

Special thanks

CHF BC would like to thank the following people for their help in producing the Guide to the Co-op Act:

Bill Wright, lawyer

Thom Armstrong
CHF BC and COHO Management Services Society

Sue Moorhead
CHF BC

Maggie Ross
Infinite Potential Consulting Group for her help in the preliminary edit of the Guide

Stephanie Ballantyne
EGO Creative Solutions
For her design and layout

**A project this ambitious needs resources.
We are grateful for the funding we received from:**



THE REAL ESTATE
FOUNDATION
OF BRITISH COLUMBIA

In addition to funding this Guide, the two foundations enabled us to hold 30 workshops on the Co-op Act from 1999 to 2002. Almost 600 people from related organizations and 141 different housing co-ops attended workshops throughout British Columbia.



BC Housing

And finally, we thank the many BC co-op members whose experience has guided us.

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1 Introduction to Guide and the Act

British Columbia’s new *Cooperative Association Act* (called “the Co-op Act”, or “the Act” in this Guide) became law on January 31, 2001. It replaces all earlier versions of the Act.

1.1 Purposes and use of Guide

This Guide is written to help you understand and use the Co-op Act. The Act covers non-profit housing co-operatives and all other kinds of co-ops. This Guide will only deal with how the Act applies to non-profit housing co-operatives (called housing co-ops from here on).

Some parts of the Act don’t apply to housing co-ops. For example, parts of the Act deal with investment shares and shareholders. Housing co-ops cannot issue investment shares, so this Guide will not deal with them.

The Co-op Act is nearly 100 pages long and has 229 sections. It is complicated and sometimes hard to read. This Guide will help you use and understand the Act. The Guide will help with everything from the first incorporation of your housing co-op to ongoing business, filings, membership, meetings, elections and voting. But remember, it is only a guide. It is still a good idea to read the Act to get more information.

You can read this Guide on its own or together with the *Model Rules and Guide to the Model Rules* in CHF BC’s *Effective Governance for BC Housing Co-ops, volume one*.

There are two kinds of information in this Guide:

- When we explain something from the Act, the words will look like this.
- *When we give advice or make suggestions, the words are in italics like this.*

When the Guide refers to a specific section of the Act, it will use square brackets. For example, section 5, subsection 3 of the Act will be shown as [section 5(3)]. These references are in the Guide to help you look up the exact wording in the Act.

1.2 How to get a copy of the Act

The official name of the Co-op Act is: *Cooperative Association Act*, SBC 1999 – Chapter 28. This means that it is part of the Statutes of British Columbia (SBC) and that the Act was passed in 1999. The Act only became law in 2001. You can buy the Co-op Act and the *Cooperative Association Regulation* (the Regulation) from:

Crown Publications

521 Fort St., Victoria V8W 1E7
Telephone: 250-386-4636.
www.crownpub.bc.ca

International Travel, Maps & Books

539 West Pender St., Vancouver V6B 1V5
Telephone: 604-687-3320.
www.itmb.com

You can find the Act and Regulation on the BC Government web site for Revised Statutes and Consolidated Regulations:

The Act:

www.qp.gov.bc.ca/statreg/stat/C/99028_01.htm

The Regulation:

www.qp.gov.bc.ca/statreg/reg/C/CoopAssn/391_2000.htm

What you see on the web site is not an official version of the Act. It is best to buy your own, true copy.

CHF BC has a link to the Act and Regulation on our web site at www.chf.bc.ca.

You can also look at a copy of the Co-op Act and Regulation at CHF BC's Resource Library. Call us for Vancouver office hours at 604.879.5111, and for Victoria office hours at 250.384.9444. We do not sell copies of the Act. Federation members can use our Vancouver Library computer to consult Internet resources.

1.3 Your Rules and the Co-op Act

If you have not updated your co-op's Rules since January 31, 2001, you need to. Those parts of your Rules that contradict the Act do not have any legal force. You may want to do some things that the Act allows. If they are not in your Rules, you may not be able to. CHF BC can help – consult our *Model Rules* and the *Guide to the Model Rules* for advice.

1.4 Stand alone law

The Co-op Act is known as a “stand alone” act or legislation. This means that in most cases, people who use the Co-op Act will not need to look at other acts, like the *Company Act*, to conduct business. Because the Act has everything in it that a co-op will need, it is easy for housing co-op directors, staff, advisors and members to use.

Co-ops must still follow other important legislation such as the *Human Rights Code*, the *Arbitration Act*, the *Income Tax Act* and other general laws. Sometimes the Co-op Act refers to these or other laws. This Guide will explain if and when these references are important to housing co-ops.

1.5 Registrar of Companies

The Registrar of Companies administers the Co-op Act. There is no longer a Superintendent of Co-ops. Chapter 9.5 of this Guide explains what documents your co-op needs to file with the Registrar of Companies.

The Registrar's duties are limited. There is no “overseer” or “ombudsman” of co-ops. Co-ops are seen as independent organizations that are run by their members and the directors elected by the members.

1.6 Types of provisions in the Act

When you read the Co-op Act you will find three kinds of provisions.

Mandatory

These are rules that all co-ops must follow. For example, a co-operative **must** hold an annual general meeting [section 143(2)]. A co-op **must** file an annual report with the Registrar of Companies [section 126]. You cannot change or “opt out” of a mandatory provision.

Default

Sometimes the Act sets out what a co-op must do, unless it decides to do something else. This is called a “default provision”. If a co-op’s Rules are silent, then the default provision in the Act applies. It’s important to know what these are, so that you can make a different choice if you want to.

Phrases that will signal a default provision are “unless the rules otherwise provide...” and “subject to the rules...”

For example, the Act sets the majority required to pass a special resolution at 3/4 of the votes cast at a members’ meeting, unless you decide in your Rules to lower the majority to 2/3.

If your Rules do not specify the required majority, then the default provision of 3/4 applies.

Enabling

The Co-op Act is sometimes thought of as an “enabling” law. An enabling law allows anyone covered by the Act to do certain things without getting further permission. It does not force them to do these things.

Enabling provisions are signalled by a phrase like “the rules may provide...”

For example, your co-op may decide that you must hold more than one general meeting per year. You can provide for this in your Rules [section 145]. You may also decide to admit people as members who are younger than 19 years. The Act allows you to do so, as long as they are no younger than 16 and as long as your Rules allow it [section 31].

1.7 Regulation

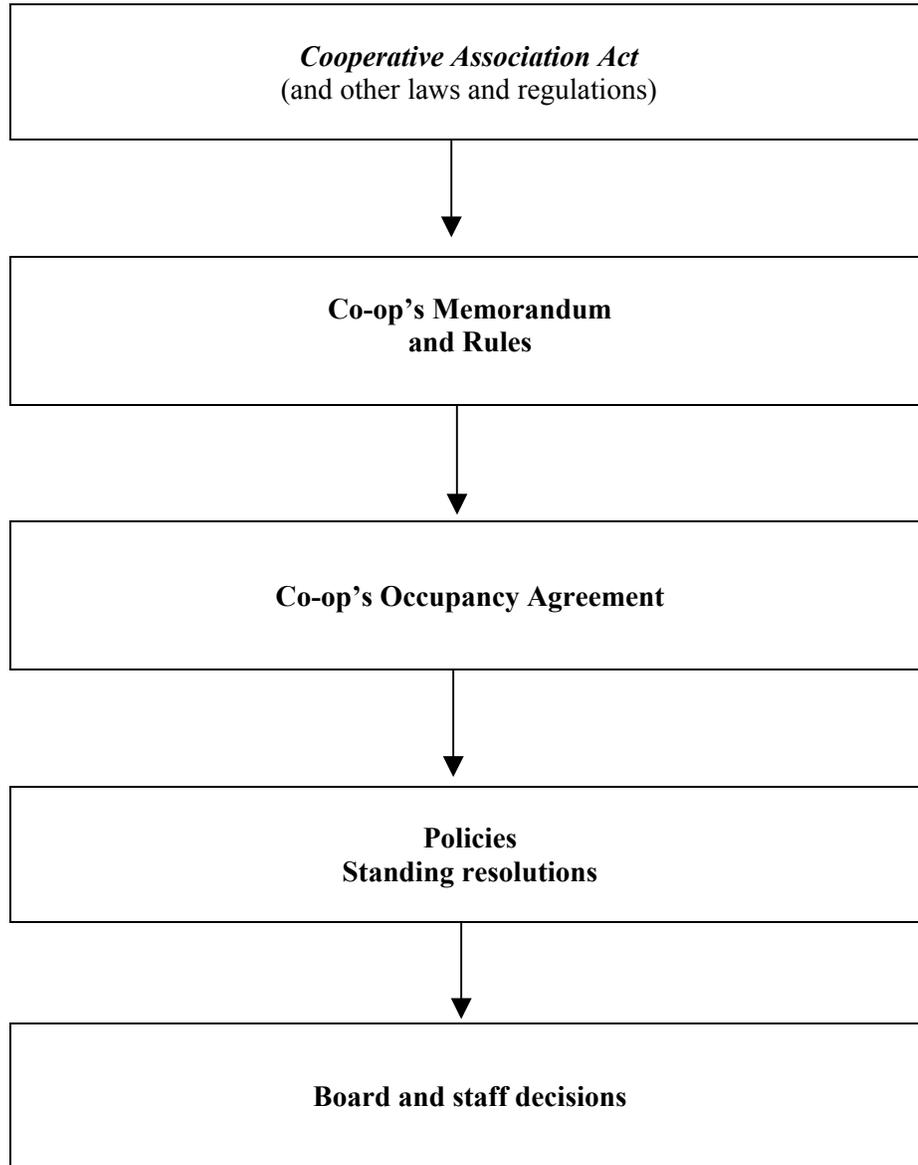
The Co-op Act gives permission to the provincial Cabinet to make regulations. “Regulations” are rules that cover procedures. These regulations have the same legal force as the Co-op Act. The *Cooperative Association Regulation* was made under the Act. It also came into effect on January 31, 2001. Section 4 of the Regulation deals with member termination in a housing co-op. *This is covered in Chapter 3.5 of the Guide.*

Schedule B - Form of Rules, is a model for other types of co-ops. It does not apply to housing co-ops. Be careful: do not confuse Schedule B with the Act. Consult CHF BC’s Model Rules for housing co-ops instead.

