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Agricultural Cooperative Formation:

New Mexico



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Section 76-12-5 – Purposes

An association may be organized under this act [76-12-1 through [76-12-23](#) NMSA 1978] to engage in any activity in connection with the marketing or selling of agricultural products, or with the harvesting, preserving, drying, processing, blending, canning, packing, grading, storing, warehousing, handling, shipping or utilizing such products; or in connection with the manufacturing, marketing, selling or supplying of the byproducts thereof or the manufacturing, selling or supplying of machinery, equipment, feed, fertilizer, seeds, oil, gasoline or other supplies; or in the financing of any of the above-enumerated activities or in performing or furnishing business or educational services on a cooperative basis for those engaged in agriculture as bona fide producers of agricultural products or in any one or more of the activities specified herein.

Section 76-12-6 – Powers

Each association incorporated under this act [[76-12-1](#) to [76-12-23](#) NMSA 1978] shall have the following powers:

- A. to act as an agency for or subsidiary of or to assist cooperative associations formed under this act or similar acts in any one or more of the above-mentioned activities; to act as a holding corporation of the properties of such associations;
- B. to make all necessary and proper contracts and agreements with any other association formed in this or any other state, or in connection with any other association in this or any other state to unite in employing and using, or separately to employ and use the same methods, means and agencies which may be used by another association for carrying on and conducting the respective businesses of such associations;
- C. to act as the agent or representative of any member or members in any lawful activity;



D. to make loans or advances to members or producer patrons or to the members of an association which is itself a member; to accept any kind, form or type of obligation or security, therefore to purchase, endorse, discount or sell any note, draft, bill of exchange, debenture, bill of sale, mortgage or other obligations 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, debenture, bill of sale, mortgage or other obligation the proceeds of which are advanced or used in the first instance for carrying on any cooperative activity authorized under this act and to dispose of same with or without endorsement. An 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 establish and accumulate reserves including a permanent surplus fund as an addition to capital; to invest the reserves either directly or by means of subsidiary or affiliated associations or other corporations in real estate or other property for carrying out the purpose of the association; or the reserves may be deposited or invested in such securities as the bylaws may provide;

F. 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 production, warehousing, handling or marketing of any of the products handled by the association;

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 borrow money from any source without limitation as to amount of corporate indebtedness or liability, with authority to give any form of obligation or security therefor;

I. to establish and secure, own and develop patents, trademarks and copyrights;

J. to deal in products, handle machinery, equipment or supplies or perform services for or on behalf of nonmembers to an amount not greater in value during any fiscal year than such as are dealt in, handled or performed by it for, or on behalf of its members during the same period;

K. 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 the activities in which it is engaged; and in addition [to exercise] any other rights, powers and privileges granted by the laws of this state to ordinary business corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere.

Section 76-12-7 – Articles of Incorporation



The incorporators of an association to be formed under the Cooperative Marketing Association Act must prepare and file articles of incorporation setting forth:

- A. the name of the association, which may or may not include the word "cooperative";
- B. its purposes;
- C. its duration;
- D. its principal place of business in the state;
- E. the name and post office address of each of the incorporators;
- F. the names and addresses of those who are to serve as incorporating directors for the first term or until the election and qualifications of their successors;
- G. if organized without capital stock, whether the property rights and interests of each member are to be equal or unequal; if unequal, the general rule applicable to all members by which the property rights and interests respectively of each member shall be determined; and provision for the admission of new members who shall share in the property of the association in accordance with the general rule;
- H. 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 capital stock shall have par value and, if so, the par value thereof; 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, the relative rights, interests and preferences each class shall represent and the dividends, which may be cumulative not exceeding eight percent per year, to which each share shall be entitled; and
- I. in addition to the foregoing, the articles of incorporation 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 its stock, if formed with capital stock, or any provision relative to the way or manner in which it shall operate with respect to its members, officers or directors and any other provisions relating to its affairs.

The articles of incorporation must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of the state to take and certify acknowledgments of deeds and conveyances and shall be filed with the secretary of state. When filed, the articles of incorporation or certified copies thereof shall be received in all courts of the state as prima facie evidence of the facts contained therein and of the due incorporation of the association.

Section 76-12-10 – Bylaws

Each association incorporated under this act [[76-12-1](#) to [76-12-23](#) NMSA 1978] shall adopt bylaws consistent with this act, within thirty days after its incorporation. A majority of the members voting thereon is necessary to adopt such bylaws, or if the association permits its members to vote on the basis of patronage, a majority in numbers which is also a majority of the patronage. The bylaws shall provide for their amendment by the members and the method by which amendments may be adopted. The following matters among others may be covered in the bylaws:



- 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 members constituting a quorum;
- C. the right of members to vote except by proxy, at general or special meetings and by mail; and the conditions, manner, form and effects of such votes;
- D. the number of directors constituting a quorum;
- E. the number, qualifications, compensation, duties and term of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;
- F. penalties for violations of bylaws;
- 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 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 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 which every member may be required to sign;
- I. the number, qualification and voting rights of members of the association and the conditions precedent to membership; the method, time and manner of permitting members to withdraw or to transfer their stock; the manner of assignment and transfer of the interest of members; 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 upon the expulsion of a member or forfeiture of his membership.

