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CHAPTER C-23

CO-OPERATIVE ASSOCIATIONS ACT

REGULATIONS

Made by the Lieutenant Governor in Council under the *Co-operative Associations Act* R.S.P.E.I. 1988, Cap. C-23

NAME AND SEAL

1. An association shall have a name as prescribed by sections 6, 7 and 10 of the Act. (EC883/76) Name

2. (1) An association shall have a corporate seal, the design of which shall be approved by the Board of Directors and the inspector. Seal

(2) The seal of the association shall not be affixed to any instrument except by authority of resolution of the Board of Directors. The seal shall be affixed by the president, secretary, secretary-treasurer, or such other person as the Board may appoint for the purpose. The president and one other person as aforesaid shall sign every instrument to which the seal of the association is so affixed in their presence. (EC883/76) *Idem*

FISCAL YEAR-END DATE

3. The fiscal year-end date of an association shall be specified in its bylaws. (EC883/76) Fiscal year

MEMBERSHIP

4. Membership in an association shall be open to all persons who are in agreement with the aims and purposes of the association. However, no person under the age of 16 years shall be entitled to hold office or vote at meetings. (EC883/76) Membership

5. The Board of Directors shall review and evaluate applications for membership on a regular basis. The Board of Directors shall provide reasons to the applicant if it rejects an application for membership and record these in the minutes of the director's meetings. (EC883/76) Review of applications

6. Legal heirs of deceased members who have inherited shares in the association may apply for membership in the same manner as any other applicant. The Board of Directors shall have the same rights to approve or reject such persons as they have for any other applicant. The Heirs

association shall repurchase the shares of an inheritor if his application is rejected, subject to clause 27(1)(c) of the Act. (EC883/76)

Subscription for shares

7. When the Board of Directors approves an application, the applicant, in the case of an association limited by shares, shall subscribe for one or more shares of the association and make an initial payment on such subscriptions as prescribed by the bylaws. In the case of an association limited by membership, the applicant shall agree to pay the annual or other periodic membership fee on such terms and conditions as are prescribed by the bylaws. The applicant becomes a full member with voting privileges only after he has paid his first installment on the shares subscribed or on the membership fee, as the case may be. (EC883/76)

Failure to subscribe

8. Any member who fails to make the agreed payments for shares subscribed, or for his membership fee, may, at the discretion of the Board of Directors, be expelled from membership. In such cases, the money already paid for shares subscribed shall be returned to him, subject to clause 27(1)(c) of the Act. Membership fees shall not be refunded to an expelled member of an association limited by membership unless provision to the contrary has been made in the bylaws. (EC883/76)

Bylaws

9. A copy of the bylaws of an association shall be given to each member on demand. A copy of the Act and these regulations shall be kept at the registered office and shall be available for inspection by any member on demand. (EC883/76)

Rights of member

10. Every member must agree to obey the rules of the association as set down in the regulations, the bylaws, and the decision of the general membership meetings or of the Board of Directors. He must also help to promote the aims and purposes of the association, the success of its business and the welfare of its members; by patronizing its business and by participating in its membership activities, he shall aim to serve himself by promoting the interest of his fellow members in this spirit of mutual aid. Every member shall have an equal right to participate in annual or special meetings and to vote on all matters brought before such meetings; to patronize the place of business of the association; to receive interest on his paid-up share capital as prescribed by the bylaws and to share in the distribution of net earnings; provided however that these provisions shall be subordinate to any special rules pertaining to voting, payment of interest or distribution of savings returns contained in these regulations. (EC883/76)

Voting

11. Every member who has met his obligations as regards share capital or membership fees as specified in these regulations and the bylaws of the association and who has not in other respects been judged delinquent

nor acting contrary to the interests of the association by a membership meeting, shall be qualified to vote and to participate in the meetings of the association. (EC883/76)

CAPITAL

12. (1) The capital of an association limited by shares shall be composed of Capital

- (a) share capital,
- (b) retained earnings including that segregated in reserves,
- (c) contributed surplus.

