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Agricultural Cooperative Formation:

North Dakota



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Section 10-15-02 – Purposes

Cooperatives may be organized under this chapter for any lawful purpose except banking and insurance, but subject to statutes relating to the organization or operation of specified kinds of corporations or associations.

Section 10-15-03 – General Powers

Unless otherwise provided by its articles, a cooperative may:

1. Exist perpetually.
2. Sue and be sued.
3. Have a seal.
4. Make contracts, incur liabilities, and borrow money; issue certificates representing indebtedness, or representing equity interests in its assets; acquire property; and dispose of, mortgage, pledge, lease, or otherwise use in any manner any of its property, or any interest therein, wherever situated.
5. Invest its funds, lend money for its purposes, and hold any property as security for repayment.
6. Conduct its business and affairs and have offices and exercise its powers in the United States or in any foreign country.
7. Elect officers and appoint agents, define their duties, and fix their compensation.
8. Make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.
9. Make donations for charitable, scientific, educational, or religious purposes.



10. Indemnify any present or former director, officer, agent, or manager against actual expenses necessarily incurred in defense of any proceeding in which the person is a party because the person is or was a director, officer, agent, or manager. This subsection does not apply to those proceedings in which the person is adjudged liable for gross or willful negligence or gross or willful misconduct in the performance of duty. Such indemnification is not exclusive of other rights to which the person may be entitled. For purposes of this subsection, "manager" means the person who was the most responsible for carrying out the policies and directives of the officers or the board of directors when the act or omission complained of occurred.

11. Cease its activities and surrender its franchise.

12. Exercise all powers necessary or convenient to effect its purposes

Section 10-15-05 – Articles; Provisions

The articles of association shall set forth:

1. The name of the cooperative.

2. The period of existence, unless perpetual. Cooperatives now organized under the provisions of chapter 4-07 or 10-15 are granted perpetual existence irrespective of the period of existence set forth in articles of incorporation. Any such cooperative may nevertheless amend its articles to provide for a limited period of existence.

3. The purposes for which organized. It is sufficient to state that the cooperative may engage in any activity within the purposes for which cooperatives may be organized, and all such activities shall then be deemed within its purposes, subject to express limitations.

4. Whether the cooperative is organized with or without capital stock.

5. The designation of classes of members, if more than one.

6. The number and par value of shares of each authorized class of stock. If more than one class is authorized, the designation, preferences, limitations, and relative rights of each class shall also be set forth.

7. Which classes of stock are membership stock.

8. As to each class of stock, the rate of dividend, or that the rate of dividend may be fixed by the board, or that no dividend will be paid.

9. Any reservation of a right to acquire or recall any stock.

10. The basis of distribution of assets in the event of liquidation.

11. The complete address where the cooperative's principal office is to be located.

12. If the address of the principal office is not located in North Dakota, the name and complete address in this state of the cooperative's registered agent.

13. The name and address of each incorporator.

14. The names and addresses of at least five incorporators who will act as the temporary board.

15. The effective date of the cooperative if a later date than that on which the certificate of association is issued by the secretary of state.



A later effective date may not be later than ninety days after the date on which the certificate of association is issued.

Section 10-15-11 – Bylaws

The initial bylaws of a cooperative may be adopted by the temporary board. Thereafter, bylaws may be adopted and amended only by the members, unless the members adopt a bylaw that permits the board to make and amend specified bylaws. Any bylaw adopted or amended by the board shall be reported at the next regular member meeting. Any such bylaw shall be at any time subject to amendment or repeal by the members. Unless the bylaws provide otherwise, any bylaw may be adopted, amended, or repealed by a majority of the members present at a meeting, provided that the members voting must be sufficient in number to constitute a quorum as provided in this chapter or the bylaws.

