Legal Sourcebook
For California Cooperatives:
Start-up and Administration

A Legal Guide for Co-ops Incorporating
and Operating under the
California Consumer Cooperative Corporation Law

Third Edition
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Chapter 5. BYLAWS

A. IN GENERAL

While the articles of incorporation usually state only certain fundamental items related to a cooperative’s existence, bylaws provide more detailed rules by which the co-op governs itself. While many of these rules could be put into the articles, a co-op is usually best advised to put them in the bylaws, instead. This is particularly true since the bylaws are almost always easier to amend than the articles.

B. CONTENTS

1. Required

Unless the number of directors is stated in the articles of incorporation, the bylaws must set the number or state a minimum and maximum number of directors, with the exact number to be established by board or member approval in a manner determined by the bylaws. A co-op must have at least three directors, however. Any “alternate” directors and the method and time of their selection must be specified in the bylaws, along with provisions stating the conditions of their service in place of directors.

2. Optional Provisions

Bylaws may contain any provision not in conflict with any law or the articles of incorporation to manage and conduct the affairs of a cooperative. The bylaws may include, but are not limited to, the following provisions:

(1) any of the last five listed optional provisions for articles (see chapter 4 of this publication);
(2) the time, place, and manner of calling, conducting, and giving notice of member, board of directors, and board committee meetings, and of conducting mail ballots;
(3) the qualifications, duties, and compensation of directors, the time of their election, and the quorum and frequency requirements for board and board committee meetings;
(4) the appointment of committees, comprised of directors or nondirectors, or both, by the board or any officer, and the authority of any committee;
(5) the appointment, duties, compensation, and tenure of officers;
(6) the way in which members “of record” are determined;
(7) the making of reports and financial statements to members;
(8) establishing, imposing, and collecting dues, assessments, memberships and shares, and membership or share transfer fees;
(9) determination of patronage versus nonpatronage income;
(10) the time and manner of patronage refunds;
(11) eligibility requirements, admission procedures, and procedures related to the admission, withdrawal, suspension, and expulsion of members (consistent with the discussion in chapter 9 of this publication);
(12) the establishment of a delegate system (see chapter 10 of this publication);
(13) voting by organizational units (see chapter 10 of this publication);
(14) limiting the number of members, in total or by class, of the co-op;
(15) establishing an educational program related to the principles and techniques of cooperation;
(16) indemnification; and
(17) dissolution.

Finally, the bylaws may require, for any and all corporate actions, the vote of a larger proportion of
the members or the members of any class, unit, or grouping or the vote of a larger proportion
of the directors than is otherwise required by co-op law. Any bylaw provision requiring a greater
proportion may not be altered, amended, or repealed except by that larger proportion, unless the
bylaws themselves provide otherwise.

C. BYLAW CHANGES

1. Adoption, Amendment, and Repeal by the Board

Except for certain changes which must be approved by the members (see below) and unless the
bylaws or articles of incorporation restrict or eliminate the power of the board of directors to adopt,
amend, or repeal the bylaws, the board may adopt, amend, or repeal bylaw provisions unless the
action would (1) materially and adversely affect the rights or obligations of members as to voting,
dissolution, redemption, transfer, distributions (e.g., dividends), patronage refunds, patronage,
property rights, or rights to repayment of contributed capital; (2) change the total number of
members or shares authorized for any class; (3) effect an exchange, reclassification, or cancellation
of memberships or shares; or (4) authorize a new class of membership or shares.† (Related to the last
two items of the foregoing list, the author presumes that share changes would be included, although
the law is unclear.)

2. Adoption, Amendment, and Repeal by the Members
   a. In General

   In addition to the bylaw changes that must be approved by the members (below), co-op law
   provides that bylaws may generally be adopted, amended, or repealed by the approval of the
   members. Any adoption, amendment, or repeal, however, also requires the approval of the
   members (and presumably “shares”) of a class if the action would:

   (1) materially and adversely affect the rights or obligations of that class as to voting, dissolution,
   redemption, transfer, distributions, patronage distributions, patronage, property rights, or
   rights to repayment of contributed capital, in a way different than the action affects another
   class;

   (2) materially or adversely affect the same items as in (1) above of that class by changing the
   rights, privileges, preferences, restrictions, or conditions of another class;

   (3) change the number of memberships (or shares) authorized for that class;
(4) increase the number of memberships (or shares) authorized for another class;
(5) effect an exchange, reclassification, or cancellation of memberships (or shares) of that class;
or
(6) authorize a new class of memberships (or shares)."}

b. Required Member Approval
There are certain situations where co-op law prohibits bylaw amendments by the board of directors, requiring member action instead. The members must approve the following bylaw changes:

(1) after members have been admitted, a bylaw specifying or changing in any way the number of directors;"}

(2) any extension of the term of a director or any provision related to the designation or selection of directors other than by election by the members;"}

(3) a Bylaw provision allowing the board of directors to fill vacancies in the board caused by removal of directors;"}

(4) to increase the quorum requirements for a membership meeting;" or
(5) the repeal or amendment of a bylaw provision authorizing cumulative voting in a central organization."}

3. Larger than Majority Approvals
Generally, only a simple majority of a quorum of the board of directors, members, or members of any class (if necessary) needs to approve any adoption, amendment, or repeal of the bylaws. The bylaws, may require, however, that the vote of a larger proportion, or all, of the members (or members of any class, unit, or grouping) or the directors is required to approve the adoption, amendment, or repeal of any or all bylaw provisions."

4. Amendment and Repeal by Others
California Corporations Code Section 12330(d) provides (as of 1996) that a cooperative’s bylaws may allow that the repeal or amendment of the bylaws (or any specified parts of the bylaws) “occur only with the approval in writing of a specified person or persons other than the Board of Directors or members.”
D. SAMPLE BYLAWS

The bylaws give legal guidance to the co-op on a routine basis. While the California Consumer Cooperative Corporation Law does not require any specific bylaw provisions, the sample bylaws presented below address the more common issues that confront co-op personnel, including directors and officers, and members. Although many of the sample provisions may be modified to fit a particular co-op's needs and desires, an attorney should be consulted to review proposed bylaws prior to adoption.

These sample bylaws provide for a single class of members and shares. Shares in these bylaws may be used for direct investment by members and to distribute any noncash portions of patronage refunds and dividends. Please note that most of the sample bylaw provisions are discussed in the section immediately following the sample bylaws.

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ARTICLE I. MEMBERSHIP

Section 1.01. Classification of Members.
The Corporation shall have one (1) class of members.

Section 1.02. Membership Qualifications.
Any person, including any organizations (except a subsidiary of the Corporation) may become and remain a member of this Corporation by:
(a) Complying with such uniform conditions as may be prescribed by the Board of Directors;
(b) Making full payment of any nonrefundable membership fee as set forth in Section 1.06 of these Bylaws;
(c) Making full payment for ______ share(s); and
(d) If a natural person, being a resident of California.

Section 1.03. Membership Application.
An applicant eligible for and desiring admission to membership in the Corporation shall file a written application for admission in whatever form and containing whatever information the Board of Directors shall prescribe.

Section 1.04. Acceptance of Members.
Applications for membership shall be reviewed by the Board of Directors or by a Membership Committee duly authorized by resolution to admit members. The application shall be accepted unless rejected in writing within thirty (30) days for reasons satisfactory to the Board. If accepted, the applicant shall be admitted to membership and shall be allowed to vote and hold office. If rejected, the applicant shall be entitled to a refund of any amounts paid for membership fees and shares.

