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Agricultural Cooperative Formation:

*Texas*



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# A National Agricultural Law Center Research Publication

## Agricultural Cooperative Formation: Texas

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## Tex. Agric. Code §§ 51.001 to 51.025 (Farmers' Cooperative Societies)

## Tex. Agric. Code §§ 52.001 to 52.151 (Cooperative Marketing Associations)

### Farmers' Cooperative Societies

#### Section 51.003 – Purpose

A society may be organized to enable its members to cooperate with each other for the purposes authorized by this chapter.

#### Section 51.004 – Powers

- (a) A society may:
- (1) borrow money and discount notes, not to exceed a total amount equal to five times its working capital;
  - (2) lend money to its members, on terms and with security as provided by its bylaws;
  - (3) act as an agent for its members in selling the members' agricultural products and in purchasing machinery and supplies for its members, including fire, livestock, hail, cyclone, and storm insurance;
  - (4) own and operate machinery and tools necessary to produce, harvest and prepare for market farm and ranch products;
  - (5) exercise any of the powers granted to cooperative marketing associations under Section [52.013](#) of this code; and



- (6) deliver money to a scholarship fund for rural students.
- (b) To be eligible to purchase insurance for its members, a society must be appointed and licensed as an agent of the insurance company from which the insurance is to be purchased. Commissions received by the society from the purchase of insurance for its members are corporate funds.
- (c) A society may not lend money or act as an agent for any person other than a member of the society.
- (d) Societies may join to establish and maintain joint agencies to accomplish the purposes for which they were incorporated.

### **Section 51.009 – Articles of Incorporation**

- (a) The incorporators shall prepare articles of incorporation under the general corporation laws of the state and shall deliver the articles to the attorney general for approval.
- (b) After the attorney general has approved the articles, the incorporators shall file them with the secretary of state under the general corporation laws of the state.
- (c) The society shall file with the county clerk a certified copy of the articles in accordance with Section [51.011](#) of this code.

### **Section 51.010 – Bylaws and Amendments to Articles of Incorporation**

- (a) Each member of a society shall sign the bylaws of the society.
- (b) A society shall obtain the approval of its bylaws and amendments to its articles of incorporation from the attorney general. After obtaining that approval, the society shall file the bylaws or amendments with the secretary of state.

### **Section 251.101 – Board of Directors**

- (a) Except as provided by Subsections (b) and (c), a cooperative association is managed by a board of directors in accordance with Chapter [22](#).
- (b) The board shall contain at least five directors elected by and from the cooperative association's members. A director:
  - (1) serves a term not to exceed three years as provided by the bylaws; and
  - (2) holds office until the director is removed or the director's successor is elected.
- (c) The bylaws of a cooperative association may:
  - (1) apportion the number of directors among the units into which the cooperative association may be divided; and
  - (2) provide for the election of the directors by the respective units to which the directors are apportioned.
- (d) An executive committee of the board of directors may be elected in the manner and with the powers and duties specified by the certificate of formation or bylaws.

### **Section 251.102 – Officers**



- (a) The directors of a cooperative association shall annually elect, unless otherwise provided by the bylaws, the following officers for the cooperative association:
- (1) a president;
  - (2) one or more vice presidents; and
  - (3) a secretary and treasurer or a secretary-treasurer.
- (b) Any two or more offices, other than the offices of president and secretary, may be held by the same person.
- (c) The officers of a cooperative association may be designated by other titles as provided by the certificate of formation or the bylaws of the cooperative association.
- (d) A committee duly designated by the board of directors may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

### Section 51.012 – Membership

- (a) Membership in a society is limited to persons in the community in which the society is located who are engaged in agricultural pursuits.
- (b) A person may become a member of a society only if the person is chosen to be a member by:
- (1) the incorporators at the time of incorporation; or
  - (2) the board of directors under rules prescribed by the corporation's bylaws.

### Section 251.201 – Share and Membership Certificates: Issuance and Contents

- (a) A cooperative association may not issue a certificate for membership capital or for invested capital until any par value of the certificate has been paid in full.
- (b) Each certificate for membership capital issued by a cooperative association must contain a statement of the requirements of Sections [251.202\(a\)](#) and (b), [251.254](#), and [251.255](#).
- (c) Each certificate for invested capital issued by a cooperative association must contain a statement of the restrictions on transferability as provided by the cooperative association's bylaws.