(2) The capital of an association limited by membership shall be the same as that for an association limited by shares, except that it will have no share capital. (EC883/76)

13. The shares in an association limited by shares shall have the par value as stated in the articles of incorporation but the number of shares which may be issued is unlimited. (EC883/76) Shares, par value

14. The maximum amount of share capital that an individual member may hold in an association shall be set out in the bylaws of the association. (EC883/76) Maximum holding

14.1 (1) In this section “preferred share” means a share which gives its holder a preference, as declared by the bylaws, as to receipt of dividends or priority of payment in the case of winding-up or both. “preferred share”

(2) Subject to subsection (3), the Board of Directors of an association may make bylaws for the creation and issue of preference shares. Bylaws

(3) A bylaw under subsection (2) has no effect until *Idem*

- (a) it has been approved by a vote of two-thirds of the members of the association present in person at an annual or special meeting of the association; or

- (b) approved unanimously in writing by the members of the association,

and until it has been filed with and approved by the inspector.

(4) Preferred shares are subject to redemption only in accordance with the terms of their issue. Preferred shares redemption

(5) Nothing in this section affects or impairs the rights of creditors of the association. (EC845/82) Rights of creditors

15. Share capital may receive interest up to the maximum rate specified in the bylaws but such rate shall not be greater than nine per cent *per* Interest

annum. No interest shall be computed on shares until the full amount of the share has been paid. (EC883/76)

Transfer of shares

16. Shareholders desiring to dispose of their shares must first offer them to the association through the Board of Directors who are authorized to redeem them at a price not exceeding their par value or book value, whichever is less. If the association through the Board of Directors is unable or does not desire to redeem such shares, the shareholder shall have the right to dispose of them to any person approved by the Board of Directors. Transfers of the shares of this association shall not be binding until recorded upon the books of the association with the approval of the Board of Directors. Redemption of shares shall be subject to such other provisions pertaining in the bylaws of the association. (EC883/76)

Reduction of capital

17. Whenever the share capital of an association shall, in the judgment of the Board of Directors, be in excess of current requirements, the Board of Directors, subject to the approval of the inspector, shall have the power to repurchase from any or all shareholders who have shares in excess of the minimum requirement of one share as many such shares as it shall deem necessary to the best interests of the association. The Board of Directors shall not purchase the shares of any withdrawing member or any other member if such a reduction of the association's capital would in any way endanger the financial condition of the association. Any repurchase of shares to reduce capital shall be done by applying an equal percentage to all members' share capital. (EC883/76)

Repurchase of shares

18. (1) The Board of Directors, with the approval of the inspector, shall have the authority to repurchase the shares and to cancel the membership of any member who has died; who has ceased to patronize the business of the association; who has failed to meet his installments within the time specified; or for any other reason has been judged unfit for membership.

Cancellation of membership

(2) Where share capital is held by a co-operative for the credit of one of its members and the co-operative is unable to locate the person entitled to such share capital, the Board of Directors may, after reasonable efforts to locate the person entitled to such share capital, and after advertising the same with at least two consecutive insertions in the Royal Gazette and the daily newspaper serving the area, cancel the membership of said members and transfer the share capital to the General Reserve. Such cancellations and transfers shall be subject to the approval of the Inspector of Co-operatives. (EC454/77)

General reserve

19. (1) A general reserve shall be created by appropriations from retained earnings. The amount appropriated in each fiscal year shall be equal to not less than ten per cent of the net earnings before income taxes of the association for the fiscal year. The general reserve shall be appropriated

from retained earnings for the purpose of extraordinary losses or expenditures and to provide some protection for share capital. Extraordinary losses or expenditures shall be included on the statement of

earnings and a corresponding transfer will be made from the general reserve to retained earnings to reflect the fact that part or all of the general reserve has been used for its designated purpose. Transfers from the general reserve back to retained earnings require the approval of the Inspector of Co-operatives.

