

FOR APPROVAL

**UNIFORM LIMITED COOPERATIVE
ASSOCIATION ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-SIXTEENTH YEAR
PASADENA, CALIFORNIA
JULY 27 - AUGUST 3, 2007

**UNIFORM LIMITED COOPERATIVE
ASSOCIATION ACT**

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[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Limited Cooperative Association Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Articles of organization” means the articles of organization of a limited cooperative association required by Section 302. The term includes the articles as amended or restated.

(2) “Bylaws” means the bylaws of a limited cooperative association. The term includes the bylaws as amended or restated.

(3) “Contribution” means a benefit under Section 902 that a person provides to a limited cooperative association to become or remain a member or in the person’s capacity as a member.

(4) “Cooperative” means a limited cooperative association or an entity organized under any cooperative law of any jurisdiction.

(5) “Designated office” means, with respect to a limited cooperative association or a foreign cooperative, the office that it is required to designate and maintain under Section 116(a)(1).

(6) “Director” means the director of a limited cooperative association.

(7) “Distribution” means a transfer of money or other property from a limited cooperative association to a member because of the member’s financial rights or to a transferee of a member’s financial rights. The term does not include amounts described in Section 907(e).

(8) “Domestic entity” means an entity organized under the laws of this state.

(9) “Entity” means a person other than an individual.

(10) “Financial rights” means the right to participate in allocations and distributions as provided in [Articles] 9 and 11 but does not include rights or obligations under a marketing contract governed by [Article] 6.

(11) “Foreign cooperative” means an entity organized in a jurisdiction other than this state under a law similar to this [act].

(12) “Foreign entity” means an entity that is organized under the laws of a jurisdiction other than this state.

(13) “Governance rights” means the right to participate in governance of a limited cooperative association as provided in [Article] 4.

(14) “Investor member” means a member that has made a contribution to a limited cooperative association and is not permitted or required by the organic rules to conduct patronage business with the association in the member’s capacity as an investor member in order to receive the member’s interest.

(15) “Limited cooperative association” means an association organized under this [act].

(16) “Member” means a person that is admitted as a patron member or investor member, or both, in a limited cooperative association. The term does not include a person that has dissociated as a member.

(17) “Member’s interest” means the interest of a patron member or investor member under Section 501.

(18) “Members’ meeting” means an annual or special members’ meeting.

(19) “Organic law” means the statute providing for the creation of an entity or principally governing its internal affairs.

(20) “Organic rules” means the articles of organization and bylaws of a limited cooperative association.

(21) “Organizer” means an individual who signs the initial articles of organization.

(22) “Patron member” means a member that has made a contribution to a limited cooperative association which is permitted or required to conduct patronage with the association to receive the member’s interest.

(23) “Patronage” means business transactions between a limited cooperative association and a person which entitles the person to receive financial rights based on the value or quantity of business done between the association and the person.

(24) “Person” means an individual, corporation, business trust, cooperative, estate, trust, partnership, limited partnership, limited liability company, limited cooperative association, joint venture, association, public corporation, government or governmental subdivision, agency, or

instrumentality, or any other legal or commercial entity.

(25) “Principal office” means the principal executive office of a limited cooperative association or foreign cooperative, whether or not in this state.

(26) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) “Required information” means the information a limited cooperative association is required to maintain under Section 113.

(28) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process to or with a record.

(29) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(31) “Voting group” means any combination of one or more voting members in one or more districts or classes that under the organic rules or this [act] are entitled to vote and can be counted together collectively on a matter at a members’ meeting.

(32) “Voting member” means a member that, under the organic law or organic rules has a right to vote on matters subject to vote by members under the organic law or organic rules.

(33) “Voting power” means the total current power of members to vote on a particular matter for which a vote may or is to be taken.

SECTION 103. LIMITED COOPERATIVE ASSOCIATION SUBJECT TO AMENDMENT OR REPEAL OF [ACT]. A limited cooperative association governed by this [act] is subject to any amendment or repeal of this [act].

SECTION 104. NATURE OF LIMITED COOPERATIVE ASSOCIATION. A limited cooperative association organized under this [act] is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise

primarily controlled by those persons which permits combining:

- (1) ownership, financing, and receipt of benefits by the members for whose interests the association is formed; and
- (2) separate investments in the association by members who may receive returns on their investments and a share of control.

SECTION 105. PURPOSE AND DURATION OF LIMITED COOPERATIVE ASSOCIATION.

- (a) A limited cooperative association is an entity distinct from its members.
- (b) A limited cooperative association may be organized for any lawful purpose, whether or not for profit [except designated prohibited purposes].
- (c) Unless the articles of organization state a term for a limited cooperative association's existence, the association has a perpetual duration.

Legislative Note: This Act does not exclude a limited cooperative association organized under it from pursuing any lawful purpose. If an adopting jurisdiction state desires to prevent an association under this Act from being used for a particular purpose, this can be accomplished in one of two ways. An exception for the particular purpose can be specified in Section (b). Alternatively, if there is another statute in the adopting jurisdiction that governs the particular purpose and that statute does not already so provide, the other statute could be amended to assure that no entity organized under this Act may pursue the purpose of the other statute. Examples of those types of statutes may be those protecting the public interest in organizations formed for charitable or similar purposes and those protecting consumer interests in common interest ownership communities (such as housing cooperatives).

SECTION 106. POWERS. A limited cooperative association may sue and be sued in its own name and do all things necessary or convenient to carry on its activities. An association may maintain an action against a member for harm caused to the association by a violation of a duty to the association or the organic law or organic rules.

SECTION 107. GOVERNING LAW. The law of this state governs:

- (1) the internal affairs of a limited cooperative association; and
- (2) the liability of a member as member and a director as director for the debts, obligations, or other liabilities of a limited cooperative association.

SECTION 108. SUPPLEMENTAL PRINCIPLES OF LAW. Unless displaced by

particular provisions of this [act], the principles of law and equity supplement this [act].

SECTION 109. NAME.

(a) In this section, “available” means distinguishable upon the records of the [Secretary of State] from:

- (1) the name of any entity organized or authorized to transact business in this state;
- (2) a name reserved or registered under Section 110; and
- (3) an alternative name approved for a foreign cooperative authorized to transact business in this state.

(b) The name of a limited cooperative association must contain the words “limited cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA”. “Limited” may be abbreviated as “Ltd.”. “Cooperative” may be abbreviated as “Co-op” or “Coop”. “Association” may be abbreviated as “Assoc.” or “Assn.”.

(c) Except as authorized by subsection (d), the name of a limited cooperative association must be available.

(d) A limited cooperative association may apply to the [Secretary of State] for authorization to use a name that is not available. The [Secretary of State] shall authorize use of the name if:

- (1) the user, registrant, or owner of the name consents in a record to the use and applies in a form satisfactory to the [Secretary of State] to change the reserved or registered name to a name that is distinguishable upon the records of the [Secretary of State] from the name applied for; or
- (2) the applicant delivers to the [Secretary of State] a certified copy of the final judgment of a court establishing the applicant’s right to use the name in this state.

SECTION 110. RESERVATION OF NAME.

(a) A person may reserve the exclusive use of the name of a limited cooperative association, including a fictitious name for a foreign cooperative whose name is not available under Section 109, by delivering an application to the [Secretary of State] for filing. The application must set forth the name and address of the applicant and the name proposed to be

reserved. If the [Secretary of State] finds that the name applied for is available under Section 109, the name must be reserved for the applicant's exclusive use for a nonrenewable period of 120 days.

(b) The owner of a name reserved for a limited cooperative association may transfer the reservation to another person by delivering to the [Secretary of State] a signed notice of the transfer which states the name, street address, and, if different, the mailing address of the transferee. If the owner of a reserved name is an organizer of an association and the name of the association is the same as the reserved name, the delivery of articles of organization for filing [by the Secretary of State] is a transfer by the owner of the reserved name to the association.

[SECTION 111. USE OF TERM "COOPERATIVE".

(a) Use of the term "cooperative" or its abbreviation under this [act] is not a violation of the provisions restricting the use of the term under [insert cross-reference to law of this state].

(b) A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under this [act] [insert cross-reference to other laws of this state].]

Legislative Note: *This Section is optional but if the adopting jurisdiction has existing limitations in other law on the use of the term "cooperative" it is strongly urged this Section be adopted to avoid violation of the other law by entities governed by this Act.*

Many cooperative statutes include name protection provisions unique among organizational laws. If the adopting jurisdiction has a prohibition of the use of the word "cooperative" or a permitted abbreviation by any entity other than a cooperative organized under a statute providing for the formation of cooperative entities, this Act will not violate that statute if this Section is adopted with a reference to that statute in subsection (a). Moreover, if this Section is adopted with a reference to the other statute in subsection (b), restrictions on the use of the word "cooperative" or a permitted abbreviation under that statute may be enforced by a limited cooperative association or a member of an association organized under this Act. Alternatively, the adopting jurisdiction could amend the other statute to permit an association organized under this Act to use the word "cooperative" or a permitted abbreviation without violating that statute and to enforce the restrictions on the use of the word or abbreviations under that statute.

