



The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Agricultural Cooperative Formation:

Arkansas



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Agricultural Cooperative Formation: Arkansas

Fast Find:

- 1) Purpose: [§ 2-2-105](#)
- 2) Power: [§ 2-2-106](#)
- 3) Membership: [§ 2-2-107](#)
- 4) Articles of Incorporation: [§ 2-2-108](#)
- 5) Bylaws: [§ 2-2-110](#)
- 6) Directors and Officers: [§§ 2-2-112 & 2-2-113](#)
- 7) Capitalization: [§ 2-2-114](#)
- 8) Taxation: [§ 2-2-123](#)

[Ark. Code §§ 2-2-101 to 2-2-430](#)

Section 2-2-105 – Reasons for Organizing

An association may be organized to engage in any agricultural or related activity, including, but without limitation, any activity in connection with the producing, marketing, selling, harvesting, dairying, preserving, drying, processing, canning, packing, milling, ginning, compressing, storing, transporting, handling, or utilization of any agricultural or forestry products produced by it or delivered to it by its members or others; with the manufacturing or marketing of the by-products thereof, or in connection with the purchase, hiring, or use by it or its members or others of supplies, machinery, or equipment; in the acquisition or improvement of land; in the construction or maintenance of houses, barns, sheds, or facilities for its use or the use of its members; for indemnifying or replacing damaged, lost, or destroyed livestock or other tangible personal property pertaining to agriculture belonging to its members; in burial activities; or the furnishing of medical, dental, health, hospitalization, nursing, or any related services, or medicines or medical supplies to its members and their families.

Section 2-2-106 – Powers

Each association incorporated under this subchapter shall have the following powers:

(1) To engage in any activity in connection with any agricultural or related activity, including, but without limitation, any activity in connection with the producing, marketing, selling, harvesting, dairying, preserving, drying, processing, canning, packing, milling, ginning, compressing, storing, transporting, handling, or utilization of any agricultural or forestry products produced by it or delivered to it by its members or others; with the manufacturing or marketing of the by-products thereof; in connection with the purchase,



hiring, or use by it or its members or others of supplies, machinery, or equipment; in the acquisition or improvement of land; in the construction or maintenance of houses, barns, sheds, or facilities for its use or the use of its members; for indemnifying or replacing damaged, lost, or destroyed livestock or other tangible personal property pertaining to agriculture belonging to its members; in burial activities; or the furnishing of medical, dental, health, hospitalization, nursing, or any related services, or medicines or medical supplies to its members and their families;

(2) To borrow money and to make advances to members;

(3)

(A) To establish funds in pools for the purposes of indemnifying or replacing damaged, lost, or destroyed livestock or other tangible personal property pertaining to agriculture belonging to members.

(B) Associations organized under this subchapter which shall engage in the activities enumerated in this subdivision (3) shall not be deemed to be insurance companies and shall not be subject to the insurance laws of Arkansas;

(4) To purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the production, warehousing, handling, or marketing of any of the products of the type handled by the association;

(5) To establish reserves and to invest those funds in bonds or such other property as may be provided in the bylaws;

(6) To purchase or otherwise acquire or to buy, hold, and exercise all privileges of ownership or tenancy over such real and personal property as may be necessary or convenient for the conducting and operating of any of the business of the association or incidental thereto;

(7)

(A) To arrange medical, dental, health, surgical, nursing, hospitalization, and related services and benefits for the members and families of the members.

(B) Associations organized under this subchapter for the purposes specified in this subdivision (7) shall not be deemed to be insurance companies and shall not be subject to the insurance laws of Arkansas;

(8)

(A) To do each and every thing necessary, suitable, or proper for the accomplishment of any of the purposes or the attainment of any one (1) or more of the objects enumerated in this section, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly.

(B) In addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and to do any such thing anywhere;

(9) To contract and to sue and be sued; and

(10) To act as agent or representative of any members or others in any of the activities enumerated in this section.