(2) Transfers from retained earnings to the general reserve are not required in a fiscal year if the general reserve is at least equal to thirty per cent of the aggregate of the paid-up share capital, loan capital and loans and other amounts payable to members. (EC883/76) *Idem*

20. A reserve for education shall be created by appropriations from retained earnings. The amount appropriated in each fiscal year shall be equal to not more than five per cent of the net earnings before income taxes of the association for the fiscal year. The education reserve shall be set aside for educational purposes. Expenditures made for such purposes shall be shown on the statement of earnings and a corresponding amount shall be transferred from the educational reserve to retained earnings to reflect the fact that part or all of the education reserve has been used. (EC883/76) *Education reserve*

21. At the end of each fiscal period, after paying the interest on shares and after providing for a general reserve and an education reserve, the remainder of the net earnings may be apportioned among the members who are fully paid-up shareholders and those members who are not in arrears in their payments for shares or membership fees, in proportion to the amount of their patronage. Such allocations may be allotted to members who have not paid in full for their shares but must be applied as payment towards said shares. Patronage dividends shall be applied in accordance with the bylaws of the association. (EC883/76) *Surplus net earnings*

GOVERNMENT

22. The control of the association shall be vested in the members and effected through their membership meetings. The Board of Directors and such other committees as may be elected or appointed at the membership meetings shall administer the affairs of the association and implement policies as directed by the members through the membership meetings and as contained in the *Co-operative Associations Act*, these regulations, and the bylaws of the association. All meetings shall be governed by rules of order for meetings in Canada. (EC883/76) *Management*

- 23.** A quorum competent to transact business shall be specified in the bylaws. No meeting shall proceed with business unless a quorum be present. However, where a meeting is adjourned for lack of a quorum, the next called meeting may proceed in the absence of a quorum if the bylaws contain the following provision: “When a quorum is not convened, the next called meeting shall be a valid meeting notwithstanding lack of a quorum, and the call shall so inform the members”. (EC883/76)
- 24.** The annual membership meetings shall be held at a time and place determined by the Board of Directors and specified in the call to the meetings. Notice of meetings shall be posted prominently in the association’s place of business and shall also be sent in the form of a notice to the address of every member as registered on the books of the association unless otherwise provided by the bylaws. Notice shall be sent at least ten calendar days prior to the meeting. (EC883/76)
- 25.** The order of business for annual meetings of the association shall be as follows:
- (a) the meeting to be called to order by the president or acting president;
 - (b) appointment credentials committee;
 - (c) report of credentials committee;
 - (d) the reading and disposal of the minutes of the preceding meeting;
 - (e) business arising out of the minutes;
 - (f) reports of standing committees appointed at previous meetings;
 - (g) reports of special committees appointed at previous meeting;
 - (h) reports of officers;
 - (i) report of auditors;
 - (j) consideration of financial statements;
 - (k) financial considerations, including general reserve, education reserve, interest on share capital and patronage dividends;
 - (l) unfinished business;
 - (m) nomination and election of directors for ensuing year;
 - (n) election of auditors;
 - (o) new business. (EC883/76)
- 26.** Special meetings of the membership may be called at any time by the Board of Directors and such meetings must be called whenever a petition therefor is signed by at least fifty members or ten per cent of the members of the association, whichever is the lesser number, and presented to the Board of Directors. Notice of special meetings shall be given in the same manner as is provided for annual meetings under section 24 and shall state time, place and purpose of such meetings and

the business to come before it, and no business other than that specified in the notice shall be transacted. (EC883/76)

- 27.** The membership meeting shall have the right and the responsibility,
- (a) to elect directors or members of committees and to remove them from office if, and when they are derelict in their duties;
 - (b) to hear and pass upon the reports of officers and the general manager of the association and of any committees which are responsible to it;
 - (c) to determine the method of distributing the net earnings;
 - (d) to make the final decision regarding any major changes in the financial policy including the purchase or sale of real estate;
 - (e) to act as final arbiters in any dispute or disagreements which may arise between the Board of Directors and any committees or individual members;
 - (f) to determine what amendments shall be made in the bylaws; and
 - (g) to exercise its final authority in all other matters vitally affecting the association as a co-operative body and as a business organization. (EC883/76)

Functions

- 28.** (1) The management of the association shall be vested in a Board of Directors who shall be elected at the annual meeting. One-third of the Board shall be elected to hold office until the first annual meeting, one-third shall be elected to hold office until the second annual meeting and the remaining third shall be elected to hold office until the third annual meeting. At each annual meeting directors shall be elected to replace those retiring; directors so elected at any annual meeting shall hold office for three years. Directors may be re-elected but shall not serve more than two consecutive three-year terms without a lapse of at least one year.