If the adopting jurisdiction does not have a statute prohibiting the use of the word "cooperative" or a permitted abbreviation by any entity that is not organized as a cooperative, the adopting jurisdiction may wish to consider providing a prohibition and remedies in this Section.

SECTION 112. EFFECT OF ORGANIC RULES.

(a) The relations between a limited cooperative association and its members are consensual. Unless required, limited, or prohibited by this [act] the organic rules may provide for any matters concerning the relations among the members of the association, between the members and the association, the activities of the association, and the conduct of its activities.

(b) This [act] requires the matters in this subsection (b) to be varied, if they are to be varied, only in the articles of organization. The articles may:

- (1) state a term of existence for the association under Section 105(c);
- (2) vary the limitations on the obligations and liability of members for association obligations under Section 404;
- (3) require a notice of an annual members' meeting to state a purpose of the meeting under Section 408(b);
- (4) vary the board of directors meeting quorum under Section 715(a);
- (5) vary the matters the board of directors may consider in making a decision under Section 720;
- (6) specify events of dissolution under Section 1102(1);
- (7) provide for member approval for asset dispositions under Section 1601; [and] [[(8)] subject to Section 720 of this [act], ~~to~~ provide for the elimination or limitation of liability of a director to the association or its members for money damages pursuant to Section 718 of this [act];
- [(9)] provide for permitting or making obligatory indemnification under Section 801(a) of this [act];
- [(10)] provide for any matters that may be contained in the organic rules, including those under subsection (c).

(c) This [act] requires the matters in this subsection (c) to be varied, if they are to be varied, only in the organic rules. The organic rules may:

- (1) increase the information required to be maintained by Section 113 or provided to members under Section 405(l);
- (2) provide restrictions on transactions between a member and an association

under Section 114;

(3) provide for terms and conditions to become a member under Section 402;

(4) restrict the manner of conducting members' meetings under Sections 406(c) and 407(e);

(5) designate the presiding officer of members' meetings under Sections 406(e) and 407(g);

(6) require a statement of purposes in the annual meeting notice under Section 408(b);

(7) increase quorum requirements for members' meetings under Section 410 and board of directors meetings under Section 715;

(8) allocate voting power among members, including patron members and investor members, and provide for the manner of member voting and action as permitted by Sections 411 through 417;

(9) provide for the existence of investor members and expand or restrict the transferability of, and the creation of security interests in, members' interests under Sections 502 through 504;

(10) provide for enforcement of a marketing contract under Section 604(a);

(11) provide for qualification, election, terms, removal, filling vacancies, and member approval for compensation of directors in accordance with Sections 703 through 705, 707, 709, and 710;

(12) restrict the manner of conducting board meetings and taking action without a meeting under Sections 711 and 712;

(13) provide for frequency, location, notice and waivers of notice for board meetings under Sections 713 and 714;

(14) increase the percentage of vote necessary for board action under Section 716(b);

(15) provide for the creation of committees of the board of directors and matters related to the committees in accordance with Section 717;

(16) provide for officers and their appointment, designation, and authority under

Section 722;

(17) provide for forms and values of contributions under Section 902;

(18) provide for the allocation of profits and losses of the association, distributions, and the redemption of equity in accordance with Sections 904 through 907;

(19) specify when a member's dissociation is wrongful and the liability incurred by the dissociating member for damage to the association under subsections 1001(b) and (c);

(20) provide the personal, or other legal representative of, a deceased member or a member adjudged incompetent with additional rights under Section 1003;

(21) increase the percentage vote required for board of director approval of:

(A) a resolution to dissolve under subsection 1105(a)(1);

(B) a proposed amendment to the organic rules under subsection 1402(1)(a);

(C) a plan of conversion under subsection 1503(a);

(D) a plan of merger under subsection 1507(a); and

(E) a proposed disposition of assets under subsection 1603(1);

(22) vary the percentage vote required for members approval of:

(A) resolution to dissolve under Section 1105;

(B) an amendment to the organic rules under Section 1406;

(C) a plan of conversion under Section 1503;

(D) a plan of merger under Section 1508; and

(E) a disposition of assets under Section 1604.

(d) The organic rules must address members' contributions pursuant to Section 901.

Legislative Note: Bracketed subsections (a)(7) and (8) are illustrative. They apply only if the adopting jurisdiction selects both the state general business corporation act in Sections 718 and 801 and the act so selected is consistent with the Revised Model Business Corporations Act. Thus, these provisions need to be conformed to the flexibility of choice provided by those sections.

SECTION 113. REQUIRED INFORMATION.

(a) A limited cooperative association shall maintain in a record available at its principal office the following:

- (1) a list showing the full name, last known street address and, if different, mailing address, and term of office of each director and officer;
- (2) the initial articles of organization and all amendments to and restatements of the articles, together with a signed copy of any powers of attorney under which any articles, amendments, or restatements have been signed;
- (3) the initial bylaws and all amendments to and restatements of the bylaws;
- (4) all filed articles of merger;
- (5) any financial statements of the association for the six most recent years;
- (6) the six most recent annual reports delivered by the association to the [Secretary of State];
- (7) the minutes of members' meetings for the six most recent years;
- (8) all actions taken by members without a meeting for the six most recent years;
- (9) a list containing the full name, in alphabetical order, and last known street address and, if different, mailing address of:
 - (A) each patron member; and
 - (B) each investor member;and if the association has districts or classes of members, the list must contain information from which each current member in a district or class may be identified;
- (10) the federal, state, and local income tax returns and any reports of the association for the six most recent years;
- (11) accounting records maintained by the association in the ordinary course of its operations for the six most recent years;
- (12) the minutes of directors' meetings for the six most recent years;
- (13) all actions taken by directors without a meeting for the six most recent years;
- (14) the amount of money contributed and agreed to be contributed by each member;
- (15) a description and statement of the agreed value of other contributions made and contributions agreed to be made by each member;
- (16) the times at which, or events on the happening of which, any additional

contribution to be made by each member is to be made;

(17) for each member, a description and statement of the member's interest or interests or information from which the description and statement can be derived; and

(18) all communications made in a record to all members, or to all members in a district or class for the six most recent years.

(b) If a limited cooperative association has been in existence for a period less than the time required for the maintenance of records under subsection (a), the time records must be kept is the period of the association's existence.

SECTION 114. BUSINESS TRANSACTIONS OF MEMBER WITH LIMITED COOPERATIVE ASSOCIATION. Subject to the organic rules or a specific contract relating to a transaction, a member may lend money to and transact other business with a limited cooperative association in the same manner as a person that is not a member.

SECTION 115. DUAL CAPACITY. A person may be both a patron member and an investor member. A person that is both a patron member and an investor member has the rights, powers, duties, and obligations provided by this [act] and the organic rules in each of those capacities. When the person acts as a patron member, the person is subject to the obligations, duties, and restrictions under this [act] and the organic rules governing patron members. When the person acts as an investor member, the person is subject to the obligations, duties, and restrictions under this [act] and the organic rules governing investor members.

SECTION 116. DESIGNATED OFFICE AND AGENT FOR SERVICE OF PROCESS.

(a) A limited cooperative association, and a foreign cooperative that has a certificate of authority under Section 1304, shall designate and continuously maintain in this state:

(1) an office, which need not be a place of the association's or foreign cooperative's activity in this state; and

(2) an agent for service of process at that office.

(b) An agent for service of process of a limited cooperative association or foreign cooperative must be an individual who is a resident of this state or an entity that is authorized to do business in this state and has an office in this state.

SECTION 117. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS.

(a) Except as otherwise provided in Section 207(e), to change its designated office, its agent for service of process, or the street address or, if different, the mailing address of its principal office, a limited cooperative association must deliver to the [Secretary of State] for filing a statement of change containing:

- (1) the name of the limited cooperative association;
- (2) the street address and, if different, mailing address of its designated office;
- (3) if the designated office is to be changed, the street address and, if different, mailing address of the new designated office;
- (4) the name of its agent for service of process; and
- (5) if the agent for service of process is to be changed, the name of the new agent.

(b) Except as otherwise provided in Section 207(e), to change its agent for service of process, the address of its designated office, or the street address or, if different, mailing address of its principal office, a foreign cooperative shall deliver to the [Secretary of State] for filing a statement of change containing:

- (1) the name of the foreign cooperative;
- (2) the name, street address and, if different, mailing address of its designated office;
- (3) if the current agent for service of process or an address of the designated office is to be changed, the new information;
- (4) the street address and, if different, mailing address of its principal office; and
- (5) if the street address or, if different, the mailing address of its principal office is to be changed, the street address and, if different, the mailing address of the new principal office.

(c) Except as otherwise provided in Section 204, a statement of change is effective when filed by the [Secretary of State].

SECTION 118. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

(a) To resign as an agent for service of process of a limited cooperative association or foreign cooperative, the agent must deliver to the [Secretary of State] for filing a statement of

resignation containing the name of the association or foreign cooperative.

(b) After receiving a statement of resignation under subsection (a), the [Secretary of State] shall file it and mail or otherwise provide or deliver a copy to the limited cooperative association or foreign cooperative at its principal office.

