



# The National Agricultural Law Center

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Agricultural Cooperative Formation:

*California*



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# A National Agricultural Law Center Research Publication

## Agricultural Cooperative Formation: California

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### Nonprofit Cooperative Associations

#### Section 54061 – Purposes

Three or more natural persons, a majority of whom are residents of this state, who are engaged in the production of any product, may form an association pursuant to this chapter for the purpose of engaging in any activity in connection with any of the following:

- (a) The production, marketing, or selling of the products of its members.
- (b) The harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping, or utilization of any product of its members, or the manufacturing or making of the byproducts of any product of its members.
- (c) The manufacturing, selling, or supplying to its members of machinery, equipment or supplies.
- (d) The financing of the activities which are specified by this section.
- (e) Any one or more of the activities which are specified in this section.

#### Section 54171 – Powers

An association may engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any product which is produced or delivered to it by its members; or the manufacturing or marketing of the byproducts of any such product; or any activity in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment, or in the financing of any such activities; or in any one or more of the activities which are specified in this section.

#### Section 54081 – Articles of Incorporation



The articles of incorporation of the association shall show that the signers of the articles of incorporation are engaged in the production of products, and that they propose to incorporate an association pursuant to this chapter, and shall state all of the following:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The county where the principal office for the transaction of business of the association is to be located.

(d) The number of directors of the association, which shall not be less than three, and the names and addresses of the persons who are to serve as first directors. If it is desired that the first directors shall serve for terms of different length, the term for which each person so named shall serve shall also be stated.

(e) If organized without shares of stock, whether the voting power and the property rights and interest of each member are equal or unequal. If voting power and property rights and interest of each member are unequal, the general rule or rules which are applicable to all members by which the voting power and the property rights and interests, respectively, of each member may be and are determined and fixed shall also be stated.

(f) If organized with shares of stock, the number of shares which may be issued and if the shares are to have a par value, the par value of each share, and the aggregate par value of all shares. If the shares are to be without par value it shall be so stated.

If the shares of stock are to be classified, a description of the classes of shares and a statement of the number of shares of each kind or class and the nature and extent of the preferences, rights, privileges, and restrictions which are granted to or imposed upon the holders of the respective classes of stock.

Except as to the matters and things so stated, no distinction shall exist between the classes of stock or the holders of them. One class of stock shall always be known as common stock and voting power may be restricted to holders of common stock.

### Sections 54111 to 54122 – Bylaws

54111. Each association shall, within 30 days after its incorporation, adopt for its government and management, a code of bylaws, not inconsistent with this chapter. The vote or written assent of shareholders or members that hold at least a majority of the voting power is necessary to adopt such bylaws and is effectual to repeal or amend any bylaws, or to adopt additional bylaws.

The power to repeal and amend the bylaws, and adopt new bylaws, may, by a similar vote, or similar written assent, be delegated to the board of directors, which authority may, by a similar vote, or similar written assent, be revoked.

54112. The bylaws may prescribe the time, place, and manner of calling and conducting its meetings. Meetings of members or stockholders shall be held at the place as provided in the bylaws; and if no provision be made, then in the city where the principal place of business is located at a place designated by the board of directors. Meetings of the board of directors may



be held at any place within or without the state which is fixed by a quorum of the board of directors unless otherwise provided in the articles of incorporation or bylaws.

54113. The bylaws may prescribe the number of stockholders or members which constitutes a quorum.

54114. The bylaws may prescribe the right of members or stockholders to vote by proxy or by mail or both, and the conditions, manner, form, and effects of such votes; the right of members or stockholders to cumulate their votes and the prohibition, if desired, of cumulative voting.

54115. The bylaws may prescribe the number of directors which constitutes a quorum.

54116. (a) The bylaws may prescribe the qualifications, compensation, duties, and term of office of directors and officers and the time of their election.

(b) The number of directors set forth in the articles of incorporation shall be either a fixed number or a variable number. If a fixed number, it shall not be less than three, and if a variable number, the stated minimum shall not be less than three and the stated maximum shall not be greater than two times the stated minimum minus one.

(c) The number of directors may also be set forth in the bylaws either as a fixed number or as a variable number subject to the same limitations as in subdivision (b). After shares have been issued or members have been admitted, any adoption or amendment of such bylaw provision shall be approved by the outstanding shares as provided in Section 152 of the Corporations Code.

(d) In the event of an inconsistency between an article provision referred to in subdivision (b) and a bylaw provision referred to in subdivision (c), the provision more recently adopted or amended shall prevail.

(e) If a variable number of directors is set forth in the articles of incorporation or the bylaws, the exact number of directors shall be fixed, within the limits specified, by approval of the board of directors or the shareholders as provided in Section 153 of the Corporations Code in the manner designated in the bylaws.

54117. The bylaws may prescribe penalties for violations of the bylaws.

54118. The bylaws may prescribe the amount of entrance, organization, and membership fees, if any; the manner and method of collection of such fees; and the purposes for which they may be used.

