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Agricultural Cooperative Formation:

West Virginia



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W. Va. Code §§ 19-4-1 to 19-4-29

Section 19-4-3 – Purposes

A cooperative association may be organized to engage in one or more qualified activities in connection with the marketing or selling of agricultural products or the goods and services of its members or those purchased from other persons; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in securing and disseminating market information; or in the financing directly, through agricultural credit associations, and/or otherwise, the above-enumerated activities; or in any one or more of the activities specified herein. An agricultural credit association may be organized hereunder to finance qualified persons or to finance any cooperative association, or both, whether formed under the laws of this or any other state.

Section 19-4-4 – Powers

A cooperative association shall have the following powers:

(a) To engage in any qualified activity in connection with any agricultural products or goods and services provided; or any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in securing and disseminating market information; or in the financing, directly, through agricultural credit associations any qualified activities. All transactions with nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise participate in any benefits derived from such transactions;

(b) To borrow money without limitation as to amount of corporate indebtedness or liability, and to make advance payments and advances to members; to execute, issue, draw, make, accept, endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants, certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any kind; to become the surety, guarantor, maker, and/or endorser for accommodation



or otherwise of bills, notes, securities and other evidences of debt of any association or person, anything in any other statutes or law of this state to the contrary notwithstanding;

(c) To act as the agent or representative of any member or members in any of the above-mentioned activities;

(d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing of any of the products handled by the association;

(e) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the bylaws;

(f) To buy, hold and exercise all privileges of ownership over real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

(g) To establish, secure, own and develop patents, trademarks and copyrights;

(h) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated, or conducive to or not contrary to the interest or benefit of the association; and to contract accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the purposes of this article; and to do any such thing anywhere. An agricultural credit association shall have all of the powers given to a cooperative association under the provisions of subdivision (b), section four of this article, and in general shall have power to do and perform any act or thing, not inconsistent with law, which may be appropriate to promote and attain the objects and purposes of such credit association.

Section 19-4-6 – Articles of Incorporation

Each association formed under this article shall prepare and file articles of incorporation, setting forth:

(a) The name of the association, which includes the words "cooperative," "co-operative," or "co-op," and words or abbreviations designating a corporation;

(b) The purposes for which it is formed;

(c) The place where its principal business will be transacted;

(d) The period, if any prescribed, for the duration of the corporation;

(e) The number of incorporators which is not less than three, the number of directors which is not less than three and any number in excess of those minimums, or it may be set forth that the number of directors will be fixed by the bylaws;

(f) If organized without capital stock, whether the property rights and interest of each member are equal or unequal; and if unequal, the general rules applicable to the classes of members whose property rights and interest are determined and fixed; and provision for the admission of new



members who may be entitled to share in the property of the association with the old members, in accordance with the general rules. This provision of the articles of incorporation may not be altered, amended or repealed except by the written consent or vote of three fourths of the members;

(g) If organized with capital stock and authorized to issue only one class of stock, the total number of shares of stock which the association has authority to issue, including: (1) The par value of each of the shares; or (2) a statement that all the shares are to be without par value;

(h) If the association is authorized to issue more than one class of stock, the total number of shares of all classes of stock which the association may issue, including: (1) The number of shares of each class that have a par value and the par value of each share by class; (2) the number of shares that are to be without par value; and (3) a statement of the powers, preferences, rights, qualifications, limitations or restrictions that are permitted by section thirteen of this article in respect to a class of stock fixed by the articles of incorporation or by resolution of the board of directors;

(i) The articles shall be signed and filed in accordance with the provisions of the business or nonprofit corporation laws of this state;

(j) The articles may also contain any provisions managing, defining, limiting or regulating the powers and affairs of the association, the directors, the stockholders or members of the association.