(c) An agency for service of process of a limited cooperative association or foreign cooperative terminates on the earlier of:

(1) the 31st day after the [Secretary of State] files a statement of resignation under subsection (b); or

(2) when a record designating a new agent for service of process is delivered to the [Secretary of State] for filing on behalf of the association or foreign cooperative and becomes effective.

SECTION 119. SERVICE OF PROCESS.

(a) An agent for service of process appointed by a limited cooperative association or foreign cooperative is an agent of the association or foreign cooperative for service of process, notice, or demand required or permitted by law to be served upon the association or foreign cooperative.

(b) If a limited cooperative association or foreign cooperative does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address on file with the [Secretary of State], the [Secretary of State] is an agent of the association or foreign cooperative upon which process, notice, or demand may be served.

(c) Service of process, notice, or a demand on the [Secretary of State] as agent of a limited cooperative association or foreign cooperative may be made by delivering to the [Secretary of State] two copies of the process, notice, or demand. The [Secretary of State] shall forward one copy by registered or certified mail, return receipt requested, to the association or foreign cooperative at its principal office.

(d) Service is effected under subsection (c) on the earliest of:

(1) the date the limited cooperative association or foreign cooperative receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the association or foreign cooperative; or

(3) five days after the process, notice, or demand is deposited for delivery by the United States Postal Service, if mailed postpaid and correctly addressed.

(e) The [Secretary of State] shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(f) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

[ARTICLE] 2

FILING AND ANNUAL REPORTS

SECTION 201. SIGNING OF RECORDS DELIVERED FOR FILING TO [SECRETARY OF STATE].

(a) A record delivered to the [Secretary of State] for filing pursuant to this [act] must be signed as follows:

(1) The initial articles of organization must be signed by at least one organizer.

(2) A statement of cancellation under Section 302(d) must be signed by at least one organizer.

(3) Except as otherwise provided in paragraph (4), a record signed on behalf of an existing limited cooperative association must be signed by an officer.

(4) A record filed on behalf of a dissolved association must be signed by a person winding up activities under Section 1106 or a person appointed under Section 1106 to wind up those activities.

(5) Any other record must be signed by the person on whose behalf the record is delivered to the [Secretary of State].

(b) Any record to be signed under this [act] may be signed by an authorized agent.

Legislative Note: This Act contemplates signatures on all records delivered to the office where records regarding entities are filed in a jurisdiction adopting this Act. In those jurisdictions that do not require signatures, the Sections of the Act that require a signature should be revised to relate to the person causing the record to be delivered for filing.

SECTION 202. SIGNING AND FILING OF RECORDS PURSUANT TO JUDICIAL ORDER.

(a) If a person required by this [act] to sign or deliver a record to the [Secretary of State] for filing does not do so, the [appropriate court], upon petition of an aggrieved person, may order:

(1) the person to sign the record and deliver it to the [Secretary of State] for filing; or

(2) the delivery of the unsigned record to the [Secretary of State] for filing.

(b) If an aggrieved person under subsection (a) is not the limited cooperative association or foreign cooperative to which the record pertains, the aggrieved person shall make the association or foreign cooperative a party to the action brought to obtain the order.

(c) An unsigned record filed pursuant to this section is effective.

SECTION 203. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY OF STATE]; EFFECTIVE TIME AND DATE.

(a) A record authorized or required by this [act] to be delivered to the [Secretary of State] for filing must be captioned to describe the record's purpose, be in a medium permitted by the [Secretary of State], and be delivered to the [Secretary of State]. If the filing fees have been paid, unless the [Secretary of State] determines that a record does not comply with the filing requirements of this [act], the [Secretary of State] shall file the record [and send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed].

(b) Upon request and payment of the requisite fee, the [Secretary of State] shall send to the requester a certified copy of any record filed by the [Secretary of State] under this [act].

(c) Except as otherwise provided in Sections 117 and 204, a record delivered to the [Secretary of State] for filing under this [act] may specify an effective time and a delayed effective date that may include an effective time on that date. Except as otherwise provided in Sections 117 and 204, a record filed by the [Secretary of State] under this [act] is effective:

(1) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the [Secretary of State's] [endorsement] of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

- (A) the specified date; or
- (B) the 90th day after the record is filed.

SECTION 204. CORRECTING FILED RECORD.

(a) A limited cooperative association or foreign cooperative may deliver to the [Secretary of State] for filing a statement of correction to correct a record previously delivered by the association or foreign cooperative to the [Secretary of State] and filed by the [Secretary of State] if, at the time of filing, the record contained inaccurate information or was defectively signed.

(b) A statement of correction may not state a delayed effective date and must:

(1) describe the record to be corrected, including its filing date, or have attached a copy of the record as filed;

(2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(3) correct the inaccurate information or defective signature.

(c) When filed by the [Secretary of State], a statement of correction is effective retroactively as of the effective date of the record the statement corrects. However, the statement is effective when filed as to persons relying on the false or erroneous information or defective signature before its correction and adversely affected by the correction.

SECTION 205. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD. If a record delivered to the [Secretary of State] for filing under this [act] and filed by the [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

Legislative Note – In adopting jurisdictions that do not require signatures on records delivered for filing, the jurisdiction may want to consider revising the Section to cause the liability to be applicable to the person or persons delivering the record for filing or causing the record to be filed.

SECTION 206. CERTIFICATE OF GOOD STANDING OR AUTHORIZATION.

(a) The [Secretary of State], upon application and payment of the required fee, shall

furnish a certificate of good standing for a limited cooperative association if the records filed in the [office of the Secretary of State] show that the [Secretary of State] has filed articles of organization, that the association is in good standing, and that the [Secretary of State] has not filed a statement of termination.

(b) The [Secretary of State], upon application and payment of the required fee, shall furnish a certificate of authorization for a foreign cooperative if the records filed in the [office of the Secretary of State] show that the [Secretary of State] has filed a certificate of authority, has not revoked nor has reason to revoke the certificate of authority, and has not filed a notice of cancellation.

(c) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the [Secretary of State] establishes conclusively that the limited cooperative association or foreign cooperative is in good standing or is authorized to transact business in this state.

SECTION 207. ANNUAL REPORT FOR [SECRETARY OF STATE].

(a) A limited cooperative association or foreign cooperative authorized to transact business in this state shall deliver to the [Secretary of State] for filing an annual report that states:

(1) the name of the association or foreign cooperative;

(2) the street address and, if different, mailing addresses of the association's or foreign cooperative's designated office and the name of its agent for service of process;

(3) the street address and, if different, mailing addresses of its principal office;

and

(4) in the case of a foreign cooperative, the state or other jurisdiction under whose law the foreign cooperative is formed and any alternative name adopted under Section 1305.

(b) Information in an annual report must be current as of the date the annual report is delivered to the [Secretary of State].

(c) The first annual report must be delivered to the [Secretary of State] between [January 1 and April 1] of the year following the calendar year in which the limited cooperative association was formed or the foreign cooperative was authorized to transact business in this state. An annual report must be delivered to the [Secretary of State] between [January 1 and

April 1] of each subsequent calendar year.

(d) If an annual report does not contain the information required by subsection (a), the [Secretary of State] shall promptly notify the reporting limited cooperative association or foreign cooperative and return the report for correction. If the report is corrected to contain the information required by subsection (a) and delivered to the [Secretary of State] within 30 days after the date of the notice from the [Secretary of State], it is timely delivered.

(e) If a filed annual report contains an address of the designated office, name of the agent for service of process, or address of the principal office which differs from the information shown in the records of the [Secretary of State] immediately before the filing, the differing information in the annual report is considered a statement of change.

(f) If a limited cooperative association fails to deliver an annual report under this section, the [Secretary of State] may proceed under Section 1111 to dissolve the association administratively.

(g) If a foreign cooperative fails to deliver an annual report under this section, the [Secretary of State] may revoke the certificate of authority of the cooperative.

Legislative Note – In adopting jurisdictions that require entities to file reports with the [Secretary of State] at times other than annually, this Section should be revised accordingly.

SECTION 208. FILING FEES. The filing fee for records filed under this [article] by the [Secretary of State] is governed by [insert appropriate fee or citation to fee provision under other state law].

Legislative Note – A jurisdiction adopting this Act should consider whether filing fees are to be a flat fee or a fee based on a different fee structure as is consistent with filing fees for records of limited partnerships or limited liability companies in the jurisdiction.

If the adopting jurisdiction has a centralized statute providing a unified fee structure the bracketed language should be a cross-reference to the appropriate unified schedule.

[ARTICLE] 3

FORMATION AND ARTICLES OF ORGANIZATION

SECTION 301. ORGANIZERS. A limited cooperative association must be organized by one or more organizers.

SECTION 302. FORMATION OF LIMITED COOPERATIVE ASSOCIATION; ARTICLES OF ORGANIZATION.

(a) To form a limited cooperative association, the organizer or organizers of the association must deliver articles of organization to the [Secretary of State] for filing. The articles must state:

- (1) the name of the association;
- (2) the purposes for which the association is formed;
- (3) the street address and, if different, mailing address of the association's initial designated office and the name of the association's initial agent for service of process at the designated office;
- (4) the name and street and mailing addresses of each organizer; and
- (5) the term for which the association is to exist if other than perpetual.