Section 10-15-25 – Directors; Number, Election, Removal, and Vacancies

1. The business and affairs of a cooperative shall be managed by a board of directors. Every director shall be a member or a representative of a member who is other than a natural person. The bylaws shall prescribe any other qualifications for directors and may provide that directors be from specified territorial districts.
2. The number of directors shall not be less than five, provided that in a cooperative with less than fifty members, the number of directors shall not be less than three. However, the number of directors required of a cooperative association shall never be greater than the number of members of the association. Subject to such limitation, the number shall be fixed in the articles, or if the articles so provide, in the bylaws.
3. The directors constituting the temporary board, named in the articles, shall hold office until the first member meeting. At that meeting and thereafter, directors shall be elected by the members at a member meeting in the manner and for the terms provided in the bylaws. If the bylaws provide that directors be from specified territorial districts, the articles may limit voting for any director to members from within the territorial district from which such director is to be elected. Unless the bylaws provide otherwise, a director's term of office shall be one year. Each director shall hold office for the term for which elected and until a successor takes office. The bylaws may permit selection of alternates to take the place of directors absent at a meeting of the board.
4. Unless the bylaws provide otherwise, a director may be removed upon a majority vote of all members.
5. Unless the bylaws provide otherwise, any vacancy existing in the board may be filled until the next annual meeting by appointment by a majority vote of the directors then in office.

Section 10-15-29 – Officers

1. The principal officers of a cooperative are a president, one or more vice presidents and a treasurer as prescribed in the bylaws, and a secretary. They



shall be elected annually by the board at such time and in such manner as the bylaws provide. Each principal officer except the secretary and the treasurer must be a director of the cooperative. The offices of secretary and treasurer may be combined in one person. If the bylaws provide, the board of directors may also elect from its number a chairman and one or more vice chairmen, in which case the president and vice presidents need not be directors or stockholders.

2. Any other officer may be chosen by the board or as provided in the bylaws.

3. All officers shall have such authority and perform such duties as the bylaws provide or as the board may determine not inconsistent with the bylaws. Any officer may be removed by the board whenever in its judgment the best interests of the cooperative will be served thereby. Election or appointment shall not of itself create contract rights.

Section 10-15-15 – Membership

A cooperative may have one or more classes of members. Provisions for qualifications, requirements, method of acceptance, terms, conditions, termination, and other incidents of membership shall be set forth in the bylaws. Any person, including a partnership, incorporated or unincorporated association, corporation, or body politic, may become a member in accordance with the bylaws.

Section 10-15-20 – Stock; Authorization, Control, Use, Right

1. A cooperative organized with capital stock may issue the amount of stock stated in its articles. The stock may be divided into two or more classes with the designations, preferences, limitations, and relative rights as stated in the articles, except that:

a. Stock as such has no voting power.

b. Stock without par value may not be authorized or issued.

c. The rate of dividends upon stock may not exceed eight percent of its par value for any year, and dividends may not be cumulative.

2. The articles may require that members own one or more shares of membership stock. Such stock shall be issued or transferred only to a person eligible to become a member and only when such person satisfies other requisites for membership. Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.

3. Unless the articles provide otherwise, a cooperative may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the cooperative a prior right to acquire any stock offered for sale, or a right to recall the stock of any stockholder, or both of said rights. The consideration paid for stock recalled by the cooperative shall be its par value and accrued unpaid dividends; provided, that if the book value of such stock is less than the par value, the consideration shall be such book value. The cooperative may set off obligations of the stockholder to it. If the remaining assets would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, no stock shall be acquired,



recalled, exchanged, or redeemed for a consideration other than stock or certificates of equity interest of equal or subordinate rank.

4. When stock is acquired, recalled, exchanged, or redeemed by the cooperative, such stock is restored to the status of authorized but unissued stock.

5. Stockholders as such have no pre-emptive right to purchase additional stock.

Section 57-38-11 – Annual Tax on Corporations

The tax imposed by this chapter must be levied, collected, and paid annually with respect to its North Dakota income, as hereinafter defined, received by every corporation doing business in this state.