Section 1.05. Transfers Prohibited.
No member may transfer his or her membership or any right arising therefrom.

Section 1.06. Membership Fee.
A one-time nonrefundable membership fee, in an amount set from time to time by the Board of Directors, may be charged to and collected from each member upon joining the Corporation.

Section 1.07. Bylaws and Articles to Prospective Members.
Each prospective member, upon application for membership, shall receive a copy of the Articles of Incorporation, Bylaws, and disclosure document of the Corporation.

Section 1.08. Shareholders and Members.
"Shareholder" and "member" and their plurals shall be synonymous terms throughout these Bylaws.
ARTICLE II. SHARES

Section 2.01. **Share Issuance.**

Shares may be issued for money paid in an amount as is determined from time to time by the Board of Directors and as share dividends, patronage refunds, or other changes affecting outstanding shares.

Section 2.02. **Share Ownership.**

Share ownership entitles a member to only one (1) vote in the affairs of the Corporation, irrespective of the total number of shares a member owns, and to all the rights of membership as described by statute, the Articles of Incorporation, and these Bylaws. Pursuant to Subsection (b) of Section 9.03 of these Bylaws, the Directors may declare noncumulative dividends on shares not to exceed any maximum rate established by statute.

Section 2.03. **Share Receipt and Disclosure Document.**

(a) Nothing in this section shall restrict the Corporation from issuing identity cards or similar devices to members which serve to identify members qualifying to use facilities or services of the Corporation.

(b) Except as provided in Subsection (c) of this Bylaw section, prior to issuing a share, the Corporation shall provide the purchaser of a share with a “disclosure document.” The disclosure document may be a prospectus, offering, circular, brochure, or similar document, a specimen copy of the share certificate, or a receipt that the Corporation proposes to issue. The disclosure document shall contain the information required by Section 12401 of the California Corporations Code.

(c) The Corporation shall issue a receipt or written advice of purchase to anyone purchasing a share upon the member’s first purchase of a share. No disclosure document need be provided to an existing member prior to the purchase of additional shares if that member has previously been provided with a disclosure document which is accurate and correct as of the date of the purchase of additional shares.

Section 2.04. **Prohibition on Transfer of Shares.**

No shares of this Corporation may be assigned or transferred. Any attempted assignment or transfer shall be wholly void and shall confer no rights on the intended assignee or transferee.

Section 2.05. **Partial Withdrawal.**

A member having a monetary amount in his or her share account in excess of a monetary amount to be determined from time to time by the Board of Directors may cause the Corporation to purchase his or her excess share amount upon written request to the Board. Subject to Section 2.06 of these Bylaws, the Board must, within one (1) year of such request, pay the amount the member requests in cash or other property or both. The exact form of payment is within the discretion of the Board.
Section 2.06.  Insolvency Delay.
The Corporation shall delay the purchase of shares as described in Sections 2.05 and 3.04 of these Bylaws if the Corporation, in making such purchase is, or as a result thereof would be, likely to be unable to meet its liabilities (except those whose payment is otherwise adequately provided for) as they mature.

Section 2.07.  Unclaimed Equity Interests.
Any share of a member, together with any accrued and unpaid dividends and patronage distributions related to that member, that would otherwise escheat to the State of California as unclaimed personal property shall instead become the property of the Corporation if the Corporation gives at least sixty (60) days' prior notice of the proposed transfer to the affected member by (1) first-class or second-class mail to the last address of the member shown on the Corporation's records, and (2) by publication in a newspaper of general circulation in the county in which the Corporation has its principal office. No shares or amounts shall become the property of the Corporation under this section of the Bylaws if written notice objecting to the transfer is received by the Corporation from the affected member prior to the date of the proposed transfer.

ARTICLE III. TERMINATION OF MEMBERSHIP

Section 3.01.  Voluntary Withdrawal.
A member shall have the right to resign from the Corporation and terminate his or her membership by filing with the Secretary of the Corporation a written notice of resignation. The resignation shall become effective immediately without any action on the part of the Corporation.

Section 3.02.  Death or Dissolution.
A membership shall immediately terminate upon the death of a member or the dissolution of a member that is an organization.

Section 3.03.  Expulsion.
(a) A member may for failure to comply with these Bylaws, rules, or regulations of the Corporation, for failure to patronize the Corporation during the immediately preceding fiscal year of the Corporation in the amount of at least ________ dollars ($____.00), or for any other justifiable reason, be expelled from the Corporation by resolution adopted by a two-thirds (2/3) vote of all members of the Board of Directors. Expulsion shall become effective immediately unless the Board shall, in the resolution, fix another time. On expulsion, the name of the member expelled shall be stricken from the membership register and all of his or her rights shall cease except as provided in Section 3.04 of these Bylaws.
(b) Prior to expulsion of a member, the Board of Directors shall give such member at least fifteen (15) days notice prior thereto and the reasons thereof. Such member shall have the opportunity to be heard, orally or in writing, not less than five (5) days before the effective date of expulsion by the Board.

(c) The notice required pursuant to Subsection (b) of this section of these Bylaws may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last known address of the member shown on the Corporation's records.

Section 3.04. Settlement of Share Interest.
If a membership is terminated for any reason set forth in this Article of the Bylaws, the share interest held by the member shall be purchased by the Corporation, subject to Section 2.06 of these Bylaws, within one (1) year of the date of termination to the extent of the paid-up value of the member's shares on such date. The Board of Directors, in so settling the member's share interest, shall have the right to set off any and all indebtedness of the member to the Corporation. The paid-up value of the member's share interest is the monetary amount of such interest (including fractional shares) that the member has been issued in accordance with Section 2.01 of these Bylaws.

ARTICLE IV. MEMBERSHIP MEETINGS AND MEMBERS

Section 4.01. Location.
Meetings of members shall be held at the principal office of the Corporation.

Section 4.02. Regular Annual Meetings.
A regular meeting of members shall be held annually on the first _____________ in __________ at __:00 p.m. for the purpose of transacting any proper business, including the election of Directors, that may come before the meeting. If the day fixed for the regular meeting falls on a legal holiday, the meeting shall be held at the same time and place on the next day.

Section 4.03. Special Meetings.
Special meetings of members for any lawful purpose may be called by the Board of Directors, the President, or by five percent (5%) or more of the members.

Section 4.04. Time for Notice of Meetings.
Whenever members are required or permitted to take action at a meeting, a written notice of the meeting shall be given not less than ten (10) nor more than ninety (90) days before the date of the meeting to each member who is entitled to vote on the record date for notice of the meeting. In the case of a specially called meeting of members, within twenty (20) days after receipt of a written request, the Secretary shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the Board of Directors not less than thirty-five (35) nor more than ninety (90) days after receipt of the request.
Section 4.05. **Method of Giving Notice.**

Notice shall be given either personally or by mail or other written communication to the address of a member appearing on the books of the Corporation or provided by the member. If no address appears or is given, notice shall be given at the principal office of the Corporation.

Section 4.06. **Record Date for Notice.**

The record date for determining the members entitled to notice of any meeting of members is thirty (30) days before the date of the meeting.

