

# New York Cooperative Corporations Law

This research has been provided by Jason Wiener, Principal, *Jason Weiner P.C., A Public Benefit Corporation*, 5762 Table Top Court Boulder, CO 80301, phone number (720) 445-6860, Email [jason@jrwiener.com](mailto:jason@jrwiener.com) . Jason is admitted to the bar in New York, Massachusetts, and Colorado.

This research is intended to provide detailed information on specific provisions of the New York Cooperative Corporations Law. The table of contents provides a list of provision topics addressed. The descriptions of the statute provisions include legal citations to the specific part of the statute where the topic is addressed so users can easily look at the statute language. A URL for the statute is also provided when it is available.

This research has been provided by a private individual and does not represent official policy of the U.S. Department of Agriculture or any other government agency. The research is presented only to provide summary information to persons interested in the state statutory treatment of New York cooperatives. Individuals considering organizing a cooperative are advised to seek professional advice from an expert on cooperative law who is acquainted with the facts of the individual’s particular situation.

## Contents

<b>1. Cooperative Statute: Policy, Purposes, Powers</b> .....	4
1.1. State and Statute Title .....	4
1.2. Statute Nickname, Legal Citation, and URL .....	4
1.3. Application of General Law. ....	4
1.4. Conflict of Laws. ....	4
1.5. Construction of Law.....	4
1.6. Declaration of Statutory Policy.....	5
1.7. Statutory Qualification as a Cooperative. ....	5
1.8. Cooperative Operational Description.....	5
1.9. "Nonprofit" Nature of Cooperative. ....	5
1.10. Cooperative Purpose.....	6
1.11. Perpetual Duration and Succession.....	6
1.12. General Powers. ....	6
1.14. Inter-Association Agreements.....	7
1.15. Prohibited Powers. ....	7

1.16. Prohibited Lines of Business.....	7
1.17. Emergency Powers.....	7
1.18. Ultra Vires.....	7
1.19. Quo Warranto Proceeding.....	7
1.20. Miscellaneous.....	7
<b>2. Association Formation .....</b>	<b>8</b>
2.1. Specific Types of Cooperative.....	8
2.2. Number of Organizers.....	8
2.3. Other Organizer Requirements.....	8
2.4. Cooperative Promoters.....	8
2.5. Filing Articles.....	8
2.6. Fee Amount.....	8
2.7. Start of Legal Existence.....	9
2.8. "Cooperative" Required in Name.....	9
2.9. Unique Cooperative Name Required.....	9
2.10. Restrictions on Cooperative Business Entity Types.....	9
2.11. Nonstock Cooperatives.....	9
2.12. Stock Cooperatives.....	9
2.13. Cooperative Prerequisites.....	9
2.14. Annual Renewal.....	10
2.15. Annual Report.....	10
2.16. Annual Report Content.....	10
2.17. Failure to File Annual Report.....	10
2.18. State Assistance.....	10
2.19. Out-of-State Cooperatives.....	10
2.20. Out-of-State Business.....	10
2.21. Miscellaneous.....	11
<b>3. Cooperative Articles of Association .....</b>	<b>11</b>
3.1. Signatures and Acknowledgment.....	11
3.2. Cooperative Name.....	11
3.3. Cooperative Purpose.....	11
3.4. Place of Business.....	11
3.5. Term of Existence.....	11
3.6. Incorporators, Subscribers.....	12
3.7. Number of Directors.....	12
3.8. Director Term.....	12
3.9. Registered Agent.....	12
3.10. Limitations of Power.....	12
3.11. Limitations of Liability.....	12
3.12. Membership Definition.....	13
3.13. Member Classes.....	13

