



# The National Agricultural Law Center

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Agricultural Cooperative Formation:

*Colorado*



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: Colorado

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## [Colo. Rev. Stat. §§ 7-56-101 to 7-56-901](#)

### Section 7-56-501 – Powers

(1) Every cooperative has the power, except as specifically limited by this article or by its own articles or bylaws:

- (a) To have perpetual existence and succession by its domestic entity name unless limited by the articles;
- (b) To sue and be sued and to complain and defend in courts of law and equity;
- (c) To make and use a common seal, alter the same at its pleasure, and to use such seal or a facsimile thereof, including a rubber stamp, by impressing or affixing it or by reproducing it in any other manner;
- (d) To purchase, receive, lease, and otherwise acquire, and to own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;
- (e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) To purchase, receive, subscribe for, and otherwise acquire shares and other interests in, and obligations of, any other entity, including any other cooperative, and to own, hold, vote, use, sell, mortgage, lend, pledge, and otherwise dispose of, and deal in and with, the same;
- (g) To make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the cooperative; and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (i) To be a partner, member, associate, trustee, promoter, or manager of, or to hold any similar position with, any entity;
- (j) To conduct its business, locate offices, and exercise the powers granted by this article within or outside this state;



- (k)** To elect directors and officers and appoint employees and agents of the cooperative, define their duties, fix their compensation, and lend them money and credit;
- (l)** To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share options and rights plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (m)** To make payments or donations for the public welfare or for charitable, scientific, or educational purposes;
- (n)** To regulate and limit the right of members to transfer their memberships, stock, or other equity;
- (o)** To make and amend its articles and bylaws for the management of its affairs and to make provisions in its articles for the terms and limitations of stock ownership or membership and for the distribution of its earnings;
- (p)** To indemnify its directors, officers, employees, and agents to the extent provided or permitted in this article and to eliminate or limit the personal liability of a director, officers, employees, or agents of the cooperative, as provided in accordance with section 7-56-406; however, no such provision shall eliminate or limit the liability of a director or officer to the association or to its members for monetary damages for any act or omission occurring prior to the effective date of such provision;
- (q)** To establish in its bylaws procedures for the disposition of funds when declared payable by the cooperative and unclaimed by the holder three years after notification has been mailed to the holder's last-known address of record on the books of the cooperative, which disposition may consist of transferring the funds to the general operating account of the cooperative;
- (r)** To establish, secure, own, and develop patents, trademarks, and copyrights;
- (s)** To make advance payments and advances to members;
- (t)** To act as the agent or representative of any member for any lawful purpose or in any lawful transaction of the cooperative;
- (u)** 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 stock or bonds of any person engaged in any lawful activity;
- (v)** To allocate earnings and pay patronage dividends;
- (w)** To use per unit retains;
- (x)** To prohibit or place limitations on amounts or rates of dividends payable on any class of capital stock or other equity investment in the cooperative;
- (y)** To engage in any activity in connection with the purchase, hiring, or use by its members or other patrons of goods, services, products, equipment, supplies, utilities, telecommunications, housing, or health care;
- (z)** To establish amounts for reasonable and necessary reserves for bad debts, obsolescence, grain, quality and grade, contingent losses, working capital, debt retirement, buildings and equipment, and ownership retirement and to provide that no member or other person entitled to share in the allocation of the cooperative's net



margins or other funds shall have any rights except upon dissolution when the entire reserve funds of the cooperative shall be distributed in accordance with applicable federal, state, and local law and the articles and bylaws of the cooperative;

(aa) To manufacture, sell, or supply goods, machinery, equipment, supplies, or services to its members and to other patrons or persons;

(aa.5) To adopt a trade name;

(bb) To finance one or more of the activities in this section; and

(cc) To perform every other form or type of act that is necessary or proper for accomplishing any lawful purpose of the cooperative not prohibited to it by law or its articles and bylaws or that is conducive to or expedient for the interest or benefit of the cooperative.