1.8 The framework

The Co-op Act does not replace the Rules and policies of a housing co-op. It does not replace the co-op’s operating agreement with CMHC (Canada Mortgage and Housing Corporation) or BC Housing Management Commission (BC Housing). These documents are separate and are necessary for a co-op to carry on its business.

Chain of legal authority



Chain of legal authority

The *Cooperative Association Act* is provincial law that governs all co-operatives, including housing co-ops. Only the BC government can change the Act.

Memorandum of association is an official document that proves a co-op is incorporated as a legal association under the Co-op Act. Changes to the Memorandum must be consistent with the Act. *You will find more about this topic in Chapter 2.3 of this Guide.*

Rules set out how the co-op will carry on its business. Rules deal with things like how to become a member, membership shares, elections, and how meetings will be run. All co-ops must have written Rules. These Rules must be consistent with the Act and the co-op's Memorandum. The Rules can be changed by a special resolution of the members. *You will find more about this topic in Chapter 2.3 of this Guide.*

Occupancy agreement is the lease between the housing co-op and each member. The occupancy agreement must be consistent with the Rules. If the Rules and the agreement are in conflict, then the Rules take priority. *In some housing co-ops the occupancy agreement is made part of the Rules as a schedule to them.*

Policies are set by the members or the board of directors. *Policies deal with the daily business of the co-op. Most co-ops have policies about parking, pets, maintenance, participation and more. A co-op can change its policies by a simple majority vote at the general meeting or a board meeting. Policies must be consistent with the Rules and the occupancy agreement. Some co-ops call their policies “house rules”. This can be confusing when explaining the difference between “Rules” and “house rules”. We recommend changing “house rules” to “policies”.*

Standing resolutions are decisions made by the board or members that do not need a formal policy. Standing resolutions cannot contradict co-op policies, occupancy agreement, Rules, Memorandum or the Act.

Operating agreement is a contract with CMHC or BC Housing. The operating agreement covers the conditions of the government funding the co-op receives. The operating agreement is not part of the co-op's governance framework, but it is a binding contract and the co-op must live up to its terms. It cannot be changed without the consent of both parties.

2 General information

2.1 Definitions

The Act defines many of the terms that your co-op uses in its Rules. It's important to use the definition in the Act and not make up your own. The definition from the Act has priority over any other definition.

The definitions are in section one of the Act. Be sure to look them up if you do not understand a word or term. This chapter covers some of the most common terms or definitions that housing co-ops need to know.

Resolutions

Members make decisions using two kinds of resolutions:

- ordinary
- special

The Guide refers to ordinary and special resolutions often.

“Ordinary resolution” usually means a resolution of the members of an association that is passed, after the required notice of meeting under the Act, in a general meeting by a simple majority of the total votes cast by the members who are entitled to vote on the resolution, including votes cast in person and, if permitted by the Act and the association's Rules, votes cast by mail ballot.

Co-ops use ordinary resolutions to make most of their decisions at general meetings.

Members can pass an ordinary resolution by a simple majority. A simple majority is more than half of the total votes cast.

Ordinary resolution – example 1

General Meeting 100 members present

Votes for	51
Votes against	<u>49</u>
Total votes cast	100

Simple majority 51 ordinary resolution passes

When a member does not vote it is called an abstention. Abstentions do not count as votes cast, so you do not consider them in deciding whether you have a simple majority.

Ordinary resolution – example 2

General Meeting	100 members present
Votes for	49
Votes against	47
Abstentions	<u>4</u> (not counted)
	100
Total votes cast	96
Simple majority	49 ordinary resolution passes

The Act also allows members to pass an ordinary resolution without having a meeting. Three-quarters of the members must agree to the resolution in writing.

It is very rare for a housing co-op to make a decision this way. Decisions should be made at meetings where members can discuss the issues before voting.

“Special resolution” (called an “extraordinary resolution” under the old Act) usually means a resolution of the members of an association that is passed, after the required notice of meeting under the Act, in a general meeting by a majority that the association’s Rules specify is required, of the total votes cast by the members who are entitled to vote on the resolution..., if the specified majority is at least 2/3, but not more than 3/4 of those votes or, if the association’s Rules do not specify the required majority,....at least 3/4 of those votes, in the case of a housing cooperative....

A co-op must use a special resolution for some types of decisions such as changing or amending its Rules or mortgaging its land and buildings.

The co-op’s Rules will set out the majority needed at a meeting to pass a special resolution. It cannot be less than 2/3 or more than 3/4 of the votes cast. If the Rules are silent on the majority needed to pass the resolution, then it is automatically 3/4 of the votes cast.

You must give members at least 14 days’ notice before a general meeting where a special resolution will be considered [section 146(1)]. *You can read more about notices in Chapter 6.3.*

The Act also allows members to pass a special resolution without having a meeting. All of the members must agree in writing to the resolution.

It is very rare for a housing co-op to make a decision in writing. Decisions, especially those important enough to need a special resolution, should be made at a general meeting where members can discuss the issues before voting.

Special resolution – example 1

Members vote by a **show of hands**

General Meeting	112 members present
Votes for	75
Votes against	25
Abstentions	<u>12</u> (not counted)
	112
Total votes cast	100
3/4 majority	75 special resolution passes

Special resolution – example 2

Members vote by **secret ballot**

General Meeting	112 members present
Votes for	75
Votes against	25
Spoiled ballots	4
Abstentions	<u>8</u> (not counted)
	112
Total votes cast	104
3/4 majority	78 special resolution fails

You will find more information about Meetings and Voting in Chapters 6 and 7 of this Guide.

Other definitions

“Association” means an association incorporated or continued under this Act or a former Act, and includes a housing cooperative.

Remember this when you are reading the Act. This Guide uses “co-op” or “co-operative” instead of “association”, unless we quote from the Act.

“Director” means a person who is appointed or elected to the governing body of a corporation (co-operative) and includes every person, by whatever name designated, who performs functions of a director, but does not include a person exempted, conditionally or unconditionally, from this definition by regulation.

You will find more information about directors in Chapter 5 of this Guide.

“Housing co-operative” means an association providing accommodation for persons the majority of whom are members of the association and are ordinarily resident in the accommodation.

Part 11 (sections 170 to 173) of the Act applies to housing co-ops only.

“Joint member” means a person who is one of 2 or more persons who jointly hold one membership in an association.

You will find more information about joint membership in Chapter 3.3 of this Guide.

“Member” means a member of an association and includes a joint member.

You will find more about this in Chapter 3 of this Guide.

“Officer,” in relation to an association, includes

- [a] the chair of the board of directors, every vice chair of the board of directors, the president, every vice president, the secretary, every assistant secretary, the treasurer and every assistant treasurer,
- [b] the general manager and every other individual designated, according to the function performed for the association, as an officer by the rules or by resolution of the directors, and
- [c] every other individual who performs functions for the association similar to those performed by the officers described in paragraphs (a) and (b) of this definition.

You will find more information about officers in Chapter 5 of this Guide.

“Registrar” means the Registrar of Companies or an authorized individual performing the Registrar’s duties.

See Chapters 1.5 and 9.5 of this Guide for more information.

“Rules” means the rules adopted by an association, as amended from time to time.

See Chapter 2.3 of this Guide for more information.

2.2 Names, incorporation and other formalities

Housing co-ops are incorporated bodies. The people who start the co-op form the legal group or “association”.

Every housing co-op that is incorporated in British Columbia must use the words “co-operative,” “cooperative” or “co-op” or “coop” or some form of the word co-operative in its name. You can also use one of the words “association,” “society,” “union” or “exchange.”

The Registrar will hold a name for a co-operative for up to two months until the co-op is incorporated. The Registrar will not permit the use of a name if it is the same as, or similar to the name of another co-op [sections 22, 23, 24].

Any three people can start a housing co-op [section 10]. At least three members are needed to keep the housing co-op going. To incorporate a co-op, you must file the following papers with the Registrar:

- a Memorandum
- a set of co-op Rules
- the names of all members
- the names and addresses of all first directors
- the address of the registered office.

You must send two copies of these papers to the Registrar. A registration fee of \$250 is also needed. If the papers include everything the Registrar needs then the co-op will be incorporated. [sections 11 to 21]

*You can find more information in the guide “**Incorporating a Cooperative Association in British Columbia, Government of British Columbia**”, December 2001.*

2.3 Memorandum and Rules

“**Memorandum**” means an association’s memorandum of association with all amendments, and includes the application for registration, certificate of incorporation, or a declaration or other equivalent to a memorandum of association, by whatever name called, of an association registered under this Act [section 1].

The Memorandum must explain why the co-op was formed and how co-op shares will be structured.

If a co-op ends

For a not-for-profit housing co-op, the Memorandum must explain what will happen if the co-op ends or “winds up” or “dissolves”. This is called a “dissolution provision”. It must say that the property will be given to another not-for-profit housing co-operative or to a charitable organization. A not-for-profit housing co-op must not give or sell any part of its property to its members [section 173].