Board of Directors

- (2) The Board of Directors shall meet immediately after the first general meeting of the association, and subsequently immediately after each annual meeting, and shall organize by electing for the current year from their own number a president and vice-president. A secretary or secretary-treasurer shall be appointed and such member may or may not be a director. Notwithstanding the above, the bylaws may provide the time at which the incoming executive officially takes office. (EC883/76)

Officers

- 29.** (1) Any director or officer shall vacate his office if he becomes bankrupt.

Bankruptcy

- (2) No director shall engage in business which competes with the business of the association.

Business
competition

Employees as
directors

(3) No employee of the association shall hold office as a director on any account whatever, except that in a worker co-operative employees may be directors.

Worker co-
operative defined

(4) For the purposes of this section a worker co-operative is a co-operative whose articles of incorporation provide that its main objective is to create employment for its members. (EC447/85)

Functions of
directors

30. The directors shall administer all business carried on by or on account of the association. The directors shall in all their actions be under control and direction of any annual or special meetings of the members. The directors shall meet at least as often as required by the bylaws. A majority shall form a quorum. They may arrange themselves into subcommittees. When this is done each subcommittee shall supervise one or more of the different activities carried on by the association, and each chairman shall make a detailed statement of the work done in that department at the directors meeting. The directors shall convene the meetings of the association. The president or any two directors may call a special directors meeting by giving two days notice in writing to the secretary specifying the object thereof. The directors shall act for the association and shall be responsible to it for the performance of the following duties:

- (a) to hire a manager, define his responsibilities and provide him with overall direction;
- (b) to acquire the facilities necessary to carry on the association's business;
- (c) to ensure that the business is conducted in accordance with law and that justice is given to members and employees;
- (d) to control all investments whether in shares or loans in other associations, or in land, property and fixtures;
- (e) to secure economical working of the association's business;
- (f) to take all reasonable steps necessary to ensure the existence of a system of control over the assets of the association;
- (g) to provide the best possible conditions of labour in the association's service and to demand and secure equivalent results in efficiency, faithfulness and diligence;
- (h) to set policy for control of the sources of supply of the association's goods and to maintain a direct and vital connection with other co-operative organisations;
- (i) to foster the spirit of enthusiasm for co-operative effort, both in the staff and in the members of the association and to identify themselves with every good feature of co-operative endeavour;
- (j) to ensure the association complies with the provisions of the Act and these regulations and its own by-laws. (EC883/76)

31. The president shall act as chairman at all meetings of the association and of the Board of Directors, but should he be absent, the vice-president shall take the chair. Should he also be absent, the officers and directors present shall elect one from among themselves to act as chairman on that occasion. (EC883/76)

President

32. The secretary or secretary-treasurer shall attend all meetings of the association and of the Board of Directors and shall record the names of all the directors present and the minutes of their proceedings. The secretary shall, on all occasions, in the execution of his duties, act under the supervision, control and direction of the Board of Directors. (EC883/76)

Secretary

33. The manager may be required to attend meetings of the association and of the Board of Directors. The manager shall conduct the business of the association on a day to day basis and account for all transactions which take place by ensuring proper records are kept. (EC883/76)

Manager

34. The members may elect subcommittees at the annual meeting. Such committees may include an educational committee, a membership committee for the purpose of securing new members and increasing the interest of the members through recreational and social activities and also other committees that may be needed from time to time for any special need. (EC883/76)

