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Agricultural Cooperative Formation:

Virginia



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Section 13.1-315 – Purposes

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

- (a) Producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing such products, or manufacturing or marketing the by-products thereof.
- (b) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and other patrons.
- (c) Performing or furnishing business or educational or other services, including the services of buildings, machinery and equipment, on a cooperative basis.
- (d) Financing any of the above-enumerated activities for its members.

Section 13.1-320 – Powers

A. An association shall have the capacity to act possessed by natural persons, but such association shall have authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles of incorporation and which are not repugnant to law.

B. Without limiting or enlarging the grant of authority contained in subsection A of this section, it is hereby specifically provided that every such association shall have authority:



1. To act as agent, broker or attorney-in-fact for its members, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles of incorporation, and to hold title for its members and for subsidiary and affiliated associations to property handled or managed by the association on their behalf.
2. To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles of incorporation and that may be conducive to or expedient for the interest or benefit of the association.
3. To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount or sell any evidence of debt, obligation or security.
4. To establish and accumulate reserves and surplus to capital, and such other funds as may be authorized by the articles of incorporation or the bylaws.
5. To own and hold membership in, or shares of the capital stock of, other associations and corporations and the bonds or other obligations thereof, engaged in any related activity, in producing, warehousing or marketing any of the products handled by the association or in financing its activities or of its members, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.
6. If such associations are warehousing corporations, they may issue legal warehouse receipts to the association, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this Commonwealth or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the associations.
7. To acquire, hold, sell, dispose of, pledge or mortgage any property which its purposes may require, subject to any limitation prescribed by law or its articles of incorporation.
8. To borrow money and to give its notes, bonds or other obligations therefor and secure the payment thereof in any manner consistent with law.
9. To purchase or otherwise handle machinery, equipment, supplies and perform services for nonmembers.



10. To market or otherwise deal in products of nonmembers to an amount not greater in annual value than such products as are dealt in for or on behalf of its members.
11. To have a corporate seal and to alter the same at pleasure.
12. To continue as a corporation for the time limited in its articles of incorporation, or if no time limit is specified, then perpetually.
13. To sue and to be sued in its corporate name.
14. To conduct business in this Commonwealth and elsewhere.
15. To dissolve and wind up.

Section 13.1-316 – Articles of Incorporation

Articles of incorporation shall be signed in triplicate by each of the incorporators and acknowledged by them, if natural persons, and, if associations, by the president and secretary of each such association, before an officer authorized to take acknowledgments, and shall state:

- (a) The name of the association which shall be distinguishable upon the records of the Commission from the name of any association or corporation, whether issuing shares or not issuing shares, limited liability company, business trust or limited partnership existing under the laws of this Commonwealth, or the name of any foreign corporation, whether issuing shares or not issuing shares, limited liability company, business trust or limited partnership authorized to transact business in this Commonwealth, or any corporate, limited liability company, business trust or limited partnership name reserved or registered as provided by law;
- (b) The address of its initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its initial registered agent at such address and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth;
- (c) Its purposes;
- (d) Whether organized with or without capital stock; and if organized with capital stock, a description thereof in accordance with the requirements of § 13.1-619;
- (e) If organized without capital stock, whether the property rights and interests of each member are equal or unequal; if unequal, the rule by which such rights and interests shall be determined;



(f) The maximum number of directors, not less than five, who are to manage the affairs of the association;

(g) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(h) If the duration of a corporation is not to be perpetual, the period of its duration;

(i) The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of election districts, the election of delegates to represent the members residing therein and the election of directors to represent such election districts, either directly or indirectly by said delegates, for voting by proxy or mail ballot and the issuance, retirement and transfer of membership certificates and stock.