The dissolution provision cannot be changed after incorporation [sections 12(e), 68(1), 173]. Older co-ops have the dissolution provision in their Rules. Some have it in both the Memorandum and Rules. This is important when your co-op wants to change its Rules. You may change all of your Rules except the one on dissolution.

A co-op that follows section 173 of the Act can, but does not need to, include “non profit” or “not for profit” in its name [section 23(3)].

Changes to Memorandum or Rules

A housing co-op may change its Memorandum and Rules by a special resolution of the members [section 68]. These changes must be consistent with the Co-op Act. For example, your co-op cannot change its Rules to allow members younger than 16 [section 31]. A not for profit housing co-op cannot change the dissolution provision in its Memorandum or Rules [sections 173, 68(1)].

Before your co-op can put the changes in place, you must send them to the Registrar [section 69]. It costs \$70 to file changes with the Registrar (subject to change).

When the Registrar accepts the Memorandum and Rules, all of the members must follow the Rules. The Rules have the same force as a binding contract between the housing co-op and the members [section 18]. This includes the occupancy agreement as well, if it is part of the Rules.

CHF BC's Model Rules make the occupancy agreement a schedule to the Rules. The occupancy agreement is part of the Rules and can only be changed by a special resolution. If your co-op does not have the occupancy agreement as part of its Rules, members must abide by whichever occupancy agreement they signed with the co-op.

Rules

The Rules of a housing co-op must include certain topics [section 13 of the Act and section 10 of the Regulation]. Some of the topics that must be in the co-op's Rules are:

Membership in the association

- How do people become members of the co-op?
- What must members do and not do?
- What kinds of membership will the co-op have?

Shares of the association

- Who will have shares in the co-op?
- How many shares will each member have?
- Who gets the shares when the member dies or goes bankrupt?
- What happens to shares that are not held by an individual, such as a corporation? *This is rare for a housing co-op.*

Directors and officers of the association

- How many directors will the co-op have?
- What restrictions, if any, are there on the powers of the directors?
- How will directors' meetings be conducted?
- How long can someone be a director or officer?
- How does a co-op choose its directors?
- How will the co-op remove a director if necessary?
- What are the duties and powers of officers?

Financial management of the association

- What rules are there about borrowing money? Who has the power to decide?
- What rules are there about investing the co-op's money? Who has the power to decide?
- What will happen to surplus co-op money?
- How and when will shares be cashed in?

General meetings of the association

- When and how will general meetings happen?
- How will voting happen for a delegate representing a corporation that is a member?

Documents

- How can someone send a notice to the co-op?
- How can the co-op send official documents or notices to members?
- How will the co-op approve any official documents?
- If the co-op has a seal, how will it be used and kept?

If any part of your Rules contradicts the Act, that part has no legal force. If you have not updated your Rules since the most recent changes to the Co-op Act, you should do so.

Schedule B of the Regulation under the Act contains “model” or “standard” Rules. Be careful: this Form of Rules is not for housing co-ops. Use CHF BC's *Model Rules* instead. We can help your co-op to update your Rules.

2.4 Registered office

The registered office of a housing co-op must be in BC [section 27].
It is usually found on-site at the office of the housing co-op. Co-ops sometimes use the address of their management company, resource group or another organization.

Co-ops must tell the Registrar if they change the address of the registered office. *This is important so that co-ops continue to receive official notices from the Registrar. You will find information about the form to use in Chapter 9.5 of this Guide.*

2.5 Use and change of name

A housing co-op must clearly show its name at the actual co-op site. *Co-ops usually have a sign at the entrance roadway or on the building where their main office is located.* All letterhead, invoices, notices and advertisements must clearly show the correct, legal name of the co-op [section 26].

If a co-op wants to change its name, the Registrar can hold a new name for up to two months. The Registrar will also hold a name if a co-op wants to join with another (“amalgamation”) [section 22].

2.6 Notices – how to send them

To the co-op

A person may serve or officially deliver notices and other papers to a co-op in different ways:

- leave them at the co-op’s registered office
- send them by registered mail to the registered office, or
- give them to a director or officer of the co-op [section 28].

To the member

A co-op can send notices to a member by:

- ordinary mail
- giving the notice to the member personally
- other ways, as long as they are set out in the co-op’s Rules [section 147].

When a notice is sent by ordinary mail, the Act considers that the member has received it on the second business day after the date of mailing. *For example, if your co-op mails a notice to a member on Monday, you can assume that the member has received it on Wednesday. If you mailed the notice on Friday, you can assume that the member has received it on Tuesday (unless Monday was a statutory holiday, in which case you can assume that the member received it on Wednesday).*

Sometimes proof is needed to show that the papers were sent or received. The co-op can keep a list of important notices or use double registered mail. Check your post office for more information on “registered mail.”

Information about notices of general meetings and board meetings is covered in Chapters 6.3 and 5.19 of this Guide.

2.7 Disclosure statement

A newly incorporated housing co-op must file certain papers under the *Real Estate Act* before it can offer shares to its members. This applies to members other than the incorporators or subscribers. These papers are called a “disclosure statement.” Housing co-ops can get help from CHF BC or their resource group to file the disclosure statement.

3 Membership

A housing co-op's Rules cover several topics about co-op membership. The Rules explain how someone can become a member of the co-op and who will make the decision about membership. In most cases, the co-op directors will decide who will be a member. The membership committee cannot make decisions about accepting new members, unless the Rules allow it. Usually the membership committee makes recommendations to the directors and the directors make the final decision.

Rules and policies

When making a decision about membership, the membership committee or the directors must follow the co-op's Rules and policies.

Government, first nations and corporations

A housing co-op can have members that are not individual persons, like corporations. First nation groups and government bodies can also be members [section 32]. If your co-op wants to do this, it must be in your Rules. *Usually only individuals can become members of a housing co-op.*

3.1 Age limits on membership

A housing co-op can let anyone who is at least 16 years old become a member. But if your co-op wants to have members who are younger than 19, your Rules must say so [section 31(1)].

Members who are younger than 19 have to follow the Rules of the co-op, just like any other member. They may also be sued if they owe money to the co-op. Members who are younger than 18 cannot be directors [section 31(3) and (4)].

3.2 Number of members per unit

The Act does not cover the issue of the number of members per unit in a housing co-op. Each co-op decides this in its Rules. The question to ask is: does our co-op want to have

- *one vote per adult? or*
- *one vote per unit?*

*There are pros and cons to each approach – the choice is yours. If your co-op decides that each adult should have one vote, then you will need to provide for **principal and associate members**. You will not find references to principal and associate members in the Co-op Act, but the Registrar will accept them. See CHF BC's Model Rules 2.1 and 2.2.*

3.3 Joint membership

Housing co-ops can have “joint memberships”, where two or more people share a membership. If your co-op wants to have joint membership, the Rules must be written to allow it [sections 13, 42].

The Rules about joint membership must include the following:

- Who owns the membership shares?
- If one of the joint members dies, who inherits the shares? If the Rules are silent on this, the surviving member will inherit the membership shares [section 13(3), (4)]. *This is why some housing co-ops allow joint membership.*
- How many votes do joint members have? Co-ops can let joint members have one vote each or one vote to share among them. Joint members are allowed only one vote among them unless the Rules say otherwise [section 42(1)].
- If joint members only have one vote among them, which joint member gets to vote? If the Rules do not say otherwise, the first of the joint members named on the co-op's register of members gets to vote. But if that joint member is away or does not want to vote, then the next-named person gets to vote, and so on [section 42(3)].

- What happens when one joint member leaves the co-op? *The Rules could say that the membership of both joint members is ended. The Rules can also require both joint members to sign the application or notice to withdraw.*

Each joint member is responsible for all money owed to the housing co-operative [section 42 (4)] by a joint membership.

If the co-op gives out share certificates, it does not need to give a share certificate to each joint member. It can issue one, naming all of the joint members [section 42(5)].

Co-ops should seek advice from their lawyer or from CHF BC before deciding to have joint memberships. Joint membership can be complicated, so getting advice will help.

3.4 Withdrawal from membership

Members can end their membership in the co-op by giving notice to the co-op. This is called withdrawal from membership [section 33].

The Rules may say how much notice members need to give for withdrawal. They should also say how a member must give notice. *Chapter 2.6 deals with sending notices. Most housing co-ops require a notice period of 60 days, starting from the end of the month. The notice should be in writing. A co-op would be taking a risk if it assigned a new member to a unit without a written notice from the departing member. Once written notice is received, the member who gave the notice cannot cancel it without the co-op's consent.*

A co-op cannot refuse a member's withdrawal from membership.

A co-op's Rules may set out conditions for transferring a member's shares [section 33(1)]. *For example, the Rules should set out what happens if a member dies and another family member living in the unit wants to apply for membership.*

3.5 Termination of membership

A member's right to live in a unit comes from the person's membership in the housing co-op. The right to live in a unit ends when the membership ends [section 171].

Housing co-ops can end or “terminate” a membership under the Act.

Terminating a membership is a serious decision, resulting in the loss of someone's home. The process is sometimes called “expulsion”, although this word is not in the Act. Expulsion or termination of membership means losing the right to live in a unit owned by the housing co-op. A co-op should use termination of membership as a last resort, only after trying other ways to solve the problem.

The Act allows a co-op to have Rules for termination of a membership [sections 35, 36, 37, 172 of the Act and section 4 of the Regulation]. However, the Rules must be consistent with the Co-op Act. A housing co-op may be unable to terminate a membership if it does not have the proper wording about termination in its Rules.

