatives are available from Service Alberta:

- Applying in Alberta:  
<https://www.alberta.ca/incorporate-alberta-based-cooperatives.aspx>
- Applying outside the province:  
<https://www.alberta.ca/incorporate-out-of-province-cooperative.aspx>

## Bylaws

Bylaw requirements do not apply to extra-provincial cooperatives registering under the *Cooperatives Act*. The bylaws in their own jurisdictions apply.

The legislation identifies what must be included in bylaws. The document *Bylaw Requirements* is available from Service Alberta.

Cooperatives do not have to submit bylaws at the same time they submit their incorporation documents. However, within 180 days after the Certificate of Incorporation is issued, the directors must hold a members meeting to make and approve the bylaws. The bylaws come into force on the day they are made or on any later date specified in the bylaws or in the resolution adopting them.

The bylaws must be filed with the Director of Cooperatives within 60 days of the date they come into force.

## Specific cooperatives

The *Cooperatives Act* identifies the following four specific types of cooperatives:

1. **New generation cooperatives** generally focus on producing, processing or marketing agricultural products or providing services to agricultural producers.

This type of cooperative is set apart from the traditional cooperative structure. New generation cooperatives generally require different share structures and may require different voting rights. For example, each member may have to make a significant investment by buying shares in the cooperative. Membership can be restricted to agricultural producers who buy delivery service rights. Members may be required to sign a contract with the cooperative that sets each member's delivery or service rights and obligations.

A new generation cooperative may issue three types of shares:

- Membership shares remain at their original value and carry the right to vote.
  - Designated shares are similar to common shares in a limited company. These shares carry activity rights and obligations, but do not carry voting rights. New generation cooperatives can also form contracts with designated shareholders to deliver or receive goods or services.
  - Investment shares are similar to fixed or preferred shares in a limited company. These shares are fixed in value and earn a specific rate of interest.
2. **Multi-stakeholder cooperatives** are formed by a variety of stakeholders such as customers, suppliers, government agencies or other interested parties to work together as equals to achieve a common goal. Multi-stakeholder cooperatives need provisions that balance the interests of its stakeholders (clients, employees, investors and community organizations), which may not be of equal size and influence, but each of which has only one vote.

3. **Employment or worker cooperatives** are usually established by a group of people starting up or buying a business to provide themselves jobs. Employment cooperatives need provisions that recognize the relationships among members, employees, employers and directors.
4. **Housing cooperatives** have specific provisions for terminating a membership and evicting a member. The legislation provides details on non-profit continuing housing cooperatives and non-profit home ownership cooperatives including special limitations, specific Articles of Incorporation requirements and bylaw requirements.

## For more information

Refer to the following documents available from Service Alberta:

- Articles of Incorporation Requirements
- Bylaw Requirements
- How to Incorporate an Alberta-Based Cooperative and Register an Out-of-Alberta Cooperative (forms and instructions)
- Required forms
- A summary of the *Cooperatives Act*
- A summary of the Cooperatives Regulation.

These documents are also posted on the Alberta.ca website:

<https://www.alberta.ca/incorporate-business-organization.aspx>

### Consumer Contact Centre:

Edmonton: 780-427-4088

Toll-free in Alberta: 1-877-427-4088

<https://www.alberta.ca/service-alberta.aspx>

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These are also free for you to download in the "pdf" or

"html" formats at <http://www.qp.alberta.ca>

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**Director of Cooperatives**

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