Section 13.1-319 – Bylaws

The board of directors or members of the association, before commencing business, shall adopt bylaws not inconsistent with law or its articles of incorporation, and they may alter, amend and revise the same from time to time. The bylaws may be adopted, amended or revised by a majority vote of the board of directors, or by the vote of two-thirds of the members voting thereon at any regular or special meeting of the members or by the written assent of two-thirds of the members voting thereon by mail ballot, provided, that written notice of the proposed bylaw or bylaw amendments or revisions shall have been delivered to each member or mailed to his last known address as shown by the books of the association, at least ten days prior to any such meeting or the date on which the mail ballots must be returned to be counted. The bylaws made by the board of directors may be repealed or changed and new bylaws made by the members, and the members may prescribe that any bylaw made by them shall not be altered, amended or repealed by the directors. The bylaws may also provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting meetings of the members, and the number of members (which may be less than a majority) that shall constitute a quorum;

(b) The manner of voting and the conditions upon which members may vote at general and special meetings by proxy and by mail or by delegates elected by district groups or other associations;

(c) Subject to any provision thereon in the articles of incorporation and in this Act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;



(d) The time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

(e) Rules consistent with law and the articles of incorporation for the management of the association, the establishment of election districts, the making of contracts, the issuance, retirement and transfer of stock, the relative rights, interests and preferences of members and stockholders, and the mode, manner and effect of the expulsion of a member;

(f) Penalties for violations of the bylaws.

One copy of the bylaws and all amendments thereto, certified by the secretary of the association, shall be transmitted to the Commissioner of Agriculture and Consumer Services and one copy to the Director of the State Agricultural Extension Division within thirty days after their adoption.

Section 13.1-324 – Directors Generally; Executive Committee

(a) The business of the association shall be managed by a board of not less than five directors. The directors, with the exception of the public directors, shall be elected from the membership of the association or from the officers, directors or membership of a member association. The bylaws shall provide that one or more directors shall be appointed by the Director of the State Agricultural Extension Service. The director or directors so appointed shall be known as public directors. They need not be members of the association, or officers, directors or members of a member association, but shall have the same powers and rights as the directors elected by the members. A director shall hold office for the term for which he was appointed or elected and until his successor is elected, or appointed, and qualified.

(b) The names of the first directors shall be stated in the articles of incorporation. Their successors shall be elected by the members at the first meeting of the members held after the incorporation of the association.

(c) The number, qualifications, terms of office, manner of election or appointment, time and place of meeting and the powers and duties of the directors may, subject to the provisions of this Act and the articles of incorporation, be prescribed by the bylaws.

(1) Except as otherwise prescribed in the bylaws, a director shall be elected or appointed for a term of one year.

(2) Except as otherwise prescribed in the bylaws, vacancies in the board, other than by expiration of term, shall be filled by the remaining members of the board, unless the bylaws provide for the election of directors by districts, in which case the board shall call a special meeting of the members or delegates in the district to elect a person qualified to fill the vacancy. A



director elected by the remaining members of the board shall serve until his successor is elected by the members at their next annual meeting or at any special meeting called and held prior thereto. This subsection shall not apply, however, to public directors; any vacancies occurring in the office of a public director shall be filled in the same manner as the original appointment was made.

(d) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify, or vest in the board of directors authority to determine, the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

(e) The bylaws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board subject to its general direction and control.

Section 13.1-326 – Officers Generally

The board shall elect a president, a secretary and a treasurer, and may elect one or more vice-presidents, and such other officers as may be authorized in the bylaws. The president and at least one of the vice-presidents must be directors, but a vice-president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice-president, secretary and treasurer may be combined in one person.

Section 13.1-321 – Members

(a) An association may admit as members only bona fide producers of agricultural products, including tenants and landlords receiving a share of the crop, and cooperative associations of such producers.

(b) The articles of incorporation may limit the amount of voting stock which a member may own.

(c) Under the terms and conditions prescribed in the bylaws a member shall lose his membership and his right to vote if he ceases to belong to the class eligible to membership under this section, but he shall remain subject to any liability incurred by him while a member of the association.

(d) No member shall be personally liable for any debt or liability of the association.



(e) No member shall have more than one vote.

Section 13.1-322 – Membership or Voting Stock Certificates; Transfers; Dividends; Nonvoting Stock

A. No certificate for membership or stock shall be issued until fully paid for, but promissory notes may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote and hold office.

Fractional shares may be issued by capital stock associations. Certificates representing shares and certificates of membership or other evidence of the patron's equity in any fund, capital investment or other assets of the association shall be signed by the president or a vice-president or treasurer or assistant treasurer and the secretary or an assistant secretary of the association, or by facsimiles of their signatures, and may be sealed with the seal of the association, or a facsimile thereof.

