



# The National Agricultural Law Center

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Agricultural Cooperative Formation:

*South Dakota*



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# A National Agricultural Law Center Research Publication

## Agricultural Cooperative Formation: South Dakota

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## **S.D. Codified Laws §§ 47-15-1 to 47-20-17**

### **Section 47-15-2 – Purposes; Banking and Insurance Prohibited**

Cooperatives may be organized under this chapter for any lawful purpose except banking and insurance.

### **Sections 47-15-27 – Powers of Cooperatives; Existence**

Unless otherwise provided by its articles, a cooperative may exist perpetually.

### **Sections 47-15-28 – Powers of Cooperatives; Actions**

Unless otherwise provided by its articles, a cooperative may sue and be sued.

### **Sections 47-15-29 – Powers of Cooperatives; Seals**

Unless otherwise provided by its articles, a cooperative may have a seal.

### **Sections 47-15-30 – Powers of Cooperatives; Contracts; Encumbrances**

Unless otherwise provided by its articles, a cooperative may

- (1) Make contracts, incur liabilities, and borrow money;
- (2) Issue certificates representing indebtedness, or representing equity interests in its assets;
- (3) Acquire property;
- (4) Dispose of, mortgage, pledge, lease, or otherwise use in any manner any of its property, or any interest therein, wherever situated.

### **Sections 47-15-31 – Powers of Cooperatives; Securities Holdings**



Unless otherwise provided by its articles, a cooperative may 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.

#### **Sections 47-15-32 – Powers of Cooperatives; Investments and Lending**

Unless otherwise provided by its articles, a cooperative may invest its funds, lend money for its purposes, and hold any property as security for repayment.

#### **Sections 47-15-33 – Powers of Cooperatives; Territorial**

Unless otherwise provided by its articles, a cooperative may conduct its business and affairs and have offices and exercise its powers in the United States or in any foreign country.

#### **Sections 47-15-34 – Powers of Cooperatives; Officers and Agents**

Unless otherwise provided by its articles, a cooperative may elect officers and appoint agents, define their duties, and fix their compensation.

#### **Sections 47-15-35 – Powers of Cooperatives; Bylaws**

Unless otherwise provided by its articles, a cooperative may make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.

#### **Sections 47-15-36 – Powers of Cooperatives; Donations**

Unless otherwise provided by its articles, a cooperative may make donations for charitable, scientific, educational, or religious purposes.

#### **Sections 47-15-37 – Powers of Cooperatives; Indemnification of Agents**

Unless otherwise provided by its articles, a cooperative may indemnify any present or former director, officer, or agent against actual expenses necessarily incurred in defense of any proceeding in which he is a party because he is or was such director, officer, or agent. This section does not apply to those proceedings in which he is adjudged liable for negligence or misconduct in the performance of duty. Such indemnification shall not be exclusive of other rights to which he may be entitled.

#### **Sections 47-15-38 – Powers of Cooperatives; Cessation of Activities**



Unless otherwise provided by its articles, a cooperative may cease its activities and surrender its franchise.

### **Sections 47-15-39 – Powers of Cooperatives; Effectuation of Purpose**

Unless otherwise provided by its articles, a cooperative may exercise all powers necessary or convenient to effect its purposes.

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### **Sections 47-15-4 – Articles of Incorporation; Contents**

The articles of incorporation shall set forth that they are executed pursuant to the provisions of this chapter and shall state:

- (1) The name of the cooperative;
- (2) The period of existence, unless perpetual;
- (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 municipality in this state in which the cooperative's principal office is to be located and the information required by § 59-11-6;
- (12) The number of directors, or that the number of directors shall be as stated in the bylaws;
- (13) The name and address of each incorporator; and
- (14) The names and addresses of at least three incorporators who will act as the temporary board and will serve until the first annual meeting of members or stockholders.

### **Sections 47-15-16 – Bylaws; Adoption and Amendment**



Bylaws may be adopted and amended only by the members, unless the members adopt a bylaw which 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.

### **Sections 47-17-1 – Board of Directors as Manager of Cooperative; Qualifications of Directors**

The business and affairs of a cooperative shall be managed by a board of directors. Each director shall be a member or a representative of a member who is an entity member. The bylaws shall prescribe any other qualifications for directors and may provide that directors be from specified territorial districts.

### **Sections 47-17-14 – Principal Officers of Cooperative; Election by Board of Directors**

The principal officers of a cooperative are a president, one or more vice-presidents as prescribed in the bylaws, a secretary, and a treasurer. The principal officers shall be elected annually by the board of directors at a time and manner pursuant to the bylaws. Each principal officer except the secretary and the treasurer shall be a director of the cooperative. The offices of secretary and treasurer may be combined in one individual.

### **Sections 47-16-1 – Class of Members; Provisions in Bylaws**

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, a firm, an unincorporated association, a cooperative, a corporation, or a body politic, may become a member in accordance with the bylaws.

### **Sections 47-16-21 – Capital Stock; Classes of Stock**

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

- (1) Stock as such has no voting power;
- (2) Stock without par value shall not be authorized or issued;
- (3) The rate of dividends upon stock shall not exceed eight percent of its par value for any year, and dividends may not be cumulative.