Section 2-2-107 – Members

(a)

(1) Under the terms and conditions prescribed in its bylaws, an association formed under this subchapter may admit any persons as members who are engaged in the production of agricultural commodities, including the lessees and tenants of lands used for production of agricultural commodities and lessors and landlords who receive as rent all or part of the crops raised on the leased premises, and issue certificates of common stock or membership to them.

(2) Certificates of stock or membership shall not be transferable except as provided in the articles of association or the bylaws. No person shall otherwise acquire, by operation of law or otherwise, the benefits of membership except as provided in this subchapter.

(b) If a member of any association organized under this subchapter is other than a natural person, the member may be represented by any individual, associate, officer, manager, or member thereof, duly authorized in writing.

Section 2-2-108 – Articles of Association

(a) Each association formed under this subchapter must prepare and file articles of association, setting forth:

(1) The name of the association;

(2) The purposes for which it is formed;

(3) The place where its principal business will be transacted, which shall be its domicile;

(4) The term for which it is to exist, which may be perpetual;

(5) The number of directors thereof, which must not be fewer than five (5) and may be any number in excess thereof, and the term of office of the directors;

(6) If organized without capital stock, the classes of membership, if more than one (1) class of membership is authorized, and the rules determining the property rights of all classes of members in the event of dissolution; and

(7)

(A) If organized with capital stock, the amount of stock and the number of shares into which it is divided and the par value thereof.

(B)

(i) The capital stock may be divided into preferred and common stock.

(ii) If so divided, the articles of association must contain a statement of the number of shares of stock to which preference is granted, the nature and definite extent of the preference and privileges granted to each, and the number of shares of stock to which no preference is granted.

(b) The articles must be subscribed by the incorporators and acknowledged by them before an officer authorized by the law of this state to take and



certify acknowledgments. They shall be filed and recorded in the office of the Secretary of State.

Section 2-2-110 – Bylaws

(a)

(1) Each association incorporated under this subchapter must adopt for its government and management a code of bylaws not inconsistent with the articles of association or the powers granted in this subchapter.

(2) A majority vote of the incorporators and members or stockholders or their written assent is necessary to adopt the bylaws.

(3) Each association under its bylaws may provide without limitation for any or all of the following matters:

(A) The time, place, and manner of calling and conducting its meetings;

(B) The number of stockholders or members constituting a quorum;

(C)

(i) The right of members or stockholders to vote; and

(ii) The conditions, manner, form, and effect of such votes;

(D) The number of directors constituting a quorum;

(E)

(i) The qualifications, duties, and terms of office of directors and officers;

(ii) The time of their election; and

(iii) The mode and manner of giving notice thereof;

(F) Penalties for violations of the bylaws;

(G) The form and manner of amendment of bylaws;

(H)

(i) The amount of entrance, organization, and membership fees, if any;

(ii) The manner and method of collection of the fees; and

(iii) The purposes for which they may be used;

(I)

(i) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association;

(ii) The charge, if any, to be paid by each member or stockholder for services rendered by the association to him or her and the time of payment and the manner of collection; and

(iii) The producing, marketing, renting, leasing, or other contract between the association and its members or stockholders, which every member or stockholder may be required to sign; and

(J)

(i) The qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common and preferred stock;



- (ii) The method, time, and manner of permitting members to withdraw;
- (iii) The manner of assignment and transfer of the interest of members and of the shares of common and preferred stock;
- (iv) The conditions upon which and the time when membership of any member shall cease;
- (v) The mode, manner, and effect of the expulsion of a member;
- (vi) The manner of determining the value of a member's or stockholder's interest and the provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his or her membership;
- (vii) The method, time, and manner of allotment and distribution of surpluses;
- (viii) The manner and method of removal from office of any officer or director of the association; and
- (ix) The manner and method of filling vacancies.

(b)

(1) For the purpose of amending the articles of association or for the purpose of amending the bylaws of the association, or for both purposes, a quorum for any stockholders' meeting for all associations organized under this subchapter shall be members or voting stockholders representing five percent (5%) of the voting power of the association who shall be present in person or voting by proxy.

