

# Current Requirements Imposed on Societies

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By Stephanie Wylde

## **Can the society make a profit or is this considered a financial gain?**

Even though an incorporated society is a non-profit organisation, a society can make a profit (for example, through entry fees or fundraising) and retain that money and use it to further its objectives. In contrast financial gain is the making of a profit with the intention of passing that profit on to some or all of the society's members. The Incorporated Societies Act 1908 specifies that a society must not undertake activities for financial gain (referred to in the Act as 'pecuniary gain').

If the society has the intention to use the money to further its objectives but continues to accumulate profits year on year (growing bank balances) this may contradict the core reason the Society was set up. The members would need to ascertain what value is being obtained by building up reserves (year on year profits) for example accruing interest on term deposits versus furthering your outcomes. The society may wish to have a policy which sets out the minimum level of contingency funding needed to cover unexpected events that members deem suitable.

If the society is found to be engaging in operations involving financial gain, both the society and the members are liable to be prosecuted and fined. In addition, all members involved can be personally liable for any debts and obligations incurred by the society.

The Act specifically allows for several acceptable situations that may normally be considered financial gain:

- The property of a society can be divided amongst its members when the society is dissolved.
- Members of a society can receive a salary as an employee or officer of the society
- Members of the society can compete with each other at members' only society events for trophies or prizes (not money prizes).

## **What a society should consider before entering into a contract?**

- Is the purpose of the contract authorised by the rules and objects of the society?
- The rules may allow a society to borrow money, but is the money going to be used for a purpose covered by the objects of the society?
- Who is authorised to enter into the contract on behalf of the society?
- An incorporated society can enter into a contract if the following requirements are met:
- The society must have a written contract. For example, an agreement to sell or buy land if the contract is the type of agreement that would need to be in a deed if it was between individuals
- The society will need a written contract signed by a person (usually an officer) with the express or implied authority of the society if the contract is the type of agreement that would normally need to be in writing if it was between individuals.

## **Why does a society need rules and what if the rules are not being followed?**

One of the advantages of being an incorporated society is that the society has a set of rules that determine how it should be run. The rules must include an objects, or purpose, clause which sets out the reason why the society has been incorporated. The society should always ensure that the activities it undertakes fall within the scope of the objects clause.

Any internal problems or disputes about how the society is being run or the way in which its rules are being interpreted and applied need to be dealt with by the society itself. The Registrar of Companies is not empowered to intervene in disputes or provide interpretations of rules. The Incorporated Societies Act 1908 does give the Registrar certain powers to investigate alleged breaches of the Act, but not breaches of a society's rules. If you are concerned that the activities of the society breach other New Zealand laws, it may be appropriate to forward your concerns, along with any supporting evidence, to the appropriate authority.

## **Do we really need to hold meetings?**

An incorporated society is required to hold at least one general meeting a year (known as the annual general meeting), at which the members approve the annual financial statements. The meeting will also include and approve the election of officers and any necessary rule changes.

The society's rules may allow for other general meetings to be held during the year and must describe such things as how members may vote and how business at a general meeting is to be conducted.