



# The National Agricultural Law Center

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Agricultural Cooperative Formation:

*Illinois*



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# A National Agricultural Law Center Research Publication

## Agricultural Cooperative Formation: Illinois

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### [805 Ill. Comp. Stat. 315/1 to 315/33](#)

#### [315/4 – Sec. 4 \(Purpose\)](#)

An association may be organized under this Act for the purpose of engaging in any co-operative activity in connection with the producing, marketing or selling of agricultural products or with the harvesting, preserving, drying, processing, canning, packing, grading, storing, warehousing, handling, shipping or utilizing such products; or the manufacturing or marketing of the by-products thereof; or in connection with any of the activities mentioned herein, the manufacturing, selling or supplying of machinery, equipment or supplies; or in the financing of any of the above enumerated activities; or in performing or furnishing business or educational services on a co-operative basis for those engaged in agriculture as bona fide producers of agricultural products or in any one or more of the activities specified herein.

#### [315/6 – Sec. 6 \(Powers\)](#)

Each association organized under this Act shall have the following powers:

(a) To engage in any activity in connection with the producing, marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, warehousing, handling or utilizing of agricultural products the manufacturing or marketing of the by-products thereof; or in any activities in connection with the purchasing, hiring or using of supplies, machinery or equipment; or in the financing of any of the above enumerated activities; or in performing business or educational services on a co-operative basis, for those engaged in agricultural activities as bona fide producers of agricultural products, or in any one or more of the activities specified herein.

(b) To borrow money from any source without limitation as to amount of corporate indebtedness or liability, with authority to give any bond or form of obligation or security therefor.

(c) To act as the agent or representative of any person in any of the above



mentioned activities.

(d) To make loans or advances to members or stockholders and/or to their members or stockholders or to their producer patrons with authority to accept any kind, form or type of obligation and/or security, therefor; to purchase, endorse, discount and/or sell any note, draft, bill of exchange, indenture, bill of sale, mortgage or other obligation acquired by it, the proceeds of which have been advanced or used in the first instance for any of the purposes provided for herein; to discount for or purchase from any association, organized under the laws of any state with or without its endorsement any note, draft, bill of exchange, indenture, bill of sale, mortgage or other obligation the proceeds of which are advanced or used in the first instance for carrying on any co-operative activity authorized in this Act and with authority to dispose of same with or without endorsement. Any association organized under this Act and exercising any of the powers provided in this paragraph shall not engage in the business of banking.

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

(f) To establish reserves and to invest the funds thereof in bonds, or in such other property as may be provided in the by-laws.

(g) To buy, hold and exercise all privileges of ownership over such real or personal property, as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto.

(h) To establish and secure, own and develop patents, trade-marks and copyrights.

(i) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the subjects herein enumerated, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly; and 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 any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this Act; and to do any such thing anywhere.

(j) No association organized under this Act, during any fiscal year thereof, shall deal in products, handle machinery, equipment, or supplies, or perform services for and on behalf of non-members to an amount greater in value than such as are dealt in, handled or performed by it for and on behalf of members during the same period.

### 315/8– Sec. 8 (Articles of Incorporation)

Each association organized under this Act, shall prepare and file articles of incorporation, setting forth:

(a) The name of the association which may or may not include the word co-operative or any abbreviation thereof.

(b) The purpose for which it is formed.



(c) The place where its principal office within the State will be located.

(d) The term for which it is to exist, which may be perpetual.