3.14. Member Property Rights.....	13
3.15. Member Voting Rights.....	13
3.16. Membership Certificates.....	13
3.17. Capital Stock.....	13
3.18. Amount of Capital Stock.....	13
3.19. Par Value.....	14
3.20. Authorized Classes of Stock.....	14
3.21. Par Value of Authorized Classes of Stock.....	14
3.22. Acquire or Recall Stock.....	14
3.23. Voting Rules.....	14
3.24. Distributions or Apportionments.....	14
3.25. Capital Accounts.....	14
3.26. Asset Distribution on Liquidation.....	15
3.27. Miscellaneous Provisions.....	15
3.28. Amendment Initiation.....	15
3.29. Notice of Amendment.....	15
3.30. When Amendments Occur.....	15
3.31. Quorum Requirements.....	16
3.32. Margin Required for Approval.....	16
3.33. Voting Members.....	16
3.34. Board Authority.....	16
3.35. Filing of Amendment.....	16
3.36. Restrictions on Amendment.....	16
3.37. Miscellaneous Amendment Rules.....	16

## 1. Cooperative Statute: Policy, Purposes, Powers

**1.1. State and Statute Title.** Please name the state and the title of the cooperative organization law. Provide a nickname for the cooperative law using the state abbreviation hyphenated with a brief statute description.

- New York Cooperative Corporations Law: NY-CC; New York Business Corporation Law: NY BSC.

**1.2. Statute Nickname, Legal Citation, and URL.** Please provide a full legal citation to the statute and, if available, a uniform resource locator (URL) address where the statute may be accessed for free.

- NY-CC: N.Y. C.C.O. Law § 1-101 et. Seq (Consol. 2015), [New York Cooperative Corporations Law](http://codes.findlaw.com/ny/cooperative-corporations-law/#!tid=ND66BA6417A1046DE84120ED30987B50B): <http://codes.findlaw.com/ny/cooperative-corporations-law/#!tid=ND66BA6417A1046DE84120ED30987B50B> .

**1.3. Application of General Law.** Briefly describe whether general corporate law or general limited liability company law applies to cooperatives organized under the statute.

- NY-CC § 1-5: Business Corporation Law applies to every cooperative corporation formed under NY-CC. Sub-section (b) sets forth provisions of NY-BSC that shall not apply to cooperative corporation.

**1.4. Conflict of Laws.** Briefly describe any provisions addressing any conflict between the cooperative statute and general corporate or general limited liability company law.

- NY-CC § 1-5(1)(a): Provisions of NY-CC control if in conflict with New York business corporation law.

**1.5. Construction of Law.** Briefly describe any reference to how the statute should be construed.

- NY-CC §§ 1-5(1)(c)-(d): Provision clarifies how certain terms of art are to be interpreted.

**1.6. Declaration of Statutory Policy.** Briefly state any broad declaration of statutory policy (i.e., description of conditions in agriculture or in the economy prompting the enactment of the cooperative statute).

- NY-CC § 1-2: State policy is to improve economic welfare of its people, particularly those who are producers, marketers or consumers of food products, and to encourage effective organization in cooperative associations for mutual aid and service.

**1.7. Statutory Qualification as a Cooperative.** Briefly describe any statement indicating that a cooperative is an entity that qualifies under this particular statute.

- NY-CC § 1-4.

**1.8. Cooperative Operational Description.** Briefly describe any provision that gives a general, operational description of a cooperative.

- NY-CC § 1-3: Defines operational components of a cooperative, including definition of cooperative corporation, member, patron and distinguishes between stock and non-stock cooperatives.

**1.9. "Nonprofit" Nature of Cooperative.** Briefly describe any reference to the "nonprofit" nature of the cooperative inasmuch as it is organized to pass margins to users rather than to make profit for itself.

- NY-CC § 1-3(d); NY-CC § 5(1): Primary object is not to make profits for itself as such, or to pay dividends on invested capital, but to provide service and means for economic advantage of members.

**1.10. Cooperative Purpose.** List any specific purpose(s) of the cooperative.

- NY-CC § 2-13. See statute for specific purposes; generally, a worker cooperative can be formed for any lawful business purpose and other cooperatives can:
  - Engage in agricultural and food financing and production;
  - Capture, use and sell methane and other gases;
  - Acquire labor, supplies, livestock, for use by members or to carry on household operation or educational work;
  - Build, buy, sell, or lease homes or farms;
  - Conduct housing or eating places cooperatively'
  - Furnish medical expense indemnity, dental expense indemnity, or hospital services to persons under insurance law article 43, and;
  - Organize agency or credit corporations under article 7 of this chapter.