Section 4.07. **Contents of Notice.**

The notice shall state the place, date, and time of the meeting. The notice of a regular meeting shall state any matters that the Board of Directors, at the time of giving notice, intends to present for action by the members. The notice of a special meeting shall state the general nature of the business to be transacted. The notice of any meeting at which Directors are to be elected shall include the names of all nominees at the time of giving notice.

Section 4.08. **Waivers, Consents, and Approvals.**

The transactions of a meeting, whether or not validly called and noticed, are valid if a quorum is present and each of the absent members who is entitled to vote, either before or after the meeting, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

A member's attendance at a meeting shall constitute a waiver of notice of and presence at the meeting, unless the member objects at the beginning of the meeting. However, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice but not included, if an objection is made at the meeting.

Section 4.09. **Quorum at Meeting.**

The lesser of two hundred fifty (250) members or members representing five percent (5%) of the voting power shall constitute a quorum at a meeting of members. Any Bylaw amendment to increase the quorum may be adopted only by approval of the members. When a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting and entitled to vote shall be the act of the members, unless provided otherwise by these Bylaws or the law. The only matters that may be voted upon at any regular meeting actually attended by less than one-third (1/3) of the voting power are matters notice of the general nature of which was given pursuant to the first sentence of Section 4.04 of these Bylaws.

Section 4.10. **Loss of Quorum at Meeting.**

The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of the members required to constitute a quorum.
Section 4.11. **Adjournment for Lack of Quorum.**
In the absence of a quorum, any meeting of members may be adjourned by the vote of a majority of the votes represented in person, but no other business may be transacted except as provided in Section 4.10 of these Bylaws.

Section 4.12. **Adjourned Meetings.**
The corporation may transact any business at an adjourned meeting that could have been transacted at the original meeting. When a meeting is adjourned to another time or place, no notice is required if the time and place are announced at the original meeting. If the adjournment is for more than forty-five (45) days or if a new record date is fixed, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

Section 4.13. **Voting of Memberships.**
(a) Each member of the Corporation is entitled to one (1) vote on each matter submitted to a vote of the members.

(b) If a membership stands of record in the names of two (2) or more persons whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, persons entitled to vote under an agreement, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same membership, unless the Secretary is given written notice to the contrary and furnished with a copy of the instrument or order appointing them or creating the relationship, the vote of one (1) joint holder will bind all, when only one (1) votes, and the vote of the majority will bind all, when more than one (1) joint holder votes.

(c) The record date for determining the members entitled to vote at a meeting or cast written ballots is twenty (20) days before the date of the meeting or the day on which the first ballot is mailed or solicited.

(d) Cumulative voting shall not be permitted for any purpose.

(e) Voting by proxy shall not be permitted for any purpose.

Section 4.14. **Use of Written Ballots at Meetings.**
A combination of written ballot and personal voting may be used at any regular or special meeting of members, and may be used for the election of Directors. Prior to the meeting, the Board of Directors may authorize distribution of a written ballot to every member entitled to vote. The ballots shall be distributed in a manner consistent with the provisions of Sections 4.05, 4.17(b), and 4.19 of these Bylaws. When ballots are distributed, the number of members voting at the meeting by written ballot shall be deemed present at the meeting for purposes of determining a quorum but only with respect to the proposed actions referred to in the ballots.
Section 4.15. **Contents of Written Ballot Used at Meetings.**

Any written ballot used at a meeting shall set forth the proposed action to be taken, provide an opportunity to specify approval or disapproval of the proposed action, and state that unless revoked by the member voting in person, the ballot will be counted if received by the Corporation on or before the time of the meeting.

Section 4.16. **Action by Ballot without Meeting.**

Any action that may be taken at any regular or special meeting, including election of Directors, may be taken without a meeting through distribution of a written ballot to every member entitled to vote on the matter. The Secretary shall cause a vote to be taken by written ballot on any action or recommendation proposed in writing by at least twenty percent (20%) of the members.

Section 4.17. **Written Ballot Used without Meeting.**

(a) Any ballot used without a meeting shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Corporation.

(b) The form of written ballot distributed to ten (10) or more members shall afford an opportunity to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time of distribution, to be acted on by the ballot. The form must also provide that whenever the person solicited specifies a choice with respect to any matter, the vote will be cast in accordance with that choice.

(c) A written ballot cannot be revoked. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Section 4.18. **Solicitation of Written Ballots.**

Ballots shall be solicited in a manner consistent with Sections 4.05, 4.17(b), and 4.19 of these Bylaws. The solicitations shall indicate the number of responses needed to meet the quorum requirement and specify the time by which the ballot must be received to be counted. Ballots other than for the election of Directors shall state the percentage of approvals necessary to pass the measure.

Section 4.19. **Withholding Vote.**

In an election of Directors, any form of written ballot, which names the candidates for Director and which the member has marked “withhold” (or otherwise indicated that the authority to vote in the election of Directors is withheld) shall not be used for voting in that election.
Section 4.20. **Appointment of Inspectors of Election.**  
In advance of any meeting of members, the Board of Directors may appoint inspectors of election to act at the meeting and any adjournment. If inspectors are not appointed or if any appointed persons fail to appear or refuse to act, the chairperson of the meeting may and, on the request of any member, shall, appoint inspectors at the meeting.

Section 4.21. **Duties of Inspectors of Election.**  
The inspectors shall determine the number of memberships outstanding and the voting power of each, the number represented at the meeting, and the existence of a quorum. They shall receive votes, ballots, and consents, hear and determine all challenges and questions regarding the right to vote, count and tabulate all votes and consents, determine when the polls will close, and determine the result. They may do those acts which are proper to conduct the election or vote with fairness to all members. The inspectors shall perform these duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical.

**ARTICLE V. DIRECTORS**

Section 5.01. **Number.**  
The corporation shall have __________________ Directors, collectively known as the Board of Directors.

Section 5.02. **Qualifications.**  
The Directors of the Corporation shall be members of the Corporation and residents of California.

Section 5.03. **Nomination.**  
(a) The Board of Directors shall prescribe reasonable nomination and election procedures for the election of Directors given the nature, size, and operations of the Corporation. The procedures shall include: (1) a reasonable means of nominating persons for election as Directors, (2) a reasonable opportunity for a nominee to communicate the nominee's qualifications and the reasons for the nominee's candidacy to the members, (3) a reasonable opportunity for all nominees to solicit votes, (4) a reasonable opportunity for all the members to choose among the nominees.

(b) When the Corporation distributes any material soliciting a vote for any nominee for Director in any publication owned or controlled by the Corporation, it shall make available to each other nominee, in the same material, an equal amount or space with equal prominence to be used by the nominee for a purpose reasonably related to the election. The Corporation shall mail within ten (10) business days to all members any material related to the election which a nominee for Director has furnished, upon written request and payment of mailing costs by the nominee, or allow the nominee to obtain the names, addresses, and voting rights of members within five (5) business days after the request.
Section 5.04. **Election.**
The Directors shall be elected at the annual meetings or by written ballot in accordance with Sections 4.16-4.19 of these Bylaws. The candidates receiving the highest number of votes up to the number of Directors to be elected shall be elected.

Section 5.05. **Terms of Office.**
The terms of office for Directors shall be ___( )__ years. Each Director shall hold office until the expiration of the term for which elected and until the election and qualification of a successor.