54119. The bylaws may prescribe 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; the charge, if any, to be paid by each member or stockholder for services which are rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.



54120. The bylaws may prescribe the amount of any dividends that may be declared on the stock or membership capital. To the extent that dividends are payable out of the excess of association income over association expenses attributable to business transacted with or for members, dividends shall not exceed 8 percent per annum. Dividends are in the nature of interest, and do not affect the nonprofit character of any association that is organized pursuant to this chapter.

54121. The bylaws may prescribe the number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when, membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; and the mode, manner, and effect of the expulsion of a member.

54122. The bylaws may prescribe the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors; and the conditions and terms for the repurchase by the association from its stockholders of their stock upon their disqualification as stockholders. In case of the expulsion of a member, and where the bylaws do not provide any procedure or penalty, the board of directors shall equitably and conclusively appraise his property interest in the association and shall fix the amount of his property interest in money, which shall be paid to him within one year after such expulsion.

### Section 54141 to 54150 – Directors and Management

54141. The affairs of the association shall be managed by a board of not less than three directors who are elected by the members or stockholders.

54142. The bylaws may provide that the territory in which the association has members shall be divided into districts and that directors shall be elected from the several districts. In any such case, the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association.

54143. The bylaws may provide that primary elections shall be held to nominate directors. If the bylaws provide that the territory in which the association has members shall be divided into districts, the bylaws may also provide that the results of the primary elections in the various districts shall be final and shall be ratified at the annual meeting of the association.



54144. 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 by representatives or advisers, who themselves have been elected by the members or stockholders from the several territorial districts. In any such case, the bylaws shall specify the number of representatives or advisers to be elected by each district, the manner and method of reapportioning the representatives or advisers and of redistricting the territory which is covered by the association.

54145. The bylaws may provide that one or more directors may be chosen by any public official or commission or by the other directors selected by the members. Such director shall represent primarily the interest of the general public in such associations. The directors so chosen shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors.

54146. The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

54147. An association may provide a fair remuneration for the time which is actually spent by its officers and directors in its service and for the service of the members of its executive committee.

54148. If a vacancy on the board of directors occurs except by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy unless the bylaws provide for an election of directors by districts. If the bylaws provide for an election of directors by districts, the vacancy shall be filled by the election of a director from the district in which the vacancy occurs or the board of directors may call a special meeting of the members or stockholders in that district to fill the vacancy.

54149. The directors shall elect a president, one or more vice presidents, a secretary, a treasurer, and such other officers as may be prescribed by the bylaws. Any two or more offices, except those of president and secretary, may be held by the same person. The treasurer may be a bank or any depository and as such, shall not be considered as an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as and where authorized by the board of directors.

54150. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition which is signed by five percent of the members, which requests the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer, against whom such charges have been brought, shall be informed in writing of the charges previous to the meeting and shall have





an opportunity at the meeting to be heard in person or by counsel and to present witnesses. The person bringing the charges against him shall have the same opportunity.

If the bylaws provide for election of directors by districts with primary elections in each district, the petition for removal of a director shall be signed by 20 percent of the members that reside in the district from which such director was elected. The board of directors shall call a special meeting of the members that reside in that district to consider the removal of the director; and by a vote of the majority of the members of that district, the director in question shall be removed from office.

### **Section 54231 – Members**

Under the terms and conditions which are prescribed in the bylaws adopted by it, an association may admit as members or issue common stock to only such persons as are engaged in the production of any product which is to be handled by or through the association, or that use or employ any service or facility offered by the association on, or in connection with, land which is used for the production of any product, including the lessees and tenants of land which is used for the production of such product and any lessors and landlords that receive as rent all or part of the crop which is raised on the leased premises.

### **Sections 54201 to 54204 – Financial Provisions**

54201. An association is not subject in any manner to the terms of the Corporate Securities Law, Division 1 (commencing with Section 25000), Title 4 of the Corporations Code, and any association may issue its membership certificates or stock or other securities as provided in this chapter without the necessity of any qualification under that law.

54202. If an association issues nonpar value stock, the issuance of such stock shall be governed by the terms of all general laws which cover the issuance of nonpar value stock in domestic corporations.

54203. If an association with preferred shares of stock purchases the stock or any property, or any interest in any property of any person, it may discharge the obligations which are so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest which is purchased is equivalent to payment in cash for the shares of stock which are issued.

54204. The board of directors of every association shall cause to be sent to the members of the association not later than 120 days after the close of the fiscal or calendar year an annual report of the operations of the association, unless such report is expressly dispensed with in the bylaws.



If required by the bylaws, interim reports of the operations of the association for the three month, six month, or nine month periods of the current fiscal year of the association shall be furnished to the members of the association.

Such annual report and any such interim reports shall include a balance sheet as of such closing date. Such financial statement shall be prepared from, and be in accordance with, the books. It shall be prepared in a form which is sanctioned by sound accounting practice for the association or approved by a duly certified public accountant or a public accountant.