### Section 51.025 – Exemption from Franchise Tax

A society is not required to pay any annual franchise tax, except that a society is exempt from the franchise tax imposed by Chapter [171](#), Tax Code, only if exempted by that chapter.

## Cooperative Marketing Associations

### Section 52.011 – Purposes

- (a) A marketing association may be incorporated to engage in any activity connected with:



- (1) the production, cultivation, and care of citrus groves;
  - (2) the harvesting, preserving, drying, processing, canning, storing, handling, shipping, marketing, selling, or use of agricultural products of its members;
  - (3) the manufacturing or marketing of by-products of its members' agricultural products;
  - (4) the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or
  - (5) the financing of any of the activities authorized by this section.
- (b) The activities authorized by Subsection (a) of this section may extend to nonmembers, to the production, cultivation, and care of lands owned or cultivated by nonmembers, and to products of nonmembers as limited by Section [52.012](#) of this code.

### Section 52.013 – General Powers

A marketing association may:

- (1) engage in any activity connected with:
  - (A) the production, cultivation, and care of citrus groves;
  - (B) the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or use of any agricultural products produced or delivered to it by its members;
  - (C) the production, manufacturing, or marketing of the by-products of those agricultural products;
  - (D) the purchase, hiring, or use by its members of supplies, machinery, or equipment; and
  - (E) the financing of an activity enumerated by Paragraphs (A) through (D) of this subdivision;
- (2) borrow money and make advances to its members;
- (3) act as an agent or representative of any member in an activity authorized by Subdivision (1) or (2) of this section;
- (4) acquire, hold, own, exercise all rights of ownership in, sell, transfer, or pledge shares of capital stocks or bonds of a corporation or association, including a bank for cooperatives organized under the Farm Credit Act of 1933, engaged in an activity related to that of the association incorporated under this chapter or engaged in the handling or marketing of a product handled by the association;
- (5) establish reserves and invest the money in those reserves in bonds or other property as provided by the association's bylaws;
- (6) buy, hold, and exercise all privileges of ownership over real or personal property that is determined by the association to be necessary or convenient for, or incidental to, conducting and operating its business;
- (7) perform, in or outside this state, acts that are necessary, suitable, or proper to accomplish the purposes and objectives permitted by this section or that are conducive to or expedient for the interest or benefit of the association, and may contract for the performance of those acts;



- (8) possess and exercise, in or outside this state, all powers, rights, and privileges necessary for or incidental to the purposes for which the association is organized or the activities in which it is engaged;
- (9) exercise the rights, powers, and privileges that are granted by the laws of the state to general corporations and that are not inconsistent with this chapter; and
- (10) deliver money to a scholarship fund for rural students.

### **Sections 52.033 and 52.034 – Execution of Articles of Incorporation; Contents of Articles of Incorporation**

#### **§ 52.033**

- (a) Each marketing association shall prepare and file articles of incorporation signed by each incorporator.
- (b) One of the incorporators shall acknowledge the articles before an officer authorized by the laws of the state to take and certify acknowledgments of deeds and conveyances.

#### **§ 52.034**

- (a) The articles of incorporation must state:
  - (1) the name of the association;
  - (2) the term of existence, if it is limited;
  - (3) the purpose for which the association is formed;
  - (4) the location and street address of the association's principal place of business;
  - (5) the number of directors; and
  - (6) the term of office of each director.
- (b) If the association is organized without capital stock, the articles must state whether property rights and interests of each member are equal or unequal, and if unequal, the general rules applicable to all members by which the property rights and interests of each are determined and fixed.
- (c) If the association is organized with capital stock, the articles must state:
  - (1) the amount of capital stock authorized;
  - (2) the number of shares authorized;
  - (3) the par value of the shares; and
  - (4) if preferred stock is to be issued, the number of shares of common stock, the number of shares of preferred stock, the rights, preferences, and privileges granted, and the conditions under which the association may redeem the preferred stock.

### **Sections 52.051 and 52.052 – Adoption; Contents**

#### **§ 52.051**

- (a) A marketing association shall adopt bylaws before the 31st day after the day on which the articles of incorporation are filed with the secretary of state.



(b) The initial bylaws may be adopted by a two-thirds vote of the incorporating directors and then:

- (1) a simple majority vote when 50 percent or more of the members vote in person or by proxy or mail;
- (2) a two-thirds majority vote when less than 50 percent but 25 percent or more of the members vote in person or by proxy or mail; or
- (3) a three-fourths majority vote when less than 25 percent but 10 percent or more of the members vote in person or by proxy or mail.

