

REMOVING INACTIVE MEMBERS FROM YOUR REGISTER

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This paper discusses various ways in which a Co-operative may manage inactive members. The Co-operatives in this paper will be trading as opposed to non-trading Co-operatives. Trading Co-operatives are Co-operatives with share capital.

Co-operatives Generally

Co-operatives throughout the world are based on the Co-operative Principles, which reflect the principles adopted by International Co-operative Alliance. The Co-operative Principles remind us that the philosophy of co-operatives is for member to enjoy their rights as a member whilst they actively participate in the objectives or business of their Co-operative, but once they cease to participate they must lose their membership after a require period and have any share capital that they have subscribed to the Co-operative repaid to them. This is set out in detail in the Act.

Where the members supply goods to their Co-operative they expect to receive a competitive price for their produce supplied and generally in return the Co-operatives' Rules will have a primary activity Part 6 of the Act over a period of time that the member must met to retain their active membership provision. The Co-operative can sell directly to retailers. Particularly is this the case where the Co-operative value adds ,that is for example , turns raw milk into cheese , releases fruit out of season by storing them in cold rooms until there is a greater demand and less supply.

On the other hand retail members purchase goods from their Co-operative they expect to acquire those goods purchased at a competitive price because the member own the Co-operative which is able to bulk buy directly from manufacturers or importers and has eliminated the distributors and wholesales of the manufacturers. Secondly this total purchasing becomes part of your active member Part 6 of the Act for retail members.

INACTIVE MEMBERS

It is very important to have a reporting system in place to record the active membership provision, and in the course of member supplying goods there is the payment record which can record the litres or weight that reflects the active membership provision. In the case of hardship(bush fires , floods) when a supplier slips behind with their supply the directors will normally have terms in place for exceptional circumstances and will be handled on a one to one basis.

A retail member's activity is a little harder to track than a supplier member and this can be done by members with a loyalty program where a card number is swiped each time a member has a transaction and these are accumulated over a period of time to comply with the active membership provision.



Cancellation of Membership of inactive members Section.127

- (1) The board of a co-operative must declare the membership of a member cancelled if:
 - (a) The whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for at least the required period before that time, or
 - (b) The member is not presently an active member of the co-operative and has not been an active member of the co-operative at any time during the required period immediately before that time.
- (2) This section applies to a member only if he or she was a member of the co-operative throughout the required period.
- (3) The question of whether a member was an active member at a particular time in the past is to be determined as if the active membership provisions concerned had been in force at the time.
- (4) The board's declaration under this section has the effect of canceling the membership concerned.
- (5) A person may apply to the Co-operative Council for an order under section 129 in respect of the cancellation of the person's membership under this section.
- (6) In this section "**the required period**" in relation to a co-operative, means:
 - (a) 3 years, or
 - (b) If a shorter period is provided for in the rules of the co-operative, that shorter period.

Shares to be forfeited if membership cancelled Section 128

- (1) If a co-operative has share capital, the board of the co-operative is to declare the shares of a member to be forfeited at the same time as the member's membership is cancelled under section 127.
- (2) The board's declaration has the effect of forfeiting the shares concerned.
- (3) Nothing in this section affects the operation of section 134.

Notice of Intention to Cancel Membership Section 132

- (1) The board of a Co-operative must ensure that not less than 1 month's notice of its intention to declare the membership of a member to be cancelled is given to the member:
 - (a) by notice in writing sent to the member by post, or
 - (b) if the member's whereabouts are unknown to the co-operative, by notice published in a newspaper circulating in the district in which the registered office of the co-operative is situated.
- (2) No notice is required to be given under this section if the member's whereabouts are unknown to the co-operative and the amount required to be repaid to the members in respect of the cancelled membership (whether by reason of the cancellation of shares or otherwise) does not exceed \$50.00.

Repayment of amounts due in respect of cancelled membership Section 134

- (1) If the membership of a member of a co-operative is cancelled under this Part, the co-operative must, within 12 months after the date of cancellation:
 - (a) Repay to the former member the amount due to the member in respect of that cancellation, or
 - (b) Apply that amount in accordance with subsection (2) if:
 - (i) The board is of the opinion that repayment would adversely affect the financial position of the co-operative, or
 - (ii) The board and the former member so agree



(2) The amount due may be applied as follows:

(a) If the co-operative is a deposit-taking co-operative, the co-operative may apply the amount as a deposit by the former member with the co-operative (subject to the requirement of section 135 as to the interest on the deposit),

(b) The co-operative may allot or issue debentures or CCUs of the co-operative to the former member in satisfaction of the amount,

(c) The co-operative may appropriate the amount due as a donation to the co-operative, but only if the former member consents in writing to the donation.

Please refer to the act for the details on the interest payable on the above transactions.

The co-operative is to keep a register specifying the prescribed particulars of persons whose membership has been cancelled. Section 137

Division 5 ENTITLEMENTS OF FORMER MEMBERS

Former shareholders to be regarded as shareholders for certain purposes

Section 139

(1) This section applies to a co-operative only if the co-operative has a share capital.

Great care needs to be given here and the co-operative should seek professional advice on their lot before finalizing any transactions.

One is the entitlement of a shareholder to a distribution of surplus in a winding-up of the co-operative that commences within 5 years after the person's shares were forfeited.

Entitlement to distribution from reserves Section 142

A person whose membership of a co-operative has been cancelled under this Part is nevertheless to be considered to still be a member for the purposes of any distribution from reserves of the co-operative that takes place within 5 years after the person's membership was cancelled.

If directors wish to avoid a distribution to former members, the directors should not transfer funds into a reserve. Directors need to be alert to the possibility that their accountant may unwittingly treat part of the co-operative's retained earning as a reserve without having regard to Section 142

Summary

Based on the Model Rules

A person is eligible to be elected as director of the co-operative provided the person:

a) is an active member of the co-operative

A person holds no voting right at meetings, in ballots (including postal ballots) or circulated resolution unless he or she is an active member.

A person must not act as a proxy unless he or she is an active member of the co-operative.

Therefore it is very important to know your active members or they could cause grief to the sitting directors by voting in the co-operative's business without having any real understanding of what the vote will do as they are not an active member.



Sample of letter to reject a nomination for director from an inactive member

>>Date

>>Name

>>Address

Dear ,

We acknowledge receipt of your nomination for director of the Co-operative ... for the year for a term.

Regrettably, we are unable to accept your nomination. Under and in accordance with section 206 of the Co-operatives Act and under rule 11(based on the model rules) of the Rules of the Co-operative, to qualify as a director of the Co-operative, a person must be an active member (or the corporate representative of a body corporate active member), an eligible employee or an independent person holding such experience or community standing identified by the board as lacking in the mix of elected directors.

You are not an eligible employee and the Board has not identified any specific qualifications lacking in the current board. Moreover, you are not currently an active member (and have never been the representative of any body corporate active member).

In light of this, your nomination as a Director would contravene the Co-operatives Act and our Rules. Consequently, we are forced to decline the nomination and your papers are enclosed herewith.

This outcome is unfortunate. However, we cannot properly authorise any non-compliance with our Rules or any contravention of the Act.

Yours sincerely,

.....
Secretary

