



The National Agricultural Law Center

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

Agricultural Cooperative Formation:

Massachusetts



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: Massachusetts

Fast Find:

- 1) Purpose: [§ 3](#)
- 2) Power: [§ 4](#)
- 3) Articles of Incorporation: [Ch. 156B § 13](#)
- 4) Bylaws: [§ 13](#)
- 5) Directors: [§ 12](#)
- 6) Membership: [§ 14](#)
- 7) Capitalization: [§ 4](#)
- 8) Taxation: [§ 18](#)

[Mass. Gen. Laws ch. 157, §§ 1 to 18](#)

Section 3 – Co-operative Agricultural, Dairy or Mercantile Associations; Name

Seven or more persons, residents of the commonwealth, may associate themselves as a corporation, association, society, company or exchange, to conduct within the commonwealth any agricultural, dairy or mercantile business on the co-operative plan. The word "co-operative" shall form a part of the name of the corporation, and, for the purposes of this and sections three A to nine, inclusive, the words "association", "company", "exchange", "society" and "union", shall have the same signification and shall import a corporation. The corporation shall be formed as provided in chapter one hundred and fifty-six B, with shares having par value, and shall be subject to the provisions thereof so far as consistent with said sections.

Section 4 – Capital Stock; Powers; By-Laws; Meetings

The capital stock of a co-operative corporation formed under section three, three A or three B shall not be less than one hundred dollars nor more than five million dollars. No stockholder shall own shares of a greater par value than one tenth of the total par value of the capital stock issued and outstanding unless in a housing cooperative there are less than ten units in which case each stockholder shall own an equal number of shares of the capital stock issued and outstanding, nor shall any member be entitled to more than one vote on any subject arising in the management of the corporation.

In addition to the powers granted by section sixteen of chapter one hundred and fifty-six B, any corporation organized under section three, three A or three B may provide in its by-laws for the election of directors and other officials by unit or district or by mail ballot; for a method of membership representation by annual election of delegates to represent proportionately the members of such units or districts in the membership meeting of the corporation, and shall hear reports of and instruct the delegates on the policy and business of the



corporation. The articles of organization shall be altered or amended, and the by-laws shall be altered, amended or repealed, if the delegate type of membership meeting is adopted by any such corporation, only after notice of the proposed action is given in the call for the annual meetings of the units or districts at which the delegates are to be elected to the membership meeting of the corporation, or in the call for the annual election of such delegates if the vote is to be taken by mail ballot, and only upon vote of two-thirds of the delegates eligible to vote at such membership meeting. Special meetings of the units or districts may be demanded by written petition of at least one-tenth of the membership of any such unit or district for the purpose of instructing its delegate or delegates on questions concerning the operation and business of the corporation, in which case it shall be the duty of the clerk or secretary of the corporation to call such unit or district meeting or meetings to take place within thirty days after such demand. The minutes of such unit or district meeting shall be forwarded by the clerk or secretary of such meeting to the clerk or secretary of the corporation and be kept at the principal place of business in the commonwealth.

Ch. 156B, Section 13 – Articles of Organization; Contents

(a) The articles of organization shall state:

(1) that the incorporators (stating their names, including their given names, and post office addresses) associate themselves with the intention of forming a corporation;

(2) the name of the corporation;

(3) the purposes for which the corporation is formed;

(4) the total number of shares and the par value, if any, of each class of stock which the corporation is authorized to issue;

(5) if more than one class of stock is authorized, a distinguishing designation for each class and, prior to the issuance of any shares of a class, if shares of any other class are outstanding, a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding, and of each series then established within any class.

(b) The articles of organization, in addition, may state:

(1) any restrictions imposed upon the transfer of shares of stock of any class;

(1.5) a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability; provided, however, that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith



or which involve intentional misconduct or a knowing violation of law, (iii) under section sixty-one or sixty-two, or (iv) for any transaction from which the director derived an improper personal benefit; and

(2) any other lawful provisions for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders.

No provision adopted pursuant to clause (1.5) shall eliminate or limit the liability of a director for any act or omission occurring prior to the date upon which such provision becomes effective.

(c) The form on which articles of organization are filed shall also contain the following information which shall not for any purpose be treated as a permanent part of said articles:

(1) the street address of the initial principal office of the corporation in the commonwealth;

(2) the name, residence and post-office address of each of the initial directors and the president, treasurer and clerk of the corporation;

(3) the fiscal year of the corporation initially adopted;

[There is no clause (4).]

(5) the name and business address of the resident agent, if any, of the corporation.

Section 13 – Scope of By-Laws; Amendment or Repeal of By-Law

In addition to the powers granted by section sixteen of chapter one hundred and fifty-six B, any corporation organized under section ten may provide in its by-laws for the election of directors by districts; for the election of advisory directors who are not members, the number of whom shall not be greater than one fifth the total number of directors; for voting of members by proxy, and the mode thereof, within such limitations and restrictions as may be specified therein; for voting of members by mail in elections and on questions concerning the operation and business of the corporation; for the admission, withdrawal, suspension or expulsion of members; for dues and assessments to be paid by members and the conditions under which such dues and assessments shall be imposed and collected; for determining the rights and interests of members in the property of the corporation, whether equal or unequal; for establishing the basis of voting by the members, especially whether the votes of all members shall be equal, or in proportion to the land area leased or used by each member for production of the products handled by the corporation, or in proportion to the quantity of such products



delivered by each member to the corporation during the preceding year; for an approved or established form of marketing contract; and for fines or other penalties for violation of its by-laws or marketing contract. No by-law shall be amended or repealed nor any new by-law adopted, unless notice of the proposed action is given in the call for the meeting at which the proposal is to be considered, or in the call for the vote if the vote is to be taken by mail.

Section 12 – First Meeting; Selection of Directors

The first meeting of the corporation shall be held within six months after the execution of the articles of organization. If the directors of the corporation have been previously chosen in anticipation of its organization, or in connection with a plan for preliminary organization, or in accordance with contracts made in anticipation of such organization, such choice of directors shall be ratified at said meeting. Elections of directors shall thereafter be governed by section forty-seven of chapter one hundred and fifty-six B, except as provided in the following section.

Section 14 – Membership

Membership in such corporations shall be limited to persons engaged in the production of products which are handled or to be handled by the corporation, as specified in its articles of organization, including the lessees or tenants of land used for the production of such products and lessors or landlords to whom are due all or any part of such products produced on leased or rented premises in payment for the use of such premises. If a member is a corporation, it may be represented by any officer thereof, duly authorized in writing.

Section 18 – Taxation; Filing Fees

A corporation organized under the provisions of section ten, and any corporation, association or organization now or hereafter established, organized or chartered without capital stock for a similar purpose under laws other than those of this commonwealth, shall not be liable to taxation under the provisions of chapter sixty-three, but shall be taxable under the provisions of chapter fifty-nine, in the same manner and to the same extent as an individual or partnership. The fee for filing the articles of organization required by section ten, including the issuing by the state secretary of the certificate of incorporation, shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