**1.11. Perpetual Duration and Succession.** Does a cooperative have perpetual duration and succession?

- NY-CC § 2-11(3): 5 or more persons, who may form the cooperative, shall state the duration of the cooperative. Duration may be perpetual.

**1.12. General Powers.** State briefly any general power mentioned (e.g., the power to do all things necessary or convenient to carry out the cooperative's business).

- NY-CC § 2-14; NY-BSC § 2-202: See specific statutory language. Cooperative has powers and rights available to NY Business Corporations or the not-for-profit corporation, in addition to a number of specific powers.

**1.13. Specific Powers.** Please list any specific powers mentioned (e.g. buy, sell, produce, process products, handle byproducts, make purchases for members, manufacture, enter contracts, act as agent, own property, sue and be sued, develop and own patents, trademarks, and copyrights, borrow and lend money, invest, etc.).

- NY-CC § 2-14; NY-BSC § 2-202: See specific statutory language. In addition to powers and rights available to NY Business Corporations or the not-for-profit corporation, generally a cooperative can describe its activities and its members' rights in its certificate of incorporation or bylaws; amend its bylaws; become a member of another cooperative; handle products of non-member in an amount not to exceed those of members; provide advance payments or loans to members; act as agent; buy and sell securities; establish reserves; borrow money; purchase real property; and purchase and develop intellectual property.

**1.14. Inter-Association Agreements.** Briefly describe any provision that permits activities between or among two or more cooperatives.

- NY-CC § 2-14(j): Permits a cooperative to become a member of any other cooperative corporation.

**1.15. Prohibited Powers.** State briefly (list) powers denied to the cooperative.

- N/A. See NY-BSC.

**1.16. Prohibited Lines of Business.** State briefly (list) prohibited lines of business.

- N/A. See NY-BSC.

**1.17. Emergency Powers.** State briefly any emergency powers.

- N/A.

**1.18. Ultra Vires.** Briefly describe any provision addressing when a cooperative exceeds its legal purpose.

- NY-BSC § 2-203.

**1.19. Quo Warranto Proceeding.** Describe briefly any provision addressing any inquiry into the legitimacy of an association's operation as a cooperative.

- N/A.

**1.20. Miscellaneous.** Describe any other provision(s) that address cooperative powers or their limits.

- NY-CC Article 5: Relates to marketing contracts, purchasing business of other corporations/persons, reserves, net margins, distributions, penalty for spreading false financial or management reports, liability for damages arising from marketing agreement, audit and annual report, foreign corporations and annual license fee.

## 2. Association Formation

2.1. Specific Types of Cooperative. Name any specific cooperative forms mentioned by the statute (e.g., worker cooperative, agricultural cooperative, value-added producer cooperative, etc.).

- NY-CC Article 5-A: Worker Cooperatives. NY-CC Article 6: Agricultural Cooperative Corporations. NY-CC Article 7: Credit and Agency Corporations.

2.2. Number of Organizers. Is a minimum number of organizers required?

- NY-CC § 2-12: 5 or more persons may form a cooperative corporation.

2.3. Other Organizer Requirements. Are there any other requirements for organizers (e.g. an organizer must be a "person," a "natural person," an "association," must be a state resident, must be a certain age, must produce agricultural products, etc.)?

- NY-CC § 2-12: Statute requires organizers be "persons." See also NY-BSC § 4-401. Requires incorporators to be "natural persons" of at least 18-years.

2.4. Cooperative Promoters. Briefly describe any provisions that address the activities and or expenses of individuals ("promoters") engaged in assisting in the organization of the cooperative.

- N/A.

2.5. Filing Articles. Briefly state where and how to file the articles of incorporation or organization.

- NY-CC § 2-15: Must be filed with the Secretary of State. Secretary will provide copies of such certificate to the commissioner of agriculture and markets upon request.

2.6. Fee Amount. State the fee amount for starting a cooperative.

- NY-CC § 5A-84, NY-CC §1-5: \$125 for worker cooperative and cooperative corporations due to applicability of business corporation law.



**2.7. Start of Legal Existence.** When does the cooperative's legal existence begin?

- NY-CC § 2-15, NY-BSC § 4-403: When filed with Secretary of State.