Section 19-4-8 – Bylaws

Each association incorporated under this article, must, within thirty days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this article. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. Each association, under its bylaws, may provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting its meetings;

(b) The number of stockholders or members constituting a quorum;

(c) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effect of such votes;

(d) The number of directors constituting a quorum; and, if authority therefor is given in the articles of incorporation, the total number of directors;

(e) The qualifications, compensation, duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;

(f) Penalties for violation of the bylaws;

(g) The amount of entrance, organization and membership fees, if any; the manner and method of collecting the same; and the purposes for which they may be used;

(h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;



(i) The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the conditions upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member's interest, and provision for its purchase by the association, at its option, upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors, or at the election of the board, such property interests may be sold at public auction to the association itself, or to any person eligible to membership in such association and the proceeds of such sale paid over to the personal representative of such deceased member, or to the member withdrawing or expelled, as the case may be.

Section 19-4-10 – Directors

(a) The affairs of the association shall be managed by a board of not less than three directors, elected by the members or stockholders.

(b) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors be elected either directly or by district delegates elected by the members in that district. The bylaws shall specify the number of directors to be elected by each district, the manner of reapportioning the directors and the method of redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to the districts and that the results of all the primary elections may be ratified during the next regular meeting of the association or may be considered final.

(c) The bylaws may provide that one or more directors may be appointed by a public official, commission or by the other directors. These public directors shall represent the interest of the general public in the associations. The public directors need not be members or stockholders of the association, but shall have the same powers and rights as other directors. The directors shall not number more than one fifth of the entire number of directors.

(d) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee. No director, during the term of his or her office, shall be a party to a contract for profit with the association differing from the contractual terms accorded regular members or holders of common stock of the association.

(e) The bylaws may provide that no director, except the president and secretary, shall occupy a position in the association on regular salary or substantially full-time pay.



(f) The bylaws may provide for an executive committee and may allot to the committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

(g) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws provide for an election of directors by district. In that case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

Section 19-4-11 – Officers

The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the association; and they may combine the two latter offices and designate the combined office as secretary-treasurer; or unite both functions and titles in one person. The treasurer may be a bank or any depository, and, as such, shall not be considered an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as and where authorized by the board of directors.

Section 19-4-5 – Members

(a) Under the terms and conditions prescribed in the bylaws adopted by it, a cooperative association may admit as members, or issue common stock to, only qualified persons, employees, volunteers and persons engaged in qualified activities, including the production, sale, creation, distribution, aggregation or cooperative marketing of the agricultural products or the goods and services to be handled by or through the association, and any lessor or landlord who receives as rent all or any part of a crop raised on the leased premises; and under the terms and conditions prescribed in the bylaws adopted by it, an agricultural credit association may admit any person as a member.

(b) If a member of a nonstock association be other than a natural person, the member may be represented by an individual, associate, officer or manager or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations organized under this article or similar laws of any state.

Section 19-4-13 – Stock; Membership Certificate; Voting; Liability; Limitations on Transfer and Ownership

(a) When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership. An association shall have power to issue one or more classes of stock, or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value,



with such voting powers, full or limited, or without voting powers and in such series, and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation, or in any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or of any amendment thereto.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members 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.

(c) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(d) An association in its bylaws may limit the amount of common stock which one member may own. No member or stockholder shall be entitled to more than one vote, regardless of the number of shares of common stock owned by him or her.

(e) Any association organized with stock under this article may issue preferred stock, with or without the right to vote. Such stock may be sold to any person, member or nonmember, and may be redeemable or retireable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate. The bylaws shall prohibit the transfer of the common stock of the association to persons who are not qualified persons, or organizations that are not engaged in qualified activities handled by the association, or to persons or organizations that are not members of credit associations financing such products; and such restrictions shall be printed upon every certificate of stock subject thereto.

(f) Other kinds and classes of stock may be issued in compliance with the provisions of the articles of incorporation, the terms of the bylaws, or special resolutions of the board of directors.

(g) The association may, at any time, as specified in the bylaws, except when the debts of the association exceed fifty percent of the assets thereof, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors, and pay for it in cash within one year thereafter.

