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Agricultural Cooperative Formation:

Wisconsin



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Section 185.02 – Purposes

Cooperatives may be organized under this chapter for any lawful purpose except banking and insurance, but subject to statutes relating to the organization of specified kinds of corporations.

Section 185.03 – General Powers

Unless otherwise provided by its articles, a cooperative may:

- (1) Exist perpetually.
- (2) Sue and be sued.
- (3) Have a seal.
- (4) Make contracts, incur liabilities and borrow money; issue certificates representing indebtedness, or representing equity interests in its assets; acquire property; dispose of, mortgage, pledge, lease or otherwise use in any manner any of its property, or any interest therein, wherever situated.
- (5) Invest its funds, lend money for its purposes, and hold any property as security for repayment.
- (6) Conduct its business and affairs and have offices and exercise its powers in the United States or in any foreign country.
- (7) Elect officers and appoint agents, define their duties and fix their compensation.
- (8) Make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.
- (9) Make donations for charitable, scientific, educational or religious purposes.
- (10) Effect the forfeiture to the cooperative of unclaimed funds, including all forms of distributions or credits under s. [185.45 \(2\) \(b\)](#) and [\(c\)](#), [\(3\) \(a\)](#) and [\(b\)](#) and [\(4\) \(b\)](#) and unclaimed stock, membership fees and deposits, if all of the following conditions are met:



- (a) No earlier than 3 years and no later than 5 years after the funds are first made available to their owners, the board declares the funds forfeited to the cooperative unless claimed by the date specified in par. (b).
- (b) After the declaration under par. (a), the cooperative gives notice that states that the funds shall be forfeited if not claimed by a specified date.
- (c) The date specified in the notice under par. (b) is a business day at least 60 days after the date of mailing of the notice.
- (d) The notice under par. (b) is mailed to the last-known address of each owner, and the name and address of each owner to whom notice is mailed or an Internet site address where this information is posted, together with a brief description of the reason for the notice, is published as a class 1 notice under ch. 985 on or before the date of mailing in a newspaper published in the municipality containing the service area of the cooperative.
- (e) The cooperative dedicates any funds remaining unclaimed after the date specified in par. (b) to educational purposes, limited to providing scholarships or loans to students, or to charitable purposes, as the board determines, within one year after the date the funds are declared forfeited under par. (a).
- (11) Cease its activities and surrender its franchise.
- (12) Exercise all powers necessary or convenient to effect its purposes.
- (13) In anticipation of or during an emergency, as defined in s. 185.07 (4) (a), through its board or members, do any of the following:
 - (a) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.
 - (b) Unless emergency bylaws adopted under s. 185.07 (4) provide otherwise, give notice of a meeting of the board only to those directors whom it is practicable to reach, and give notice to them in any practicable manner.

Section 185.05 – Articles

- (1) The articles shall set forth:
 - (a) The name of the cooperative.
 - (b) The period of existence, unless perpetual.
 - (c) 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.
 - (d) Whether the cooperative is organized with or without capital stock.
 - (e) The designation of classes of members, if more than one.
 - (f) 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.
 - (g) Which classes of stock are membership stock.
 - (h) 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. If the dividend on any class of stock is to be cumulative, this shall also be stated.
 - (i) Any reservation of a right to acquire or recall any stock.



- (j) The basis of distribution of assets upon liquidation and, if changes in the basis of distribution are to be prohibited, a statement that this provision may not be changed and a reference to the restriction under s. [185.033](#).
- (k) The complete address, including street number, city, town or village, county and zip code of its principal office or the name and complete address, including street number, city, town or village, county and zip code of its registered agent.
- (L) The name and address of each incorporator.
- (m) The names and addresses of at least 5 incorporators who will act as the temporary board.
- (2) It is not necessary to set forth in the articles any of the powers granted by this chapter. The articles may include additional provisions, consistent with law, including provisions which are 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.
- (3) The articles shall be filed and recorded as provided in s. [185.82](#). The legal existence of a cooperative begins when the articles are filed. Upon the filing of the articles, the department shall issue a certificate of incorporation. The department shall forward within 5 days a duplicate original of the articles to the register of deeds of the county of the cooperative's principal office or registered agent for recording.
- (4) The certificate of incorporation shall be conclusive evidence, except as against this state in a proceeding to cancel or revoke such certificate, that all conditions precedent to existence have been met.