(2) In addition to the powers granted in subsection (1) of this section, each agricultural cooperative incorporated under this article has the following powers:

(a) To engage in any activity in connection with the marketing, selling, preserving, raising, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, and utilization of any products, by-products, or services produced or delivered to the cooperative by its members or other patrons;

(b) To engage in any activity in connection with agricultural education and research and to represent its members' interests in legislative and administrative forums.

(3) In addition to the powers specifically given in this article, a cooperative has all powers, rights, and privileges granted by the law of this state to domestic corporations or domestic nonprofit corporations that are not inconsistent with the provisions of this article.

(4) The powers enumerated in this article shall vest in every cooperative in this state formed under this article, or that has elected to be subject to this article, although they may not be stated in its charter or in its articles.

### Section 7-56-201 – Articles of Incorporation

(1) A cooperative may be formed pursuant to this article for the transaction of any lawful business. One or more persons may act as the incorporator or incorporators of a cooperative by delivering articles for the cooperative to the secretary of state for filing pursuant to part 3 of article 90 of this title. An incorporator who is an individual shall be eighteen years of age or older.

(2) The articles shall state:

(a) The domestic entity name of the cooperative, which domestic entity name shall comply with part 6 of article 90 of this title;

(b) The principal office address of the cooperative's principal office;

(c) The registered agent name and registered agent address of the cooperative's initial registered agent;

(d) Repealed.

(e) If formed without common voting stock, whether the property rights and interests of each member are equal or unequal and, if



unequal, the general rule or rules applicable to all members by which the property rights and interests of each member are determined and fixed; provisions for the admission of new members who are entitled to share in the property of the cooperative with the old members in accordance with such general rules; and whether the cooperative is authorized to issue one or more classes of preferred stock or other equity interests and, if so authorized, a statement as to the number of shares of stock of each class or other equity interests and the nature and extent of the preferences, limitations, relative rights, and privileges granted to each;

(f) If formed with stock, the classes of shares and the number of shares of each class the cooperative is authorized to issue. The stock may be divided into preferred and common stock, voting and nonvoting stock, or into any other class of stock. If so divided, the articles must contain a statement as to the number of shares of stock in each class and the nature and extent of the preferences, limitations, relative rights, and privileges granted to each.

(g) The true name and mailing address of each incorporator.

(3) The articles may state:

(a) A provision eliminating or limiting the personal liability of a director as provided in this article;

(b) A provision permitting proportional voting rights based solely upon the patronage of a member with the cooperative, the amount of equity held by the member in the cooperative, or some combination of these methods, as provided in section 7-56-305 (3);

(c) The number and terms of the board of directors, which number shall be not less than three, together with the names and the street addresses of the initial directors. If the names of the initial directors are not stated in the articles, the initial board of directors shall be designated by the incorporator or incorporators following the delivery of the articles to the secretary of state for filing.

(d) The purpose or purposes for which the cooperative is incorporated which may state any lawful business;

(e) A par value for authorized shares of stock or classes of shares;

(f) Provisions defining, limiting, and regulating the powers of the cooperative, its board, and its members;

(g) Provisions limiting membership to producers of agricultural products;

(h) A limitation on the handling of products or services for its own members only, or for members and nonmembers, and whether nonmembers are entitled to share in allocations of net margins or are subject to per unit retains;

(i) Provisions for the removal for cause of any director by the members at any regular or special members' meeting;

(j) A provision eliminating or limiting the indemnification of directors, officers, employees, or agents of the cooperatives as otherwise provided in this article;

(k) Any provision that under this article is required or permitted to be stated in the bylaws;

(l) Any other provision not inconsistent with law.



(4) (Deleted by amendment, L. 2004, p. 1410, § 39, effective July 1, 2004.)

(5) When incorporated, no member or shareholder as such shall be liable directly or indirectly, including by way of indemnification, contribution, or otherwise, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of or chargeable to the cooperative.