(b) Subject to Section 112(b), articles of organization may contain any other provisions in addition to those required by subsection (a).

(c) A limited cooperative association is formed after articles of organization that substantially comply with subsection (a) are delivered to the [Secretary of State], are filed, and become effective under Section 203(c).

(d) If the articles of organization state a delayed effective date, a limited cooperative association is not formed if, before the articles take effect, an organizer signs and delivers to the [Secretary of State] for filing a statement of cancellation.

SECTION 303. ORGANIZATION OF LIMITED COOPERATIVE ASSOCIATION.

- (a) After a limited cooperative association is formed:
- (1) if initial directors are named in the articles of organization, the initial directors shall hold an organizational meeting to adopt initial bylaws and carry on any other business

brought before the directors at the meeting; or

(2) if initial directors are not named in the articles of organization, the organizers shall designate the initial directors and call a meeting of the initial directors to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the association.

(b) Initial directors need not be members.

(c) An initial director serves until a successor is elected and qualified at a members' meeting or the director is removed, resigns, is adjudged incompetent or dies.

SECTION 304. BYLAWS.

(a) Bylaws must be in a record and, if not stated in the articles of organization, must include:

(1) a statement of the capital structure of the limited cooperative association, including:

(A) the groups, classes, or other types of member's interests and relative rights, preferences, and restrictions granted to or imposed upon each group, class, or other type of member's interest; and

(B) the rights to share in profits or distributions of the association;

(2) a statement of the method for admission of members;

(3) a statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;

(4) a statement that member's interest is not transferable or, if transferable, a statement of the conditions upon which it may be transferred;

(5) a statement concerning the manner in which profits and losses are allocated and distributions are made among patron members and, if investor members are authorized, the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members;

(6) a statement concerning:

(A) whether persons that are not members but who conduct business with the association may be permitted to share in allocations of profits and losses and receive

distributions; and

(B) the manner in which profits and losses are allocated and distributions are made with respect to those persons; and

(7) a statement of the number and terms of directors or the method by which the number and terms are determined.

(b) Subject to Section 112(b) and the articles of organization, bylaws may contain any other provision for managing and regulating the affairs of the association.

(c) In addition to amendments permitted under [Article] 14, the initial board of directors of a limited cooperative association may amend the bylaws by a majority vote of the directors at any time before the admission of members.

[ARTICLE] 4
MEMBERS

SECTION 401. MEMBERS. To begin business, a limited cooperative association must have at least [two] patron members unless the sole member is a cooperative.

Legislative Note – The “two” in brackets means an adopting jurisdiction may increase the number of required patron members required for a limited cooperative association to begin business. It does not mean the number can be reduced unless the association is to be a wholly owned subsidiary of a cooperative.

SECTION 402. BECOMING A MEMBER. A person becomes a member:

- (1) as provided in the organic rules;
- (2) as the result of a merger or consolidation under [Article] 15; or
- (3) with the consent of all the members.

SECTION 403. NO RIGHT OR POWER AS MEMBER TO BIND LIMITED COOPERATIVE ASSOCIATION. A member does not have the right or power as a member to act for or bind the limited cooperative association solely by reason of being a member.

SECTION 404. NO LIABILITY AS MEMBER FOR LIMITED COOPERATIVE ASSOCIATION OBLIGATIONS. Unless the articles of organization otherwise provide:

- (1) an obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a member; and
- (2) a member is not personally liable, by way of contribution or otherwise, for an obligation of the association solely by reason of being a member.

SECTION 405. RIGHT OF MEMBER AND FORMER MEMBER TO INFORMATION.

(a) Within 10 business days of receipt by a limited cooperative association of a demand made in a record, the association shall permit a member to obtain, inspect, and copy required information under Section 113(a)(1) through (8) during regular business hours in the association’s principal office. A member need not have any particular purpose for seeking the information. The association is not required to provide the same information under Section 113(a)(2) through (8) to the same member more than once during a six-month period.

(b) On demand made in a record received by the limited cooperative association, a member may obtain, inspect, and copy required information under Section 113(a)(9), (10), (12), (13), and (16) during regular business hours in association's principal office, if:

(1) the member seeks the information in good faith and for a proper purpose reasonably related to the member's interest as a member;

(2) the demand includes a description with reasonable particularity of the information sought and the purpose for seeking the information;

(3) the information sought is directly connected to the member's purpose; and

(4) the demand is reasonable.

(c) Within 10 business days after receiving a demand pursuant to subsection (b), a limited cooperative association shall inform in a record the member that made the demand:

(1) if the association agrees to provide the demanded information:

(A) the information the association will provide in response to the demand; and

(B) a reasonable time and place at which the association will provide the information; or

(2) if the association declines to provide some or all of the demanded information, the association's reasons for declining.

(d) A person dissociated as a member may obtain, inspect, and copy information under subsection (a) or (b) by delivering a demand in a record to the limited cooperative association in the same manner and subject to the same conditions applicable to a member under subsection (b) if:

(1) the information pertains to the period during which the person was a member in the association; and

(2) the person seeks the information in good faith.

(e) A limited cooperative association shall respond to a demand made pursuant to subsection (d) in the same manner as provided in subsection (c).

(f) Within 10 business days of receipt by a limited cooperative association of a demand made by a member in a record, but not more often than once in a six-month period, the

association shall deliver to the member a record stating the information with respect to the member required by Section 113(a)(17).

(g) A limited cooperative association may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the association has the burden of proving reasonableness.

(h) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(i) A person that may obtain information under this section may obtain the information through an attorney or other agent. A restriction imposed on the person under subsection (g) or by the organic rules applies to the attorney or other agent.

(j) The rights stated in this section do not extend to a person as transferee.

(k) The organic rules may require a limited cooperative association to provide more information than required by this section and may establish conditions and procedures for providing the information.

SECTION 406. ANNUAL MEMBERS' MEETING.

(a) Members shall meet annually at a time provided in the organic rules or set by the limited cooperative association's board of directors not inconsistent with the organic rules.

(b) An annual members' meeting may be held inside or outside this state at the place stated in the organic rules or selected by the limited cooperative association's board of directors not inconsistent with the organic rules.

(c) Unless the organic rules otherwise provide, members may attend or conduct an annual members' meeting through any means of communication if all members attending the meeting can communicate with each other during the meeting.

(d) A limited cooperative association's board of directors shall report, or cause to be reported, at the association's annual members' meeting the association's business and financial condition as of the close of the most recent fiscal year.

(e) Unless the organic rules otherwise provide, a limited cooperative association's board of directors shall designate the presiding officer of the association's annual members' meeting.

(f) Failure to hold an annual meeting does not affect the validity of any action by the limited cooperative association.

SECTION 407. SPECIAL MEMBERS' MEETING.

(a) A special members' meetings may only be called:

(1) as provided in the organic rules;

(2) by a majority vote of the board of directors on a proposal stating the purpose of the meeting;

(3) by demand in a record signed by members holding at least 20 percent of the voting power of the persons in any district or class entitled to vote on the matter that is the purpose of the meeting stated in the demand; or

(4) by demand in a record signed by members holding at least 10 percent of the total voting power of the persons entitled to vote on the matter that is the purpose of the meeting stated in the demand.

(b) A demand under subsection (a)(3) or (4) must be submitted to the officer of the limited cooperative association charged with keeping its records.

(c) Any voting member may withdraw its demand under subsection (a)(3) or (4) before receipt by the limited cooperative association of demands sufficient to require a special members' meeting.

(d) A special members' meeting may be held inside or outside this state at the place stated in the organic rules or selected by the limited cooperative association's board of directors not inconsistent with the organic rules.

(e) Unless the organic rules otherwise provide, members may attend or conduct special members' meetings through the use of any means of communication if all members attending the meeting can communicate with each other during the meeting.

(f) Only affairs within the purpose or purposes stated in the notice of a special members' meeting may be conducted at the meeting.

(g) Unless the organic rules otherwise provide, the presiding officer of a special members' meeting shall be designated by the limited cooperative association's board of directors.

SECTION 408. NOTICE OF MEMBERS' MEETING.

(a) A limited cooperative association shall notify each member of the time, date, and place of a members' meeting [at least 15 and not more than 60] days before the meeting.

(b) Unless the articles of organization otherwise provide, notice of an annual members' meeting need not include the purpose or purposes of the meeting.

(c) Notice of a special members' meeting must include the purpose or purposes of the meeting as contained in the demand under Section 407(a)(3) or (4) or as voted upon by the limited cooperative association's board of directors under Section 407(a)(2).

(d) Notice of a members' meeting must be given in a record unless oral notice is reasonable under the circumstances.

SECTION 409. WAIVER OF MEMBERS' MEETING NOTICE.

(a) A member may waive notice of a members' meeting before, during, or after the meeting.

(b) A member's participation in a members' meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

SECTION 410. QUORUM OF MEMBERS. Unless the organic rules otherwise provide, the member or members present at a members' meeting constitute a quorum.

SECTION 411. VOTING BY PATRON MEMBERS.

(a) Unless the organic rules provide for a larger number, each patron member has one vote. The organic rules may allocate voting power among patron members as provided in Section 412.

