

Forming an entity

is simply a filing with the state.

While navigating the factors associated with your choice of entity may be a bit tricky, the actual document is quite short.

A lot more detail and time goes into crafting the internal agreements that will become the foundation of your governance documents and policies which will dictate the nature of relationships between you and your fellow members in the co-op (and, if separate, the management).

Look inside for more about these internal considerations.

Co-op Structure

organizes our relationships so that we can best make decisions and do our work.



Key questions to discuss before you talk to a lawyer

1. How do you want the co-op to be managed? By an elected board, by the members themselves, by one or more managers?
2. How will major decisions be made? Majority vote, super majority, consensus, modified consensus?
3. What are some decisions that you think should be considered major?
4. Do you want to have committees? What sort of committees become members?
5. Will there be a probationary period before a worker can become a member? What is that period?
6. Will all workers have the legal right to work in the U.S.? Profit distributions? A combination of these?
7. Will all workers be members? Salaries? Commissions?
8. How do you intend to pay your members? Salaries? Commissions?
9. How will you decide whether to admit new members?
10. How will you decide whether to remove/expel members?
11. Is it important to you to use the word "cooperative" in your name?



STEP FOUR Choose a Structure

The entity you choose

as the legal structure of your co-op will conform to one of the existing options in your state.

In California, most worker co-ops choose to form as a Cooperative Corporation or a Limited Liability Company (LLC). In any case or place, the type of entity you choose will define a host of issues including how your co-op will be taxed, what kind of protection your co-op will have against liability, whether workers will be considered employees, and whether you can even use the word "cooperative" in your name.

Consult with an attorney and tax accountant to help your co-op members understand the issues so you can make a well-informed decision.

structuring
democracy
at work

Real Co-op Examples

If you put some time and thought into structure early on, it can help avoid some headaches and heartaches later...

Design Action Collective

9 members, all of whom serve on the Board of Directors. There are also four committees that are responsible for different aspects of management (Finance, Tech, Operations).

Union Cab Taxi Co-op

260 workers elect a Board of 9 worker-owners. The Board is responsible for governance and hires and supervises the General Manager who, in turn, is responsible for implementing their decisions and hiring and supervising other members.

Beyond Care Child-Care Co-op

38 members. All members vote on governance and important management decisions and are also encouraged to serve on an elected management committee (Leadership, Education, Publicity).

[structure tip]

Don't spend too much time on structure without first experimenting and getting practice with your structure to work out any issues.

[structure tips]

Get on the same page about your co-op's core functions and values and set up some agreements.

You may also want to set up some operating principles to help guide you when you do need to make changes.

[structure tip]

You don't need to set up the structure that you need in 5 or 10 years — focus on a structure that will serve you now

internal considerations

[patronage]

All cooperative worker-owners are entitled to a share of profits based on their contribution of labor to the co-op. The measure of that contribution is called patronage.

Patronage can be measured in various ways, depending on what makes sense in your cooperative and whatever is deemed to be fair. Examples may include hours worked, projects completed, or products produced.

[path to ownership]

Co-ops need to establish a clear path of what it takes for a worker to become a worker-owner. Milestones along that path may include the number of hours, months, or years on the job; completed trainings; meeting specific skill standards; a collaborative spirit; and, ultimately, a vote of confidence by the members.

[decision-making]

Here are some key distinctions to consider when you are deciding how to structure decision-making in your co-op:

Governance vs. Management

Governance involves bigger picture decisions like the core policies of your co-op. Management is more about the day-to-day implementation of the decisions made through governance.

Accountability vs. Autonomy

Accountability asks how to make sure everyone is upholding our agreed upon expectations. Autonomy asks how to make sure we have enough freedom to do our work without checking in with everyone all of the time. The goal is to find the sweet spot between the two.

gratitude to Brett Heeger, Yuki Kidokoro & DAWI

external considerations

[taxes]

How your co-op business and its members will be taxed is a consideration that, if not given enough attention, can produce unwelcome surprises. Key tax questions for corporations include whether the co-op will be taxed twice — once at the entity level and again through dividends to individual owners.

Co-ops that elect to form an LLC also have the choice of being taxed either as a partnership or a corporation. If the co-op is taxed as a partnership, members are taxed on all the profits of the business, including those that are retained in the cooperative. There are pros and cons of each choice, depending on the size of your co-op, its stage of growth, and the needs of the members. Just know that with professional advice, it is not difficult to change how your LLC is taxed or to even change to a completely different entity type.

[liability]

Liability means being on the hook for claims against your co-op business. Let's say someone walks into your shop, slips on a puddle that you failed to clean up, breaks both of their arms and then sues you for medical damages. Liability protection is one benefit of incorporating your co-op into a distinct business entity. Incorporation draws a line between your co-op business assets and your personal assets. So even if that person could access your co-op's bank account or truck to pay for their medical expenses, they cannot access your personal assets, like your personal bank account or car.

It's also important to think about what risks your co-op actually faces, because there are a number of other tools you can use to address liability such as insurance or a contract with your customers. So consider possible risks along with the protections, costs, and benefits of your options.