CREATIVE USE OF THE COOPERATIVE BUSINESS MODEL

Cooperatives are a business model that are seeing increased use in Colorado and Colorado has some of the more robust statutes in the country, helping attorneys and the public create entities that are democratically owned and controlled. Colorado has several statutes relating to the organization and operation of cooperatives, but the most commonly used statutes are:

- Colorado Cooperative Act, Title 7, Article 56, a general cooperative statute.
- Colorado Limited Cooperative Association Act, Title 7, Article 58, a hybrid statute combining standard cooperative principles with partnership and limited liability company law.
- Cooperatives can also be formed under the Colorado Business Corporation Act, the Colorado Limited Liability Company Act, or the Colorado Revised Nonprofit Corporation Act, as long as cooperative principles are incorporated into the governing documents (primarily the articles of incorporation and bylaws, or the operating agreement) of the organization. With a few specific exceptions, federal income tax laws recognize as a cooperative "any corporation operating on a cooperative basis."

Cooperatives are created to provide a service to their members. A worker cooperative provides jobs; a farm service cooperative provides agricultural services. A key factor differentiating LLCs from the member-oriented philosophy embedded in cooperatives is that the profit motive of most LLCs and their members is generally based on *investment*, whereas cooperatives operate at cost and return excess net income to their members on the basis of the members' *patronage*, or use of the cooperative. Examples of patronage – how much fertilizer did Farmer A buy from their cooperative, versus Farmer B? Or, how many hours did Employee A work at the cooperative, versus Employee B. An LLC ordinarily is organized chiefly to pursue profit maximization, while a cooperative is generally designed to serve its members at the lowest effective cost. Another distinction is that if an LLC is taxed as a partnership, it is not able to set aside any capital reserves for future expansion. On the other hand, both the cooperative corporation and the LCA, if taxed as Subchapter T entities, are able to set aside reasonable reserves, allowing the cooperative to better manage cash flow in its operations.

Cooperative business models can be used in almost any industry. Agriculture, construction, transportation, manufacturing, wholesale/retail, restaurant, rural utilities, banking, insurance, real estate and service industries have all used the cooperative model, some more than others. The types of cooperatives include: purchasing, marketing, services, worker, consumer, and multi-stakeholder (combining services to members). Contact us if you have questions about the cooperative business model. Jason Wiener P.C., Linda Phillips, Senior of Counsel, www.jrwiener.com