Section 5.06. **Compensation.**
The Directors shall serve without compensation except that they shall be paid in advance or reimbursed by the Corporation for their actual and reasonable expenses incurred in the performance of their duties as Directors of the Corporation. Officers of the Corporation may also be paid in advance or reimbursed for such expenses.

Section 5.07. **Call of Meetings.**
Meetings of the Board of Directors may be called by the President, any Vice-President, the Secretary, or any two Directors.

Section 5.08. **Place of Meetings.**
Meetings of the Board of Directors may be held at any place designated in the notice of the meeting, or, if not stated in a notice, by resolution of the Board.

Section 5.09. **Presence at Meetings.**
Directors may participate at meetings of the Board through the use of conference telephone or other communications equipment, as long as all participating Directors can hear one another. Participation by communications equipment constitutes presence at the meeting.

Section 5.10. **Regular Meetings.**
Regular meetings of the Board of Directors shall be held, without call or notice, at the principal office of the Corporation immediately following the annual meeting of members, as set forth in Section 4.02 of these Bylaws.

Section 5.11. **Special Meetings and Notice.**
Special meetings shall be held on four (4) days' notice by first-class mail or forty-eight (48) hours notice delivered personally or by telephone or telegraph. Notice of regular or special meetings need not be given to any Director who signs a waiver of notice, a written consent to holding the meeting, or an approval of the minutes (either before or after the meeting), or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to that Director. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.
Section 5.12. **Quorum at Meetings.**

A majority of the authorized number of Directors constitutes a quorum for the transaction of business.

Section 5.13. **Acts of Board at Meetings.**

Unless provided otherwise in the Articles of Incorporation, these Bylaws, or by law, every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present is the act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for the meeting or a greater number required by the Articles, these Bylaws, or by law.

Section 5.14. **Adjournment of Meetings.**

A majority of the Directors present, whether or not a quorum is present, may adjourn to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of adjournment.

Section 5.15. **Action without Meeting.**

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all Directors individually or collectively consent in writing to the action. The consents shall be filed with the minutes of the proceedings of the Board. Action by written consent has the same force and effect as a unanimous vote of the Directors.

Section 5.16. **Executive Committees.**

(a) The Board of Directors may create one or more committees to serve at its pleasure by resolution adopted by a majority of the number of Directors then in office when a quorum is present. Each committee shall consist of two (2) or more Directors appointed by a majority vote of the Directors then in office.

(b) Any executive committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except with respect to the following actions:

1. The approval of any action for which the approval of the members or a majority of all members is required by law;
2. The filling of vacancies on the Board or in any committee that has the authority of the Board;
3. The fixing of compensation of the Directors for serving on the Board or on any committee;
4. The amendment or repeal of Bylaws or the adoption of new Bylaws;
5. The amendment or repeal of any resolution of the Board which by its express terms are not amendable or repealable;
6. The appointment of committees of the Board or the members of such committees:
(7) The expenditure of corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected.

Section 5.17. Resignation of Directors.
Any Director may resign effective upon written notice to the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of the resignation. If a resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 5.18. Removal of Directors.
Any or all Directors may be removed without cause by the members. If the Corporation has fewer than fifty (50) members, the removal shall be approved by an affirmative vote or written ballot of a majority of all the votes entitled to be cast. If the Corporation has fifty (50) or more members, the removal shall be approved or ratified by the affirmative vote of a majority of all the votes represented and voting at a duly held meeting at which a quorum is present, or by written ballot, or by the affirmative vote or written ballot of any greater proportion of the votes as required in these Bylaws or by law.

Section 5.19. Cause of Vacancies on Board.
Vacancies on the Board of Directors shall exist on the death, resignation, termination of membership, or removal of a Director; whenever the authorized number of Directors is increased; whenever the Board declares an office vacant pursuant to Section 5.20 of these Bylaws; and on the failure of the members to elect the full number of Directors authorized.

Section 5.20. Declaration of Vacancies.
The Board of Directors may declare vacant the office of any Director whose eligibility for election has ceased, who has been declared of unsound mind by a final order of court, who is convicted of a felony, or who has not attended _____ (__) or more consecutive regular or special meetings of the Board.

Section 5.21. Filling Vacancies on Board.
Except for vacancies created by removal of a Director pursuant to Section 5.18 of these Bylaws, vacancies may be filled by a majority of the Directors then in office, whether or not less than a quorum, or by a sole remaining Director. Vacancies created by the removal of a Director may be filled only by approval (as defined by Section 12224 of the California Corporations Code) of the members. The members may elect a Director at any time to fill any vacancy not filled by the Directors.
ARTICLE VI. OFFICERS

Section 6.01. Titles.
The officers of the Corporation shall be a President, Secretary, Chief Financial Officer, and any other officers with such titles and duties as determined by the Board of Directors and as may be necessary to enable it to sign instruments. The President is the Chief Executive Officer of the Corporation. The same person may hold any number of offices. The President shall be chosen from among the Directors elected by the membership of the Corporation.

Section 6.02. Appointment and Resignation.
The officers shall be chosen by the Board of Directors and serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time on written notice to the Corporation without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

ARTICLE VII. CORPORATE RECORDS AND REPORTS

Section 7.01. Required Records.
The Corporation shall keep adequate and correct books and records of account and minutes of the proceedings of its members, Board of Directors, and committees of the Board. It shall also keep a record of the members, including the names, addresses, and number of shares held by each. The minutes shall be kept in written form. Other books and records shall be kept either in written form or in any other form capable of being converted into written form.

Section 7.02. Annual Report.
(a) For fiscal years in which the Corporation has, at any time, more than twenty-five (25) members, the Corporation shall notify each member yearly of the member's right to receive an annual financial report. The Board of Directors shall promptly cause the most recent annual report to be sent to a member on written request. The annual report shall be prepared no later than one hundred twenty (120) days after the close of the Corporation's fiscal year.

(b) The annual report shall contain in appropriate detail all of the following: (1) a balance sheet as of the end of the fiscal year, an income statement, and a statement of changes in financial position for the fiscal year; (2) a statement of the place where the names and addresses of the current members are located; and (3) the statement required by Section 7.03 of these Bylaws.

(c) The annual report shall be accompanied by any pertinent report by independent accountants, or, if there is no such report, by the certificate of an authorized officer of the Corporation that the statements were prepared without audit from the books and records of the Corporation.
Section 7.03. **Annual Statement of Transactions and Indemnifications.**
In addition to the annual report described in Section 7.02 of these Bylaws, the Corporation shall furnish annually (pursuant to Section 12592 of the California Corporations Code) to its members and Directors a statement of the transactions and indemnifications to interested persons. If the Corporation does not issue an annual report pursuant to Section 7.02 of these Bylaws, such statement shall be mailed or delivered to members within one hundred twenty (120) days after the close of the fiscal year.

**ARTICLE VIII. INSPECTION RIGHTS**

Section 8.01. **Articles and Bylaws.**
The corporation shall keep at its principal office in California the original or a copy of its Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the members at all reasonable times during office hours. If the Corporation has no office in California, it shall furnish on the written request of any member a copy of the Articles or Bylaws as amended to date.

Section 8.02. **Books and Records.**
The accounting books and records and minutes of proceedings of the members, the Board of Directors, and committees of the Board shall be open to inspection on the written demand of any member at any reasonable time, for a purpose reasonably related to that person's interests as a member.

