

Cooperatives are user-owned and user-controlled businesses formed to benefit a group of members. Cooperatives are designed to reward use, encourage users to commit to using the services, and encourage users to voice opinions about how the business is doing.

NCDC encourages the engagement of legal counsel to guide this process, the steering team and future board of directors should know which questions to ask to ensure that the cooperative is legally structured, that legal procedures are followed as the cooperative begins operations and policy decisions are made.

Organization

- What state will you be operating in?
Will you have operations in more than one state?
Will you have members that live in more than one state?
- What will be the main activities of the cooperative?
How will it earn revenue?
- Does it need to raise capital?
If so, how will it raise capital?
Through member contributions and/or through outside investors?
- How do you want the cooperative to be governed?
By a board elected by the members, by the members themselves, or by one or more managers.
- Would it bother you to have to observe certain “formalities” (such as holding regular governance meetings, complying with rules about meeting notice, keeping meeting minutes, having elections, having officers)?
- How will decisions be made?
Majority vote, super-majority, consensus, modified consensus?
Will different decisions be made in different ways?
- If you have a board, what do you want the term of office to be?
Do you want term limits?
Do you want to have any qualifications for who can serve on the board?
Can only members serve on board?
How many board members do you want? Do you want staggered terms?
- If you have officers, what officers do you want to have and what will be their duties and qualifications?
- Do you want to have committees?
If so, what powers do you want them to have?
- Would it bother you to have an entity that is not well understood by most lawyers and accountants?
- Is it important to you to use the word “cooperative” in your name?
The use of the word cooperative in the legal name is required in Nebraska.

Operations

- How will you decide whether to admit new members?
- How will you decide whether to remove members?
- How will you decide whether to remove managers, directors, officers?
- Do you want the founders to receive some sort of extra benefit to compensate them for the risks they took?
- How will you decide on amending your governing documents – a majority of members, 2/3 of members?

Revenues

- How do you want to distribute excess revenues?
Do you want some of it to be able to be held within the cooperative and not become the property of the members?
Do you want to pay dividends to the members?
Do you want to pay dividends to investors?
How will you decide how much excess revenues to allocate to various uses?
How will you decide how much the patronage dividend to pay in cash versus an allocation to the member's capital account?
- How will you allocate losses?
- How will you set member capital contributions?
Do you want there to be a limit on how much they can increase from year to year?
- Do you want to have member capital accounts?
If so, do you want to pay "interest" on the balance in the member accounts?
How often do you want to redeem member accounts?
- When a member leaves the cooperative, how will their capital account be redeemed?
- What do you want to happen with the assets of the cooperative upon dissolution?
- Given your business plan, what are your biggest concerns about taxes?
Dividends being taxed twice (at the entity and investor level)?
Having to pay a tax on gross receipts? Having to pay employment tax on distributions?
Having to deal with "pass through" tax treatment?
- Who will have check signing authority?
Who will have the authority to sign contracts on behalf of the co-op?

Worker Cooperatives

- Will all the workers be members? In other words, will there be employees that never become members?
- Will there be a probationary period before a worker can become a member?
If so, how long?
- Can the cooperative pay all the workers at least minimum wage from the very beginning and pay all the other costs associated with having employees like employment tax, workers comp, etc.?
- Will all the workers have the legal right to work in the United States?
- Will the workers be more like employees or independent contractors?

Sources:

<https://ndbf.nebraska.gov/about/legal/securities-act-nebraska>
<https://nebraskalegislature.gov/laws/statutes.php?statute=21-1301>
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<https://www.rd.usda.gov/content/cir-62-cooperative-directors-asking-necessary-questions>
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For more information, contact:

Cindy Houlden, Cooperative Development Specialist, choulden2@unl.edu or 308-293-6417

Charlotte Narjes, NCDC Director/Rural Prosperity Nebraska Extension Educator, cnarjes1@unl.edu or 402-472-1724