**2.8. “Cooperative” Required in Name.** Is "cooperative" or another term of art required as part of the association's name?

- NY-CC §§ 2-11, 5-a-87: Cooperative must include word “cooperative” in its name. Worker cooperative must include “cooperative,” “corporation,” “incorporated,” or “limited” or an abbreviation of one of those words in its corporate name.

**2.9. Unique Cooperative Name Required.** Is the cooperative's name required to be unique?

- NY-BSC § 3-301(a)(2): Corporate name may be reserved by any domestic corporation.

**2.10. Restrictions on Cooperative Business Entity Types.** Are there restrictions on types of business entities that can be called a cooperative?

- NY-CC § 1-3(j). The term “cooperative,” “cooperation” or any variation or similitude is restricted to cooperatives organized under Cooperative Corporation Law. Any Coop Corp may sue for injunction against prohibited use. Violation of prohibition is a misdemeanor, punishable by fine not to exceed \$500.

**2.11. Nonstock Cooperatives.** Are nonstock cooperatives permitted?

- NY-CC §1-3(k) and NY-CC §2-10: Yes.

**2.12. Stock Cooperatives.** Are stock cooperatives permitted?

- Yes. NY-CC § 1-3(k) and NY-CC §2-10.

**2.13. Cooperative Prerequisites.** State briefly any special prerequisites to forming a cooperative (e.g. requirement of certain percentage of capital paid prior to organization or incorporation or requirement that a permit be obtained).

- N/A.

**2.14. Annual Renewal.** Is an annual renewal of the organization or incorporation required?

- NY-CC §5-77: Annual license fee. NY-BC §4-408: biennial statement filing requirement.

**2.15. Annual Report.** Is an annual report required?

- NY-CC § 5-75: Annual audit and report prepared and made available at annual meeting.

**2.16. Annual Report Content.** Briefly describe any provisions stating the required content in the annual report.

- NY-CC § 5-75: Statement of services rendered, total amount of business transacted, balance sheet, income and expenses. Must be prepared by experienced bookkeeper or accountant or firm of accountants not regularly employed by the corporation. If business is less than \$100,000, the audit may be conducted by a committee of three members or stockholders of corporation, who shall not be directors, officers or employees thereof.

**2.17. Failure to File Annual Report.** Briefly describe any provision that addresses consequences for failure to file an annual report.

- NY-CC § 5-75: Any person violating or failing to comply with the annual report and audit provision shall be deemed guilty of a misdemeanor.

**2.18. State Assistance.** Briefly describe any provision that allows for state assistance to individuals contemplating forming a cooperative.

- N/A.

**2.19. Out-of-State Cooperatives.** Briefly describe any provisions on permission for an out-of-state cooperative to do business in the state.

- NY-CC § 5-76. Permits foreign cooperatives to do business and make/enforce contracts in NY, in compliance with Cooperative Corporations Law.

**2.20. Out-of-State Business.** Briefly describe any provision allowing a domestic cooperative to do business in another state.

- N/A.

2.21. Miscellaneous. Briefly describe any other provision addressing association formation.

- N/A.

### **3. Cooperative Articles of Association**

3.1. Signatures and Acknowledgment. Briefly describe any provision that requires that the articles be signed, subscribed, acknowledged, or notarized.

- NY-BSC § 1-104: Generally, certificates must be signed either by an officer, director, attorney-in-fact or duly authorized person and include the person's name and capacity.

3.2. Cooperative Name. Do the organizing documents of incorporation require the cooperative's name?

- NY-CC § 2-11(1): Yes, "cooperative" shall be included in the entity name.

3.3. Cooperative Purpose. Are the organizing documents required to state a purpose for the cooperative?

- NY-CC § 2-11(2): Yes.

3.4. Place of Business. Is the place of business required?

- NY-CC § 2-11(4, 5, 7). Yes.

3.5. Term of Existence. Briefly describe any provision requiring that the term of existence of the organization be required in the articles.

- NY-CC § 2-11(3): 5 or more persons who may form the cooperative, shall state the duration, which may be perpetual.

