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Agricultural Cooperative Formation:

Oregon



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Section 62.115 – Purposes for Which Cooperatives May be Organized

Cooperatives may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance.

Section 62.125 – General Powers

Each cooperative shall have power:

(1) To have perpetual succession unless a limited period of duration is stated in its articles.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the seal by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of, all or any part of its property and assets.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign cooperatives and corporations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(7) To make contracts and incur liabilities, borrow money at such rates of interest as the cooperative may determine, issue its notes, bonds, certificates of indebtedness and other obligations, issue certificates



representing equity interests in its assets, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(8) To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested.

(9) To conduct its business and affairs and have offices and exercise its powers in any state, territory, district or possession of the United States, or in any foreign country.

(10) To elect or appoint officers and agents, and define their duties and fix their compensation.

(11) To make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.

(12) To make donations for the public welfare or for charitable, scientific or educational purposes.

(13) To cease its activities and surrender its franchise.

(14) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the cooperative is organized.

Section 62.513 – Articles of Incorporation; Rules

(1) The articles of incorporation shall set forth:

(a) The name of the cooperative, which satisfies the requirements of ORS 62.131.

(b) The purposes for which the cooperative is organized. It shall be sufficient to state, either alone or with other purposes, that the purpose of the cooperative is to engage in any lawful activity for which cooperatives may be organized under this chapter, and by such statement, all lawful activities shall be within the purposes of the cooperative, except for express limitations, if any.

(c) Whether the cooperative is organized with or without membership stock, and if organized without membership stock the amount of the membership fee and whether the membership fee may be changed in accordance with a procedure established in the bylaws without the necessity of filing amended or restated articles, and the limitations, if any, on transfer of a membership.

(d) The number and par value, if any, of shares of each authorized class of stock, and if more than one class is authorized, the designation, preferences, limitations and relative rights of each class.

(e) Which classes of stock, if any, are membership stock, and the limitations upon transfer, if any, applicable to such stock.

(f) Any limitation of the right to acquire or recall any stock.

(g) The basis of distribution of assets in the event of dissolution or liquidation.

(h) The street address of the cooperative's initial registered office and the name of its initial registered agent who shall be amenable to service of process at the address.

(i) A mailing address to which the Secretary of State may mail notices as required by this chapter.

(j) The number of directors constituting the initial board of directors.

(k) The name and address of each incorporator.



(2) Duration shall be perpetual unless the articles of incorporation expressly limit the period of duration.

(3) It is not necessary to set forth in the articles any of the corporate powers enumerated in this chapter. The articles may include additional provisions, not inconsistent with law, for the regulation of the internal affairs of the cooperative, including any provision that restricts the transfer of shares or that under this chapter is required or permitted to be set forth in the bylaws. Any provision required or permitted in the bylaws has equal force and effect if stated in the articles. Whenever a provision of the articles is inconsistent with a bylaw, the articles control.

(4) Without limiting the provisions of subsection (3) of this section, the articles of incorporation may set forth:

- (a) The names of the initial directors;
 - (b) The addresses of the initial directors;
 - (c) The names and addresses of the president and secretary;
 - (d) Provisions regarding:
 - (A) Managing the business and regulating the affairs of the cooperative; and
 - (B) Defining, limiting and regulating the powers of the cooperative, its board of directors and members;
 - (e) A provision eliminating or limiting the personal liability of a director to the cooperative, its members or its shareholders for monetary damages for conduct as a director, provided that the provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective and the provision shall not eliminate or limit the liability of a director for:
 - (A) Any breach of the director's duty of loyalty to the cooperative, its members or its shareholders;
 - (B) Acts or omissions that are not in good faith or that involve intentional misconduct or a knowing violation of law; or
 - (C) Any transaction from which the director derived an improper personal benefit; and
 - (f) Any provision that under this chapter is required or permitted to be set forth in the bylaws.
- (5) The Secretary of State by rule may require additional identifying information.

Section 62.135 – Bylaws

The initial bylaws of a cooperative shall be adopted by its board of directors. Power to alter, amend or repeal the bylaws or adopt new bylaws is vested in the members of the cooperative. Bylaws may contain any provisions for the regulation and management of the affairs of the cooperative not inconsistent with law or the articles.

Section 62.280 – Board of Directors

(1) The corporate powers of a cooperative shall be exercised by or under the authority of the board of directors, and the business and affairs of a cooperative shall be managed under the direction of the board of directors.



Except as provided in subsection (2) of this section, each director, at all times during the director's term of office, shall be a member or a representative of a member which is other than a natural person. Unless the bylaws otherwise provide, directors need not be residents of this state.