Section 185.07 – Bylaws

- (1) The initial bylaws may be adopted by the temporary board. Thereafter, except as provided in sub. (4), 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.
- (2) 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.
- (3) Unless the bylaws provide otherwise, any bylaw may be adopted, amended or repealed by a majority of the member votes cast at a meeting.
- (4)
- (a) In this subsection, “emergency” means a catastrophic event that prevents a quorum of a cooperative's directors or members from being readily assembled.
- (b) Unless the articles provide otherwise, the board may adopt bylaws that are effective only in an emergency. Emergency bylaws are subject to amendment or repeal by the board or by the members. Emergency bylaws may provide special provisions or modify provisions as necessary for managing the cooperative during the emergency including any of the following:
1. Procedures for calling a meeting of the board or the members.
 2. Procedures for the conduct of a meeting of the board or the members.
 3. Quorum requirements for a meeting of the board.



4. Deadlines for any action required to be taken by the cooperative, the board, or the members.

5. Designation of additional or substitute directors.

(c) Provisions of the regular bylaws that are consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(d) Action taken in good faith in accordance with the emergency bylaws, and action taken in good faith under s. [185.03 \(13\)](#) for the benefit of the cooperative, binds the cooperative and may not be used to impose liability on a director, officer, member, employee, or agent. Action taken in good faith in anticipation of or during an emergency to delay or reschedule any action required to be taken by the cooperative, the board, or the members under par. [\(b\) 4.](#) shall not constitute a violation of the bylaws in the event the delayed or rescheduled action occurs after the emergency ends.

Section 185.31 – Directors; Number, Election, Removal and Vacancies

(1)

(a) All powers of the cooperative shall be exercised by or under authority of, and the business and affairs of a cooperative shall be managed under the direction of, the board, except as otherwise provided in this chapter. Except as provided in par. [\(b\)](#), every director shall be a member or a representative of a member that is other than a natural person. The bylaws shall prescribe any other qualifications for directors and may provide that directors be from specified districts.

(b)

1. In this paragraph, “outside director” means a director who is neither a member nor a representative of a member that is other than a natural person.

2. Subject to subds. [3.](#) and [4.](#), if authorized by the bylaws, a cooperative may allow for not more than 2 outside directors.

3. The total number of outside directors may not exceed 20 percent of the total number of directors, as established under sub. [\(2\)](#).

4. No person may serve as an outside director unless a majority of the members or delegates voting or a majority of directors who are not outside directors, as specified in the bylaws, votes to approve the person as a director.

5. An outside director has the same voting rights as a director who is not an outside director.

(2) The number of directors shall not be less than 5, provided that, in a cooperative with less than 50 members, the number of directors shall not be less than 3. Subject to such limitation, the number shall be fixed in the articles, or if the articles so provide, in the bylaws.

(3) The directors constituting the temporary board, named in the articles, shall hold office until the first member meeting. At that meeting and thereafter, directors shall be elected by the members at a member meeting in the manner and for the terms provided in the bylaws. If the bylaws provide that directors be from specified districts, the articles may limit voting for any director to members from within the district from which the director is to be elected.



Unless the bylaws provide otherwise, a director's term of office shall be one year. Each director shall hold office for the term for which elected and until a successor takes office. The bylaws may permit selection of alternates to take the place of directors absent at a meeting of the board. Whenever any change is made in the board, the cooperative shall file within 20 days with the department a report showing the names and addresses of all directors.

(4) Unless the bylaws provide otherwise, a director may be removed upon a majority vote of all members.

(5) Unless the bylaws provide otherwise, any vacancy existing in the board, including any vacancy created by an increase in the number of directors, may be filled until the next annual meeting by appointment by a majority vote of the directors then in office.

