

Part V. REPORTING AND FILING MATTERS

Chapters 14 through 16

This Publication is Not Fully Updated for Subsequent Changes in the Law or Other Information Provided Herein.

Chapter 14. RECORDS, REPORTS, AND INSPECTION RIGHTS

A. IN GENERAL

The California Consumer Cooperative Corporation Law provides fairly detailed rules about the types of records a co-op must maintain and under what conditions they may be inspected. There are five general rules that should be stated initially, however.

- (1) If any document subject to inspection is not maintained in written form, upon a request for inspection, the cooperative must at its own expense provide the requested information in written form.¹
- (2) Any proper inspection of information may be made by the person requesting the information or by her or his representative.²
- (3) Inspection rights include the right to make copies or extracts.³
- (4) All inspection rights extend to any subsidiary corporation of the cooperative.⁴
- (5) The members' inspection rights may not be limited by contract, the articles of incorporation, or the bylaws.⁵

B. REQUIRED RECORDS AND REPORTS

1. Accounting Records, Minutes, and Membership Records

A cooperative must maintain (1) adequate and accurate accounting records, (2) minutes of board of directors, board committee, and member meetings, and (3) membership records containing each member's name, address, membership class, and the number of membership units (e.g., shares) held by each member.⁶

Minutes of all of a cooperative's meetings must be kept in written form.⁷ Other records and books must be kept in written form or in some form capable of being converted to written form.⁸

2. Annual Report

a. Requirements

The following four rules apply only to cooperatives having more than twenty-five members at any time during the fiscal year.⁹ First, the co-op must annually notify each member of her or his right to receive a financial report.¹⁰ Second, upon the written request of a member, the board of directors must provide the member with a copy of the most recent annual report.¹¹ Third, the report must be prepared no later than one hundred twenty days after the end of the co-op's fiscal year.¹² Fourth, the annual report must contain the following information in appropriate detail:¹³

- (1) a balance sheet as of the end of the fiscal year and statements of income (or loss) and changes in financial position ("cash flows") for the entire fiscal year;
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- (2) where the names and addresses of all current members are located and any required information about “interested” or indemnification transactions (see chapter 7 of this *Sourcebook*); and
- (3) an independent accountant’s “report” (e.g., a compilation, review, or audit by a CPA) on the annual report *or* the certificate of an authorized co-op officer that the financial statements were prepared without audit from the co-op’s accounting records.

For more information about financial statements, please see Section 7.02 of the sample bylaws.

b. Financial Statements and Accountants Defined

For purposes of the California Consumer Cooperative Corporation Law, “financial statements” are statements prepared in conformity with generally accepted accounting principles or some other basis of accounting which reasonably states the assets, liabilities, income, and expenses of the co-op and discloses the accounting basis of the statements.¹⁴ An “independent accountant” means a “certified public accountant” (CPA) or “public accountant” (a status which is being phased out) who is independent of the co-op in accordance with generally accepted auditing standards and who is engaged to audit the co-op’s financial statements or perform other accounting services.¹⁵

c. Need for Current Financial Information

While an annual report will be required for many cooperatives, almost all co-ops will also probably want to generate financial statements more often, e.g., quarterly or monthly. It is obviously much easier for the board of directors, members, and management personnel to assess the performance and financial position of the co-op if frequent and timely statements are generated.

3. Annual Statement of Certain Covered Transactions and Indemnification

All cooperatives, even those not required to issue an annual report (i.e. those with fewer than twenty-six members throughout the accounting year), must annually furnish to their members and directors a statement of any transactions or indemnifications as described below.¹⁶ Like the annual report, this information must be mailed or delivered to all members within 120 days of the end of each fiscal year.¹⁷

Except for those transactions approved by the members (see chapter 10 of this *Sourcebook*), transactions which must be reported (i.e., “covered transactions”) are those where the cooperative or its subsidiary was a party *and* a director or officer of the co-op (or its subsidiary), or any holder of more than ten percent of the co-op’s (or subsidiary’s) voting power had a direct or indirect significant financial interest.¹⁸ (A more-than-ten-percent holder is referred to below as an “interested person.”¹⁹) Neither a common directorship nor a regular member-patron relationship constitutes a material financial interest by itself, however.²⁰

Any required annual statement must briefly describe or state:²¹

- (1) any “covered transaction” (not including compensation of officers and directors) during the previous fiscal year involving more than one thousand dollars or which was one of several covered transactions totaling more than one thousand dollars in which the same interested person had a direct or indirect material financial interest; and
 - (2) the names of any interested persons involved in covered transactions, the person’s relationship to the cooperative, the nature of the person’s interest in the transaction, and the amount of the interest (assuming that it may be reasonably determined).
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Finally, the required annual statement must also briefly describe the amount and circumstances of any loans, guarantees, indemnifications, or advances totaling more than one thousand dollars paid or made during the fiscal year to any officer or director.²² A description is not necessary, however, for any loan, guaranty, or indemnification approved by the members or for a loan or guaranty not requiring any approval of the board of directors or members.²³ (See chapter 7 of this publication.)