The Act and the Regulation prescribe a complicated process for termination and expulsion. *Before deciding to terminate a membership, a housing co-op should get legal advice or talk to CHF BC.*

Every co-op should look carefully at its Rules and occupancy agreement to make sure that the Rules for terminating a membership are consistent with the Act and are easy to understand and follow.

When can a membership be terminated?

There are three general grounds or reasons when the Act allows for the termination of membership. A co-op can terminate a membership when:

- A member does not pay rent, housing charges, occupancy charges or other money owed for the housing unit. The member must be given notice with a reasonable time to pay any money that is owed.
- A member has broken a material condition of the lease or occupancy agreement [section 35(3)]. This is called breach of a material condition. The member must be given notice with a reasonable time to correct the problem.
- A member has engaged in conduct detrimental to the housing co-operative [section 35(4)].

What is a “breach of a material condition” or “detrimental conduct?”

A co-op’s Rules must be clear about what kind of behaviour is covered by these terms. This will guide a co-op in deciding if a member has broken an important rule in the occupancy agreement (breach of a material condition) or acted in a way that is harmful to the co-op (detrimental conduct).

Some examples of a breach of a material condition of the occupancy agreement are listed below. These should be written in the occupancy agreement:

- *breaking parking regulations*
- *giving the co-op NSF cheques many times*
- *not giving the co-op financial or income information when asked*
- *not following the Rules or policies of the co-op*
- *using the housing unit for something other than a residence*
- *creating a dangerous or hazardous situation that could damage the co-op buildings or cause insurance problems*
- *altering the co-op unit without written permission*
- *not keeping the unit in good condition*
- *allowing liens to be placed on the unit for repairs*
- *not using the unit as a principal residence, or*
- *not participating in the co-op’s activities without a good reason.*

The Act does not define detrimental conduct. Some examples of detrimental conduct might be:

- *causing damage to the co-op by not following Rules, policies or a section of the occupancy agreement*
- *causing damage or threatening to damage co-op property, buildings or grounds, or*
- *making statements that hurt the co-op’s reputation and have a serious impact on the co-op.*

How to start membership termination

Step 1 – Notice to pay arrears or correct breach specifying time: To start the termination process the co-op must first send a written notice to the member explaining the situation and demanding payment or that a problem be fixed. The notice must tell the member the date when the payment must be made or the problem fixed. If the grounds for termination are conduct detrimental to the co-op, the co-op can send a notice here or as part of Step 2.

Step 2 – Notice of meeting of directors to consider termination: If the debt is not paid or the problem continues, the directors must send another notice to the member. This notice should advise that the directors plan to meet to decide on whether to terminate the membership. The member must receive the notice at least seven days before the meeting.

The notice can be sent by ordinary mail or delivered in person. A co-op can use a different way of giving notice only if it is allowed by the Rules [section 147(4)]. The notice must:

- describe the reason for considering the termination
- set the date, time and place of the directors’ meeting
- advise that the member can attend the meeting, and
- advise that the member can either bring or send a lawyer or someone else to the meeting [section 36].

Step 3 – Directors’ meeting with member: The directors must allow the member to come to the meeting. The directors must let the member or the member’s lawyer or representative explain the member’s situation or defend the member’s actions. The member must have a chance to answer questions and provide a defence against the board’s claims.

The board must follow the “principles of natural justice” during the entire process.

Principles of natural justice

Following the principles of natural justice means that:

- *the member has all of the information about the reasons the board is considering termination of membership*
- *the member has had enough notice to prepare for the meeting*
- *the member has a right to speak at the meeting and to have representation [section 36(1)]*
- *only information related to the board’s reasons for considering termination can be used to make the decision, and*
- *the directors are not “biased” or making their decision for personal reasons.*

Decision

After meeting with the member, the directors may decide to go ahead with termination. This is done by a resolution of the directors. The resolution must be passed by 3/4 of all directors (not just 3/4 of the directors present at the meeting). For example, if a co-op has 8 directors, at least 6 directors must vote in favour of termination.

Note: it is possible to have a quorum of directors at the meeting and still not have enough directors present to pass a motion of termination.

After the member has been given every chance to hear the board's arguments and to speak to the directors, the directors may ask the member to leave the meeting and then make the decision in private. The directors should only use information related to the grounds for termination to make their decision. They cannot use information that the member was not made aware of and had no chance to respond to. The directors must not be biased or prejudiced when making a decision.

Step 4 – Notice to member of directors' decision: Within seven days of the directors' meeting, the directors must notify the member in writing of their decision. The notice must advise the member whether the resolution for termination was:

- withdrawn and that the termination will not continue
- defeated because it did not receive the support of 3/4 of all directors, or
- passed by at least 3/4 of all directors. In this case, the notice should include the date that the member must leave the unit. The co-op must give the member a reasonable amount of time to leave – usually one month.

The co-op must send this notice the same way it sent the first one. See Step 2.

The notice **must** tell the member about the member's right to appeal.

Step 5 – Member’s right to appeal to general meeting: If the member does not accept the board’s decision to terminate membership, the member has seven days to send a notice of appeal to the co-op. The appeal will be heard at the next general members’ meeting. The directors can decide if they want to call a special general meeting to hear the appeal. They can also wait until the next regular general meeting of members. The member continues to be a member with full rights until the appeal is heard.

It is usually best to have a special general meeting so that you can deal only with the termination issue. It is a difficult process and does not mix well with other co-op business.

Step 6 – Notice of general meeting to hear member’s appeal: The notice of the meeting must:

- give the notice required by the co-op’s Rules. If the decision requires a special resolution, the notice period must be at least 14 days. *See Chapter 6.3 of this Guide for more information*
- be delivered correctly – *see Chapter 2.6 of this Guide for the method of giving notices.*

Step 7 – General membership meeting to hear member’s appeal: At the general meeting, the member who is appealing the termination is allowed to be present and/or represented by a lawyer or other person. When deciding on the appeal, all of the same “principles of natural justice” must be followed.

Step 8 – Membership decision: At a general meeting, the members of the housing co-op may decide to confirm the directors’ decision to terminate the membership. The type of resolution to be passed depends on the grounds for termination:

- A resolution requiring a simple majority (ordinary resolution) or, if the Rules require it, a greater majority, if the termination is for:
 - not paying housing charges or other money owed to the co-op
 - breach of a material condition of the occupancy agreement.
- A special resolution if the termination is for detrimental conduct. *Chapter 2.1 of this Guide covers special resolutions.*

Step 9 – Notice to member with information of right to court appeal: The co-op must then give written notice to the member confirming the decision of the general meeting [section 37(2.1)]. The notice must be given promptly. If the decision of the members was to confirm the termination of membership, the notice must include:

A Notice or Right To Appeal (form 9 of the Regulation), and Forms 59, 59B and 59C from Appendix A of the Supreme Court of BC rules [regulation 221/90].

These forms are required by the Act [Regulation, section 4].

Step 10 – Grounds for appeal to court by member: The member has 30 days after the date of the notice to appeal this decision to the BC Supreme Court. The appeal can be on the following grounds:

- the principles of natural justice were not followed,
- the decision to terminate membership is not based on the facts, or
- the decision does not comply with section 35 of the Act.

If the member starts an appeal, the co-op has a right to give its reasons for the decision at a new hearing in court (called an appearance). At the same time, the co-op may apply to the court for an order for possession of the unit. The court will listen to any information given by the co-op. The court will also consider any other information it thinks is important [section 37(5)].

Step 11 – Right of member to payment by co-op of court fees: A member who decides to appeal the termination decision to the court can ask the co-op to issue a cheque payable to the BC Supreme Court Registry to cover the cost of court fees (\$240 at the time this Guide is being published). This request must be made in writing. It must be given to the co-op within ten days from the date that the member was notified of the final decision to terminate membership. If this request is made in time, the co-op must pay the fees.

If the member owes money for housing charges, the co-op does not have to pay the filing fee. If some of the money issues are still not agreed on, this rule may not apply. The court does not refund the fee. If the court agrees with the co-op's decision to terminate the membership, the co-op is allowed to recover the cost of the fees as a debt from the member [Regulation, section 4].

Step 12 – Right of co-op to possession if member does not appeal:

Sometimes a member does not appeal to the court but also does not leave the unit. If this happens, the co-op may apply to the BC Supreme Court for an “order of possession.” An order of possession lets the co-op take over the unit. Before giving the order, the court must decide if the co-op followed the principles of natural justice. If the co-op did, then the court will give the co-op an order of possession [section 172].

Step 13 – Member is no longer considered to be a member after decision of general meeting: Once the general meeting has confirmed the decision to terminate a membership, the member is no longer a member of the co-op and has none of the rights or responsibilities of a member. But the member keeps the right to remain in the unit while appealing to have the co-op’s decision overturned in the BC Supreme Court. The member must still comply with the occupancy agreement or lease with the co-op.

Step 14 – Member appeal to Court of Appeal with permission: The member can appeal a decision of the BC Supreme Court to the Court of Appeal if a judge allows it [section 37(6)].

Step 15 – Member remains in unit or court gives order to vacate: The member can remain in the unit unless the court gives an order to vacate.

Why the need for clear rules?

Every housing co-op’s Rules and occupancy agreement must clearly set out the grounds and procedures for membership terminations. These Rules must be consistent with the Co-op Act. It is very important to follow these Rules exactly. *When in doubt, consult your lawyer. CHF BC will assist housing co-ops with termination issues but cannot provide legal advice.*

Can a member be re-admitted to membership?