(6) A member does not have any vested property right resulting from any provision in the articles that may exist from time to time or at any time, including any provision relating to management, control, capital structure, dividend entitlement, purpose, or duration of the cooperative.

### Section 7-56-208 – Bylaws

(1) The initial board of each cooperative formed under this article shall, within thirty days after the articles become effective, adopt bylaws for the government and management of its affairs that are not inconsistent with law or the articles of the cooperative. Such bylaws may be amended or modified in such manner as the bylaws may provide. If the bylaws do not provide a manner for their amendment, the bylaws may be amended at any time upon a majority vote of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1) at a regular or special meeting, the notice of which meeting shall have stated that consideration would be given at the meeting to amending the bylaws and stating the proposed amendment or amendments.

(2) The bylaws of the cooperative shall prohibit the transfer of the voting common stock or membership in the cooperative to persons not eligible to be a member of the cooperative and, if the cooperative issues certificates of common stock or of membership, the restrictions must be printed upon every certificate of stock or certificate of membership subject to the restrictions. At the election of the cooperative, the restrictions may also be included in the articles.

(3) If not stated in the articles, the bylaws of the cooperative shall include:

(a) The qualifications for membership, manner of succession, and conditions for suspension, withdrawal, or expulsion;

(b) The amount of any membership fee or capital subscription required by the cooperative to become a member, conditions of membership, and procedures for acquiring and repayment of membership capital;

(c) Any limitations on dividends on stock or interest on equity capital;

(d) The time, place, and manner of conducting or determining membership meetings of the cooperative which shall be at least annually;

(e) The number, terms, and time of the election of directors, or the manner for determining the same;

(f) The number of directors that shall constitute a quorum for a meeting of the board, which must be at least a majority;

(g) The number, terms, and titles of officers, their authority and duties as well as the manner of election or appointment, the filling of vacancies, or removal of officers; and





- (h) A requirement that the cooperative's business shall be conducted on a cooperative basis for the mutual benefit of the cooperative's members.
- (4) In addition to the provisions set forth in subsection (3) of this section, the bylaws may include:
- (a) The time, place, and manner of conducting its meetings;
  - (b) The mode and manner of removal of directors and the mode and manner of filling vacancies on the board caused by death, resignation, or removal;
  - (c) The compensation of directors and officers or the manner for determining compensation;
  - (d) The mode and manner of conducting business;
  - (e) The mode and manner of conducting elections and provisions for voting by ballots forwarded by mail or otherwise;
  - (f) The manner of assignment and transfer of interests in the cooperative;
  - (g) The manner of collection and enforcement for member nonpayment or nonperformance, including forfeiture of property rights and interests;
  - (h) The method of determination of property rights and interests in the cooperative and the value thereof;
  - (i) Methods and procedures for acquiring and returning equity capital to members and other patrons of the cooperative;
  - (j) Procedures pursuant to section 7-56-501 (1)(q) for the handling of unclaimed equity capital and other funds declared payable by the cooperative and unclaimed by the holder; and
  - (k) Such other things as may be proper to carry out the purpose for which the cooperative was formed or the governance of the cooperative.

### Section 7-56-401 – Directors; Elections; Remuneration; Vacancy

(1) The affairs of a cooperative formed under or subject to this article shall be managed by a board of not less than three directors as provided in the articles or bylaws elected by and from the members of the cooperative or designated representatives of members who are not individuals. If authorized by the articles or the bylaws, up to twenty percent of the board may consist of directors who are neither members nor representatives of members. Directors who are not members of the cooperative or representatives of members may be elected by a vote of two-thirds of the cooperative members present and voting. Nominations for the position of director shall be conducted in a manner provided in the bylaws or in a resolution of the board or of the members.

(2) The articles or bylaws may provide that the territory in which the cooperative has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In that case the articles or bylaws shall state the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the cooperative. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to such districts and that the



result of all such primary elections shall be ratified at the next regular meeting of the cooperative or be considered final as to the cooperative.