Regarding this required annual statement, an attorney should almost certainly be consulted, since the law's provisions are quite technical and open to a certain amount of interpretation (e.g., the threshold amount for a "material" financial interest).

C. INSPECTION RIGHTS

1. Membership List

Except where a court steps in or unless the cooperative provides a reasonable alternative (see below), a co-op member may do either or both of the following concerning inspection of the membership list.²⁴ First, he or she may inspect and copy the record of all members' names, addresses, and voting rights at any reasonable time after giving five business days' written demand, with the demand stating the purpose of the inspection.

Second, the member may obtain from the cooperative's secretary upon written demand and payment of a reasonable charge, a list of the names, addresses, and voting rights of all members entitled to vote for directors as of the most recent record date or as of a date specified by the member after the date of the demand. The demand must state the purpose of the request, and the list must be made available to the member by the tenth business day after the demand is received or by the tenth business day after the date specified in the demand.

The inspection of the membership list may only be exercised by a member or members having at least five percent of the voting power and then only for a purpose reasonably related to their interest as members.²⁵ If the cooperative reasonably believes that the information will be used for another purpose or if it provides a reasonable alternative (below), it may deny the member or members access to the list.²⁶

As an alternative to providing access to the list, the cooperative may, within ten business days after receiving the demand, deliver to the member or members making the demand a written offer of a reasonable alternative method for achieving the purposes of the demand.²⁷ Any rejection of the offer must be in writing and state the reasons the co-op's alternative does not meet the members' proper purpose of the demand.²⁸

Both the cooperative and its members have legal remedies to deny or restrict the inspection rights provided above if it is believed that the demand is for improper purposes.²⁹

2. Availability of Records to Members

A cooperative's accounting records and minutes of board of directors, board committees, and membership meetings must be open to inspection upon the written demand of the co-op by any member.³⁰ Although the inspection may be made at any reasonable time, it must be for a purpose reasonably related to the person's interests as a member.³¹

3. Availability of Records to Directors

Each director has the *absolute* right at any reasonable time to inspect and copy any book, record, or document of any kind and to inspect the physical properties of the cooperative.³²

4. Availability of Articles and Bylaws to Members³³

A cooperative must keep at its principal California office a copy of its articles of incorporation and bylaws as currently amended, and these documents must be open to inspection by members at all reasonable times during office hours. If the co-op does not maintain an office in California, it must, upon the written request of a member, provide her or him with a copy of the current articles or bylaws.

D. PROHIBITED USES OF MEMBERSHIP LIST³⁴

Without the consent of the board of directors, a member may not use a cooperative's membership list (i.e., the names and addresses of all the co-op's members) for any purpose not reasonably related to the member's interest as a member. Although there may be others, the following four purposes are definitely *not* reasonably related to a member's interest: (1) to solicit money or property unless it will be used to solicit members' votes in a co-op election; (2) for a purpose the user does not reasonably and in good faith believe will benefit the co-op; (3) for any commercial purpose or purpose in competition with the co-op; or (4) to sell the list. A co-op may seek damages as well as injunctive relief related to any unauthorized use of the membership list.

E. VOTING REPORT

Up to sixty days after an annual, regular, or special meeting of the members, a cooperative must provide, upon the written request of any member, the results of any particular vote taken at the meeting (including the number of votes in favor, against, or abstaining). (See Section 12594 of the California Corporations Code, enacted in 1999, for more details related to the information required to be provided, including information related to the election of directors.)

Chapter 15. FILINGS WITH THE SECRETARY OF STATE

A. IN GENERAL

1. Date of Filing¹

Generally, whenever a cooperative sends a document that conforms to all legal requirements to the Secretary of State, it is “filed” when endorsed by the Secretary of State. Except for documents related to the annual statements or updated annual statements (see below), the filing date is the same date the document is received by the Secretary of State, unless the co-op requests a later filing date, or unless the Secretary of State believes the filing is intended to be coordinated with the filing of some other document which for some reason cannot be filed. If the co-op requests a future date for filing, that date may not be more than ninety days after nor less than one business day before the receipt of the document by the Secretary of State. Even if an incorrect filing fee is sent with the document, it will be filed if any unpaid amount does not exceed a limit established by policy of the Secretary of State.

2. Rejection and Resubmission²

If the Secretary of State finds that the document submitted for filing does not conform to applicable laws and returns it to the cooperative, the document may be resubmitted along with a written opinion of a California attorney stating that the specific provision objected to by the Secretary of State *does* conform to applicable laws. The opinion must also state appropriate legal authority. The Secretary of State must then rely upon the written opinion concerning a disputed point of law in determining whether the document conforms to law. Assuming the document is then filed, the filing date is the day the resubmitted document is received.

3. Delayed Effectiveness of Filing³

A cooperative document sent to the Secretary of State may provide that it not be effective for up to ninety days after its filing date. Where a delayed effective date is specified, the co-op may revoke the document before it becomes effective if it sends a certificate to the Secretary of State stating that the co-op (by appropriate action) has revoked the document, making it null and void. The certificate must be executed in the same way as the original document and filed before the stated effective date. If no revocation certificate is filed, the document original becomes effective on the stated date.