(b) The organic rules may provide for the allocation of patron member voting power by districts or class, or any combination thereof.

SECTION 412. DETERMINATION OF VOTING POWER OF PATRON MEMBER. The organic rules may allocate voting power among patron members on the basis of one or a combination of:

(1) one member, one vote;

- (2) use or patronage;
- (3) equity; or
- (4) if a patron member is a cooperative, the number of its patron members.

SECTION 413. VOTING BY INVESTOR MEMBERS. If the organic rules provide for investor members, each investor member has one vote, unless the organic rules otherwise provide. The organic rules may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

SECTION 414. VOTING REQUIREMENTS FOR MEMBERS. If a limited cooperative association has both patron and investor members, the following rules apply:

(1) The total voting power of all patron members may not be less than a majority of the entire voting power entitled to vote.

(2) Action on any matter is approved only upon the affirmative vote of at least a majority of:

(A) all members voting at the meeting unless more than a majority is required by [Articles] 14 through 16 or the organic rules; and

(B) votes cast by patron members unless the organic rules require a larger affirmative vote by patron members.

(3) The organic rules may provide for the percentage of the affirmative votes that must be cast by investor members to approve the matter.

SECTION 415. MANNER OF VOTING.

(a) Unless the organic rules otherwise provide, voting by a proxy at a members' meeting is prohibited. This subsection does not prohibit delegate voting based on district or class.

(b) If voting by a proxy is permitted, patron members may appoint only another patron member as a proxy and, if investor members are permitted, investor members may appoint only another investor member as a proxy.

(c) The organic rules may provide for the manner and terms of the appointment of a proxy.

(d) The organic rules may provide for voting on any question by ballot delivered by mail or voting by other means on questions that are subject to vote by members.

SECTION 416. ACTION WITHOUT A MEETING.

(a) Unless the organic rules require that action be taken only at a members' meeting, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on the action consents in a record to the action.

(b) Consent under subsection (a) may be withdrawn by a member in a record at any time before the limited cooperative association receives a consent from each member entitled to vote.

(c) Consent to any action may specify the effective date or time of the action.

SECTION 417. DISTRICTS AND DELEGATES; CLASSES OF MEMBERS.

(a) The organic rules may provide for the formation of geographic districts of patron members and:

(1) for the conduct of patron member meetings by districts and the election of directors at meetings; or

(2) that districts may elect district delegates to represent and vote for the district at members' meetings.

(b) A delegate elected under subsection (a)(2) has one vote unless voting power is otherwise allocated by the organic rules.

(c) The organic rules may provide for the establishment of classes of members, for the preferences, rights, and limitations of the classes and:

(1) for the conduct of members' meetings by classes and the election of directors at the meetings; or

(2) that classes may elect class delegates to represent and vote for the class in members' meetings.

(d) A delegate elected under subsection (c)(2) has one vote unless voting power is otherwise allocated by the organic rules.

[ARTICLE] 5

MEMBER'S INTEREST

SECTION 501. MEMBER'S INTEREST. A member's interest:

- (1) is personal property;
- (2) consists of:
 - (A) governance rights;
 - (B) financial rights; and
 - (C) the right or obligation, if any, to do business with the limited cooperative association; and
- (3) may be in certificated or uncertificated form.

SECTION 502. PATRON AND INVESTOR MEMBERS' INTERESTS.

(a) Unless the organic rules establish investor members' interests, member's interests are patron members' interests.

(b) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, while a person is a member of the association, the person:

- (1) if admitted as a patron member, remains a patron member;
- (2) if admitted as an investor member, remains an investor member; and
- (3) if admitted as a patron member and investor member remains a patron and investor member if not dissociated in one of the capacities.

SECTION 503. TRANSFERABILITY OF MEMBER'S INTEREST.

(a) Unless the organic rules otherwise provide and except for the creation of a security interest in financial rights, a member's interest other than financial rights is not transferable.

(b) Unless a transfer, other than the creation of a security interest, is restricted or prohibited by the organic rules, a member may transfer its financial rights in the limited cooperative association.

(c) The terms of any restriction on transferability of financial rights must be:

- (1) set forth in the organic rules and the member records of the association; and
 - (2) conspicuously noted on any certificates evidencing a member's interest.
- (d) A transferee of a member's financial rights, to the extent transferred, has the right to

share in the allocation of profits or losses and to receive the distributions to the member transferring the interest to the same extent as the transferring member.

(e) A transferee of a member's financial rights does not become a member upon transfer of the rights unless the transferee is admitted as a member by the limited cooperative association.

(f) A limited cooperative association need not give effect to a transfer under this section until the association has notice of the transfer.

(g) A transfer of a member's financial rights in violation of a restriction on transfer contained in the organic rules is ineffective as to a person having notice of the restriction at the time of transfer.

SECTION 504. SECURITY INTEREST AND SET-OFF.

(a) A member or transferee may create an enforceable security interest in its financial rights in a limited cooperative association.

(b) Unless the organic rules otherwise provide, a member may not create an enforceable security interest in the member's governance rights in a limited cooperative association.

(c) A limited cooperative association has a continuing security interest in the financial rights of a member to secure payment of any indebtedness or other obligation of the member to the association.

(d) Unless the organic rules otherwise provide, a member may not compel the association to offset financial rights against any indebtedness or obligation owed to the association.

SECTION 505. CHARGING ORDERS FOR A JUDGMENT CREDITOR OF MEMBER OR TRANSFEREE.

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the financial rights of the judgment debtor for the unsatisfied amount of the judgment. A charging order issued under this subsection constitutes a lien on the judgment debtor's financial rights and requires the limited cooperative association to pay over to the creditor or receiver, to the extent necessary to satisfy the judgment, any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order under subsection (a), the court may:

(1) appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the judgment debtor's financial rights, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders that the circumstances of the case may require to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the financial rights. The purchaser at the foreclosure sale obtains only the financial rights that are subject to the charging order, does not thereby become a member, and is subject to Section 503.

(d) At any time before a sale pursuant to a foreclosure, a member or transferee whose financial rights are subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure, the limited cooperative association or one or more members whose financial rights are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order. Unless the organic rules otherwise provide, the association may act under this subsection only with the consent of all members whose financial rights are not subject to the charging order.

(f) This [act] does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's financial rights.

(g) This section provides the exclusive remedy by which persons seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment out of the judgment debtor's financial rights.

(h) The limitations of this section to financial rights do not apply to the extent that the organic rules provide for the transfer of the member's interest in addition to financial rights.

[ARTICLE] 6

MARKETING CONTRACTS

SECTION 601. AUTHORITY. In this [article], “marketing contract” means a contract between a limited cooperative association and another person that need not be a patron member:

(1) requiring the other person to sell, or deliver for sale or marketing on the person’s behalf, a specified part of the person’s products, commodities, or goods exclusively to or through the association or any facilities furnished by the association; or

(2) authorizing the association to act for the person in any manner with respect to the products, commodities, or goods.

SECTION 602. MARKETING CONTRACTS.

(a) If a marketing contract provides for the sale of products, commodities, or goods to a limited cooperative association, the sale transfers title absolutely to the association upon delivery or at any other specific time expressly provided by the contract.

(b) A marketing contract may:

(1) authorize a limited cooperative association to create an enforceable security interest in the products, commodities, or goods delivered; and

(2) allow the association to sell the products, commodities, or goods delivered, and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

SECTION 603. DURATION OF MARKETING CONTRACT. The initial duration of a marketing contract may not exceed 10 years, but the contract may be made self-renewing for additional periods not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least 90 days before the end of the current term.

SECTION 604. REMEDIES FOR BREACH OF CONTRACT.

(a) A marketing contract may liquidate damages to be paid to a limited cooperative association for a breach or anticipatory repudiation of the marketing contract but only at an amount or at a formula that is reasonable in light of the actual or then anticipated harm caused by the breach or to be caused by the anticipatory repudiation. The provision may be enforced as

liquidated damages and is not to be considered a penalty.

(b) If there is a breach or anticipatory repudiation of a marketing contract the cooperative association may seek an injunction to prevent the further breach or an anticipatory repudiation of the contract and the specific performance of the contract.

(c) In the case of a marketing contract between a limited cooperative association and a patron member the organic rules may also provide for the remedies under subsections (a) and (b).

[ARTICLE] 7

DIRECTORS AND OFFICERS

SECTION 701. EXISTENCE AND POWERS OF BOARD OF DIRECTORS.

(a) Unless the number of members is fewer than three, a limited cooperative association must have a board of directors consisting of three or more individuals. If there are fewer than three members, the number of directors may not be less than the number of members.

(b) The affairs of a limited cooperative association must be managed by, or under the direction of, the association's board of directors, and the board may adopt policies and procedures that are not in conflict with the organic rules or this [act].

(c) An individual does not have agency authority on behalf of a limited cooperative association solely by being a director.

SECTION 702. NO LIABILITY AS DIRECTOR FOR LIMITED COOPERATIVE ASSOCIATION'S OBLIGATIONS. An obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a director. An individual is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of an association solely by reason of being a director.

SECTION 703. QUALIFICATIONS OF DIRECTORS AND COMPOSITION OF BOARD.

(a) A director of a limited cooperative association must be an individual.

