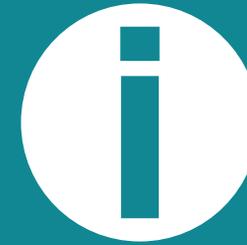


Making Fundamental Changes



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Introduction

It may be necessary for some co-operatives to make changes to their structure or operations after they are up and running. Some changes require filing paperwork with (or waiting for approval from) the Financial Services Commission of Ontario (FSCO). Many changes also require approval or confirmation of the members or shareholders of the co-op. Some changes do not require formal filing of material with FSCO and only require the membership to agree to a change in the bylaws.

Some changes that a co-op makes are voluntary, other times changes are forced upon the co-op by FSCO in response to a complaint or activities that are contrary to the Act.

Amending bylaws can allow the co-op to change things like:

- **Terms and election procedures for the board**
- **Description of officer positions**
- **Role and responsibilities of the executive committee and board of directors**
- **Definitions and responsibilities of special committees that the co-op might use**
- **How disputes are settled**
- **Classes and conditions of membership**
- **How the bylaws can be amended**

Changing Bylaws vs. Changing Articles

All co-operatives have Articles of Incorporation that provide prescribed information about the co-op and how it is structured. Bylaws are detailed rules and regulations that co-ops enact to indicate how the co-op will operate and govern itself. Co-ops are not required under the Act to have bylaws, but the Act does allow the directors of a co-op to pass bylaws that regulate the business and affairs of the co-op.

Amending the Articles requires confirmation from the members and the filing of a fee and Articles of Amendment with FSCO. Amending bylaws is done internally by the membership and no external approval is required.

- There are over 1,300 co-operatives, credit unions and caisse populaires incorporated and operating in Ontario, with 1,900 locations in 400 communities.
- In 2012 alone, 73 new co-ops incorporated in Ontario.
- Housing is Ontario's largest co-op sector (45%), followed by Financial Services (17%), Child care (17%) and Agriculture (6%).
- The co-operative sector in Ontario represents a very conservative \$30 billion in assets (2007).

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Changing Bylaws

In order to pass or change bylaws for a co-op, the board of directors must pass a motion enacting or changing the bylaw(s), and then the members must also vote to confirm them at a general members meeting, with two-thirds of the members voting to confirm the bylaw(s).

How Does a Co-op Change Bylaws?

In order to change the bylaws, the board must discuss and approve the necessary changes, deletions or additions to the bylaws and then present them to the membership for approval. This can be done at the Annual General Meeting of the co-op, or at a general members meeting that has been called to allow the members to conduct business.

Changing Articles

In the case of other changes that a co-op wishes to make, the special resolution is not the only action required by the co-op. The co-op will also have to amend its Articles. A co-op has to amend its Articles if it wants to:

- Change its name
- Extend, limit or change its objectives (the reason it exists)
- Increase its authorized capital or decrease its authorized capital by

cancelling shares or by reducing the value of shares (either issued or unissued)

- Increase or decrease the membership fee
- Increase or decrease the amount of member loans
- Redivide its authorized capital into shares of lesser or greater par value
- Redesignate any class of share or reclassify any shares into shares of a different class
- Delete or change any provision in the articles
- Add anything to the articles that this Act allows the co-op to define in its articles (this could include a variety of items — there are places throughout the Act that make reference to defining things in the articles like number of directors, notice periods, etc. — these items can be added into the articles at any time after incorporation)
- Convert a co-op with share capital into one without share capital or vice-versa
- Convert a co-op into a corporation that the *Business Corporations Act* applies to (in effect a private company)
- Convert a co-op into a corporation that Part III of the *Corporations Act* applies to (in effect, a corporation without share capital, commonly referred to as a not-for-profit, or NFP, organization).

All of these amendments can only be made once the co-op membership agrees to do so through a “special resolution.” A special resolution is a motion that is first passed by the board of directors of a co-op and then confirmed by two-thirds of the membership that is present at a members meeting.

In the event that a co-op wants to change its corporate form (the last three cases outlined in the list above), additional authorization is required besides the special resolution.

- For a co-op with share capital being converted to one without (or vice-versa) there is additional authorization that must be met before the change is effective: at least 60% of the members must also confirm the amendment in writing.
- The same rule applies to co-ops being converted to a corporation that the *Business Corporations Act* or Part III of the *Corporations Act* applies to — even if the special resolution has passed, at least 60% of the members have to confirm the amendment in writing before it becomes effective.
- If the amendment will change or delete the conditions and details associated with a class of preference shares, or will create a new class of preference shares that is equal or superior in rank to an existing class of shares, then at least two-thirds of the shareholders being affected have to confirm the amendment to the articles.