B. REQUIRED ANNUAL STATEMENT AND DESIGNATION OF CORPORATE AGENT

1. In General⁴

A cooperative must, within ninety days after filing its original articles of incorporation and annually thereafter, file on a prescribed form with the Secretary of State a statement containing: (1) the names and business or residential addresses of its “chief executive officer” (i.e., chairperson of the board or president) or general manager, secretary, and chief financial officer; (2) the street address of its principal California office; and (3) the individual or corporation designated as the co-op’s agent

for service of process. If a natural person is designated as agent, that person must be a resident of California and the annual statement must provide his or her business or residential address. If a corporate agent is named, no address need be provided.

2. Corporate Agent for Process

Special rules beyond the scope of this discussion apply to the qualifications of a *corporation* to serve as an agent for process. California Consumer Cooperative Corporation Law should be consulted.⁵ To avoid these rules related to a corporate agent, a co-op may use an individual as agent.

3. Annual Filing Period⁶

Except for its first filing of the annual statement, a cooperative must file the statement each year during the six-month period ending with the last day of the same calendar month in which the original articles of incorporation were filed. The Secretary of State is supposed to mail the proper form to the co-op about halfway through its filing period. The co-op is obliged to file the form on time, even if the form is not sent by the Secretary of State's office. Thus, the co-op may have to request the form in order to file on time.

4. Changes in Required Information⁷

For any changes in the required information other than the agent for process, the cooperative may (but is not required to) file an updated statement. To change its agent for process, however, the co-op *must* file an updated statement containing all required information.

5. Effect of the Most Recent Statement⁸

Whenever any statement is filed (even if it is only to update a previously filed annual statement), the most recent statement supersedes any previous filings and the provision in the articles of incorporation stating the name and address of the agent for process.

6. Resignation of Agent⁹

An agent for process designated by a cooperative may file a signed and acknowledged written statement of resignation with the Secretary of State. The authority of the agent to act in that capacity then ceases, and the Secretary of State must give written notice of the resignation to the co-op.

7. Designation of New Agent

If an agent for process who is a natural person resigns, dies, or no longer lives in California, or if a corporate agent resigns, dissolves, leaves or forfeits its rights to do business in California, has its rights, powers, and privileges suspended, or ceases to exist, the cooperative must file a statement designating a new agent.¹⁰

8. Penalty for Failure to File

A cooperative may be subject to a penalty by the California Franchise Tax Board if its required filing to the Secretary of State is not made within sixty days of any delinquency notice.¹¹

Chapter 16. INCOME TAX–RELATED FILINGS

A. INCOME TAX RETURNS

Unless a cooperative attains tax-exempt status, and assuming that it is incorporated under the California Consumer Cooperative Corporation Law, a co-op will file annual income tax returns just like other corporations (i.e., federal Form 1120 and California Form 100). Also, like other California corporations, a taxable co-op must annually pay California the greater of eight hundred dollars (the “minimum franchise tax”) or the amount based upon the current tax rate applied to the “taxable income” of the co-op. While the Internal Revenue Code imposes no minimum tax similar to California’s, the federal tax rates are higher.

While a comprehensive look at the taxation of cooperatives is outside the scope of this publication, co-ops that distribute patronage refunds (called “patronage dividends” in the Internal Revenue Code) may deduct such refunds from their income, provided certain requirements are met (see chapter 12 of this *Sourcebook*). “Special-purpose” co-ops, as well as other types of legal entities (e.g., limited liability companies) should seek professional advice to ensure that appropriate income tax returns are filed properly and in a timely manner.

B. FORMS 1099

Cooperatives, like other taxpayers, must annually (based on the “calendar” year) file federal Forms 1099-DIV, 1099-INT, and 1099-PATR related to the payment or allocation of dividends, interest, and patronage refunds, respectively. Such forms are not required to be issued to recipients for amounts less than ten dollars, however. In addition, Form-MISC is required to be filed for other types of payments to generally noncorporate recipients (including service providers) of income from a co-op. Forms 1099 are required to be filed with the Internal Revenue Service by the end of February for the immediately prior calendar year, along with “transmittal” Form 1096. The income recipients are required to be sent their copy of Form 1099 by the end of January following the year of payment or allocation.

California has separate and different filing requirements related to noncorporate persons providing services to a cooperative; filings must be made with the Employment Development Department within twenty days of a co-op entering into a contract with or actually paying to a provider for services of at least six hundred dollars in a calendar year.

Related to patronage refunds, *consumer* cooperatives should seek an exemption (under Internal Revenue Code Section 6044(c)) from filing Forms 1099-PATR if at least eighty-five percent of its gross receipts are from retail sales of goods or services for personal, living, or family use. (To the extent that refunds are related to personal, living, or family use, refunds are not taxable to the recipient.) Federal Form 3491 is used to apply for such exemption.

Worker and other nonconsumer cooperatives issuing patronage refunds to their members should seek professional advice related to the reporting of such refunds on members’ personal income tax returns. While patronage refunds distributed to employee-members *are* subject to income taxes, a question exists as to whether the refunds are subject to “self-employment” taxes (i.e., Social Security and Medicare).