## § 52.052

The bylaws may provide for one or more of the following:

- (1) the time, place, and manner of calling and conducting meetings of the association;
- (2) the number and qualifications of the members;
- (3) the number of members constituting a quorum;
- (4) the right of members to vote by proxy, mail, or both and the conditions, method, and effects of the vote;
- (5) the method by which a member that is an association may cast its vote;
- (6) the number of directors constituting a quorum;
- (7) the qualifications, compensation, duties, and terms of directors and officers;
- (8) the time of the election of directors and officers and the method of giving notice of the election;
- (9) the penalties for violations of the bylaws;
- (10) the amount of entrance, organization, and membership fees, if any, the method of collecting the fees, and the purposes for which the association must use the fees;
- (11) the amount, if any, that each member must pay for the association's cost of conducting business;
- (12) the amount that each member is required to pay for services rendered to the member by the association, the time of payment, and the method of collecting the payment;
- (13) the marketing contract between the association and its members;
- (14) the requirements for ownership of common stock;
- (15) the time and method by which a member may withdraw from the association or may assign or transfer common stock;
- (16) the method of assignment and transfer of a member's interest or shares of common stock;
- (17) the time and conditions on which membership ceases;
- (18) the automatic suspension of a member's rights if the member ceases to be eligible for membership;
- (19) the method and effect of expulsion of a member;
- (20) the purchase by the association of a member's interest on the death, withdrawal, or expulsion of the member, on forfeiture of a membership, or at the option of the association; and
- (21) the method by which the value of a member's interest is determined by conclusive appraisal by the board of directors.





### Sections 52.101 – Board of Directors

- (a) A board of directors shall manage a marketing association.
- (b) The board shall be composed of five or more directors who are elected by the members of the association.
- (c) Except as provided by Subsection (d) of this section, a person must be a member of the association to be eligible to serve as a director.
- (d) As prescribed by the bylaws of the association that is holding the meeting, a marketing association that is a member of the association may designate any of its members to vote on behalf of the member association or to serve as a director of the association holding the meeting.

### Sections 52.102 – Officers

- (a) The directors shall elect:
  - (1) a president or chairman;
  - (2) one or more vice-presidents or vice-chairmen;
  - (3) a secretary; and
  - (4) a treasurer.
- (b) To be eligible to serve as president, chairman, vice-president, or vice-chairman, a person must be a director.
- (c) The directors may combine the offices of secretary and treasurer as secretary-treasurer.
- (d) A bank or depository may serve as treasurer but is not considered to be an officer. If a bank or depository serves as treasurer, the secretary shall perform the usual accounting duties of the treasurer except that the secretary may deposit money only as authorized by the board of directors.

### Sections 52.081 – Membership

- (a) Membership of a marketing association is limited to persons who produce agricultural products handled by or through the association, including the lessees and tenants of land used to produce those products and any lessors and landlords who receive as rent part of the crop raised on the leased land. A marketing association may be a member of another marketing association.
- (b) A marketing association shall admit members under terms and conditions prescribed in its bylaws.
- (c) If a member of a marketing association organized without capital stock is not a natural person, the member may be represented by any individual, an associate officer, or one of its members, authorized in writing to act for it.

### Sections 52.061 – Stock

A marketing association may be organized with or without capital stock.

### Sections 52.063 – Issuance of Shares





(a) Subject to this section, a marketing association organized with capital stock may from time to time sell and issue shares of capital stock in the manner and under the terms prescribed by its bylaws.

(b) A marketing association may issue common stock only to a person who satisfies the membership requirements prescribed by Section [52.081](#) of this code.

(c) A marketing association may not sell and issue shares of preferred stock to a person who is not a member of the association unless the association first complies with The Securities Act (Title 12, Government Code).

(d) A marketing association may not issue shares of stock to a member until the member has fully paid for the shares.

(e) A marketing association may accept promissory notes of members as full or partial payment for stock. The association shall hold the stock as security for payment of the note. The association's retention of the stock does not affect the member's right to vote.

### Sections 52.151 – Tax Exemptions

A marketing association is exempt from all franchise or license taxes, except that a marketing association is exempt from the franchise tax imposed by Chapter [171](#), Tax Code, only if exempted by that chapter.

