



# Cooperatives and Capital

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Presented by Jason Wiener

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# Disclaimer

***This information is being provided for educational purposes only. Neither the information presented, nor the attorney presenters shall be deemed to be or be giving legal advice.***

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# Agenda

1. Introduction
2. Cooperative Definition
3. Cooperative Statutes in Colorado
4. Capital
5. Questions





# Introduction

- **Jason Wiener p.c., a public benefit corporation**
  - Boutique business law, shared ownership, creative financing and securities, cooperatives, employee ownership, cooperative development and business consultancy
  - Industries: technology, agriculture and small producers, transportation, energy, telecom, service, retail, food and beverage

# Cooperative Definition

“A cooperative is an organization established by individuals to provide themselves with goods and services or to produce and dispose of the products of their labor. The means of production and distribution are those owned in common and the earnings revert to the members, not on the basis of their investment in the enterprise but in proportion to their patronage or personal participation in it.”

Puget Sound Plywood, Inc. v.  
Commissioner, 44 T.C. 305, 306 (1965),  
acq. 1966-2 C.B. 6 (1966)



# Colorado, the Delaware of Cooperative Law™

- Title 7, Article 55 – historically conventional cooperative industries (housing, electric)
- **Title 7, Article 56 – Cooperative Corporation**
- **Title 7, Article 58 – Limited Cooperative Association (LCA)**
- Title 38, Article 33.5 – Housing Cooperative Statute
- Section 40-2-127 – Community solar garden can be owned by co-op
- Title 11, Article 30 - Credit Unions



## LLC

- Profits distributed in proportion to member's equity investment
- Members do not need to be active in business
- Governance based on operating agreement
- Owned and controlled by investor members
- Default taxed as partnership, may elect tax as C or S-corp
- If taxed as partnership, owners not allowed W-2 wages
- If taxed as S-corp, all members must be individuals

## Cooperative

- Profits distributed based on patronage
- Members must be active in co-op to receive share of profits
- One member, one vote
- Owned & controlled by members who use co-op
- Can be taxed as Sub T corporation or a partnership
- Same as LLC for ownership wages or distributions, depending on tax structure
- Can have individuals or any entity as members
- Member shares are not considered securities under state and federal regulations

# LLC vs. Cooperative



## Co-op Corporation

- Generally taxed as a Subchapter T
- May have preferred shareholders, without voting rights
- Patronage allocations have more restrictive formulas
- One member – one vote

## Limited Co-op Assn

- May be taxed as partnership or as Sub T
- Preferred shareholders may have voting rights, subservient to patron rights
- Members must be active in co-op to receive a share of profit
- Patronage allocations can be based on equity holdings for preferred shareholders
- Voting for preferred shareholders is more flexible

Co-op Corporation (Art 56) vs. LCA (Art 58)





# Cooperative Definition contd.

- One-member, one-vote
- Business carried on for the mutual benefit of the members
- Stock vs membership cooperatives
- Profits distributed to the members based on *patronage*, not equity
- Operated at cost; NOT a non-profit entity
- Limited transfer of ownership interests
- Voting rights to patron members and/or investor members, depending on type of cooperative
- Limited liability for members
- Membership stock exempt from securities registration



# Types of Cooperative Capital

**Member Capital Contribution – share purchase**

**Membership Fee (non-refundable rev)**

**Member Dues**

**Member Loans**

Non-voting common stock / additional capital contributions

**Investor Convertible Debt / SAFE**

**Preferred Equity**

- (Re) Target dividend
- (Re) Accruing dividend
- (Self) Demand dividend
- (Self) Capped Revenue/profit share

**SBA 7(a) and Bank debt**



# Co-op Fundraising Strategies



Reg D Private Offering



Direct Public Offering



Crowdfunding



Commercial lending

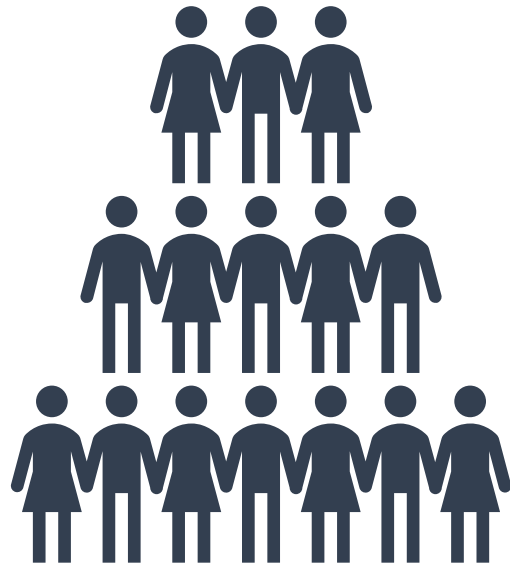


Exempt Member Transaction



# Member Capital Formation

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- Membership Share Purchase (equity)
  - Membership Fee (non-refundable, revenue)
  - Membership Dues
  - Non-voting common stock
  - Additional Capital
- Contribution
- Per Unit Retain
  - Non-qualified written notice of allocation
  - Retained equity
  - Member Loans

# Convertible Debt / SAFE / CAFE

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- Convertible debt: debt instrument that converts to preferred equity upon one or more triggering events
- SAFE: “Simple Agreement for Future Equity”
- CAFÉ: “Continuous Agreement for Future Equity”
- Bespoke conversion triggers, minimum preferred equity terms

# Preferred Equity

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## Repurchaseable Dividend Shares

Target Dividend (e.g. 3-7%, not guaranteed)

Accruing Dividend (e.g. 3-8%, guaranteed and cumulative, even if not paid)

Dividend Steps (X% div if profit below Y, and Z% div if profit above Y)



## Self-Redeeming Dividend Shares

*Demand Dividend or Capped Return*

Holiday – accruing div from FCF – distributions from FCF

# Bank Lending

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- SBA 7(a) and 504 Loans available to cooperatives
- Personal guarantee required\*
- Shared Capital and certain other CDFI's can guarantee a cooperative's bank loan for a fee
- Cooperatives can mortgage real property
- Cooperatives can issue secured or unsecured notes like any other business
- CO Revolving Loan Fund!
  
- \*Personal guarantee requirement challenging in light of 20% ownership threshold and equitable ownership



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# Questions?

Thank you!

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