Every Director has the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind, and to inspect the physical properties of the Corporation.

Section 8.03. **Inspection of Membership List.**

(a) Subject to the Corporation's right to set aside a member's demand for inspection pursuant to Section 12601 of the California Corporations Code and the power of the court to limit inspection rights pursuant to Section 12602 of the California Corporations Code, and unless the Corporation provides a reasonable alternative pursuant to Section 8.03(c) of these Bylaws, a member may do either or both of the following:

1. Inspect and copy the record of all the members' names, addresses, and voting rights, at reasonable times, on making a written demand five (5) business days in advance which states the purpose for which the inspection rights are requested;

2. Obtain from the Secretary, upon written demand and tender of a reasonable charge, a list of names, addresses, and voting rights of those members entitled to vote for the election of Directors, as of the most recent record date for which it has been compiled, or as of a date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of ten (10) business
days after the demand is received or after the date specified as the date as of which the list is to be compiled.

(b) The rights set forth in Subsection (a) of this Bylaw section may be exercised by any member or members possessing five percent (5%) or more of the voting power for a purpose reasonably related to the members' interest as members. The Corporation may deny access to the membership list where it reasonably believes that the information therein will be used for another purpose or where the Corporation provides a reasonable alternative pursuant to Section 8.03(c) of these Bylaws.

(c) The Corporation may within ten (10) days after receiving a demand, deliver a written offer of an alternative method of achieving the purpose identified in the demand without providing access to or a copy of the membership list. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in a demand made pursuant to Section 8.03(a) of these Bylaws shall be a reasonable alternative, unless the Corporation fails to do the things that it offered to do within a reasonable time after acceptance of the offer. Any rejection of the offer shall be in writing and indicate the reasons the proposed alternative does not meet the proper purpose of the demand.

ARTICLE IX. SURPLUS ALLOCATIONS AND DISTRIBUTIONS

Section 9.01. Fiscal Year.
The fiscal year of the Corporation shall end at the close of the business day on the last day of the month of __________ of each year.

Section 9.02. Surplus and Patronage Defined.
(a) "Surplus" shall be defined as the excess of revenues and gains over expenses and losses for a fiscal year. Such surplus shall be determined in accordance with generally accepted accounting principles and shall be computed without regard to any patronage refunds, capital allocations, dividends, or income taxes.
(b) "Patronage" shall be defined as ____________________________

Section 9.03. Annual Allocations and Distributions of Surplus.
(a) Before any dividends or patronage refunds are distributed for each fiscal year, any surplus should first be allocated to any deficit in the accounting of "retained earnings" of the Corporation.
(b) After any deficit in retained earnings has been eliminated, the Board of Directors may declare a dividend upon shares at a rate not to exceed any maximum rate established by Section 12451 of the California Corporations Code (taking into account any other "distributions" as defined by Section 12235 of the California Corporations Code). No such dividends shall be cumulative.
(c) The Directors may [or “shall”: see “Legal Sources and Comments” at the end of these Sample Bylaws] then uniformly distribute all the remaining surplus attributed to patronage of the members of the Corporation to such members as described in the following paragraphs of this subsection of these Bylaws. For the purposes of this subsection of the Bylaws, the remaining patronage surplus shall be computed consistent with Subchapter T of the Internal Revenue Code, related Treasury Regulations, and related court and other relevant interpretations.

(1) Any remaining patronage surplus attributed to the members and to be distributed to them shall be the total remaining patronage surplus attributed to both member and nonmember business (not reduced by dividends on shares but reduced by allocations to eliminate a deficit in retained earnings) multiplied by the ratio of member patronage to total patronage.

(2) A member is entitled to a patronage refund, if such is distributed, in the amount of the remaining patronage surplus, as determined by Paragraph (1) of this subsection of these Bylaws, multiplied by the ratio of such member's patronage with the Corporation to the patronage of all members with the Corporation.

(d) Any dividends declared or patronage refunds paid or allocated pursuant to this section of the Bylaws may be in the form of shares, in whole or in part, subject to Subsections (e) and (f) of this section of these Bylaws.

(e) If a member owns three hundred dollars ($300.00) or more in shares as of the end of the fiscal year for which dividends are declared or patronage refunds are to be paid or allocated, such member shall receive all of her or his dividends and patronage refunds in cash. The three hundred dollar ($300.00) amount shall be known as a member's “Fair Share.”

(f) If the cash payment to a member for such member's dividends and patronage refunds together would total less than one dollar ($1.00), the Board of Directors shall distribute such dividends and patronage refunds to the member wholly in shares.

(g) Each person who becomes a member of this Corporation consents to include in his or her gross income for federal income tax purposes the amount of any patronage refund paid to him or her by this Corporation in money or by written notice of allocation (as defined in the Internal Revenue Code), except to the extent that such a patronage refund is not income to the member because (i) it is attributable to the purchase of personal, living, or family items, or (ii) it should properly be treated as an adjustment to the tax basis of property previously purchased. The term “patronage refund,” as used herein, shall have the same meaning as the term “patronage dividend,” as used in the Internal Revenue Code.

(h) For the purpose of allocating and distributing any annual surplus, the entire operations of the Corporation shall be considered as a unit; provided that by resolution of the Board of Directors, the Corporation may distribute patronage refunds on the basis of the business transacted by each of the departments or divisions into which the operations of the Corporation shall be divided by the Board for the purpose of such allocation.
ARTICLE X. BYLAW CHANGES

Section 10.01  Bylaw Changes by the Board.
The Bylaws shall be adopted, amended, or repealed by the Board of Directors unless the action would:
(a) materially and adversely affect the rights or obligations of members as to voting, dissolution, redemption transfer, distributions, patronage distributions, patronage property rights, or rights to repayment of contributed capital;
(b) increase or decrease the number of members or shares authorized in total or for any class;
(c) effect an exchange, reclassification, or cancellation of all or part of the memberships or shares;
(d) authorize a new class of memberships or shares;
(c) change the number of Directors or establish a variable number of Directors;
(f) extend the term of a Director beyond that for which the Director was elected or increase the terms of the Directors;
(g) allow all or any portion of the Directors to hold office by virtue of designation or selection rather than by election by the members: and
(h) allow the Board to fill vacancies occurring in the Board by reason of the removal of Directors.

Section 10.02.  Bylaw Changes by the Members.
Where the Board of Directors is denied the right to adopt, amend, or repeal these Bylaws pursuant to Section 10.01 of these Bylaws, these Bylaws shall be adopted, amended, or repealed by approval of the members.

CERTIFICATE OF SECRETARY OF [NAME OF CORPORATION]
I hereby certify that I am the duly elected and acting Secretary of this Corporation and that the foregoing Bylaws constitute the Bylaws of this Corporation, as duly adopted by the Board of Directors on _________________________ ___, 20__.

Dated:_______________________ ___, 20__.

[signature]

______________________________
[typed name], Secretary
E. LEGAL SOURCES AND COMMENTS

Information related to most sections of the sample bylaws is provided here. All "Code Section" references are to the California Corporations Code, which includes the California Consumer Cooperative Corporation Law (sometimes referred to below as "co-op law").