(3) A cooperative may provide a reasonable remuneration for the time actually spent by its officers and directors in its service. No director, during the term of the director's office, shall be a party to a contract for profit with the cooperative differing in any way from the business relations accorded members of the cooperative.

(4) The articles or bylaws may limit directors from occupying any position in the cooperative on a regular salary or substantially full-time pay. The articles or bylaws may provide for an executive committee and may allot to the committee all the functions and powers of the board, subject to the general direction and control of the board.

(5) When a vacancy on the board occurs other than by expiration of term, the remaining members of the board, even though not a quorum, by a majority vote, shall fill the unexpired term, unless the articles or bylaws provide for an election of directors by district, in which event, unless the articles or bylaws provide for a different procedure, the board shall immediately call a special meeting of the members in the district to fill the vacancy.

### **Section 7-56-402 – Officers; Titles; Elections; Duties and Authority; Removal**

(1)

(a) The bylaws shall provide for one or more officers and the titles of those officers. The offices may include a board chair, one or more vice-chairs, a president, one or more vice-presidents, a secretary, a treasurer, and assistant officers or other officers. The officers shall be elected by the board or in any other manner prescribed in the bylaws. At least one officer shall be an individual at least eighteen years of age. At least one officer shall be a member of the board. One individual may simultaneously hold more than one office, but may not concurrently hold the offices of president and secretary.

(b) The bylaws or board of each cooperative shall designate one or more officers responsible for preparing and maintaining the minutes of board and membership meetings and all records required to be kept by section 7-56-107 and for authenticating records.

(2) All officers and agents of the cooperative, as between themselves and the cooperative, shall have such authority and perform such duties in the management of the cooperative as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with federal, state, and local law, the articles, and the bylaws.

(3) Unless otherwise provided in the articles or bylaws, the board may remove any officer at any time with or without cause.

### **Section 7-56-301 – Members**

(1) Subject to the provisions of this section and under the terms and conditions prescribed in the articles or bylaws adopted by it, a cooperative may limit admission as members or issue common stock only to persons





engaged in the particular business or utilizing the goods or services provided by or through the cooperative, including any entity formed under the law of this state or any other jurisdiction, or may admit as members or issue common stock to any person meeting uniform terms and conditions stated in its articles or bylaws.

(2) When any required membership fee or payment for stock as required in the articles, the bylaws, or a resolution of the board has been paid in full or a promissory note executed for the required membership fee or capital subscription, a cooperative may issue a certificate of membership or common stock evidencing the membership or ownership of the stock or may evidence the same on the books or other records of the cooperative as determined by the articles, the bylaws, or the board. Except for a cooperative formed with stock, promissory notes of members may not be accepted by the cooperative as full or partial payment for stock unless permitted by the bylaws and adequately secured. The cooperative shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

(3) No member shall have a right to vote until the required membership fee or payment for stock has been paid in full.

(4) A cooperative, in its articles or bylaws, may limit the amount of common stock that a member may own.

(5) No member shall be liable directly or indirectly, including by way of indemnification, contribution, or otherwise, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of or chargeable to the cooperative while it is incorporated for an amount exceeding the sum remaining unpaid on the member's membership fee or the member's subscription to the stock, including any unpaid balance on any promissory note given in payment thereof; except that this subsection (5) shall not affect the liability of a member who is also a member of the board or an officer for such member's negligence, wrongful act, or misconduct in that capacity.

(6) A cooperative formed with or without capital stock under this article may issue or accept investments in nonvoting stock or equity that may have such rights and preferences, including being subject to per unit retains or allocations of net margins, as may be provided in the articles, the bylaws, or by the board. Such nonvoting stock or equity may be issued and sold by the cooperative to any person, including those persons not otherwise qualified to be members, and may be redeemable or retireable by the cooperative on such terms and conditions as are provided for in the articles, the bylaws, or a resolution of the board providing for the issuance of or the investment in the nonvoting stock or equity. The terms and conditions of redemption shall be printed on any certificate evidencing the stock or equity.