(b) Subject to this section, the organic rules may provide for qualifications of directors.

(c) Unless the organic rules otherwise provide, and subject to Section 303 and subsections (d) and (e), each director of a limited cooperative association must be a member of the association or an individual who is designated by a member that is not an individual and who is a member for purposes of director qualification.

(d) Unless the organic rules otherwise provide, a director may be an officer or employee of the limited cooperative association.

(e) The organic rules may provide for nonmember directors. The number of nonmember directors may not exceed:

- (1) one director if there are two through four directors;

- (2) two directors if there are five through eight directors; or
- (3) one-third of the total number of directors if there are nine or more directors.

SECTION 704. ELECTION OF DIRECTORS.

(a) Unless the organic rules require a greater number:

(1) the number of directors that must be patron members may not be less than:

- (A) one director if there are two or three directors;
- (B) two directors if there are four or five directors;
- (C) three directors if there are six through eight directors; or
- (D) one-third of the directors if there are nine or more directors; and

(2) a majority of the board of directors of a limited cooperative association must be elected exclusively by patron members.

(b) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, the directors who are not elected exclusively by patron members under subsection (a) are elected by the investor members.

(c) Subject to subsection (a), the organic rules may provide for the election of all or a specified number of directors by one or more districts or classes of members.

(d) Subject to subsection (a), the organic rules may provide for the nomination or election of directors by districts or classes, directly or by district delegates.

(e) If a class of members consists of a single member, the organic rules may provide for the member to appoint a director or directors.

(f) Unless the organic rules otherwise provide, cumulative voting for directors of a limited cooperative association is prohibited.

(g) Except as otherwise provided by the organic rules, subsection (e), or Sections 303, 416, 417, and 709, member directors of a limited cooperative association must be elected at an annual members' meeting.

SECTION 705. TERM OF DIRECTOR.

(a) Unless the organic rules otherwise provide, and subject to subsections 705(c) and (d) and Section 303(c), the term of a director of a limited cooperative association expires at the annual members' meeting following the directors' election or appointment. The term of a

director may not exceed three years.

(b) Unless the organic rules otherwise provide, a director may be reelected.

(c) Except as provided in subsection (d), a director continues to serve until a successor director is elected or appointed and qualified or the director is removed, resigns, is adjudged incompetent, or dies.

(d) Unless the organic rules otherwise provide, a director does not serve the remainder of the director's term if the director to qualify to be a director.

SECTION 706. RESIGNATION OF DIRECTOR. A director may resign at any time by giving notice in a record to the limited cooperative association. Unless the notice states a later effective date, a resignation is effective when the notice is received by the limited cooperative association.

SECTION 707. REMOVAL OF DIRECTOR. Unless the organic rules otherwise provide, the following rules apply:

(1) Members may remove a director with or without cause.

(2) A member or members holding at least 10 percent of the total voting power entitled to be voted in the election of the director may demand removal of a director by a signed petition submitted to the officer of the limited cooperative association charged with keeping its records.

(3) Upon receipt of a petition for removal of a director, an officer or the board of directors shall:

(A) call a special members' meeting to be held within 90 days after receipt of the petition by the association; and

(B) mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal notice of the meeting which complies with Section 408.

(4) A director against whom a petition has been submitted must be informed in a record of the petition within a reasonable time before the members' meeting at which the members consider the petition.

(5) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

SECTION 708. SUSPENSION OF DIRECTOR BY BOARD.

(a) A limited cooperative association's board of directors may suspend a director of the association if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the association and the director is engaging, or has engaged, in:

- (1) fraudulent conduct with respect to the association or its members;
- (2) gross abuse of the position of the director;
- (3) intentional or reckless infliction of harm on the association; or
- (4) any other behavior, act, or omission as provided by the organic rules.

(b) A suspension under subsection (a) is effective for 30 days unless the board of directors calls and gives notice of a special members' meeting for removal of the director before the end of the 30-day period in which case the suspension is effective until adjournment of the special meeting or the director is removed.

SECTION 709. VACANCY ON BOARD.

(a) Unless the organic rules otherwise provide, a vacancy on the board of directors of a limited cooperative association must be filled:

- (1) within a reasonable time by majority vote of the remaining directors until the next annual members' meeting or a special members' meeting called to fill the vacancy; and
- (2) for the unexpired term by members at the next annual members' meeting or a special members' meeting called to fill the vacancy.

(b) Unless the organic rules otherwise provide, if a vacating director was elected or appointed by a class of members or a district:

- (1) the appointed director must be of that class or district; and
- (2) the election of the director for the unexpired term must be conducted in the same manner as would the election for that position without a vacancy.

(c) If a member appointed a vacating director, the organic rules may provide for that member to appoint a director to fill the vacancy.

SECTION 710. COMPENSATION OF DIRECTORS. Unless the organic rules otherwise provide, the board of directors of a limited cooperative association may fix the

remuneration of directors and of nondirector committee members appointed under Section 717(a).

SECTION 711. MEETINGS.

(a) The board of directors of a limited cooperative association shall meet at least annually and may hold meetings inside or outside this state.

(b) Unless the organic rules otherwise provide, a limited cooperative association's board of directors may permit directors to attend or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting.

SECTION 712. ACTION WITHOUT MEETING.

(a) Unless prohibited by the organic rules, any action that may be taken by the board of directors of a limited cooperative association may be taken without a meeting if each director consents in a record to the action.

(b) Consent under subsection (a) may be withdrawn by a director in a record at any time before the limited cooperative association receives consent from all directors.

(c) A record of consent for any action under subsection (a) may specify the effective date or time of the action.

SECTION 713. MEETINGS AND NOTICE.

(a) Unless the organic rules otherwise provide, a limited cooperative association's board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.

(b) Unless the organic rules otherwise provide, notice of the time, date, and place of a special meeting of a limited cooperative association's board of directors must be given to all directors at least three days before the meeting, the notice must contain a statement of the purpose of the special meeting, and the meeting is limited to the matters contained in the statement.

SECTION 714. WAIVER OF NOTICE OF MEETING.

(a) Unless the organic rules otherwise provide, a director of a limited cooperative association may waive any required notice of a meeting of the association's board of directors in

a record before, during, or after the meeting.

(b) Unless the organic rules otherwise provide, a director's participation in a meeting is a waiver of notice of that meeting unless:

(1) the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to the action taken at the meeting; or

(2) the director promptly objects upon the introduction of any matter for which notice under Section 713 has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

SECTION 715. QUORUM.

(a) Unless the articles of organization provide for a greater number, a majority of the fixed number of directors on a limited cooperative association's board of directors constitutes a quorum for the management of the affairs of the association.

(b) If a quorum of the board of directors of a limited cooperative association is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of directors originally present results in the number of directors being less than the number required for a quorum.

(c) A director present at a meeting but objecting to notice under Section 714(b)(1) or (2) does not count toward a quorum.

SECTION 716. VOTING.

(a) Each director of a limited cooperative association has one vote for purposes of decisions made by the board of directors of the association.

(b) Unless the organic rules otherwise provide, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.

SECTION 717. COMMITTEES.

(a) Unless the organic rules otherwise provide, a limited cooperative association's board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

(b) Unless the organic rules otherwise provide, an individual appointed to serve on a

committee of a limited cooperative association need not be a director or member of the association.

(c) A non-director serving on a committee has the same rights, duties, and obligations as a director serving on a committee.

(d) Unless the organic rules otherwise provide each committee of a limited cooperative association may exercise the powers delegated by the association's board of directors, but a committee may not:

(1) approve allocations or distributions except according to a formula or method prescribed by the board of directors;

(2) approve or propose to members action requiring approval of members; or

(3) fill vacancies on the board of directors or any of its committees.

SECTION 718. STANDARDS OF CONDUCT AND LIABILITY. Except as otherwise provided in Section 720:

(1) the discharge of the duties of a director or member of a committee of the board of directors of a limited cooperative association is governed by the law applicable to directors of entities organized under [insert cross-reference to this state's cooperative corporation act] or [insert reference to this state's general business corporation act]; and

(2) the liability of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under [insert reference to this state's cooperative corporation act] [insert reference to this state's general business corporation act].

***Legislative Note:** Adopting jurisdictions should choose only one of the bracketed alternative statutes to govern what has traditionally been called the "fiduciary duties" of directors. While the listed laws are generally similar they do not contain the same formulation either between the laws in a given jurisdiction or between laws governing even the same type of entity among various jurisdictions. Thus the choice of the bracketed law has policy implications for limited cooperative associations organized under this Act.*

Finally, if the adopting jurisdiction desires to add statutory cross-references to the text of a referenced act, it should be very careful to pick up citations to sections in the referenced act that provide flexibility for the entity to vary the applicable standards. For example, the RMBCA allows its standard of care to be modified within limits set forth in its articles of incorporation provisions. Without such cross-references it is intended that this Act includes all such sections in

the referenced act through this Section.

SECTION 719. CONFLICT OF INTEREST.

(a) The law applicable to conflicts of interest between a director of an entity organized under [insert reference to this state's cooperative corporation act] [insert reference to this state's general business corporation act] governs conflicts of interest between a limited cooperative association and a director or member of a committee of the board of directors of the association.