A co-op can re-admit someone whose membership has been terminated, but only by a special resolution of the members.

Successful and fair terminations

In summary, we suggest that you consult closely with your lawyer (or management company) on this complicated and potentially expensive and lengthy procedure.

For a membership termination to be completed successfully, a co-op needs:

Adequate legal framework: The Rules and occupancy agreement must be written well and comply with the Act to allow for membership termination.

Grounds: There must be proper grounds for terminating a membership:

- Non-payment
- Breach of a material condition of the occupancy agreement, or
- Conduct detrimental to the co-op

Evidence: You must have adequate evidence to show that the grounds for termination are valid.

Procedural compliance: Be sure to follow the procedures to the letter. Keep a “paper trail” of all the steps you have taken.

Sound judgement: Use sound judgement throughout the process. *When in doubt, give the member extra consideration to ensure fairness. Whenever you are unsure, consult your lawyer for advice.*

4 Shares and mortgages

4.1 Membership shares

Shares in a housing co-op give members a right to be a part of the co-op, but not the right to vote [section 40(2)]. All voting is based on membership. Members do not get to vote because they have a certain number of shares. The co-op principle is “one member, one vote”, no matter how many shares a member owns.

A not-for-profit housing co-operative is allowed to issue membership shares that have a fixed dollar value. These are called par value shares [section 173(7)]. *Normally they do not earn interest or dividends. For many housing co-ops, shares are worth \$10 each. The value can be as low as \$1 or as high as \$100.*

Members cannot own shares jointly, unless they are joint members.

Shares in a not-for-profit housing co-op are “personal property.” They are not “real property.” The member owns the dollar value of the shares, but does not own any part of the co-op’s land, buildings or other assets. A member’s right to live in a unit comes from the person’s membership in the housing co-operative and from the occupancy agreement between the member and the co-op [section 48].

A housing co-op will usually ask someone who wants to become a member to apply for shares equal to the value of the unit the member will live in. But the member does not pay the full price of these shares. Most co-ops ask that the member pay between \$1000 and \$3000 for the shares. This is called the “share payment.”

The number of shares a member must buy is usually based on whether the member is a principal member or an associate member. Associate members usually buy only one share.

Call on shares

A person who becomes a member of a co-op agrees to purchase a certain number of shares as required by the Rules or determined by the directors [section 30]. Sometimes the member is not required to pay the full price of the shares at the time of becoming a member.

Although it is not done very often, the Act allows housing co-ops to ask members to pay any money remaining unpaid on shares “on demand.” If the member does not pay, the shares that the member already has will be taken back by the co-op. Then the member would no longer be a member of the co-op [section 52].

No investment shares

A not-for-profit housing co-op cannot issue investment shares. “Investment shares” are shares that give money back or interest on the investment. Equity housing co-ops can issue investment shares [section 54].

Share certificates

A housing co-op can give out share certificates in the amount that was paid for the membership shares [section 57(1)]. If a co-op’s Rules say that share certificates will not be given, then the co-op does not need to give them out. If the co-op does not want to give out share certificates, the Rules must say this very clearly. In the case of joint membership, only one share certificate is issued naming both people as the member [section 42(5)].

Register of shares

The co-op must keep a record of the name of each shareholder and the amount paid for the shares in its registered office [sections 57, 124, 128].

4.2 Repayment of shares

Members have the right to get back the money paid for their membership shares when they leave the co-op. This right goes to members who leave voluntarily or when the co-op asks them to leave (termination of membership.) The co-op has to pay the money back after the member:

- has given back the share certificate (if the co-op gave one to the member)
- paid any money owed to the co-op
- left the unit [section 38(3)].

This payment must be made right away if a member is leaving because of termination of membership. *In practice, this should be within a reasonable time after allowing enough time to inspect the unit and issue a cheque. Most co-ops have Rules that set a time period to pay back the money, for members leaving voluntarily.* If the Rules do not say otherwise, the share money must be paid to the member right after the member leaves the unit. The amount of money given back to the member must be equal to the amount paid for the shares. No interest or bonus on shares can be paid to the member [section 38(4)].

If the shares are held by joint members, all of the joint members must get the share money back. The co-op does this by writing a cheque payable to all of the named shareholders. This ends the housing co-op's responsibility for payment [section 53].

If the member owes any money to the co-op, the co-op has the right to hold back some of the value of the membership shares [section 56]. *This lien is explained more in Chapter 4.3 below.*

A co-op must not redeem membership shares if it is insolvent or bankrupt [section 66(2)].

4.3 Lien on shares

A co-op can place a lien on membership shares for money owed to the co-op [section 56]. A "lien" is a legal right to hold someone's property until a debt on that property is paid. *A member may owe the co-op housing charges or the member may have damaged the unit. A housing co-op must have clear Rules that explain exactly how the co-op will put a lien on a member's shares. These Rules must explain all the details of this process, including the way the co-op will notify the member of the lien.*

4.4 Mortgages

A housing co-op can raise money for major construction projects or renovations by arranging a mortgage on its property. This can only be done if the members agree by passing a special resolution [section 71]. A co-op must file this kind of special resolution with the Registrar. *You will find more information on filing in Chapter 9.5 of this Guide.*



5 Directors

Every co-op has a board of directors that is elected or appointed by the members. The board is the co-op's administrative body and acts on the members' behalf between general meetings.

5.1 Duties and responsibilities

As representatives of the membership, directors have the legal right to operate the co-op. They must manage or supervise the co-op's business and affairs. They can use all the powers of the co-operative to do their job. Sometimes the co-op's Rules will limit what the directors can do. These limits must not prevent the directors from doing their job in the way the Act says they must [section 76].

5.2 As a board of directors

Directors work as a group or "board of directors." No one director has more power than another, not even the chairperson or president. Directors make decisions as a group. Individual directors do not have special powers to act alone. If a director acts alone, but gives an outsider the impression that it is on behalf of the co-op, then the co-op may be responsible or liable for the action of that director. *For example, a director orders a new bathtub installed in a unit without co-op authorization. If it's too late to cancel the order, the co-op will still have to pay the plumber.*

Delegation

Sometimes the board of directors will ask one or more of the directors to perform a special duty. That director is then acting for the board, not alone. Directors who take individual action without permission from the board could be held personally responsible.

Committees of directors

Directors can "delegate" or hand over some of their power or responsibility to committees of directors. They cannot delegate responsibility to committees of members who are not directors, unless the co-op's Rules specifically say they can. A committee of directors has all the power of directors to do the job it has been given [section 76].

Advisory committees

Directors can ask other committees whose members are not directors to do work for the co-op. These advisory committees must report their ideas, suggestions and activities to the directors. The directors can accept the committee's recommendations or suggestions if they think they are good ones.

Directors' decisions

Directors usually make decisions by resolution. All the directors' decisions must be recorded in the minutes.

5.3 Fiduciary duty

Directors are legally responsible for managing the co-op. But the co-op doesn't belong to the directors—it belongs to the members. As representatives elected by and responsible to the membership, directors must give priority to the interests of the co-op ahead of their own personal interests. This is called a fiduciary duty. Directors must conduct the business of the co-op based on certain standards of conduct.

5.4 Standards of conduct for directors

Directors (and officers) must follow certain standards of behaviour when they are in office.

They must:

- act in the best interests of the co-op (and not in their personal interest or the interests of a small group)
- act honestly and fairly
- show care, prudence and skill when doing their job (and get help when needed)
- follow the Co-op Act (they must know what is in the Act), and
- follow the Memorandum and Rules of the housing co-op (they must know what is in these documents) [section 84].

A housing co-op cannot give directors or officers permission to act in a way that is different from these standards [section 84(3)].

5.5 Conflicts of interest

Directors of a co-op have the power to make decisions that ordinary members usually cannot. Because of this, they may sometimes find themselves in a “conflict of interest”.

Recognition: what is a conflict of interest?

Conflicts of interest arise when the co-op enters into a contract or transaction that provides financial gain to a director or officer or to someone or some organization in which the director or officer has a material interest.

Not all conflicts are problems. But serious legal problems can develop if the conflicts of interest are not talked about or “disclosed.” The Co-op Act requires directors to disclose conflicts of interest. *Some co-ops make this problem easier to deal with by writing Rules that will prevent members who would be in a conflict of interest from becoming a director. The Rules might also prevent someone who is part of a business or other contract with the co-op that puts them in a conflict of interest from being elected to the board.*

People often misuse the term “conflict of interest”. Be careful that it really is a conflict of interest before naming it so.

It is a conflict of interest when, for example:

- *the co-op hires a director or the director’s spouse to do work for the co-op, such as painting vacant units*
- *the co-op buys goods or services from a company owned by a director.*

It is not a conflict of interest, based on the Act’s definition, when, for example: a director votes:

- *to hire a close friend to do work for the co-op*
- *to appoint the director’s spouse to chair a committee*
- *to terminate the membership of a neighbour when the same director laid the noise complaint that is the reason for termination.*

Situations like these could be seen as examples of a director’s bias, bad judgement, poor leadership or unethical conduct. But they are not conflicts of interest as the Act defines them.

The rules on conflict of interest in the Act are fairly narrow. They only relate to financial gain. If there is no financial gain to the director or the director's family or business, there is no legal conflict of interest. But the co-op housing sector aspires to higher codes of conduct. Please see Chapter 5.7 on ethical conduct in this Guide.

Disclosure

“Disclosure” means telling the co-op about a conflict of interest. If the co-op has or is going to enter into a contract or dealing, directors must disclose their involvement if:

- the contract has something to do with the way the co-op runs,
- the director (or officer) gets some money or other benefit from the contract, or
- a group or business that the director (or officer) is connected with, makes a profit from the contract.