Committees

35. The treasurer, manager or other officers or employees having the custody of the funds or goods shall each give a bond with corporate security against possible loss. The association shall pay the costs of such bonds. (EC883/76)

Bonds

36. Each association shall adopt bylaws which shall specify at least the following:

Bylaws

- (a) the name of the association and the address of its registered office;
- (b) the date of its fiscal year end;
- (c) the par value of its shares or the annual or other periodic membership fees;
- (d) the maximum amount of share capital, expressed in dollars and cents, that an individual member may hold;
- (e) the maximum interest rate to be paid on share capital;
- (f) the number of members or percentage of total membership required to form a quorum at annual or special membership meetings;
- (g) the minimum notice required for annual or special membership meetings if such notice is different from the minimum requirements specified in the regulations;

- (h) the terms of payment for shares or the terms of payment of annual or other periodic membership fees;
- (i) the procedure required for the calling of annual and special membership meetings;
- (j) the qualifications necessary for a person to become a director;
- (k) any specific duties and responsibilities of directors and officers not set out in the regulations;
- (l) the minimum number of meetings the directors are required to hold and the frequency of those meetings;
- (m) the manner in which vacancies on the Board of Directors may be filled;
- (n) the manner in which the association may borrow and secure the payment of money;
- (o) the manner in which the association may borrow money from its members for definite periods of time and at specific rates of interests;
- (p) the percentage of net income before income taxes to be appropriated from retained earnings for an education reserve and for a general reserve;
- (q) whether a minimum amount of patronage is required in a fiscal year from a member before he is eligible for a patronage dividend;
- (r) whether patronage dividends will be paid in cash, credited to share capital of the members, left with the association in the form of a loan or applied to members' debts to the association as approved at the annual meeting;
- (s) the credit policy of the association; and
- (t) the manner in which members may withdraw from the association. (EC883/76)

Transitional

37. Each association in existence at the date of these regulations shall have six months in which to revise their bylaws in accordance with the Act and these regulations. Such bylaws shall be adopted at a special or annual meeting and recommended by the supervisor for approval by the inspector. (EC883/76)

Amendments

38. (1) An association may make, repeal or amend the bylaws at a special or annual meeting provided that

- (a) notice of the proposed action is given in writing to the members at least ten calendar days before the meeting; and
- (b) the aforesaid notice contains the exact wording of the proposed bylaw, the exact wording of the bylaw to be repealed, the exact wording of the bylaw to be amended together with the exact wording of the bylaw incorporating the proposed amendment, as applicable.

(2) Motions to adopt bylaws, repeal bylaws or amend bylaws must be passed by a majority of not less than two-thirds of the votes cast by such members of the association entitled to vote as are present in person at a special or annual meeting. (EC883/76) Majority

39. (1) The financial statements laid before the members of an association at any special meeting or at an annual meeting shall consist of at least the following: Financial statements

- (a) balance sheet;
- (b) statement of earnings;
- (c) statement of retained earnings (and where applicable, statements of contributed surplus and reserves);
- (d) statement of changes in financial position.

(2) The financial statements shall be prepared in accordance with generally accepted accounting principles. Preparation

(3) The statement of earnings shall contain provision for all losses and expenses incurred throughout the fiscal period and, without limiting the generality of the above, shall contain Earnings

- (a) provision for depreciation on all fixed assets in every fiscal period at appropriate rates which will amortize the cost of the assets over their useful lives, and
- (b) adequate provision for doubtful accounts receivable outstanding at the end of the fiscal period. (EC883/76)

40. When an association is wound up and any amount remains after providing for all claims of creditors and members, such amount shall be paid out according to a resolution passed by a majority present at the final meeting of the association called by the liquidator to the Co-operative Union of Prince Edward Island. (EC883/76) Winding-up

HOUSING CO-OPERATIVES

41. In these regulations “housing co-operative” means a co-operative which has as its purpose the provision of residential housing accommodation to persons the majority of whom are members of the co-operative and who are ordinarily resident in the accommodation and which co-operative’s articles provide that Definition

