



Cooperatives and Capital

Presented by Jason Wiener

Jason Wiener | p.c., a public benefit corporation



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.

jasonwiener|p.c.

Agenda

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





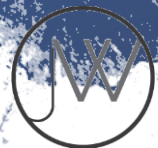
Introduction

- **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



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



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

Convertible Debt / SAFE / CAFE



- 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



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



- 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



jasonwiener|p.c.

Questions?

Thank you!

Jason Wiener

jason@jrwiener.com

720-445-6860

www.jrwiener.com