

Vancouver Food Cooperative and Washington Securities Law

Shortly after incorporation in March, 2006, Heather Lehman introduced questions of securities law to the VFC board of directors based, I believe, on her brother-in-law's understanding of various problems some Bellingham lawyers had around an owner loan program and the federal Securities and Exchange Commission. These were discussed in the spring of 2007 and a plan established which would legally allow the basic three-step financing model (shares + owner + commercial loans) to go forward after certain clear and legal steps. Those steps and their lawful order are illustrated on the left and explained below. What VFC has actually done (over my objections) is illustrated on the right. I was concerned enough about these issues to resign from the interim board in February, 2008, on the understanding that Sunrise's objections to these steps was based on personal issues with me and after having exacted a promise from Heather Lehman that she would assure VFC came into compliance with law by (A) passing bylaws, (B) accepting share agreements and (C) issuing share certificates before (D) the elected board was seated. That didn't happen, placing the current board in a shadow of illegality. By accepting money for shares which have never been issued, VFC is not only out of compliance with its own plans, but in clear violation of Washington state securities law. As it pertains to retention of owner share equity, VFC's bylaws are almost certainly invalid.

What the interim board was supposed to do is illustrated on the left, with what VFC has actually done (so far) on the right. The proper steps and sequence are:

1. ARTICLES of Incorporation clarify corporate powers, including ability to issue capital shares
2. INCORPORATION is granted by state, creating a legal entity
3. EXEMPTION from Dept of Financial Institutions clarifies price and number of shares legally to issue
4. BYLAWS clarify rules regarding mutual rights of corporation and shareholders
5. SUBSCRIPTION AGREEMENT is the contract that sells a share to owners, signed by both parties
6. PAYMENT must be made in full before any share can be issued as per RCW 24.06.070
7. CERTIFICATE issued as legal proof of share, like a receipt, as per RCW 24.06.080

The gist of all this is to explain that VFC is almost certainly out of compliance with Washington laws and procedures, making various assertions of the board incorrect and original incorporators (if not all current board members) personally liable for this non-compliance.