(e) The minimum number of directors thereof, which must be not less than 5 and may be any number in excess thereof; the term of office of such directors, and the names and addresses of those who are to serve as incorporating directors for the first term, and/or until the election and qualification of their successors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; if unequal the general rule or rules applicable to all members by which the property rights and interest, respectively of each member may and shall be determined and fixed, and provision for the admission of new members, who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision or paragraph of the articles of incorporation may not be altered, amended or repealed, except by the written consent or vote of  $\frac{3}{4}$  of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which the capital stock is to be divided; whether all or part of the same shall have par value, and if so, the par value thereof, which shall not be less than one dollar, nor more than \$1,000 per share, and whether all or part of the same shall have no par value, and if there is to be more than one class of stock created, a description of the different classes, the number of shares in each class, and the relative rights, interest and preferences each class shall represent; and if the same shall be desired, a provision that any or all classes of preferred stock may be issued in series and that dividends shall be payable with respect to any such series at such rate not exceeding 8% per annum, or such lesser amount as may be fixed in the articles of incorporation, or any amendment thereof, and that the shares of such series may be reduced at such redemption price and bear such particular designation as the board of directors, subject to such restrictions as may be imposed in the articles of incorporation, or any amendment thereof, shall by resolution, determine and fix prior to the issue of any stock of such series. Such articles of incorporation or any amendment thereto, may provide, that in the case of any share of stock in such association, issued thereby, to any bona fide producer of agricultural products, or to any co-operative association as defined in this Act, that such share is subject to the condition, that the directors of such association shall be trustees of such share of stock upon such producer becoming a non-producer of agricultural products, or such co-operative association ceasing to be operated as a co-operative association; and that in the case of any share of stock issued in the first instance to any non-producer of agricultural products, or to any corporation not operating as a co-operative association, that such share is subject to the condition that the directors of such association shall be the trustees of such share of stock; and that in either of such cases, thereupon the trustees of such share of stock shall be vested with the legal and equitable title thereto, and the stock certificate held by such producer who has become a non-producer, or such non-producer, or such corporation, not operating as a co-operative association, as the case may be, shall legally become or be a participation certificate entitling the holder thereof to any dividends provided for in such certificate, any moneys accruing by virtue thereof, and any pecuniary rights accruing thereunder, under the provisions of this Act; that the trustees of such certificate shall pay over all



such dividends and moneys to the certificate holder and protect and execute all such pecuniary rights; that the voting power, and all other legal and beneficial interests, other than those given to the certificate holder as hereinabove provided, shall be held by such trustees and exercised and managed by them by vote of a majority of such trustees; and that in case such certificate holder, thereafter, becomes a bona fide producer of agricultural products, or a co-operative association, that affidavit be made to such effect and filed with the directors thereof, and thereupon, such trustees shall be discharged and the legal and equitable title to such share and all other interests whatsoever, shall vest in such certificate holder and all the powers and privileges pertaining to such share of stock may be exercised thereby.

(h) In addition to the foregoing, the articles of incorporation of any association incorporated hereunder may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement, and transfer of the stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate or with respect to its members, officers or directors and any other provisions relating to its affairs.

The articles shall be subscribed by the incorporators and acknowledged by one of them before an officer authorized by law to take and certify acknowledgments of deeds and conveyances, and shall be filed in the office of the Secretary of State; when so filed, the articles of incorporation, or certified copies thereof, shall be received in all the courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the Director of Agriculture by the association.

### 315/10– Sec. 10 (Bylaws)

Each association incorporated under this Act must, within thirty (30) days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with the powers granted by this Act. A majority vote of the directors named in the articles of incorporation, or of the members or stockholders, or their written assent, is necessary to adopt such by-laws. By-laws shall also provide that the by-laws may be amended by the Board of Directors or by the members and/or stockholders; and shall provide the voting power by which amendments may be made. Each association, under its by-laws, may provide for any or all of following matters:

(a) The time, place and manner of calling and conducting its meetings, which meetings, and the meetings of its directors, may be held either within or without the State.

(b) The number of stockholders or members constituting a quorum.

(c) 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.

(d) The number of directors constituting a quorum.

(e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of



giving notice thereof.

(f) Penalties for violations of the by-laws.

(g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.

(h) 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 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.

(i) 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; 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 common stockholder 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. In case of the withdrawal or expulsion of a member, unless otherwise limited or restricted in the articles of incorporation or any amendment thereto, the board of directors shall equitably and conclusively appraise his membership and/or common stock interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal.

### 315/12– Sec. 12 (Directors)

The affairs of the association shall be managed by a board of not less than five directors, to be elected by the members or stockholders with such qualifications as may be provided for in the articles of incorporation or by-laws. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be nominated according to such districts, either directly or by district delegates elected by the members in that district. In such case the by-laws shall specify the number of directors to be nominated by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary elections shall be held in each district to nominate the directors apportioned to such districts and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered final as to the association. The by-laws may provide that one or more directors may be nominated by any public official or commission or by the other directors nominated by the members or their delegates. Such directors shall represent primarily the interest of the general public in such associations. Such directors shall not number more





than one-fifth of the entire number of directors.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee. No director, during the term of his 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 or others, or differing from terms generally current in that district.

The by-laws may provide for an executive committee to be elected by a board of directors from within or without the membership of the board 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.

When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for the nomination of directors by districts. In such case the board of directors shall call a special meeting of the members or stockholders in the respective district to nominate a person qualified to fill the vacancy.