Section 1.01. Classification of Members

Either the bylaws (preferably) or the articles of incorporation would need to be more complex in order to provide for multiple classes of members or shares. Most smaller cooperatives probably have no real need for more than one class of members or shares. Unless one or more different classes are established and described in the articles or bylaws, it is assumed that all members and shares have the same rights and obligations as all the other members and shares. Legal counsel should be sought before multiple classes are established.

Section 1.02. Membership Qualifications

Code Section 12403 allows a co-op to admit any "person" (i.e., a natural person or an organization) to membership, except that a "subsidiary" corporation of the co-op may not be a member. A co-op may limit those who may become members through membership qualification provisions. To help a co-op avoid the applicability of federal security registration, members should be limited to California residents wherever possible.

Section 1.05. Transfers Prohibited

Unless the articles of incorporation or bylaws provide otherwise, transfers of memberships and shares are prohibited by co-op law. As a practical matter, for a co-op issuing shares, such transfers should be prohibited. (See the discussion of sample bylaw Section 3.04 below and Code Section 12410(a)(1).)

Section 1.06. Membership Fee

One-time nonrefundable membership fees are sometimes useful in covering expenses related to the administrative processing of new members. A cooperative also might consider charging annual dues to help defray recurring membership costs (e.g., newsletters). Code Section 12441 allows the imposition of such fees and dues; to be effective, such dues and fees should be provided for in the bylaws.

Section 1.07. Bylaws and Articles to Prospective Members

This section not only recognizes that members should be given copies of a cooperative's basic corporate documents, but that it is generally required to do so if the co-op is to distribute tax-deductible patronage refunds. (See Internal Revenue Code Section 1388 (c)(2)(B) and Treasury Regulations Section 1.1388-1(c)(3)(ii).)

Section 2.01. Share Issuance

By changing the wording, a cooperative also could issue shares for other types of consideration (e.g., services, property, etc.), as allowed by Code Section 12400. To avoid "valuation" problems, however, a co-op may want to limit consideration to money paid.

Section 2.02. Share Ownership

Unless a cooperative is a "central organization" (e.g., having two or more co-ops in its membership), co-op law mandates that each member is entitled to only one vote in the affairs of the co-op. (See Code Sections 12256, 12314, and 12480.)
Section 2.03. Share Certificates and Disclosure Document
Because cooperatives are not required to issue share or membership certificates, these sample bylaws assume such certificates will not be issued. It is important to note that, while certificates are not required to be issued, co-op law does require that a "disclosure document" be given to each applicant for membership. (The sample disclosure document of this publication is correlated to the sample articles of incorporation and bylaws.) The required contents of the document are listed in this bylaw section. Also, in accordance with co-op law, Subsection (c) of this bylaw section requires that, since share or membership certificates are not to be issued, a member be given some form of receipt or other written document for his or her initial share purchase. If membership or share certificates are to be issued, co-op law requires certain information on the certificates. (See Code Section 12401.)

Section 2.04. Prohibition on Transfer of Shares
To minimize potential complex securities regulation and internal administrative problems, membership and share transfers should be prohibited, even between members.

Section 2.05. Partial Withdrawal
If investment in a cooperative is to be encouraged, a member should be allowed to withdraw at least part of her or his share investment without having to terminate membership. Termination of membership would usually mean that the co-op would then have to refund all of the member’s share account. (See sample bylaws Section 3.04.) For convenience, the “amount to be determined from time to time by the board” should be set at the same amount as the “fair share” of sample bylaws Section 9.03(e).

Section 2.06. Insolvency Delay
If share redemptions are to be allowed, this section reflects the restraints imposed by Code Section 12453.

Section 2.07. Unclaimed Equity Interests
With this bylaw provision, a cooperative may retain any unclaimed equity interests of a member after three years of no contact with such member. Otherwise, the equity amounts would be reported to and paid over to the State of California. Code Section 12446 mandates the procedures provided by this bylaw section.

Section 3.01. Voluntary Withdrawal
Code Section 12430 provides that a member has the right to “resign from membership at any time, although the articles of incorporation or bylaws may require reasonable notice before the resignation is effective.”

Section 3.02. Death and Dissolution
This bylaw provision reflects the language of Code Section 12410(a)(2).

Section 3.03. Expulsion
Fair and reasonable expulsion procedures are required by statute, and this bylaw section follows specific procedures described in Code Section 12431 as being reasonable. Most expulsions in cooperative settings are likely to be due to the “inactivity” standard of this bylaw section. A minimum patronage requirement allows a co-op to terminate memberships of those persons who are not at least minimally participating in the co-op. Because consumer co-ops in particular sometimes have problems meeting quorum requirements, terminating relatively inactive members can be an important issue.
Section 3.04. Settlement of Share Interest
To avoid the potentially awkward situation where a former member (due to termination) would perhaps indefinitely hold shares in the cooperative because of the transfer prohibition, this bylaw section provides that the share interest must be redeemed upon termination of membership. Also, the co-op is allowed to deduct from the interest of the former member any amounts he or she may owe the co-op. The substance of this bylaw section is required by Code Sections 12430(b) and 12445.

Section 4.01. Location
Code Section 12460(a) provides that membership meetings may be held anywhere that is stated in or fixed by the bylaws; if no such place is fixed or stated, the meetings must be held at the principal office of the co-op.

Section 4.02. Regular Annual Meetings
Although membership meetings may be held more often, an annual meeting is required by Code Section 12460(b). Also, although the annual meeting may be held at any time, an appropriate time for the meeting might be at about the same time that the required annual report must be made available to members, i.e., within one hundred twenty days of the end of the cooperative's "accounting" year. (See sample bylaws Section 7.02.)

Section 4.03. Special Meetings
Code Section 12460(e) allows the bylaws to specify any other persons who may call a special meeting of the members, besides the ones mentioned in this sample bylaw provision.

Section 4.04. Time for Notice of Meetings
It is important that "notice" of a meeting be properly given so that later procedural challenges of the results of any voting may be avoided. This section follows the language of Code Section 12461(a),(c).

Section 4.05. Method of Giving Notice
This bylaw section tracks the requirements of Code Section 12461(b) related to proper notice.

Section 4.06. Record Date for Notice
This bylaw section determines which members are entitled to notice of a membership meeting. In the alternative, Code Section 12481(a) allows the board of directors to set each particular record date.

Section 4.07. Contents of Notice
Code Section 12461(a) requires that the notice to members contain the items of information described in this bylaw section.

Section 4.08. Waivers, Consents, and Approvals
This section follows the language and requirements of Code Section 12461(e).

Section 4.09. Quorum at Meeting
Code Section 12462(a) provides these quorum requirements unless the bylaws provide otherwise. These sample bylaws provide that membership approval on any vote is by simple majority. While the bylaws or articles of incorporation may require approval by more than a majority of the members, a cooperative with a relatively large number of members would probably be well advised not to require approvals by more than a majority. See also Code Sections 12224 and 12331 related to majority and super-majority approvals. Code Section 12462(b) requires the "less than one-third" rule of this sample bylaws section.
Section 4.10. Loss of Quorum at Meeting
Code Section 12462(c) provides that a meeting may continue under the conditions stated in this sample bylaws section.

Section 4.11. Adjournment for Lack of Quorum
Code Section 12462(d) provides conditions for adjournment as provided in this bylaw section.

Section 4.12. Adjourned Meetings
Code Section 12461(d) provides the minimum rules as described in this bylaw section, but also allows the bylaws to set more stringent notice requirements, if desired.