**3.6. Incorporators, Subscribers.** Briefly describe any provision that requires that the names and addresses of incorporators and or subscribers be identified in the articles.

- NY-CC §§ 2-11(5), (9): Articles must include a statement that all incorporators are of full age; that 2/3 or more are U.S. citizens, at least one is a NY resident, and that at least 1 person named as a director is a citizen of U.S. and a resident of NY.

**3.7. Number of Directors.** Briefly describe any provision requiring a statement in the articles of the number and of directors.

- NY-CC § 2-11(6): Number shall be within stated minimum and maximum as the bylaws may from time to time provide. No less than five (5) directors.

**3.8. Director Term.** Briefly describe any provision requiring that the term of the directors be specified in the articles.

- NY-CC § 4-60. Staggered terms and successor terms of 3-years. At the first annual meeting, the members shall elect from among themselves a director or directors of the first class for a term of one year; of the second class for a term of two years; and of the third class for a term of three years. At the expiration of the respective terms, successors shall be elected for terms of three years. - See more at [New York Cooperative Corporation Law: http://codes.findlaw.com/ny/cooperative-corporations-law/cco-sect-60.html#sthash.hy92XKTX.dpuf](http://codes.findlaw.com/ny/cooperative-corporations-law/cco-sect-60.html#sthash.hy92XKTX.dpuf).

**3.9. Registered Agent.** Is the name of a registered agent required?

- Yes. NY-CC §§ 2-11(10), (11): Yes, if the cooperative corporation is to have a registered agent other than secretary of state.

**3.10. Limitations of Power.** Briefly describe any required or permitted provisions in the organizing document limiting the powers of the cooperative, its board, and or its members.

- NY-CC § 2-14: Describes general powers of cooperative.

**3.11. Limitations of Liability.** Briefly describe any required or permitted organizing document provision(s) regarding limitation of liability with respect to the organizers or incorporators, officers, members, and or shareholders.

- NY-CC § 3-47: Limited liability for members. NY-BSC §7-719-726.

**3.12. Membership Definition.** Briefly describe any statutory reference to defining membership in the organizing document.

- NY-CC § 1-3(e), (k): A “member” holds cooperative membership evidenced by a membership certificate or stock; members include member associations or corporations. A membership cooperative is a non-stock cooperative which admits only natural persons to membership, which provides services only to its members and which makes no distribution of net retained proceeds other than to its members on the basis of their patronage.

**3.13. Member Classes.** Is a description of member classes required or permitted?

- NY-CC § 2-10, 2-11(8): Yes, must describe whether a stock or non-stock cooperative.

**3.14. Member Property Rights.** Is a description required or permitted regarding member property rights?

- N/A.

**3.15. Member Voting Rights.** Is a description required or permitted regarding member voting rights?

- NY-CC § 3-44: Voting by proxy may be permitted in bylaws; bylaws may describe how directors are elected.

**3.16. Membership Certificates.** Is a statement required or permitted on whether the cooperative is organized with membership certificates?

- NY-CC § 3-40. Yes, certificate of membership required.

**3.17. Capital Stock.** Is a statement required or permitted that the cooperative is organized with capital stock?

- NY-CC § 2-11(8): Yes.

**3.18. Amount of Capital Stock.** Is a description of the amount of capital stock required or permitted?

- NY-CC § 2-11(8): Yes.

**3.19. Par Value.** Is a statement of par value required or permitted?

- NY-CC §2-11(8): Yes.

**3.20. Authorized Classes of Stock.** Is a description of other authorized classes of stock required or permitted?

- NY-CC § 2-11(8): Yes.

**3.21. Par Value of Authorized Classes of Stock.** Is a statement of par value required or permitted for other authorized classes of stock?

- NY-CC § 2-11(8): Yes.

**3.22. Acquire or Recall Stock.** Is a statement of a reservation of right for the cooperative to acquire or recall stock required or permitted?

- NY-CC § 2-14(h), NY-BSC § 5-513: Articles may set forth how cooperative may retire and purchase membership certificates and shares of stocks. Generally cooperative may acquire its stock unless acquisition would make the corporation insolvent.