A conflict of interest must be disclosed as soon as:

- someone becomes a director or officer
- the director becomes aware of the conflict of interest
- the contract is discussed by the directors, or
- the co-op agrees to the contract or has signed the contract.

We recommend that conflicts be disclosed as early as possible. If you aren't sure whether you have a conflict, mention it anyway and ask the board or the co-op's lawyer for advice on what you should do.

The Co-op Act sets out how and when to disclose a conflict of interest. The best way is by:

- telling the co-op at a directors' meeting or a general membership meeting about the conflict and having it written into the minutes
- writing it in a resolution that the directors can adopt without a meeting [section 77(4)], or
- writing a letter to the co-op disclosing the conflict of interest [section 80].

A disclosure is good for as long as the contract lasts or for as long as the director or officer profits from the contract [section 89]. In other words, if a director's company is hired to paint vacant units in the co-op and the director makes proper disclosure of the conflict of interest, it does not have to be repeated each time a unit is painted.

Approval

In many cases, someone can still be a director while in a conflict of interest. Once the conflict of interest is disclosed, the co-op can still “approve” the contract or transaction that has created the conflict.

There are different ways to approve a transaction or contract where there is a disclosable interest:

- a resolution of the directors at a meeting of directors unless the members have already voted not to
- a special resolution at a general meeting even if the contract was not approved by the directors, or
- a “consent resolution” or general agreement without a meeting of all the directors except the director who has the conflict (unless the membership votes not to approve the contract or transaction) [section 90], or by
- the Supreme Court of BC, if the co-op has petitioned the court [section 92].

Reporting

If the directors approve the contract, they must:

- inform the membership at the next annual general meeting, and put it in the minutes, or
- include a note with the audited financial statements if the transaction happened after the AGM [section 91].

Action by a member

If a director does not make proper disclosure or the contract is not approved in the proper way, any member of the co-op can go to the Supreme Court to stop the housing co-op from entering into the contract [section 92].

Repayment in a conflict of interest

If the rules for proper disclosure and approval of the contract are not followed, the director or officer who has the conflict must repay to the co-op all profits made from the contract [section 89].

What to do if you have a conflict of interest:

- provide full disclosure to the co-op, as soon as you know about it and before the decision is made
- abstain from discussing and voting on the transaction. *(It is good practice to leave the meeting during this discussion and voting on the conflict issue and have this recorded in the minutes.)*

In summary, a conflict of interest is not illegal in itself – what’s important is how you handle it.

5.6 Conflict of duty or office

There is another form of conflict that often causes difficulty in housing co-ops. It is not covered in as much detail in the Act and does not involve material gain for a director or officer. It is called a “conflict of duty”, a “conflict of office”, or a “conflict of loyalty.”

A conflict of duty, office or loyalty can arise when a director or officer:

- *takes a job, or*
- *becomes an officer, or*
- *is elected to the board of directors*

of an organization that:

- *has similar or competing programs, or*
- *has policies that are not compatible with the needs of the co-op, or*
- *looks for funding from the same source, for the same purpose.*

Before a co-op director takes on a position that may create a conflict of duty, the director should tell the board about those plans. If loyalties become divided later, in a way that is damaging or divisive, then the individual should resign one or both positions.

A director or officer can report a conflict of duty in the same way as a conflict of interest is disclosed. The conflict can also be disclosed at a meeting of directors [section 95] and recorded in the minutes.

5.7 Ethical conduct

The conflict of interest requirements of the Act set a modest standard. But that is not all there is to acting honourably, in a way that is worthy of members' trust.

In Chapter 5.5, we give some examples of a director's conduct that are not conflict of interest situations. Sometimes it's hard to tell whether a situation puts a director in a conflict of interest.

As a director, this is something to think about before you act. As a community, your co-op may want to set standards of conduct for directors that expand on what the Act requires. Many co-ops require directors to sign an agreement on ethical conduct. If a director does not sign the agreement, he or she must still follow the standards of conduct covered in Chapter 5.4.

5.8 Number of directors

Every housing co-op must have at least three directors. The majority of directors must live in Canada and at least one must live in British Columbia [section 72]. *This is not usually an issue for housing co-ops.*

The first directors of a co-op hold office until the first general meeting. The co-op's Rules must explain how new directors are elected or appointed [sections 73, 74(1)].

5.9 Terms of office

The Rules must set out how long the directors will serve before having to be re-elected. *Most co-ops stagger these "terms of office" so that not all of the directors will change at the same time. The Act does not require this, but it is a sensible practice.*

5.10 Non-member directors

Usually, all directors of a housing co-op must be members living in the co-op. The Act allows a co-op to adopt Rules to change this requirement. A housing co-op may want to have non-resident directors

- to get special expertise on the board of directors
- because high vacancy rates have meant that many of the residents of the co-op are not members.

If a co-op wishes, the Rules can say that non-members or non-residents can be directors [section 72(2), (3)]. Up to 20% of the directors of a housing co-op may be non-resident, non-members if the Rules allow it [section 72 (4)].

5.11 Consent to serve as director

Before members can be elected or appointed as directors, they must:

- agree in writing before the election to serve as a director or
- be present at the meeting where the election takes place, and agree to serve.

People have a right to say they do not want to be appointed or elected.

5.12 Qualifications

The Rules of a housing co-op can determine who is allowed or “qualified” to be a director (and who is not allowed or “disqualified”). The Co-op Act specifically disqualifies people from being or continuing as directors if they are:

- younger than 18 years old
- found by a court to be unable to look after their own affairs
- undischarged bankrupts, or
- convicted of fraud within five years of finishing a sentence and no pardon has been given [section 79].

The Act also says that a director is no longer a director when:

- the term of office finishes and the director is not re-elected
- the director dies or resigns
- the director is removed from office (*see Chapter 5.15 of the Guide*)
- the director is no longer qualified to be a director under the Co-op Act or Rules [section 80].

The issue of non-member directors is covered in Chapter 5.10. If members are joint members, then only one joint member may be a director at any one time, unless the Rules say otherwise [section 72(5)].

If any of these conditions exist, the director in question is no longer a director, automatically. A co-op does not have to make a decision to remove the director. *Depending on the situation, the co-op may tell or send a letter to the former director to confirm this.*

5.13 Officers

Most housing co-ops limit the officers to president, vice president, secretary and treasurer. A co-op's Rules set out how officers are chosen. *Usually the directors choose officers from among themselves after the members elect the board.* The Act also allows for a co-op to designate the general manager or any other individuals as officers, according to the function they perform for the co-op. This can be in a co-op's Rules or, if it's not in the Rules, the board can decide [section 1].

5.14 Resignation of directors

Any director who wants to resign must write a letter of resignation. The letter must be sent to the co-op's registered office or given to another director or officer of the co-op. It can also be sent to the co-op's lawyer.

The letter should give a date and time when the director wants to resign. If the letter gives a date but not a time, it means that the director will resign at the start of the day that is given in the letter. If the letter does not give a date, it means that the director will resign at the beginning of the day that the co-op gets the letter [section 81]. A director cannot resign on a date that has already passed before the co-op gets the letter of resignation.

5.15 Removal of directors

The Act allows a co-op to remove or dismiss a director, if necessary. This must be done by a special resolution passed at a general meeting of the membership.

The co-op's Rules will say how the empty position can be filled. This can sometimes be done by an ordinary resolution with a simple majority [section 82]. This is different than an election.

5.16 Filing notices for directors with the Registrar

When someone becomes or ceases to be a director, the co-op must file a notice with the Registrar of Companies in Victoria within 15 days. A special form is needed to file the notice. *See Chapter 9.5 of this Guide.*

But if a director whose term expires or a director who resigns or is removed is re-elected or re-appointed on the same day, no filing is required [sections 78, 83].

5.17 Validity of appointment

Sometimes the co-op makes a mistake and a director who is not legally qualified is elected or appointed to the board. Even if a mistake like this happens, all of the actions or decisions of the directors, while that director was on the board, are valid and binding [section 85].

If the co-op finds it has made a mistake in electing or appointing a director, the co-op must fix the mistake. The person cannot be a director once the mistake is discovered. Any person who continues to act as director in this case could become personally responsible for what happens as a result.

5.18 Directors' meetings

The formal business of the directors takes place at board meetings. The only time this is not done is when all directors sign a consent resolution.

Directors usually meet together at a time and place they decide on. They can also meet by telephone or some other way that allows all directors to communicate with each other. It is possible for some directors to be at a meeting place while others are connected by means of conference phone or video connection [section 77(1), (2)]. If the Rules say that these other kinds of meetings are not allowed, the directors must meet in person.

Consent resolution

The Act allows directors to pass a resolution without having a meeting if **all** of the directors who are allowed to vote agree to and sign the resolution in writing. A copy of the resolution must be kept with the directors' minutes [section 77(3), (4)]. Each director can sign a separate copy of the resolution—in which case all of the copies must be kept with the minutes. The board cannot make decisions by telephone polls or individual canvassing of the directors.

Who can attend?

Non-directors do not automatically have the right to attend directors' meetings under the Co-op Act. *The co-op's Rules or policies may say when members and other visitors can attend directors' meetings; otherwise it will be up to the board. Non-directors should be asked to leave the meeting when confidential matters about members or the co-op are discussed.*

Notice of meeting

The Act is silent on notices for directors' meetings. *A co-op's Rules should set out the notice period and specify who can call a directors' meeting.*

5.19 Indemnities and insurance

Sometimes a co-op can buy special insurance to “indemnify” a person who is acting as a director or officer of the co-op. An “indemnity” is protection from being personally and legally responsible for claims or legal costs that a director’s actions might cause [section 103].