Section 185.35 – Officers

(1) Unless the articles of incorporation provide otherwise, the principal officers of a cooperative are a president, one or more vice presidents as prescribed in the bylaws, a secretary and a treasurer. They shall be elected annually by the board at such time and in such manner as the bylaws provide. Upon original election and whenever any change is made in the officers, the cooperative shall file with the department, within 20 days, a report showing the name and address of all officers. Each principal officer except the secretary and the treasurer must be a director of the cooperative. The offices of secretary and treasurer may be combined in one person.

(1m) Any principal officer of a cooperative may be designated by a title other than those designated under sub. (1), as provided in the articles of incorporation of the cooperative. The provisions of this chapter applicable to a principal officer as designated under sub. (1) apply to the principal officer as designated according to the provisions of the articles of incorporation. Any document required or permitted by this chapter to be signed by the president, vice president, secretary or assistant secretary may be signed by such officer as may be stated in such document to correspond to the officer so required or permitted to sign.

(2) Any other officer may be chosen by the board or as provided in the bylaws.

(3) 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 185.11 – Membership

(1) All cooperatives shall be organized on a membership basis with no capital stock, or shall be organized on a membership basis with capital stock.

(2) A cooperative may have one or more classes of members. The designation, qualifications, requirements, method of acceptance, and incidents of membership of each class shall be set forth in the bylaws. Any person, including a partnership, incorporated or unincorporated association,



limited liability company, corporation, or body politic, may become a member in accordance with the bylaws.

(3) No member may transfer his or her membership except as permitted in the bylaws.

(4) The bylaws may provide for termination of membership and the conditions and terms thereof.

Section 185.21 – Stock; Authorization, Issuance, Control, Use, Rights

(1) A cooperative may be organized with or without capital stock.

(2) A cooperative organized with capital stock may issue the amount of stock stated in its articles. Such stock may be divided into 2 or more classes with such designations, preferences, limitations, and relative rights as shall be stated in the articles, except that:

(a) Stock as such has no voting power, except as stated in ss. [185.52](#), [185.61](#) and [185.63](#);

(b) Stock without par value shall not be authorized or issued;

(3)

(a) The articles may require that members own one or more shares of membership stock. Such stock shall be issued or transferred only to a person eligible to become a member, and only when such person satisfies other requisites for membership.

(b) Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.

(4) Each certificate for stock shall bear the manual or facsimile signature of a principal officer and shall state:

(a) The name of the cooperative, the number, par value and class of the shares represented by the certificate, and whether or not it is membership stock.

(b) Any restrictions on the issuance or transfer of such stock, including those provided in sub. [\(3\) \(a\)](#);

(c) If more than one class of stock is authorized, the designation of the several classes, and their respective preferences, limitations and relative rights. In lieu of the full statement, this information may be given in summary form, or the certificate may state that the cooperative will, upon request, furnish the information required by this subsection.

(5) No stock certificate may be issued except upon payment of the par value of the stock it represents. Payment for stock may be in cash or other property. If in other property, the value thereof shall be determined by the board and such determination, if made in good faith, shall be conclusive.

(6) Unless the articles provide otherwise, a cooperative may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the cooperative a prior right to acquire any stock offered for sale, or a right to recall the stock of any stockholder, or both of said rights. The consideration paid for stock recalled by the cooperative shall be its par value and accrued unpaid dividends, provided that if the book value of such stock is less than the par value, the consideration shall be such book value. The cooperative may set off obligations of the stockholder to it. If the remaining assets would be less than the aggregate amount payable to creditors and



persons holding stock with preferential rights upon liquidation, no stock shall be acquired, recalled, exchanged or redeemed for a consideration other than stock or certificates of equity interest of equal or subordinate rank.

(7) When stock is acquired, recalled, exchanged, or redeemed by the cooperative, such stock is restored to the status of authorized but unissued stock.

(8) Stockholders as such have no preemptive right to purchase additional stock.

Section 185.50 – Income or Franchise Tax Returns

Any cooperative association, society, company, corporation, exchange or union organized under the provisions of this chapter shall not be obliged to file a state income or franchise tax return unless such association, society, company, corporation, exchange or union is at the time subject to a state income or franchise tax.

