

Choice of Legal Entity

In Massachusetts, a Cooperative can choose to be organized as a Corporation or a Limited Liability Company (LLC). Massachusetts has a special law (Massachusetts General Law 157A) that creates a special kind of Corporation called an "Employee Cooperative". Cooperatives that choose to organize as a Corporation in Massachusetts would use this law, or they can become an LLC. The co-op needs to choose one of these forms or the other, it is not possible to be both at the same time. It is also not easy to change from one form to the other, although it's slightly easier to change from an LLC to a Corporation than the other way around.

Corporation

LLC

Track Record

Although the Employee Cooperative established by MGL 157A is a recent addition, in general the form of a Corporation is old, well-established, and well understood.

Corporations have been recognized by the US government since its founding, and the laws creating modern corporations were passed in the early 1800s. The laws governing Corporations are for the most part, predictable and stable, although there are some things still changing about Employee Cooperatives (worker co-ops).

LLCs are a relatively new form of business organization. They only became widespread in the US in the 1990s. Therefore, there are more issues about LLCs that have not been worked out in the court system, because there has not been enough time to do so.

Laws concerning LLCs are a little less predictable than the ones governing Corporations.

How to create

To create a new Corporation, file a document called "Articles of Incorporation" with the state government, and specify that this is an employee cooperative under MGL 157A.

To create an LLC, file "Articles of Organization" with the state.

Governing Document

The governing document of a Corporation is its "Bylaws". The bylaws specify who can be a member of the cooperative, the rights and responsibilities of membership, and how profits and losses will be allocated. The Bylaws do not need to be filed with the state government, but the IRS may ask to see them when making a decision about the co-op's tax status.

The governing document of an LLC is its "Operating Agreement". The Operating Agreement contains all the same information as a Corporation's bylaws, and they are also not required to be filed with the state, but might be relevant to the IRS.

Owners as Employees

All worker-owners in a Cooperative Corporation are considered employees. Their income comes in the form of wages, and the co-op should take care to follow all employment laws concerning wages, working conditions, immigration laws, payroll taxes and insurance.

Worker-owners in an LLC can choose to be considered owners only – not employees. If they choose this, the income they earn is not wages, but advances on profits earned by the business. They would not be subject to most employment laws - although it is in the best interest of the co-op to follow these laws anyway. The co-op should not use the LLC form in order to avoid employment

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Corporation

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Mechanism for Ownership

Owners of a Corporation own shares of stock in the corporation. Each worker-owner owns one share of stock, and will have a certificate of stock to prove it.

There is no stock in an LLC. Owners invest by buying a membership in the LLC and signing a membership agreement.

Taxation

Conventional Corporations are usually subject to "double taxation", where the corporation is taxed on its profits, and the shareholders are taxed on the dividends they earn. However, a conventional Corporation can elect to have "pass-through" taxation by choosing to be taxed as an "S-Corp". A Cooperative Corporation has a special tax designation under Subchapter T of the Internal Revenue Code. (See the taxation handout for more information.)

LLCs usually have "pass-through" taxation. In fact, that is one of the main reasons businesses choose to organize as an LLC. However, an LLC can choose to be taxed as a corporation (double taxation)[, or it can apply to be treated as a cooperative under Subchapter T]. While many businesses prefer pass-through taxation, there may be good reasons why a cooperative would choose not to be taxed that way. (See the taxation handout for more information.)

Use of the word "Cooperative"

In Massachusetts, only a business organized as an Employee Cooperative under MGL 157A can use the word "cooperative" in their legal name.

Co-ops organized as LLCs cannot use the word "cooperative" in their legal name, but they can use a "d/b/a" name with the word "cooperative". D/B/A means "doing business as", and is a very common way for individuals and businesses to own a business name that is different than the name of the individual, corporation, or LLC which operates the business. For example, an LLC might have the legal name "Green Cleaning Company, LLC" as the legal name, which appears on the Articles of Organization, bank accounts, and legal documents, but their website and marketing materials could carry their d/b/a name of "Green Cleaning Cooperative".

Governance

Governance requirements for Corporations are strict, and a little complicated. A Corporation must have a board of directors that is elected properly according to its bylaws. There must be annual meetings, and every member must be carefully invited in writing with an agenda, at a specified time every year. Minutes of these meetings must be taken, and kept in a safe accessible location. Corporations must file an annual report and pay annual taxes and fees. (Currently about \$600).

Governance is simpler in an LLC. [Annual meetings are not required, but annual reports must still be filed, and a fee must be paid (Currently about \$800).] Many businesses choose the LLC form because it is easier to carry out the Governance requirements. However, a democratic and well-run cooperative will usually fulfill the stricter Governance requirements of a Corporation anyway.