

Geghamyan Law Office

geghamyanlaw@gmail.com ♦ www.geghamyanlaw.com
1736 Franklin Street, Suite 400, Oakland, CA 94612 ♦ 415/857-5548 ♦ 415/688-2102

A. PRELIMINARY REVIEW

1. Make sure your Bylaws are in compliance with the applicable state laws (California, Ohio, etc).
2. Review your Bylaws approximately every three years to make sure they are updated.
 - If your legal entity is a **nonprofit mutual benefit corporation**, check California Corp. Code §§7150-7153
 - If your legal entity is a **nonprofit public benefit corporation**, check California Corp. Code §§ 5250-5153
 - Also, on Limited Equity Housing Cooperatives, check California Corp. Code. §§817-817.4

B. GUIDING PRINCIPLES

1. Don't put too much in the bylaws. For example, if you specify a board committee in the bylaws, and there hasn't been such a committee in a few years, someone could claim that you are in violation of your bylaws. Or along the same lines, if the bylaws state that meetings will be held on the third Wednesday of each month, you can't change to Thursday without a change in the bylaws.
2. When internal conflicts or attacks from others occur – the bylaws will become very important. Assign someone to be in charge of bylaw revisions.
3. Immediately attach (by staple or add it to the shared documents on dropbox or other platform) *any changes* made to the bylaws to the original copy kept by the person assigned with keeping the files (usually the Secretary).

C. CHECKLIST TO ENSURE MOST IMPORTANT PROVISIONS ARE INCLUDED IN YOUR BYLAWS

California state law requires making and maintaining your bylaws.

1. Name, Purpose and Principal Office. What is the name of your cooperative? This should be stated in the bylaws, as should the purpose of the cooperative. You should state specifically where your office is located.
2. Members. A member would usually mean the holder or joint holders of a Share Membership who has signed an Occupancy Agreement with the Cooperative. This section should detail the various aspects of membership, including the different types of members (coops usually have one class of members), the membership selection process, electing officers, members' voting rights, inspection rights, non-liability of members, transferability of memberships and the procedures for disciplining and/or removing members.
3. Minimum and Maximum Number of Board of Directors. This section should discuss the composition of the Board, which may be a specific number of directors or a maximum or minimum amount of directors. Also, discuss how vacancies are filled, whether they are filled by the Board itself or by the membership. Finally, the bylaws should specify the qualifications for serving as a director, the duties of directors, and the length of a director's term. *Note: in California, state law requires a nonprofit board to have at least one Board member.* Corp. Code §§ 5250-5153
4. Officers. Officers are members of the Board who perform specific functions on the Board (i.e., the President, Secretary, and a Chief Financial Officer, who may designate the Treasurer and Maintenance Coordinator). This section should discuss how officers are selected, their qualifications (such as holding an interest in a Share Membership in the Cooperative) as well as the duties, powers,

and responsibilities of each officer. Also specified in the bylaws are the procedures for removing an officer and filling vacant officer positions.

5. **Membership Meetings, Voting and Quorum.** Any annual, regular, or special meetings need to be discussed in the bylaws. This includes the time and place of the meetings, requirements for **notifying** the Board, committees, and/or members, attendance stipulations and, most importantly, how many Board members are needed for a **quorum** (the number of directors needed to vote on issues at hand).

Note: follow precisely the procedures set-up in the Bylaws on voting – proper notice, acceptable methods of voting, etc. If they drift away from the Bylaws, someone could claim that you are in violation of your Bylaws.

6. **Conflicts Resolution** (optional but recommended)

7. **Financial and Reporting Requirements.** Make sure they're done in accordance with California Corp. Code §§1365-1365.6.

8. **Management, Governance and Decision-Making Process.** Decide whether decisions will be conducted on a consensus-based or majority or super-majority basis. Detail how the process will work in order to carry out the goal of governance and purpose stated in the earlier section.

9. **Indemnification and Liability.** While the Board members and Officers have liability protection under certain legal entity types, the Indemnification Clause can provide an additional safety net for all Members in their status of directors and/or officers and any person who is or was an employee of the cooperative (CA Corp. Code §7237) to the fullest extent permitted and subject to any limitations imposed by the code.

10. **Amendment.** Always specify in your bylaws the exact requirements for their amendment. You should, at the very least, require a two-thirds vote and previous notice to make any change at all in your bylaws. Depending on the governance and decision-making process of the cooperative, the Bylaws may be altered, amended, or repealed and new Articles and/or Bylaws can be adopted by various methods, the acceptable practice is either 2/3rd of the members of the cooperative or on consensus-basis. However, California Corp. Code Section 5034 specifies that "the approval by (or approval of) the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum). It is important to keep in mind that the common practice to amend bylaws is 2/3rd of the vote to avoid situations where a membership contingent tries to co-opt the cooperative or radically change a critical provision. Therefore, in a more democratic governance structure of a cooperative, it is recommended to have 2/3rd of the members of the cooperative approve the amended.

If the cooperative is in leasehold with a community land trust, any amendments to the Bylaws have to be reviewed and approved by the community land treat.

D. PROCEDURES FOR AMENDING BYLAWS

The bylaws should contain specific rules as to how they can be amended. It should also state who can recommend amendments and how these amendments will be voted upon. It is important that bylaws are current and accurately represent the organization and its membership. Therefore, bylaws should be revised every three years, in order to stay current with the most up-to-date rules and regulations.

Let's say your cooperative wants to change the maintenance requirements, or the board of directors requirements in its bylaws, then you will have to follow this procedure to make sure there is an adequate notice given:

→ **The proposed Notice of bylaw amendments – with three fundamental components:**

1. The proposed amendment, precisely worded
2. The current bylaw
3. The bylaw as it will read if the amendment is adopted

Additionally, the notice should include the proposers' names and their rationale for offering the amendment. It may also include other information, such a whether a committee or board endorses or opposes the amendment.

→ **Motion to Amend bylaws**

1. The provisions for amendment contained in your bylaws determine the requirements for previous notice and the vote required to adopt a bylaws amendment. If the bylaws have no provisions for their amendment, the requirement is a 2/3rd vote with previous notice, or without notice, a majority of the entire membership
 2. Primary and secondary amendments to the proposed bylaw amendment cannot exceed the scope of the notice.
 3. After you've adopted an amendment, you cannot reconsider the vote. But if the amendment fails you can reconsider that vote.
- *If several provisions of the bylaws are being considered for amendment, perhaps it's time to review the entire document, rather than approaching it piecemeal*

E. RECENT CHANGES TO THE NONPROFIT GOVERNANCE PRACTICES (SINCE 2010)

1. Nonprofit corporations may not have non-voting directors
2. Only directors may serve as members of committees that exercise board power ("board committee"). The non-member does not have membership rights but can give input and participate in board committee work and deliberations.
3. Directors may not vote by proxy on matters presented for action at a board or board committee meeting. Although directors as a group may delegate authority, an individual director may not appoint a substitute or alternate to act in their place.
4. In addition to the general quorum requirements, the nonprofit corporate ma include a provision in their bylaws that would require the presence of one or more specified directors in order to constitute a quorum and to transact business.
5. You can bypass the right of a third party to approve or reject amendments to articles and bylaws if the specified person ceases to exist or is unresponsive for a certain period of time.
6. Nonprofit corporations may determine the size of their boards by a formula as a third option.
7. Even if there are not enough directors to meet quorum, the remaining directors can vote to voluntarily wind up and dissolve the corporation.