Section 4.13. Voting of Memberships
Except in the case of cooperatives that are "central organizations" as defined in Code Section 12256 (i.e., those whose membership includes other co-ops organized under co-op law), each member of a co-op is entitled to only one vote in the corporate affairs. Although a co-op may want to limit each membership to one person, Subsection (b) of this sample bylaws section provides a voting procedure where a single membership is made up of more than one person or organization. The record date for determining which members are entitled to vote cannot be more than sixty days before the meeting or before written ballots are mailed or solicited. See Code Sections 12480–12484 for more details related to voting.

Section 4.14. Use of Written Ballots at Meetings
Although a cooperative generally does not have to provide for written ballots, such ballots must be used for "referendums." (See sample bylaws Section 4.16.) In any event, if a relatively large number of members were involved, most co-ops would probably find written ballots the more convenient voting procedure. See Code Section 12463 for more details regarding the use of written ballots.

Section 4.15. Contents of Written Ballot Used at Meeting
Code Section 12461(h) is the basis of this sample bylaws provision.

Section 4.16. Action by Ballot without Meeting
Although the articles of incorporation or bylaws may prohibit voting outside of meetings, except where at least twenty percent of the members force a vote (Code Section 12463(a) and (f)), cooperatives with relatively large numbers of members may want to conduct votes only by mail since quorums may be difficult to achieve otherwise.

Section 4.17. Written Ballot Used without Meetings
Code Section 12464(a) provides procedures for voting by written ballots. This sample bylaws section describes the California Consumer Cooperative Corporation Law's prescribed form of a written ballot, where the ballot is to be distributed to ten or more members of a cooperative having at least one hundred members. Failure to comply with Subsections (a) and (b) of this sample bylaws provision will not invalidate a corporate action but may be a basis for challenging the vote. Code Section 12463(d) provides that a written ballot cannot be revoked unless the articles of incorporation or bylaws provide otherwise.

Section 4.18. Solicitation of Written Ballots
Code Section 12463(c) states the solicitation requirements for written ballots, and this sample bylaws section closely follows the statutory language.
Section 4.19. Withholding Vote
Code Section 12464(b) provides the statutory basis for this bylaw provision. Failure to comply will not necessarily invalidate an election but may open it to challenge.

Section 4.20. Appointment of Inspectors of Election
Code Section 12483(a) provides for the appointment of “election inspectors.” Although the board of directors may always provide for election inspectors, such inspectors are not required to be appointed unless a member so requests. It is wise for a cooperative to appoint inspectors for any election.

Section 4.21. Duties of Inspectors of Election
Subsections (b) and (c) of Code Section 12483 describe the required duties of election inspectors. This sample bylaws provision tracks the statutory language almost verbatim.

Section 5.01. Number
Unless provided for in the articles of incorporation, the bylaws must state the exact number of directors or set a minimum and maximum number of directors, the exact number of which may be established by the board or the members. To avoid confusion, a fixed number of directors is usually preferable. In any event, a cooperative must have at least three directors. Code Section 12331(a) provides these rules.

Section 5.02. Qualifications
While most cooperatives probably require that directors also be members of the co-op, California's Consumer Cooperative Corporation Law does not require such membership. Also, although not provided for in these sample bylaws for simplicity's sake, “alternate” directors are permitted by Code Section 12331(a), and Code Section 12360(d) permits all or some of the directors to hold office other than by election by the members. (Code Section 12360(c) states that the bylaws or articles of incorporation may set qualifications.) California residency is required in this sample bylaws provision (since these sample bylaws require all directors to be members and, thus, to be California residents) to minimize potential securities regulation problems.

Section 5.03. Nomination
These procedures are required by Code Sections 12470, 12473, and 12474 to help ensure fair and open elections. Although the specific procedures of Subsection (a) of this bylaw section are no longer required by the California Consumer Cooperative Corporation Law, they have been retained for the purposes of these sample bylaws.

Section 5.04. Election
Code Section 12460(b) requires that in any year that directors are to be elected, the election must be held at the regular annual meeting of members (unless the directors are chosen in some other manner). Except in the case of those cooperatives that are “central organizations” as defined in Code Section 12256 (those whose membership includes other co-ops organized under co-op law), “cumulative” voting procedures are not permitted (Code Section 12484).

Section 5.05. Terms of Office
Code Section 12360(a) requires that the terms of elected directors be fixed (not to exceed four years) in the articles of incorporation or the bylaws; these sample bylaws provide for two-year terms. To simplify the sample bylaws, no “staggering” of terms is provided. The initial directors serve only until the first annual membership meeting, as provided in the sample articles of incorporation and Code Section 12360(b).
Section 5.06. Compensation

Although cooperative directors are generally not paid for their services as directors, they are often reimbursed for certain "out-of-pocket" expenses they incur in their role as directors. Code Section 12375(b) requires that co-ops be allowed to reimburse reasonable and necessary expenses if they so desire.

Section 5.07. Call of Meetings

Code Section 12351(a)(1) allows a cooperative to expand or contract the identified people who may call a meeting of the board of directors.

Section 5.08. Place of Meetings

Code Section 12351 allows cooperatives much flexibility regarding "regular" and "special" meetings of the board of directors, although Subsection (a)(2) states that the articles of incorporation or bylaws may not dispense with notice of special meetings.

Section 5.09. Presence at Meetings

Code Section 12351(a)(6) provides for the types of participation described in this bylaw section, but Subsection (a) itself allows cooperatives to vary or even prohibit these types of electronic meetings.

Section 5.10. Regular Meetings

Code Section 12351(a)(2) allows "regular" meetings (without notice) to be fixed in the bylaws. Such a meeting should be held at the time of the annual membership meeting.

Section 5.11. Special Meetings and Notice

The statutory language of Code Section 12351(a)(2) does not include "fax" transmissions. The articles of incorporation and bylaws may not dispense with the notice requirements of "special" meetings of the board of directors.

Section 5.12. Quorum at Meetings

Code Section 12351(a)(7) provides that a majority of the board of directors constitutes a quorum, unless the articles of incorporation or bylaws provide otherwise. A quorum of less than twenty percent of the directors, or less than two directors, whichever is larger, is prohibited.

Section 5.13. Acts of Board at Meetings

Code Section 12351(a)(8) requires that at least a majority of directors is required to approve an act of the board. Many cooperatives would probably not want supermajority approvals required by the articles of incorporation or bylaws. Code Section 12350 states that the management of a co-op is ultimately the responsibility of the board of directors. Although the board may delegate the management of the co-op, the board still retains ultimate responsibility.

Section 5.14. Adjournment of Meetings

Code Section 12351(a)(4) permits adjournment of a meeting of the board of directors to another time and place, unless the articles of incorporation or bylaws provide otherwise.

Section 5.15. Action without Meeting

Code Section 12351(b) permits board of directors' actions without a meeting.

Section 5.16. Executive Committees

Code Section 12352 provides for the establishment of committees with the authority of the board of
directors, with the exceptions as listed. Such committees may be established in the bylaws or by board resolution. The bylaws, however, may restrict the use of such committees (under Subsection (c) of Code Section 12352). See also Code Section 12331(c)(4) related to committee makeup and authority.

Section 5.17. Resignation of Directors
Code Section 12364(c) provides the right of resignation to all directors in language very similar to this provision of the sample bylaws.