(2) If authorized by the bylaws of the cooperative, a cooperative other than a telecommunications cooperative or electric cooperative may have one or more directors who are not members or representatives of members that are other than natural persons. A majority of the directors of a cooperative described in this subsection must be members or representatives of members that are not natural persons.

(3) The bylaws may prescribe any other qualifications for directors and may provide that directors be from specified territorial districts. The bylaws may also provide that voting on the election of directors from specified territorial districts may be limited to members from the respective districts without the obligation to hold district meetings.

(4) The number of directors of a cooperative shall be not less than three, unless the number of members of the cooperative is less than three. If the number of members of the cooperative is less than three, the number of directors shall not be less than the number of members of the cooperative. Subject to this limitation, the number of directors shall be fixed or determined by the bylaws, except as to the number constituting the initial board, which number shall be fixed by the articles.

(5) Directors constituting the initial board named in the articles shall hold office until the first annual meeting of the members and until their successors are elected and take office. At that meeting and thereafter, directors shall be elected by the members in the manner and for the term of office, not to exceed three years, provided in the bylaws. Each director shall begin immediately to discharge the duties of director and, subject to resignation or removal, shall hold office for the term for which the director was elected and until a successor takes office.

(6) A director may be removed upon a majority vote of all members voting in person thereon at a duly called member meeting if written reasons for removal of the director are included in the notice of the meeting and the director whose removal is sought has had an opportunity to answer the reasons at the meeting. The written statement of reasons for removal shall be filed with the minutes of the meeting. The bylaws may contain such other provisions for the removal of a director as may be consistent with the provisions of this subsection.

(7) Unless the bylaws provide otherwise, any vacancy occurring in the board may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board. The director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office.

Section 62.295 – Officers

(1) The principal officers of a cooperative are a president, one or more vice presidents as prescribed in the bylaws, a secretary and a treasurer. These officers shall be elected annually by the board at such time and in such manner as the bylaws provide. The offices of secretary and treasurer may be



combined in one person. At least one principal officer must be a director of the cooperative. The manager of a cooperative may hold the office of president or any other office.

(2) The bylaws may provide for a chairperson of the board of directors. The offices of chairperson and president may be combined in one person. However, notwithstanding subsection (1) of this section, a person who is not a director may not serve as chairperson of the board of directors.

(3) Any other officer may be chosen by the board.

(4) 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 62.145 – Membership

(1) Membership in a cooperative is conditioned on ownership of a share of membership stock or payment of a membership fee as set forth in the articles. If the articles so provide, the bylaws may authorize a procedure by which the membership fee initially stated in the articles pursuant to ORS 62.513 (1)(c) may be changed without filing amended or restated articles. The bylaws of a cooperative may authorize membership conditioned upon payment of part of the membership fee or payment for part of the membership stock subscribed for and compliance with an agreement to pay the balance.

(2) Qualifications for membership and method of acceptance of members shall be as set forth in the bylaws of the cooperative.

(3) Bylaws may provide for termination of membership and the conditions and terms thereof.

Section 62.175 – Capital Stock; Membership Stock

(1) Any cooperative, including a cooperative which requires a membership fee rather than the holding of membership stock as a prerequisite of membership, has power to issue the number of shares of capital stock stated in its articles. Such shares may be divided into more than one class with such designations, preferences, limitations and relative rights as shall be stated in the articles, except that capital stock as such shall have no voting power except as specifically authorized in this chapter.

(2) The articles may require that members own one or more shares of membership stock, and may provide limitations on the issuance and transferability of such stock. Unless restricted by the articles, stock other than membership stock may be issued or transferred without limitation.

(3) Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board. Shares without par value, may be issued for such consideration expressed in dollars as may be fixed for such shares by the board. Payment for shares may be in cash or other property, tangible or



intangible. If in other property, the value thereof shall be determined by the board, and such determination, if made in good faith, is conclusive.

(4) No certificate shall be issued for any share until such share is fully paid.

(5) Shareholders as such have no preemptive right to purchase additional shares.

Section 62.780 – Notice to Members of Agricultural Cooperative; Date; Contents; Effect of Failure to Send Notice

An agricultural cooperative organized and operating under ORS chapter 62 must send a notice to all members of the cooperative annually. The cooperative shall send a member the notice in February or with the member's contract. The notice shall state that members may not file an agricultural produce lien under ORS 87.228 and 87.700 to 87.736 against the cooperative. Failure by a cooperative to send the notice does not give a member lien rights against the cooperative.