Directors and officers can only be indemnified if:

- the Rules of the housing co-op do not prohibit it
- the person being indemnified has acted honestly and in good faith and in the best interests of the housing co-op
- the requirements of sections 97 – 102 of the Co-op Act are met.

It is a good idea to buy liability insurance for all directors and officers who handle co-op money or have signing authority [section 104].

A housing co-op can buy insurance for directors and officers through its insurance agent or broker.

5.20 Payment or remuneration of directors

The Co-op Act allows a co-op to decide whether it will pay the directors for their time and expenses. This decision is made in a general meeting, or it can be set in a policy approved by a general meeting [section 75].

In housing co-ops the directors are volunteers. The co-op only pays for a director’s lost wages or for any out-of-pocket expenses the director has while doing the co-op’s business.

5.21 Minutes and records

Directors must keep complete up-to-date minutes of:

- all directors’ meetings, including appointments of directors
- the names of directors who are present at each directors’ meeting
- all resolutions passed and proceedings at meetings.

The same rules apply for meetings of committees of directors.

Directors must sign a “directors’ register” when they attend a board or committee meeting. (Failure to sign the register does not invalidate the meeting.)

Directors may keep their records in either a bound or loose-leaf record book [section 136(2)]. They must be kept at the registered office of the co-op. Directors must maintain other records for the co-op, including a register of directors.

You will find information about this and access to minutes and records, storage and confidentiality in Chapter 9.



6 Meetings

Meetings of members are called general meetings. *Co-ops sometimes call them membership meetings or general membership meetings.*

6.1 General meetings

A co-op's Rules will deal with many things about meetings, such as: frequency, quorum, agenda, conduct of business and how meetings should be run.

First meeting

The first general meeting of members must be held soon after incorporation. The Act says this first meeting must take place within the first three months after incorporation [section 143].

Annual general meeting

A general meeting must be held at least once a year. This meeting must take place within four months after the end of the co-op's financial year [section 143]. *For example, if your co-op's financial year ends May 31, you must hold the annual general meeting (AGM) by September 30.*

A co-op's Rules can set how often other general meetings must be held.

For example, required meetings can be:

- *semi-annual (the AGM plus one other meeting)*
- *quarterly (the AGM plus three other meetings).*

6.2 Special general meetings

In addition to the general meetings required in a year, the board of directors may call a special general meeting whenever the board thinks it is needed.

Members can also require the board to call a special general meeting if enough members make the request in writing. The number needed to “requisition” a special general meeting is:

- at least 20% of the members where there are less than 100 members, or
- either 20 members or 10% of all members—which ever is more—if there are more than 100 members in the co-op [section 150].

Members must requisition the special general meeting in writing. The written request must state:

- the reason for the meeting
- the names and addresses of those members who are asking for the meeting and the member who is their representative
- any resolution to be voted on.

The requisition must be served on the housing co-op.

The Co-op Act sets out very detailed steps that must be followed to requisition a meeting [sections 151, 152]. *These should be studied carefully and members who want to requisition a meeting should get advice from a lawyer or consult CHF BC before going ahead.*

CHF BC suggests that members try to talk to the board first and only use the requisition procedure as a last resort.

Directors can call or refuse to call a requisitioned meeting. They can refuse to call the meeting if they believe that:

- it is clearly meant to address a personal claim or grievance
- it deals with an issue that has nothing to do with the business of the co-op
- much the same proposal was considered and defeated by the membership within the last 3 years
- it deals with matters outside the powers of the co-op [section 151(2)(b)].

The requisitionists can appeal the board’s decision at a general meeting. The members can confirm the directors’ decision or not.

The requisitionists can call and hold the meeting themselves:

- if the directors have not replied to their request within 14 days
- if the directors ignore the decision of a general meeting that approved the requisitionists' appeal.

6.3 Notice of general meeting

For housing co-ops, every membership meeting must take place in BC. Out-of-province meetings must be approved by the Registrar and can only take place for unusual reasons.

A housing co-op must give 14 days' notice to each member before:

- an annual general meeting
- each general meeting where a special resolution will be voted on [section 146(1)]. See *Chapter 2.1 of this Guide for information on special resolutions.*

A housing co-op must give seven days' notice (not counting the day of the meeting) for every other general membership meeting [section 146(2)] unless the co-op's Rules require a longer notice period.

How are the days counted for notice periods? Count 14 (or 7) clear calendar days to avoid challenges. This means that you do not count the day the notice is given or the day of the meeting. If the notice is sent by mail, see Chapter 2.6 for information on when you can consider notices to be received by members.

The notice of meeting:

- must give the place, day and hour of the meeting
- must state the reason for the meeting, and any special business that will take place
- must include a copy or a summary of any special resolution that will be voted on at the meeting, and
- must be given to the membership by hand or sent by ordinary mail. No other way of delivery is acceptable unless it is allowed in the co-op's Rules.

If proper notice is not given, the meeting and any business done during the meeting will be invalid.

6.4 What is needed for the AGM

The Co-op Act sets out what the directors must have ready for an annual general meeting. These include:

- a financial statement covering the last financial year or from the date of incorporation if the co-op is new [section 153]
- a profit and loss statement for that period
- a surplus statement for that period
- a balance sheet [section 153(1)(a)]

(These four will be included in your audited financial statement.)

- a report from the directors to the members, and
- any other information that the Rules require.

Consult CHF BC's Model Rules for suggested business required and order of business for the AGM. [Rules 14.2 and 14.3]

6.5 Tips on general meetings

While most of this section is not covered in the Act, you should know how to conduct general meetings.

Sign in lists

Members should sign in. Most co-ops have an attendance book. Members place their initials next to their name and unit number. If there are any guests, they should sign on a separate list.

Quorum

A quorum is the number of members who must be present in order to conduct business. The Act does not set quorum – your co-op's Rules must do so. Your Rules can also say what happens if quorum is not reached at a meeting and whether there is a different quorum for an adjourned meeting.

Special meeting situations

If the meeting is to handle a special situation, for example the termination of membership, you must use extra care in planning and conducting the meeting.

Rules of order

Many people think that Robert's Rules of Order govern how their meetings are run. But Robert's Rules are not automatic. Adopt the rules of order at the start of the meeting. Your co-op may develop its own rules for meeting conduct.

Agenda

The agenda covers what business will be discussed and in what order. Adopt (accept) the agenda, including any amendments, at the beginning of the meeting. After the agenda is adopted it cannot be changed, except for an emergency. Often a co-op puts time limits on agenda topics. This is to help finish the meeting at a reasonable time.

The chairperson

Usually the president or vice-president chairs the meeting. This is set out in a co-op's Rules. The Rules may allow for a chairperson who is not a member. This may be useful when it's a difficult meeting to chair. The chair must be impartial, which means not taking sides on an issue. A chair who is a member has the right to vote. Usually a chair only exercises the right to vote when the decision is by secret ballot. If a co-op's Rules allow it, the chair has the right to cast a second and deciding vote in the case of a tie vote.



7 Voting

7.1 Voting based on membership

In a housing co-operative, the right to vote comes from membership in the co-op, not from share ownership [section 40(2)]. Each member has only one vote on all matters to be decided by members. Only members of the co-op can vote, and every member can vote, including associate members.

Only two situations affect a member's right to vote.

If members owe money for shares to the co-op, they cannot vote [section 40(4)]. *This does not apply to members who are up to date on an instalment plan for their share purchase.* Members who owe money to the co-op for housing charges or other costs can still vote. A co-op cannot take away the right to vote in that situation.

If someone's membership termination appeal is turned down by a general meeting, that person is no longer considered a voting member.

If a co-op has joint members, they are allowed one vote to share among them, unless the co-op's Rules give each of them a vote. *Chapter 3.3 of this Guide provides information on joint membership.*

7.2 No proxy voting

Proxy voting means one person casts a vote for someone else who is not able to attend a meeting to vote. Proxy voting is not allowed in housing co-ops. Only co-ops that have a membership living at great distances from the co-op's registered office can have proxy voting [section 43].

The Rules of a housing co-op should make it clear that proxy voting is not allowed.

7.3 Casting (or deciding) vote

The Rules of a housing co-operative can allow for a "casting" or deciding vote. A casting vote is used when there is a tie. A chair who does not usually vote may "cast" a vote to break the tie. If the chair usually votes, he or she would get a second vote to break the tie. A casting vote may be needed in a tied election, where two candidates have the same number of

votes. A casting vote is usually not needed for a resolution. A tied vote on a resolution means that a majority has not been reached and the resolution is defeated [section 40(3)]. A casting vote does not apply to special resolutions which require a specific number or percentage of votes to pass. See *Chapter 7.5 in this Guide*.

7.4 Method of voting

Members vote in the election of directors and on ordinary and special resolutions. A co-op's Rules can allow members to vote in person or by mail-in ballot [section 44].

The co-op's Rules should explain the way in-person voting will take place. This may include voting by:

- a show of hands
- a poll, or
- a secret ballot.

Since members of housing co-ops live close together, it is very unusual to allow mail-in votes.

7.5 Votes needed for certain resolutions

A co-op needs different majorities to pass certain kinds of motions or resolutions:

- an **ordinary resolution** needs a simple majority – more than half – of the votes actually cast, and
- a **special resolution** requires 2/3 or sometimes 3/4 of the votes actually cast, depending on what the Rules of the co-op say.