Section 5.18. Removal of Directors
Where a cooperative has fewer than fifty members, Code Section 12362(a)(1) requires that the majority of all members (not just the majority of a quorum) must approve removal.

Section 5.19. Cause of Vacancies on Board
Code Section 12363 also provides that directors and members can sue in court to remove directors for fraudulent or dishonest acts or for gross abuse of authority or discretion.

Section 5.20. Declaration of Vacancies
Code Section 12361 allows the board of directors to declare vacancies for the reasons stated in this sample bylaws provision. Any specified number of missed meetings should probably take into account how often the board of a particular cooperative will meet.

Section 5.21. Filling Vacancies on Board
Code Section 12364(a) allows the articles of incorporation or bylaws to vary this provision, although members may elect a director for any vacancy not filled by the directors.

Section 6.01. Titles
Code Section 12353(a) requires that a cooperative have officers, including a chairman of the board and/or a president, a secretary, and a chief financial officer; and that the titles and duties of the officers must be stated in the bylaws or determined by the board of directors. “Chief financial officer” is now generally used throughout the entire California Corporations Code in place of the term “treasurer.”

Unless the articles of incorporation or bylaws provide otherwise, any number of offices may be held by the same person, although the chairman of the board or the president must be directors elected by the members.

Section 6.02. Appointment and Resignation
Code Section 12353(b) provides that the manner in which officers are chosen and their terms may be specified in the articles of incorporation or the bylaws (preferably the latter). Typically, officers are appointed by the board of directors. Officers are often more likely to be employees of a cooperative rather than directors. Officers' duties tend to be more “operational” than the more policy-oriented nature of board actions.

Section 7.01. Required Records
Code Section 12590 requires that membership records (including names, addresses, and each member's class and number of membership units) as well as adequate and accurate accounting records be maintained (either in writing or some other format that is capable of being converted to written form). It also requires written “minutes” of all member, board, and board committee meetings.
Section 7.02. Annual Report

Code Section 12591 provides that the "annual report" is not required for a cooperative having fewer than twenty-six members at all times during the fiscal year covered by the report. This sample bylaws provision is included to alert co-ops of the requirements of co-op law. Please note that the "statement of changes in financial position" is now a "statement of cash flows"; the statutory language has not yet been amended to conform to changes in accounting principles.

An income statement shows the income and expenses for whatever period (e.g., a twelve-month period) is being reported upon, while the related balance sheet shows the assets, liabilities, and members' equity as of the end of the last day of the period covered by the income statement. The statement of cash flows, the other required financial statement, shows how cash was generated and used in the operating, financial, and investing activities of the co-op.

Section 7.03. Annual Statement of Transactions and Indemnifications

Code Section 12592 provides that the "annual report" must include information regarding transactions with, and indemnification of, “interested persons” (e.g., directors and officers).

Section 8.01. Articles and Bylaws

Code Section 12340 requires the availability of the articles of incorporation and bylaws, as described in this sample bylaws provision.

Section 8.02. Books and Records

This sample bylaws provision is taken almost verbatim from Code Section 12603.

Section 8.03. Inspection of Membership List

Code Section 12600 delineates the rights of a member regarding the membership list of a cooperative, and this sample bylaws provision incorporates its mandates.

Section 9.01. Fiscal Year

Although any fiscal year not exceeding twelve months (except in the case of the 52/53-week option) may be adopted by a cooperative, certain factors should be taken into consideration in choosing the fiscal year. First, if a 52/53-week fiscal year is to be adopted, the co-op should consult a tax accountant or attorney regarding the tax rules surrounding such an alternative. Second, the fiscal year preferably should end on (or, in the case of a 52/53-week year, about) the last day of some calendar quarter (i.e., March 31, June 30, September 30, or December 31). Such a date should be (1) the one in which any "inventory" to be counted will be at a relatively low point or (2) the last of the four dates that fall within twelve months of the date of incorporation, or (3) the end of the calendar year. Tax rules require that any inventories (for resale) be physically counted at reasonable intervals. Although a retail or wholesale co-op would probably want to count inventory more often, the inventory should be counted on or very near the last day of the fiscal year (for both accounting and tax reasons).

Section 9.02. Surplus and Patronage Defined

“Surplus” is defined in order to determine what amount is available for any dividends and patronage refunds at the end of the fiscal year. The surplus is generally determined in accordance with “generally accepted accounting principles,” which imply the “accrual” (rather than the “cash”) basis of accounting. Code Section 12591(a) at least implies that accrual basis statements are required, because of both the titles and types of financial statements required in the "annual report."
"Patronage" should be defined as whatever activity the members are engaged in with their cooperative (e.g., workers as employees, consumers as purchasers). Tax-deductible patronage refunds (distributed from the surplus) are based on the relative patronage of each member to all members of the cooperative.

Section 9.03. Allocations and Distributions of Surplus

Please note that the following "subsections" correlate to the subsections of this sample bylaws provision.

(a) To help restore working capital following "loss" years, a cooperative should retain any current surplus needed to eliminate any "deficit" (i.e., the accumulated total net losses and distributions of dividends and patronage refunds) in "retained earnings" (i.e., assets less liabilities and contributed capital).

(b) Unless a cooperative prohibits the distribution of dividends or shares, the board of directors may declare a dividend of up to fifteen percent of the value of the co-op's shares (Code Section 12451), assuming a surplus is available after the elimination of any deficit and that share redemptions are based upon original amounts paid or allocated. If a co-op wishes to encourage members to invest in the co-op, dividends should be an option. Even if a surplus is available and dividends are not prohibited, the board must still determine the amount, if any, of dividends to be paid.

(c) Code Section 12201 provides for the distribution of patronage refunds. The third word of the sample bylaws Subsection (c), is all-important (see p. 59). For patronage refunds to be tax-deductible, tax law requires that the bylaws, articles of incorporation, or some other document mandate in advance that the cooperative distribute patronage refunds. (See Internal Revenue Code Section 1388(a)(2) and Treasury Regulations Section 1.1388-1(a)(1).) A smaller consumer co-op, for example, probably will not want to be initially obligated to pay patronage refunds because the related administrative costs could very well be much greater than any tax savings generated by mandatory refunds.

The Internal Revenue Code becomes all-important in structuring a cooperative's patronage refunds. Only "patronage-sourced" income may be distributed as tax-deductible patronage refunds, as such income is defined in Section 1388(a)(3) of the Internal Revenue Code, Treasury Regulations Section 1.1388-1(a), and various interpretations by the Internal Revenue Service and the courts. Also, the "ordinary income" portion of the gain from the disposition of a co-op's equipment must generally be distributed in accordance with the patronage of those persons who were members during the year when depreciation deductions were taken by the co-op. (See IRS Revenue Ruling 74-84.) Because such a distribution would be very burdensome for a co-op with a relatively large number of members, however, this sample bylaws subsection excludes such a distribution. (See Treasury Regulations Section 1.1382-3(c)(3).)

Tax-deductible patronage refunds must also be paid to members on the basis of the volume of business done with each member (Internal Revenue Code Section 1388(a)(1), (3); Treasury Regulations Section 1.1388-1(a)(i),(ii)) and determined by reference to the patronage-based "net earnings" of the cooperative (Internal Revenue Code Section 1388(a)(3); Treasury Regulations Section 1.1388-1(a)(1)(iii)).