(b) A director does not have a conflict of interest under [this act] or the organic rules solely because the director's conduct relating to the duties of the director may further the director's own interest.

Legislative Note: See the Legislative Note following Section 718.

SECTION 720. OTHER CONSIDERATIONS OF DIRECTORS. Unless the articles of organization otherwise provide, in considering the best interests of a limited cooperative association, a director of the association in discharging the duties of director, in conjunction with considering the long and short term interest of the association and its patron members, may consider:

- (1) the interest of employees, customers, and suppliers of the association;
- (2) the interest of the community in which the association operates; and
- (3) other cooperative principles and values that appropriately can be applied in the context of the decision.

SECTION 721. RIGHT OF DIRECTOR OR COMMITTEE MEMBER TO INFORMATION. A director of a limited cooperative association or a member of a committee appointed under Section 717 may obtain, inspect, and copy all information regarding the state of activities and financial condition of the association and other information regarding the activities of the association reasonably related to the performance of the director's duties as director or the committee member's duties as a member of the committee. Information obtained in accordance with this Section may not be used in any manner that would violate any duty of or to the association.

SECTION 722. APPOINTMENT AND AUTHORITY OF OFFICERS.

(a) A limited cooperative association has the officers:

(1) provided in the organic rules; or

(2) if not provided in the organic rules, established by the association's board of directors in a manner not inconsistent with the organic rules.

(b) The organic rules may designate or, if the rules do not designate, the board of directors of the limited cooperative association shall designate, one of the association's officers for preparing all records required by Section 113 and for the authentication of records.

(c) Unless the organic rules otherwise provide, the board of directors shall appoint the officers of the limited cooperative association.

(d) Officers of a limited cooperative association have the authority and obligation to perform the duties the organic rules prescribe or as the association's board of directors determines is consistent with the organic rules.

(e) The election or appointment of an officer of a limited cooperative association does not of itself create a contract between the association and the officer.

(f) Unless the organic rules otherwise provide, an individual may simultaneously hold more than one office in a limited cooperative association.

SECTION 723. RESIGNATION AND REMOVAL OF OFFICERS.

(a) The board of directors of a limited cooperative association may remove an officer at any time with or without cause.

(b) An officer of a limited cooperative association may resign at any time by giving notice in a record to the association. Unless the notice specifies a later time, the resignation is effective when the notice is given.

[ARTICLE] 8

INDEMNIFICATION

Legislative Note: See the Legislative Note to Section 718. As with standards of conduct and liability and conflicts of interest, the matter of indemnification of directors and officers of an entity can be among the most complex and important in a statute governing the organization of an entity. Because most, if not all, adopting jurisdictions will have addressed this issue in statutes relating to corporations or in other cooperative statutes, an adopting jurisdiction should reference one of the bracketed statutes to provide a consistent policy with respect to indemnification and the right of a limited cooperative association to provide insurance.

SECTION 801. INDEMNIFICATION.

(a) Indemnification of an individual who has incurred liability or is a party, or is threatened to be made a party, to litigation because of the performance of a duty to, or activity on behalf of, a limited cooperative association is governed by [insert reference to this state's cooperative corporation act] [insert reference to this state's general business corporation act].

(b) A limited cooperative association may purchase and maintain insurance on behalf of any individual against liability asserted against or incurred by the individual to the same extent and subject to the same conditions as provided by [insert reference to this state's cooperative corporation act] [insert reference to this state's general business corporation act].

[ARTICLE] 9

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

SECTION 901. MEMBERS' CONTRIBUTIONS. The organic rules must establish the amount, manner, or method of determining any contribution requirements for members or may authorize the board of directors of a limited cooperative association to establish the manner and terms of any contributions by members.

Legislative Note: The type of property that is permitted to be contributed to organizations and entities is sometimes, though increasingly rarely, the subject of state constitutions. Adopting jurisdictions should review their constitutions for the existence of inconsistent provisions and revise this Section to be consistent therewith.

SECTION 902. FORMS OF CONTRIBUTION AND VALUATION.

(a) Unless the organic rules otherwise provide, the contributions of a member to a limited cooperative association may consist of tangible or intangible property or other benefit to the association, including money, labor or other services performed or to be performed, promissory notes, other agreements to contribute cash or property, and contracts to be performed.

(b) The receipt and acceptance of contributions and the valuation of contributions must be reflected in a limited cooperative association's records required under Section 113.

(c) Unless the organic rules otherwise provide, the board of directors of a limited cooperative association shall determine the value of a member's contributions received or to be received and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been fully met.

SECTION 903. CONTRIBUTION AGREEMENTS.

(a) An agreement to make a contribution may vary the requirements of this section. If it does not do so, subsections (b) through (d) shall apply.

(b) An agreement by a person to make a contribution to a limited cooperative association made before formation of the association is irrevocable for six months after the agreement is signed by the person unless all parties to the agreement consent to the revocation.

(c) A person's obligation to make a contribution under subsection (a) is not excused by the person's death, disability, or other inability to perform personally.

(d) If a person does not make a required contribution to a limited cooperative association under an agreement described in subsection (a):

(1) the person is obligated, at the option of the association, once formed, to contribute money equal to the value of that part of the contribution that has not been made, and the obligation may be enforced as a debt to the association; or

(2) the association, once formed, may rescind the agreement if the debt remains unpaid more than 20 days after the association demands payment from the person, and upon rescission the person has no further rights or obligations with respect to the association.

SECTION 904. ALLOCATIONS OF PROFITS AND LOSSES.

(a) The organic rules may provide that profits of a limited cooperative association be allocated among members, among persons that are not members but that conduct business with the association, to an unallocated account, or to any combination thereof. Unless the organic rules otherwise provide, losses of the association must be allocated in the same proportion as profits.

(b) Unless the organic rules otherwise provide, all the profits and losses must be allocated to patron members.

(c) If a limited cooperative association has investor members, the organic rules may not reduce the allocation to patron members to less than 50 percent of profits. For purposes of this subsection, the following rules apply:

(1) Sums paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members under this subsection.

(2) Sums paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocated to investor members.

(d) Unless the organic rules otherwise prohibit, in determining the amount of profits for purposes of subsections (a), (b), and (c), the association's board of directors may first deduct and set aside a part of the profits to create or accumulate:

(1) a capital reserve; and

(2) reasonable reserves for specific purposes, including expansion and

replacement of capital assets, education, training, and information concerning principles of cooperation, community responsibility, and development.

(e) Subject to subsection (f) and the organic rules, the board of directors of a limited cooperative association shall further allocate the amounts determined pursuant to subsections (a), (b), and (c):

(1) to patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and

(2) to investor members, if any, in the ratio of each investor member's contributions to the total contributions of all investor members.

(f) For purposes of allocation of profits and losses, or specific items thereof, of a limited cooperative association to members, the organic rules may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

SECTION 905. DISTRIBUTIONS.

(a) Unless the organic rules otherwise provide and subject to Section 907, the board of directors may authorize, and the limited cooperative association may make, distributions to members.

(b) Unless the organic rules otherwise provide, distributions to members may be made in the form of cash, capital credits, allocated patronage equities, revolving fund certificates, the limited cooperative association's own or other securities, or any other form.

SECTION 906. REDEMPTION OR REPURCHASE. Property distributed under Section 905(b), other than cash, may be redeemed or repurchased as provided in the organic rules but no redemption or repurchase may be made without full and final authorization by the board of directors, which may be withheld for any reason in the board's sole discretion. The redemption or repurchase will be treated as a distribution under Section 907.

SECTION 907. LIMITATIONS ON DISTRIBUTIONS.

(a) A limited cooperative association may not make a distribution if, after the distribution:

(1) the association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or

(2) the association's assets would be less than the sum of its total liabilities.

(b) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other methods that are reasonable in the circumstances.

(c) Except as otherwise provided in subsection (d), the effect of a distribution allowed under subsection (b) is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the association; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within 120 days after that date; or

(B) the payment is made, if payment occurs more than 120 days after the distribution is authorized.

(d) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(e) For purposes of this Section, "distribution" does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

SECTION 908. LIABILITY FOR IMPROPER DISTRIBUTIONS: LIMITATION OF ACTION.

(a) A director who consents to a distribution made in violation of Section 907 is personally liable to the limited cooperative association for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that

in consenting to the distribution the director failed to comply with Sections 718 or 719.

(b) A member or holder of financial rights which received a distribution knowing that the distribution to the member or holder was made in violation of Section 907 is personally liable to the limited cooperative association but only to the extent that the distribution received by the member or holder exceeded the amount that could have been properly paid under Section 907.

(c) A director against whom an action is commenced under subsection (a) may:

(1) implead in the action any other director that is liable under subsection (a) and compel contribution from the person; and

(2) implead in the action any person that is liable under subsection (b) and compel contribution from the person in the amount the person received as described in subsection (b).

(d) An action under this Section is barred if it is not commenced within two years after the distribution.

[SECTION 909. RELATION TO STATE SECURITIES LAW. Patron member's interests in the limited cooperative association that are based on patronage are entitled to the same exemption as provided for substantially similar interests in cooperatives under [citation to appropriate provision in other laws].]