### 315/13– Sec. 13 (Officers)

The directors shall elect from their number, a president, and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be directors or members of the association, and they may combine the two latter offices and designate the combined office as secretary-treasurer, or unite both functions and titles in one 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. The by-laws may provide for the election of the president and vice-presidents by the members at annual meetings.

Within 30 days after the first election of officers, the association shall file a report with the Director of Agriculture on forms prescribed by the Director of Agriculture. The report shall contain the following:

- (1) The name of the association.
- (2) The names and addresses of the association's

principal officers and directors.

- (3) The association's principal place of business.
- (4) A general statement of the association's proposed

business operations.

- (5) The end of the association's proposed fiscal year.

### 315/7– Sec. 7 (Members)

Under the terms and conditions prescribed in the by-laws adopted by it, an association may admit as members (or issue common stock to), only



persons engaged in the production of agricultural products and/or co-operative associations. An association organized hereunder, may become a member or stockholder of any other association or corporation.

### **315/15– Sec. 15 (Capitalization)**

When a member of an association organized without capital stock, has paid his membership fee in full, he shall receive a certificate of membership.

### **315/15.1– Sec. 15.1 (Capitalization)**

An association may issue its shares of stock, having no par value, from time to time for such consideration as may be fixed by the board of directors.

### **315/15.2– Sec. 15.2 (Capitalization)**

No association shall issue stock until it has been fully paid for. Promissory notes may be accepted by the association as full or partial payment of the stock. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the right of any stockholder to vote unless such notes are past due.

### **315/15.3– Sec. 15.3 (Capitalization)**

No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

### **315/15.4– Sec. 15.4 (Capitalization)**

No stockholder of an association, organized hereunder, except an association organized under this Act, or an association as defined in this Act or one subject to the "General Not for Profit Corporation Act," as heretofore or hereafter amended, shall own more than one-twentieth of the authorized common stock of the association; and an association in its by-laws may limit the amount of common stock which one member may own to an amount less than one-twentieth of the authorized common stock. The association shall limit its dividends on stock, both common and preferred, to any amount not greater than 8 per centum per annum, on the par value thereof, or if such capital stock is without par value, then upon the actual cash value of the consideration received by the association therefor. The association by the vote of its directors, may establish and accumulate reserves out of earnings, including a permanent surplus fund as an addition to capital. Net income in excess of additions to reserves and surpluses so established, shall be distributed to the members or patrons of the association on the basis of patronage. Any distribution of reserves and surpluses at any time shall be made to members or patrons at the time such distribution is ordered, on the basis of





patronage. Any receipts or dividends from subsidiary corporations, or from stock or other securities owned by the association, shall be included in the ordinary receipts of the association.

### **315/15.5– Sec. 15.5 (Capitalization)**

No member in any association without capital stock, shall be entitled to more than one vote.

### **315/15.6– Sec. 15.6 (Capitalization)**

Preferred stock may be sold to any person, member, or non-member, and may be redeemable or retireable by the association, on such terms and conditions as may be provided for by the articles of incorporation, and printed on the stock certificates. The by-laws, except as otherwise provided for in this Act, shall prohibit the transfer of the common stock of the association to persons not engaged in the production of agricultural products and such restrictions shall be printed upon every certificate of stock subject thereto.

### **315/15.7– Sec. 15.7 (Capitalization)**

An association may, at any time, except when the debts of the association exceed 50 per cent of the assets thereof, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors, and pay for it in cash within one year thereafter.

### **315/32– Sec. 32 (Taxation)**

Each year, within 6 months after the end of the association's fiscal year, each association organized or qualified to do business within this State under this Act shall file an annual report with the Director of Agriculture as required in Section 21 of this Act, and pay the fees hereinafter required; provided that an association organized or qualified to do business in this State under this Act shall not be required to file a balance sheet or income statement with its annual report until the association has completed one full fiscal year.

Each association organized hereunder or qualified to do business within this State shall pay an annual fee of ten dollars (\$10.00) only, to the Department of Agriculture, in lieu of all franchise or license or corporation taxes or charges upon reserves held by it for members, and in case of failure, neglect or refusal of any such association to either file the annual report or pay the fee as required by this Act, it shall be certified by the Director of Agriculture to the Secretary of State 9 months after the end of the association's fiscal year for dissolution in the same manner as is required under the provisions of the general corporation laws of this State, and the Secretary of State shall proceed in like manner to dissolve such association or oust it from doing business within the State as is required under the general corporation laws of this State.