You will find more information about these resolutions in Chapter 2.1 of this Guide.

8.1 Auditor appointment

Every co-op should have an auditor. The auditor must be appointed at each annual general meeting. If a new appointment is not made, the current auditor stays in office [section 108(3)].

The Act lets co-ops decide not to have an auditor. They must waive this requirement each year by a special resolution at the annual general meeting [sections 109(1), 108].

Housing co-ops own property. They must submit audited financial statements to CMHC or BC Housing as a condition of their operating agreement. For these reasons, a co-op must have an auditor. It is also a good idea to have an independent expert report on the co-op's financial situation.

8.2 Qualified auditors

To be qualified as an auditor of a housing co-op, an auditor must be a member of the Institute of Chartered Accountants or the Certified Public Accountants Association [section 110].

A person may not be an auditor of a housing co-op if:

- the person lives in the housing co-op or is a director of the co-op
- the person is an immediate family member of someone who lives in the co-op, or if
- the person is a professional partner of any of the above.

Any auditor who becomes aware of a conflict as described above must end the conflict within 90 days or resign as auditor of the co-op.

8.3 Vacancies in auditor

If the auditor dies or quits, the directors must fill the vacancy [section 108(4)]. If the auditor has not been replaced within a reasonable time and the requirement to have an auditor has not been waived, any member of the co-op can ask the Supreme Court of BC to appoint an auditor [section 108].

8.4 Remuneration of auditor

The members of the co-op set the pay for the auditor by ordinary resolution. If the members agree by ordinary resolution, they can allow the directors to set the auditor's pay [section 112]

When the members of a co-op appoint the auditor at the annual general meeting, they usually give the directors permission to set the auditor's pay.

8.5 Removal of auditor

If a housing co-op wants to dismiss the auditor, it must be done by ordinary resolution at a general meeting. A meeting must be called just for this purpose. The membership must appoint a new auditor for the rest of the auditor's term at this meeting [section 113].

Before a co-op can dismiss an auditor, it must give the auditor 14 days' notice that it plans to call a meeting to consider the matter. The auditor has up to 5 days before the meeting notice goes out to make written comments. The co-op must send the written comments and the meeting notice to all members at the co-op's expense [section 113].

8.6 Attending meetings

The auditor must come to any meeting that the directors ask the auditor to attend. This includes meetings where the co-op's financial statements are discussed. It also includes any meetings where the directors will talk about hiring or dismissing an auditor [section 117]. The auditor must be given notice that he or she must attend the meeting [section 122].

The auditor must present his or her report to the annual general meeting. The auditor does not need to read the report at the meeting unless asked to do so [section 118]. The auditor is also allowed to come to any other meeting where his or her report is discussed.

8.7 Auditor’s privilege

Whenever an auditor presents a report or gives information to the co-op about the audit, she or he has “qualified privilege.” Qualified privilege means that the auditor is protected against a lawsuit if he or she causes harm to a member by reporting information about that member. The auditor loses this privilege if he or she deliberately reports untrue information, knowing it will cause the member harm [section 123].



9 Records, registers and filings

The directors of a housing co-operative have the duty to look after the management of the co-op. This duty includes the job of keeping all records, registers, filings and reports in good order. The directors themselves or someone they hire or appoint must do this job.

9.1 Confidentiality

A co-op that has on record any financial information for a member, prospective member or tenant must not disclose that information to any person. The only people who are authorized to see that confidential information are:

- co-op directors, officers or committees for use only in connection with their official duties
- a person legally entitled to the information other than under sections 128 to 133
- members at a general meeting if a member is appealing a decision of the directors to terminate the member's membership and a ground of termination is the failure to pay money due to the co-op or a breach of a material condition relating to financial information. [section 141]

9.2 Place of safekeeping for records

All records must be kept at the registered office of the housing co-op. The Registrar will give permission to keep the register of members in another place if asked in writing. *Sometimes records are kept at the co-op's management company office or the co-ordinator's office.*

9.3 Availability of records and documents

The records and documents that must be kept at the registered office fall into four groups. These are records or documents that are:

- [a] available to any person
- [b] available to directors and members
- [c] available only to directors, and
- [d] accounting records available to directors and members
[sections 128 to 133]

[a] Available to any person

All of the following documents must be available during business hours for anyone to look at. The co-op should not make confidential member information available [sections 128(1), 141].

- a list of members, with their names and addresses. This list should include the amount paid on shares, the date each person became a member of the co-op and the date they ended their membership. This is called a register of members [section 124].
- a list of directors, with their names and addresses. The list should show when each became a director and when they stopped being directors. This is called a register of directors [section 125].
- the co-op's certificate of incorporation
- a copy of the co-op's Memorandum and all changes
- a copy of the co-op's Rules and all changes
- a list showing how many shares each member has
- a list of share transfers
- a register showing all money owed by the co-op
- a list of debenture/mortgage holders
- a copy of every document that is filed with the Registrar
- a copy of every certificate provided by the Registrar
- a copy of every order that the Minister or Registrar has made about the co-op
- all minutes of a winding up
- a copy of the co-op's disclosure statement under the *Real Estate Act*.

[b] Available to directors and members

The following documents must be made available during normal business hours to a former director, a current director, members and debenture/mortgage holders [sections 128(2), 141]. The co-op should not make confidential information available.

- minutes of every general meeting of the housing co-op, and
- a copy of every audited financial statement.

Former directors are only allowed to look at information for the time that they acted as a director. If they are still members of the co-op they can look at all documents listed above.

[c] Available only to directors

A housing co-op must also keep at its registered office:

- a copy of the minutes of directors' meetings (*see Chapter 5.21 of this Guide for more information about minutes*)
- copies of documents approved by the directors in the past 10 years
- copies of unregistered mortgages
- records of amalgamations or mergers with any other co-ops.

These records must be available during normal business hours to directors and to former directors. Former directors are only allowed to look at information for the time that they acted as a director. The Act does not require a co-op to make these records available to members or others [section 129].

The board of directors has the right to let members and others look at the directors' minutes if it wants. The board must say when this is allowed [section 130]. *The co-op's Rules or policies can also give members the right to look at directors' minutes. If this is the co-op's practice, be sure that the minutes do not contain confidential or otherwise inappropriate information.*

[d] Accounting records available to directors and members

The directors must be sure that up-to-date accounting and bookkeeping records are kept at the co-op's registered office. The actual books of account may be kept at another place if the Registrar has agreed in writing. The co-op's Rules can also allow the books to be kept at another place. The account records must include:

- all money received and spent
- the reasons the money was received or spent
- all assets and debts of the housing co-op.

These records are open to the directors. The directors may decide when the records will be available to the members. This decision must conform to the co-op's Rules [section 138].

9.4 Method of record keeping

Records and registers must be in either a bound or looseleaf book. They can also be kept on a computer disk or similar storage device [section 136]. *If using a computer a backup should be maintained.*

If someone who is allowed to see the information wants a copy, the co-op must provide it without charge [section 130].

9.5 Filings and Registrar's office

The Act sets out what information co-ops must file with the Registrar of Companies in Victoria.

The most common filings a co-op must make are:

- the co-op's annual report (form 3) within two months after the co-op's annual general meeting [section 126], and
- any change of directors (form 5) within 15 days of the change [sections 78, 83].

Filings must also be made for:

- a change of registered office (form 8) [section 27], and
- any special resolution that changes the co-op's Memorandum or Rules (form 6) [sections 69, 139].

Section 139 of the Act lists other kinds of special resolutions that must be filed. Some examples of these are:

- mortgaging or disposal of a co-op's property [section 71],
- amalgamation [section 191], and
- voluntary dissolution (form 6) [section 197].

Chapter 2.2 of this Guide covers filing when a group of people first forms a co-op.

If the Registrar asks, a co-op must also file the register of directors [section 125].

The Registrar has the right to refuse a filing if it is not in its proper form [section 204]. Records and filings at the Registrar's office are open to the public [section 206].

When a co-op fails to send proper documents to the Registrar of Companies, the Registrar can cancel the co-op's certificate of incorporation.

Filing fees

There are fees for filing all forms. These are found in Schedule A of the Regulation and on each of the forms.

Obtaining forms

You can fill out and print most forms you need for filing with the Registrar of Companies at:

www.fin.gov.bc.ca/registries/corppg/crforms.htm#coop

You can also order them by phone at:

250.356.8673

604.775.1046 (Greater Vancouver)

To avoid long distance costs call Enquiry BC at 1.800.663.7867 if you are calling from outside the Victoria or Vancouver areas.

9.6 Offences and penalties

The Act allows penalties ranging from fines up to \$5,000 and imprisonment for up to six months for co-ops, directors and officers who knowingly commit or authorize an offence under the Co-op Act.

Directors and officers must be careful when they do their job to avoid liability.



In closing

The Co-op Act should be read in the context of the functions of a healthy housing co-op. A well-run housing co-op maintains a balance among these functions.

A housing co-op is...

A business:

- *housing complex*
- *mortgage payments and sound financial management*
- *maintenance*
- *safety and security*
- *short and long-term planning*

A community:

- *social interaction*
- *quality of life*
- *mutual support*

A co-operative:

- *a legal entity*
- *guided by co-op principles*
- *volunteer governance structure*
- *the vehicle for the business and community to develop.*

We hope that this Guide will make it easier for co-op members to understand and use the Co-op Act.

CHF BC offers general advice, workshops and consultations on the Co-op Act, Rules and other co-op issues. Call us at 604.879.5111 (1.866.879.5111) in Vancouver and 250.384.9444 in Victoria or check our website at www.chf.bc.ca.