Section 76-12-14 – Directors; Election

The affairs of the association shall be managed by a board of not less than five or [nor] more than twenty-one directors to be elected by the members with such qualifications as may be provided for in the articles of incorporation or bylaws. All of the directors shall be members of the association or officers, directors or members of member associations.

When a vacancy on the board of directors occurs other than by expiration of term or removal, the remaining members of the board, shall fill the vacancy either by a majority vote of the board, or by calling a special election of the members in the district affected.

There shall be no personal liability to a director or member of an association in his official action or omission except for wilful negligence or malfeasance in office.

Section 76-12-15 – Officers

The officers of every such association shall be a president, one or more vice presidents, a secretary and a treasurer and such other officers as may be authorized in the bylaws. The president and at least one of the vice presidents must be members and directors of the association. The office of



secretary and treasurer may be combined. The treasurer may be other than a member of the association and as such shall not be considered as an officer, but as a function [functionary] of the board of directors. Officers shall be elected by the directors in the manner and for such terms as the bylaws provide.

Section 76-12-11 – Members

A. Under the terms and conditions prescribed in the bylaws adopted by it, an association may admit as members, or issue common stock to only cooperative associations and/or persons engaged in the production of agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent all or part of the crop raised on the leased premises. An association organized hereunder may become a member or stockholder of any other cooperative association organized in this or any other state.

B. A member shall lose his membership and voting rights if he ceases to belong to the class of persons eligible for membership under this section, but he shall remain subject to any liability already incurred by him as a member of the association and shall be entitled to receive from the association within three years after his ceasing to be a member the value of his membership interest in the association subject to the conclusive appraisal by the board of directors. If the association shall approve the member's designation of a transferee of his membership interest the association shall be under no obligation to pay the transferrer [transferor] the value of this interest.

C. Except for debts lawfully contracted between him and the association no member shall be liable for the debts of the association to any amount exceeding the sum remaining unpaid on his subscription to membership.

D. Under the provisions of its bylaws an association may provide that no members shall have more than one vote, or it may provide that members may vote according to actual patronage. However, in no case shall a member be allowed to have more than five (5) votes, and a member shall not be allowed more than one vote because of the amount of stock or membership capital he may own.

Section 76-12-12 – Issuance of Membership Certificates and Stock

A. When a member of an association has paid his membership fee or stock subscription in full he shall receive, as the case may be, a certificate of membership or a stock certificate.

B. No association shall issue membership certificates or stock until they have been fully paid for, but an association in its bylaws may admit a member and allow him to vote and hold office as soon as twenty per centum (20%) of his membership fee or his stock certificate has been paid.



C. An association shall limit the interest it pays on membership capital or stock to an amount not greater than eight percent (8%) per annum. Such apportionment shall not be made until not less than ten (10%) percent of any undistributed balance accruing since the last apportionment, has been set aside in a surplus or reserve fund unless such surplus or reserve fund equal [equals] at least one hundred (100%) percent of the paid up membership fees or capital stock.

D. Undistributed balances from any source, in excess of additions to reserves and surplus, shall be distributed on the basis of patronage, that is according to the amount or value, as the association may decide, of the products sold to or through, and/or purchased from or through, the association by its patrons. The distribution of such balances may be restricted to members or be made at the same or a different rate for members and nonmembers. The bylaws may provide that any distribution to a nonmember, eligible for membership may be credited to such nonmember until the amount thereof equals the value of a membership certificate or a share of the association's common stock. Such a distribution credited to the account of a nonmember shall revert to the reserve fund to be used for educational purposes if, after two years, the amount is less than the value of a membership certificate or a share of common stock, or in case said person does not accept and exercise his membership privileges.

E. Ownership of common stock and/or membership certificates may be transferred by a member only to other associations or to persons engaged in the production of agricultural products, and who are eligible to hold same. Such transfer must be approved by the board of directors before it is binding on the association.

F. An association may issue and sell preferred stock to members or nonmembers. Preferred stock may be redeemable or retirable by the association on such terms and conditions as may be provided by the bylaws and printed on the stock certificate. Preferred stockholders shall not be entitled to vote. Whenever an association organized hereunder with preferred stock shall purchase the stock or any interest in any property of any person it may discharge the obligation so incurred wholly or in part by exchanging for the acquired interest shares of its preferred stock to an amount which would equal the fair market value of the stock or interest so purchased as determined by the board of directors.

Section 76-12-20 – Taxation

It is the duty of every association organized pursuant to provisions of the Cooperative Marketing Association Act and foreign associations admitted to do business in this state under that act to procure annually from the secretary of state a license authorizing the transaction of business in the state. Each domestic or foreign corporation shall pay annually a license fee of twenty-five dollars (\$25.00) to the secretary of state before receiving such license.

