

*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.

**Articles of Incorporation** are a set of documents filed with the Nebraska Secretary of State to legally document the creation of your cooperative. Information necessary or useful in order to complete the articles include:

- the cooperative name (must be distinctive and include the word “cooperative”);
- purpose(s) of the cooperative and principal place of business;
- the name and street address (must be located within the State of Nebraska) of the registered office and registered agent;
- proposed duration of the cooperative (if other than perpetual duration);
- names and addresses of the incorporators (Nebraska law requires ten incorporators for stock cooperatives);
- how the capital structure will be organized; and
- how assets will be distributed upon dissolution.

After the organizing committee approves the articles of incorporation, the document is filed with the Secretary of State with the appropriate recording fees. Once chartered, the cooperative should promptly adopt bylaws.

**Cooperative Bylaws** state how the cooperative will conduct business and must be consistent with both Nebraska state statutes and the articles of incorporation. Bylaws are the owners’ manual of the cooperative business. Bylaws are not filed with the State; however, the Bylaws are considered to be akin to a contract between the cooperative and its members, and they are considered legally binding among members. Bylaws usually include:

- membership qualification requirements and a list of the rights and responsibilities of members;
- grounds and procedures for member suspension/expulsion;
- procedures for how to call and conduct meetings; methods of voting; processes for electing or removing directors and officers, and number, duties, terms of office, and compensation;
- time and place of members’ meetings and directors’ meetings;
- dates of the fiscal year;
- requirement to conduct business on a cooperative basis;
- process for how net margins will be distributed to the cooperative’s patrons;
- process for redemption of members’ equity;
- a consent provision that members will include the face value of written notices of allocation and per-unit retain certificates as income (for federal and state tax purposes) in the year they are received;
- distribution process for non-patronage income;
- procedures for handling of losses;
- guidelines for how non-member business will be treated;
- process for dissolution of the cooperative;
- provisions for indemnification of directors; and
- the process for amending bylaws.

## **Nebraska Banking and Finance “Cooperative Exemption from the Nebraska Securities Act Pursuant to Section 8-1111(15).”**

Under Nebraska law, a cooperative’s activities of soliciting for sale and selling its stock and memberships may be exempt from the registration and other requirements of the Nebraska Securities Act, provided that the cooperative first files the appropriate notice and related documents with the Nebraska Department of Banking and Finance. Once an exemption is established at the state level and as long as the cooperative’s activities fall within an exemption from the federal securities laws, the cooperative is ready to solicit members.

**Member Information Statement** informs prospective members of the Cooperative the purpose of the cooperative how interested parties may become common stockholders, preferred stockholders, and equity holders in the Cooperative. This document is often used in conjunction with a cooperative’s efforts to attract new members.

**Member Agreement** completed by the member and signed by the appropriate member of the board of directors, is the legal agreement establishing new membership in the cooperative. A cooperative should have a completed membership agreement on file for every member. Membership and amount of business done with members and non-members are important factors in antitrust and taxation provisions.

A **membership certificate** may be issued to each member as evidence of entitlement to all of the rights, benefits, and privileges of the cooperative. However, Nebraska law does not require that cooperatives issue stock or membership certificates.

Now the cooperative is organized and soliciting members, these questions should be asked:

- **Does our board of directors’ handbook contain all the necessary information directors need to fully understand the cooperative’s legal structure and legal parameters?**
- **Do we understand what directors’ liabilities are for the cooperative?**
- **Have we created a legal compliance program in place to monitor danger areas of antitrust, taxation, environmental laws, discrimination practices, and work safety?**
- **Do we have a process to educate ourselves regarding new cooperative laws and legal regulations that may be applicable to our cooperative?**
- **Does our cooperative have a legal audit process to measure exposure to legal issues/concerns?**

Sources:

<https://ndbf.nebraska.gov/about/legal/securities-act-nebraska>

<https://nebraskalegislature.gov/laws/statutes.php?statute=21-1301>

<https://nebraskalegislature.gov/laws/statutes.php?statute=21-201>

<https://ndbf.nebraska.gov/sites/ndbf.nebraska.gov/files/press/Raising%20Capital%20Brochure%202020%20Revision.pdf>

<https://www.rd.usda.gov/content/cir-62-cooperative-directors-asking-necessary-questions>

<https://www.rd.usda.gov/content/cir-7-how-start-cooperative-2015>

### **For more information, contact:**

Cindy Houlden, Cooperative Development Specialist, [choulden2@unl.edu](mailto:choulden2@unl.edu) or 308-293-6417

Charlotte Narjes, NCDC Director/Rural Prosperity Nebraska Extension Educator, [cnarjes1@unl.edu](mailto:cnarjes1@unl.edu) or 402-472-1724