

## **Bylaws versus Policies**

**Phil Kenkel**

**Bill Fitzwater Cooperative Chair**

Cooperatives are governed by a hierarchy of guiding documents. The Articles of Incorporation can be thought of as the contract between the cooperative corporation and the state. The articles typically include the name of the cooperative, names and addresses of initial or incorporating directors. The document must also include the cooperative corporation's purpose, principal office location, the registered agent and the types and amount of stock the corporation is authorized to issue. The articles of incorporation are filed with the state and become public record.

A cooperative's bylaws contain information about the rules and regulations that govern the cooperative. They also help to establish the roles and duties of the company's directors and officers and operational provisions such as the procedure for electing new corporate officers and board members. Cooperative bylaws also typically contain information relating to membership, voting procedures, computation of patronage, and equity capital. A cooperative is not required to file the company's bylaws with any government agency. Instead, corporations, including cooperative corporations, are required to maintain their bylaws at the company's primary business location. Relative to the Article of Incorporations, bylaws are a more internal document, establishing operating procedures for a corporation. The procedure for amending the bylaws is often described in the bylaws and typically requires a vote of the membership at a regular or special meeting.

Policies are developed by the board to help define standard operating procedures, and to set limits and safeguards on activities. The Board adopt policies and but those policies are voted on only by their board and can be changed anytime by the acting board without a vote of the membership.

In general, it is advisable to keep the bylaws as streamlined as possible. Information or procedures that could change frequently, or actions that need to be at the discretion of the board are best left out of the bylaws and addressed in policies. For example, it would be inadvisable to define a specific equity retirement period in the bylaws since that level should be set by the board in accordance with the cooperative's financial condition. On the other hand, bylaws provisions can provide protection and reassurance to the membership. Some cooperatives have a bylaw provision placing a ceiling on the percentage of member profits that can be retained as unallocated equity. It can be appropriate to define boundaries and structures in the bylaws while leaving the details to be described in policies.

At the end of the day, the dividing line between what is in the bylaws and what is covered by policy is driven by both practicality and philosophy. It is much easier to change a policy that to amend the bylaws. On the other hand, cooperatives are member controlled organization and

there are decisions and boundaries that should require membership approval. I touch on some more of the gray areas between bylaws and policies in my next newsletter.

1-21-2-16