- **Three recent studies demonstrate that co-operative enterprises have significantly higher survival rates than other business corporations. In fact, a co-operative is twice as likely to be in operation after 10 years.**
- **Ontario co-ops employ and provide benefits to 15,500 people (greater than the total number of Ontarians employed in production of goods).**
- **1.4 million Ontarians are members of a co-operative, credit union or caisse populaire (more than 10% of the population).**

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How Do You Change the Articles?

Once the special resolution has been passed, the actual amendments have to be brought into effect through the filing of some paperwork with the Minister via the Financial Services Commission of Ontario (FSCO). There is also a fee associated with the submission of Articles of Amendment. Under the Act, FSCO will provide forms for co-ops to use to file Articles of Amendment. When a co-op files this information, it must include:

1. The name of the co-op;
2. A certified copy of the resolution (signed and authorized), including the date that it was confirmed by the membership; and
3. Information that indicates that the amendment has been properly authorized by the directors and members and that any additional authorization that is required has been obtained.

Sometimes the co-op will have to submit additional documentation along with the Articles of Amendment that proves that it is not insolvent. This is required for co-ops that are proposing a name change or a decrease in the authorized capital to prove to the Minister that the co-op does not wish to change its name or otherwise alter itself to avoid bankruptcy.

Once all the required information has been submitted to FSCO in duplicate, it is reviewed. If it conforms to the Act,

the Minister will issue a Certificate of Amendment, which is effective on the date shown on the certificate. The Minister will then endorse and sign each copy of the articles, file one copy in the Minister's office and provide the other to the co-op along with the Certificate of Amendment.

Merging Two or More Co-ops

Another type of fundamental change that a co-op might experience is the merger of one co-op with one or multiple other co-ops — called an amalgamation in the Act.

It is possible for a co-op to merge with another co-op to form a new co-operative. The Act outlines the required steps and administration required to formally merge, or amalgamate, and begin operating as one co-operative.

The co-ops that are merging must enter into an agreement with each other that outlines the terms and conditions of their amalgamation, and how it will be carried out. The Act dictates that there are specific details about the amalgamated co-op that must be outlined in the agreement. Each of the co-ops that will be involved in the amalgamation must also agree to the amalgamation through the passing of a special resolution. Once the amalgamation has been approved by the co-ops involved, the agreement is provided to FSCO along

with Articles of Amalgamation that outline how the new merged co-op will operate.

Transferring a Co-operative

It is possible for a co-op to 'transfer' itself to another jurisdiction and apply to be considered a different type of corporation or co-operative under different legislation in a different jurisdiction. The co-op must authorize the transfer by a special resolution, and apply to the proper authorities of the other jurisdiction for approval. If the other jurisdiction approves the application for continuance, then the Ontario Co-operative Corporations Act ceases to apply to the co-op on that date.

Changing a Co-op Back into Its Previous Form

If a co-operative wishes to go back to its original form of operations, it can do so by "restating" its Articles of Incorporation. This has the effect of bringing the original articles back into effect. In order to make this official, the co-op then has to deliver the restated articles (which will be the same as the original articles) to the Minister, along with a statement that the restated articles are identical to the original articles.

Once FSCO reviews this material and ensures that they conform to the requirements of the Act and the appropriate

- There are some **49,000 co-operative volunteers across Ontario, including over 10,000 board members who are actively involved in governing and leading co-ops, credit unions and caisse populaires in Ontario.**
- **World-wide, co-operatives operate in over 90 countries, employ over 100 million people and are supported by over 1 billion members.**

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fees have been paid, then the Minister can endorse each copy of the restated articles. One will be filed with the Minister's office and one will be returned to the co-op with a restated certificate of incorporation. The date on the restated articles and certificate of incorporation is the effective date and supersedes the original articles and any amendments made to them up to that point.

Special Considerations for NFP Housing Co-ops

In the case of not-for-profit housing co-operatives, there are special rules and restrictions about changing or merging the co-op.

Not-for-profit housing co-ops are not permitted to voluntarily amend their articles of incorporation to become a corporation (either with share capital or without) and they are also not permitted to amend their articles to become a co-op with share capital.

Amalgamation and Transfers

The Act also has particular rules that apply to a not-for-profit housing co-op that wishes to amalgamate with another co-op. Not-for-profit housing co-ops can only amalgamate with other not-for-profit housing co-ops, and can only do so if the amalgamated co-op will be operating as a not-for-profit housing co-op.

Not-for-profit housing co-ops are also not permitted to transfer out of the Ontario jurisdiction and begin operating as another type of corporation in another location, as other co-ops are.

FOR MORE INFORMATION, CONTACT

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More resources are available at:
CoopZone Network
coopzone.coop

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