(2) As to all other association business, the quorum established by the stockholders or members as authorized in subdivision (a)(3)(B) of this section, which may include members or stockholders voting in person or by proxy, shall govern.

(c) For the purpose of amending articles of association or for the purpose of amending bylaws of the association, or for both purposes, a majority vote of the votes cast at a meeting at which a quorum is present, in person or by proxy, shall be sufficient to adopt amendments.

Section 2-2-112 – Board of Directors

(a)

(1) The affairs of the association shall be managed by a board of not less than five (5) directors.

(2)

(A)

(i) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to the districts.

(ii) In such cases, the bylaws shall specify the number of directors to be elected by each district and the



manner and method of reapportioning the directors and redistricting the territory covered by the association. The bylaws may provide for a quorum of the directors in each district.

(B) The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to the districts, and the results of all the primary elections must be ratified by the next regular meeting of the association or may be considered final as to the association.

(b) The bylaws may provide that one (1) or more directors may be appointed by the Governor, the Dean of the College of Agriculture of the University of Arkansas at Fayetteville, or any other designated federal or state public official or commission.

(c)

(1) Where not otherwise prohibited by the bylaws, the directors of the association may provide a fair remuneration for the time actually spent by its officers, directors, and employees in its service.

(2) No director, during the term of his or her office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association.

(d) The bylaws may provide for an executive committee and may allot to the committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

Section 2-2-113 – Officers

(a) The board of directors shall elect a president, one (1) or more vice presidents, a secretary, and a treasurer, and they may combine the two (2) latter officers and designate the combined office as secretary-treasurer.

(b)

(1) The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a functionary of the board.

(2) In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board.

Section 2-2-114 – Certificates of Membership or Stocks

(a) When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership.

(b) Except for debts lawfully contracted between the member and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(c)



(1) Unless provided otherwise in the articles of association or bylaws of an association, no member or stockholder shall be entitled to more than one (1) vote.

(2) In an election for directors, the number of votes a member or stockholder is entitled to cast may be multiplied by the number of directors being elected. The member or stockholder may distribute the votes among as many candidates as he or she shall see fit.

(d) Any provision of this subchapter or any other law which is applied to an association organized under this subchapter, referring to requirements for a vote or quorum based on a total number or proportion of members or stockholders, shall mean the number or proportion of the votes entitled to be cast by the members or stockholders where an association's articles of association or bylaws entitle any member to more than one (1) vote.

(e) For purposes of this subchapter or any other law which is applied to an association formed under this subchapter, if permitted by the articles of association or the bylaws of the association, any vote of a member or stockholder may be made in person or by proxy and may be counted in the establishment of a quorum.

(f)

(1) No stockholder of a cooperative association organized under this subchapter shall own more than one-twentieth ($\frac{1}{20}$) of the common stock of the association or more than one (1) share of common stock if there are fewer than twenty (20) common stockholders.

(2) Such an association, in its bylaws, may limit the amount of common stock which one (1) member may own to any amount less than one-twentieth ($\frac{1}{20}$) of the common stock.

(g)

(1) Any association organized with stock under this subchapter may issue preferred stock, with or without the right to vote.

(2) The stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of association and printed on the face of the certificate.

(h)

(1)

(A) No association shall issue stock or a membership certificate to a member until it has been fully paid for.

(B) The promissory notes of the members may be accepted by the association as full or partial payment.

(2) The association shall hold the stock or membership certificate as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

Section 2-2-123 – Annual License Fee; Taxation

(a) Each association organized or existing under this subchapter shall pay an annual license fee of ten dollars (\$10.00) to the Secretary of State.

(b)



(1) In addition, each association shall be subject to the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-101 et seq., and all other taxes levied in this state. However, any association which immediately distributes at the close of each business year all surpluses by cash or certificate to its members shall not be subject to the Income Tax Act of 1929, § 26-51-101 et seq., with respect to the income.

(2) Each association shall be subject to taxes upon its real estate and personal property.