(7) A cooperative shall impose restrictions on the transfer of voting common stock or membership in the cooperative in its bylaws in accordance with section 7-56-208 (2), and may also impose such restrictions in its articles, and may impose restrictions on the transfer of other equity investments in the cooperative in its articles, bylaws, or by resolution of its board. Any such restriction shall be printed upon any certificate or other written evidence of the membership, voting common stock, or other equity investment if one is issued.

(8) Subject to the provisions of section 7-56-406 (2)(c), a cooperative may, at any time as stated in its articles, bylaws, or resolution of the board



adopted at the time of issuance, acquire, recall, redeem, exchange, or reissue its common stock, memberships, preferred stock, preferred equity, memberships, or other equity capital. Consideration paid for stock, memberships, or other equity capital acquired, recalled, redeemed, exchanged, or reissued by the cooperative shall be the par value, stated value, price originally paid, or book value, whichever is less, as conclusively determined by the board, plus any accrued and unpaid dividends, if any, and, if the price originally paid for the stock, memberships, or other equity capital included an additional amount based upon the right of the holder to engage in business with the cooperative, the consideration shall include the additional amount. If stock, memberships, or other equity capital acquired, recalled, redeemed, or exchanged does not have a par value, then the par value shall not be considered in determining the consideration. The cooperative may set off against the consideration to be paid obligations to it of the holder of stock, membership, or other equity capital and shall have a continuing perfected security interest in the stock, membership, and other equity capital of a member, stockholder, or holder of other equity capital to secure payment of any indebtedness to the cooperative of the stockholder, member, or holder of other equity capital, whenever indebtedness is incurred. Notwithstanding any other provision of law, the security interest shall take priority over all other perfected security interests. No acquisition, recall, or redemption shall be made if the result of it would be to bring the value of the remaining assets of the cooperative below the aggregate of its indebtedness. The articles or bylaws may provide other limitations on the right of a cooperative to acquire, recall, redeem, exchange, or reissue its stock, memberships, or other equity capital.

(9) If a member of a cooperative is other than an individual, such member may be represented by any individual, associate, officer, manager, member, shareholder, or other equity holder thereof duly authorized in writing by the member's board or other governing body having the right to authorize the representation.

(10) If so prescribed in its articles or bylaws, a cooperative may group its members in districts, or other units, or by types of goods or services utilized, for administration or otherwise achieving the purposes of the cooperative.

(11) A cooperative, in its articles or bylaws, may limit the amount of common stock or other equity capital held by members or other persons.

### Section 7-56-209 – Agricultural Marketing Cooperatives

(1) It is hereby recognized that agriculture is characterized by individual production in contrast to the group or factory system that characterizes other forms of industrial production; that the ordinary form of corporate organization permits industrial groups to combine for the purpose of group production and the ensuing group marketing and that the public has an interest in permitting producers of agricultural products to bring to their industry the high degree of efficiency and merchandising skill evidenced in the manufacturing industries; that the public interest urgently needs to prevent the migration from rural to urban communities in order to enhance production of agricultural products and to preserve the agricultural supply of the nation; that the public interest demands that producers of agricultural products be encouraged to attain a more efficient system of



marketing their products and procurement of the necessary equipment and supplies through cooperatives.

(2) Upon written request to the commissioner of agriculture by any three persons, the commissioner or a duly authorized representative of the commissioner may supply a written summary of the most current survey prepared by the department of agriculture, if any exists, of the business conditions affecting the proposed purposes of the cooperative, particularly the commodities to be handled. When such a summary is supplied, the commissioner or a representative of the commissioner may separately set forth an opinion, stating the reasons therefor, regarding the viability of the proposed venture.

(3) In addition, the department of agriculture may, at the discretion of the commissioner or a representative of the commissioner, provide other assistance to persons who seek to organize an agricultural cooperative.