B. Certificates of membership of a nonstock association shall not be transferred without the consent of the association's board of directors.

C. Voting stock in capital stock associations shall not be transferable to persons not eligible to membership in the association and such restrictions must be set forth in the bylaws of each capital stock association and printed on every stock certificate subject thereto.

D. The board of directors of an association, from time to time, may declare and the association may pay dividends on the stock or membership capital except when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation.

E. Net savings (which are hereby defined as being the excess of receipts over costs and expenses for each year of operations) in excess of dividends on outstanding stock or membership capital and additions to reserves shall be distributed on the basis of patronage, and the books of the association shall provide the basis for determining the interest of members and other patrons in the reserves. The distribution of patronage refunds 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 voting stock.

F. After a member has notified the association of his withdrawal, or after the adoption of a resolution by the board terminating his membership, the board shall appraise the value in money of his membership interest in the association and shall determine and fix the time when the association shall



pay him the value of his interest, unless the member, with the consent of the board, transfers his certificate of membership.

G. An association may issue nonvoting stock to members and nonmembers. Nonvoting stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles of incorporation or bylaws and printed on the stock certificates. Payment for nonvoting stock may be made in cash, services or property as determined by the board.

Voting stock may be issued only for money or notes or in payment of patronage refunds at par.

H. Except when its debts exceed fifty per centum of its assets, an association may purchase for cash its voting stock at book value or par value, whichever is less, and may call such stock for redemption on the same basis pursuant to a plan for rotating ownership of such stock set forth in its articles of incorporation or in its bylaws. The determination of book value by the board of directors shall be incontestable except for fraud.

I. The association may from time to time issue to each patron a certificate or other evidence of the patron's equity in any fund, capital investment or other assets of the association. Such certificate or other evidence of such equity may be transferred only to the association, or to such other purchaser as may be approved by the board of directors, upon such terms and conditions as shall be provided in the bylaws and printed thereon.

J. Notwithstanding any other provision of law, when there is held by any association any membership or patronage equity, including but not limited to membership stock, patronage refunds, patronage refund allocations, or any credit or distribution attributable to business done with or for patrons, to the credit of a person who has not had a current address on file with the association for a period of not less than three consecutive years, then the bylaws or member agreements of the association may provide that such equity shall be deemed to have been transferred by forfeiture to the association and shall thereafter be the property of the association; however, such membership or patronage equity shall be deemed forfeited to the association only if (i) the association publishes conspicuous notice of such pending forfeiture in its regular member publication, if any, and a publication of general circulation and (ii) such equity is not claimed by such person or, if such person is deceased, such person's next of kin within 180 days of such publication or such longer period as set out in the bylaws or member agreements of the association. If there is no such provision in the association's bylaws or member agreements, or if there is no publication, then any unclaimed membership or patronage equity shall be treated in accordance with the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.).

K. Any association organized with capital stock under this article may accept registrations of such stock in the names of two or more persons,



payable to any one of them, or to any one of them or the survivor; and any person so named, whether the others be living or not, may accept dividend payments and withdraw from the association and receive the amount payable on withdrawal in the same manner and on the same terms as are allowed by law and the articles of incorporation and bylaws in case of any other member or stockholder and the receipt or acceptance of dividends or amounts payable on withdrawal by the person so paid shall be a valid and sufficient release and discharge of the association for any payment so made.

Section 13.1-341 – Taxes

Nothing in this article shall be construed as exempting any association from the payment of license, income, property or other taxes, state and local; and the designation of any such association in this article as nonprofit shall not be construed as exempting it from state income taxation, notwithstanding any other provision of law. For the privilege of storing or marketing agricultural products, an association shall, however, pay only an annual license fee of ten dollars which shall be in lieu of all other corporation, franchise and income taxes, taxes on capital, taxes and charges upon reserves held by the association, and all state and local license taxes on that part of its business which is solely and exclusively the storing or marketing of agricultural products. Marketing of agricultural products shall include the functions involved in transferring title and in moving goods from producer to consumer, including buying, selling, processing, packing, storing, transporting, standardizing, financing, risk bearing and supplying market information.