- (a) its activities are to be carried on without the purpose of gain for its members;
- (b) on dissolution, its property after payment of its debts and liabilities shall be distributed to either non-profit or charitable organizations;
- (c) it shall not pay any dividends or interest on share capital to its members; and

(d) the level of housing charges is decided by resolution of the members,

but does not include “building housing co-operatives,” which were incorporated prior to 1975 and for which the residential housing accommodation consists of detached single family homes constructed by the members and leased to the members by the co-operative association. (EC73/91)

Landlord/tenant
relationship not
created

42. For the purpose of determining the rights, obligations and responsibilities between a housing co-operative and its members, the relationship between a housing co-operative and its members and any persons whose memberships in the housing co-operative have been terminated is deemed not to be that between a landlord and its tenants. (EC73/91)

Bylaws

43. In addition to the requirements of section 36, a housing co-operative is required to have in its bylaws provisions that

- (a) the co-operative shall provide a copy of the occupancy agreement, if any, to every member;
- (b) each member is entitled to have quiet enjoyment of his unit;
- (c) the co-operative and its agents, except in the case of an emergency, are required to give reasonable notice to the member prior to entry of the member’s unit;
- (d) the co-operative shall allow candidates for public office access to the common premises of the co-operative;
- (e) either the co-operative or the member is responsible for
 - (i) the maintenance of the residential unit in a safe, habitable and reasonable state of repair,
 - (ii) the repair or replacement of fixtures, and
 - (iii) any damage to the unit;
- (f) govern the manner in which a member may be required to pay for housing charges or other services;
- (g) regulate the basis for fixing the amount of housing charges;
- (h) except in respect of a failure to pay housing charges, set out a method or methods providing for the final settlement of disputes between the members and the co-operative;
- (i) subject to the Act, prescribe the manner of withdrawal by a member and the repayment of the member’s interests in the co-operative;
- (j) establish the rules governing any leasing of housing units by members to non-members;
- (k) establish rules respecting exclusion from membership where the member has
 - (i) failed to pay rent, occupancy charges or other money due by him in respect of the residential premises, or

(ii) in the opinion of the directors, breached a material condition of the articles, the bylaws, or any agreement or contract between the member and the housing co-operative relating to

- (A) his possession or occupancy of the residential premises, or
- (B) his use of the property of which those premises form part, and has failed to rectify the breach within a reasonable time after receiving written notice to do so from the housing co-operative. (EC73/91)

44. The co-operative shall give a minimum of twenty days notice to a member of the termination of his membership except where a member contravenes any bylaws governing

Notice of termination of membership

- (a) ordinary cleanliness of the unit after having received written notice of the contravention;
- (b) the use of the premises for prohibited purposes; or
- (c) payment of housing charges. (EC73/91)

45. Unless a member has vacated or abandoned a unit of housing of a housing co-operative, a housing co-operative may not regain possession of the unit except under the authority of the Act and regulations. (EC73/91)

Recovery of possession

46. Where a person's membership in a co-operative is terminated, any right of the former member to possession or occupancy of residential premises acquired by virtue of membership in the co-operative is terminated. (EC73/91)

Loss of right of possession

47. Where a person's membership in a housing co-operative is terminated and the member does not get out of possession of the housing unit he occupies, the housing co-operative may apply to the Rentalsman or the Trial Division of the Supreme Court for an order for possession pursuant to the *Rental of Residential Property Act* R.S.P.E.I. 1988, Cap. R-13.1 and the Director or court, as the case may be, may on further application make an order for payment of any arrears of housing charges and for payment of compensation for use and occupation until the day of recovery of possession. (EC73/91)

Order for possession

48. Notwithstanding any provision of the Act or these regulations, a member of a housing co-operative cannot appeal termination of membership when that termination is for

- (a) failure to pay housing charges as they become due;
- (b) vandalism or destruction of property belonging to the co-operative;
- (c) use of the unit for illegal purposes; or
- (d) contravention of any bylaw regulating the leasing of a unit to a non-member. (EC73/91)