**3.23. Voting Rules.** State briefly if a description of voting rules is required or permitted.

- NY-CC §§ 2-11, 2-14, 3-44, 3-45, 3-46: Articles must describe voting rights, restrictions, and qualifications if a stock cooperative has more than one class of stock.

**3.24. Distributions or Apportionments.** Is a description of distribution or apportionment of dividends, earnings, and losses required or permitted?

- NY-CC §§ 2-14, 5-72: Yes.

**3.25. Capital Accounts.** Is a description of a cooperative's capital account(s) required or permitted?

- NY-CC §§ 5-A-92, 5-A-93: Yes, specifically permitted for worker cooperatives.

3.26. Asset Distribution on Liquidation. Is a statement on distribution of assets on liquidation required or permitted?

- NY-CC §2-17: Yes, permitted.

3.27. Miscellaneous Provisions. Briefly describe any additional important provisions.

- NY-CC Article 5: Marketing contract; purchasing business of other corporations or persons; reserves, net margins, net retained proceeds, distributions, and patronage refunds; misdemeanor to spread false reports about finances or management thereof; liability for damages for encouraging or permitting delivery of products in violation of marketing agreements; audit and annual report; foreign corporations; annual license fee.

3.28. Amendment Initiation. Briefly describe the initiation of an amendment to the organizing document.

- NY-CC § 2-12: 2/3 affirmative vote of members at regular or special meeting.

3.29. Notice of Amendment. Briefly describe notice requirements regarding an amendment to the organizing document.

- NY-CC § 2-12: A written or printed notice of the proposed amendment and of the time and place of the meeting to vote thereon shall be delivered to each member, or mailed to his last known address as shown by the books of the corporation, or published in a periodical issued by the corporation and mailed to all members, at least twenty days prior to any such meeting. If the amendment adversely affects the preferential rights of any outstanding shares, any holder of such shares not voting in favor of such change may object to it at or before such meeting by filing his written objection with the secretary of the corporation and demanding payment for his shares of stock at their fair value as provided in section six hundred twenty-three of the business corporation law. See more at [New York Cooperative Corporations Law: http://codes.findlaw.com/ny/cooperative-corporations-law/cco-sect-12.html#sthash.4soyGcJT.dpuf](http://codes.findlaw.com/ny/cooperative-corporations-law/cco-sect-12.html#sthash.4soyGcJT.dpuf).

3.30. When Amendments Occur. Briefly describe any requirement regarding when the amendments must be made (e.g. during the annual membership meeting).

- NY-CC § 2-12: Regular or special meeting. At convention meeting if delegate voting.

**3.31. Quorum Requirements.** Briefly describe any quorum requirements for an amendment.

- NY-CC § 2-12: Affirmative vote of 2/3 of members voting thereon, or majority of members and 2/3 of patronage voting thereon. No quorum requirement other than as provided by b-laws.

**3.32. Margin Required for Approval.** State briefly whether a majority or supermajority is required for approval of an amendment and state amount (e.g., 51 percent, 2/3 majority, etc.).

- NY-CC § 2-1: Affirmative vote of 2/3 of members voting thereon, or majority of members and 2/3 of patronage voting thereon. 2/3 of delegates if delegate voting.

**3.33. Voting Members.** List types of members who can vote on the amendment.

- NY-CC § 2-12: Members, patronage, preferential right holders, delegates.

**3.34. Board Authority.** Describe briefly any authority of the board of directors to make amendments.

- NY-CC § 2-12; NY-BSC § 8-803: Generally board may amend certificate of incorporation followed by a shareholder vote. See statute for caveats.

**3.35. Filing of Amendment.** Describe briefly how an amendment is executed and filed.

- NY-CC § 2-12: Acknowledged and subscribed by president and secretary, who shall annex an affidavit that they have been authorized to execute and file such certificate.

**3.36. Restrictions on Amendment.** Describe briefly any restrictions on changes to the articles of organization or incorporation other than supermajority requirements.

- N/A.

**3.37. Miscellaneous Amendment Rules.** Describe briefly any miscellaneous rules regarding amendments to the articles of organization.

- NY-CC §2-12.