Legislative Note: Section 909 is bracketed because it represents a unique policy decision that concerns both limited cooperative associations and state securities law. If the adopting jurisdiction has a securities exemption for general cooperatives located in cooperative statutes, it should determine whether the jurisdiction is best served by including limited cooperative associations within the existing exemption by cross-referencing the statutory provision here. If the adopting jurisdiction's free standing securities law has a specific exemption or definitional exclusion for cooperatives the adopting jurisdiction might consider whether limited cooperative associations should be treated similarly by that statutory provision.

[SECTION 910. ALTERNATIVE DISTRIBUTION OF UNCLAIMED PROPERTY, DISTRIBUTIONS, REDEMPTIONS, OR PAYMENTS. A limited cooperative association may distribute unclaimed property, distributions, redemptions, or payments under [citation to the applicable provision in the law governing cooperatives not formed under this [act] in this state].]

Legislative Note: The general cooperative law of many, but not all states, contains a provision unique to cooperatives concerning the disposition of unclaimed property. Some of these

provisions allow unclaimed property to revert to the cooperative if, after reasonable search, the member cannot be found; others may allow the cooperative to donate unclaimed property to a charity. In states having such a provision the legislature should consider as a matter of policy whether the same provision should be applicable to limited cooperative associations. This is the appropriate place in this Act for cross-referencing the provision contained in other law of the adopting jurisdiction and thereby incorporating it by reference. See, e.g., OREGON REV. STAT. § 62.425 (2003). If the referenced statute in a given state requires the cooperative's articles or bylaws to authorize the use of the statutory provision, the authorization requirement should be added to the list in Section 112.

[ARTICLE] 10
DISSOCIATION

SECTION 1001. MEMBER'S DISSOCIATION.

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by express will.

(b) Unless the organic rules otherwise provide, a member's dissociation from a limited cooperative association is wrongful only if the dissociation:

(1) breaches an express provision of the organic rules; or

(2) occurs before the termination of the limited cooperative association and:

(A) the person is expelled as a member under subsection (d)(3) or (4); or

(B) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a member because it dissolved or terminated in bad faith.

(c) Unless the organic rules otherwise provide, a person that wrongfully dissociates as a member is liable to the limited cooperative association for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member to the association.

(d) A member is dissociated from the limited cooperative association as a member when any of the following occurs:

(1) the association receives notice in a record of the member's express will to dissociate as a member, except that, if the member specifies in the notice a withdrawal date later than the date the association had notice, on that later date;

(2) an event stated in the organic rules as causing the member's dissociation as a member occurs;

(3) the member is expelled as a member pursuant to the organic rules;

(4) the member is expelled as a member by the association's board of directors if:

(A) it is unlawful to carry on the association's activities with the member as a member;

(B) there has been a transfer of all the member's financial rights in the

association, other than:

(i) a creation or perfection for security purposes; or

(ii) a charging order in effect under Section 505 which has not been foreclosed;

(C) the member is a limited liability company, association, or partnership, it has been dissolved, and its business is being wound up; or

(D) the member is a corporation or cooperative and:

(i) the member has filed a certificate of dissolution or the equivalent, or the jurisdiction of formation has revoked the association's charter or right to conduct business;

(ii) the association sends a notice to the member that it will be expelled as a member for a reason described in clause (i); and

(iii) within 90 days after the notice is sent under clause (ii), the member does not revoke its certificate of dissolution or the equivalent, or the jurisdiction of formation does not reinstate the association's charter or right to conduct business; or

(E) the member is an individual and is adjudged incompetent;

(5) in the case of a member who is an individual, the individual's death;

(6) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire financial rights in the association;

(7) in the case of a member that is an estate, distribution of the estate's entire financial interest in the association;

(8) in the case of a member that is not an individual, partnership, limited liability company, cooperative, corporation, trust, or estate, the termination of the member; or

(9) the association's participation in a consolidation or merger if, under the plan of merger as approved under [Article] 15, the member ceases to be a member.

SECTION 1002. EFFECT OF DISSOCIATION AS MEMBER.

(a) Upon a member's dissociation:

(1) subject to Section 1003, the person has no further rights as a member; and

(2) subject to Section 1003 and [Article] 15, any financial rights owned by the

person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee who is not admitted as a member after dissociation.

(b) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or liability to the limited cooperative association which the person incurred under the organic rules, by contract or other means while a member.

SECTION 1003. POWER OF ESTATE OF MEMBER. Unless the organic rules provide for greater rights, if a member dies or is dissociated under Section 1001(d)(4)(E) for reason of being adjudged incompetent, the member's personal representative or other legal representative may exercise the rights of a transferee of the member's financial rights as provided in Section 503 and, for purposes of settling the estate of a deceased member, may exercise the informational rights of a current member to obtain information under Section 405.

[ARTICLE] 11
DISSOLUTION

SECTION 1101. DISSOLUTION. A limited cooperative association may be dissolved:

- (1) nonjudicially under Section 1102;
- (2) judicially under Section 1103; or
- (3) administratively under Section 1111.

SECTION 1102. NONJUDICIAL DISSOLUTION. Except as otherwise provided in Sections 1103 and 1111, a limited cooperative association is dissolved and its activities must be wound up only upon:

(1) the occurrence of an event or the coming of a time specified in the articles of organization;

(2) the action of the association's organizers, board of directors, or members under Section 1104 or 1105; or

(3) the expiration of 90 days after the dissociation of a member, resulting in the association having one patron member and no other members, unless the association:

(A) has a sole member that is a cooperative; or

(B) within the 90-day period, admits at least one member in accordance with the organic rules and has at least two members, at least one of which is a patron member.

SECTION 1103. JUDICIAL DISSOLUTION. The [appropriate court] may dissolve a limited cooperative association or order any action that under the circumstances is appropriate and equitable:

(1) in a proceeding initiated by the [Attorney General], if it is established that:

(A) the association obtained its articles of organization through fraud; or

(B) the association has continued to exceed or abuse the authority conferred upon it by law; or

(2) in a proceeding initiated by a member, if it is established that:

(A) the directors are deadlocked in the management of the association's affairs, the members are unable to break the deadlock, and irreparable injury to the association is

occurring or is threatened because of the deadlock;

(B) the directors or those in control of the association have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) the members are deadlocked in voting power and have failed to elect successors to directors whose terms have expired for two consecutive periods during which annual members' meetings were held or were to be held; or

(D) the assets of the association are being misapplied or wasted.

SECTION 1104. VOLUNTARY DISSOLUTION BEFORE COMMENCEMENT OF ACTIVITY. A majority of the organizers or initial directors of a limited cooperative association that has not yet begun business activity or the conduct of its affairs may dissolve the association.

SECTION 1105. VOLUNTARY DISSOLUTION BY THE BOARD AND MEMBERS.

(a) Except as otherwise provided in Section 1104, for a limited cooperative association to voluntarily dissolve:

(1) a resolution to dissolve must be approved by a majority vote of the board of directors unless a greater percentage is required by the organic rules;

(2) the board of directors must call a members' meeting to consider the resolution, to be held within 90 days after adoption of the resolution; and

(3) the board of directors must mail or otherwise transmit or deliver to each member in a record that complies with Section 408:

(A) the resolution required by paragraph (1);

(B) a recommendation that the members vote in favor of the resolution or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis of that determination; and

(C) notice of the members' meeting, in the same manner as notice of a special members' meeting is given.

(b) Subject to subsection (c), a resolution to dissolve must be approved by:

(1) at least two-thirds vote of the voting power of members present at a members'

meeting called under subsection (a)(2); and

(2) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a larger percentage vote by patron members.

(c) The organic rules may provide that the percentage vote under subsection (b)(1) be:

(1) a different percentage vote which must not be less than a majority of members voting at the meeting; or

(2) measured against the voting power of all members; or

(3) a combination of subsections (c)(1) and (c)(2).

SECTION 1106. WINDING UP.

(a) A limited cooperative association continues after dissolution only for purposes of winding up its activities.

(b) In winding up a limited cooperative association's activities, the board of directors shall cause the association to:

(1) discharge its liabilities, settle and close its activities, and marshal and distribute its assets;

(2) preserve the association or its property as a going concern for no more than a reasonable time;

(3) prosecute and defend actions and proceedings;

(4) transfer association property; and

(5) perform other necessary acts.

(c) Upon application of a limited cooperative association, any member, or a holder of financial rights, the [appropriate court] may order judicial supervision of the winding up of the association, including the appointment of a person to wind up the dissolved association's activities, if:

(1) after a reasonable time, the association has not wound up its activities; or

(2) the applicant establishes other good cause.

(d) If a person is appointed pursuant to subsection (c) to wind up the activities of a limited cooperative association, the association shall promptly deliver to the [Secretary of State]

for filing an amendment to the articles of organization to reflect the appointment.

SECTION 1107. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED COOPERATIVE ASSOCIATION.

(a) In winding up a limited cooperative association's business, the association must apply its assets to discharge its obligations to creditors, including members who are creditors. Any remaining assets must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b).

(b) Unless the organic rules otherwise provide, each member is entitled to a distribution from the limited cooperative association of any remaining assets in the proportion of the member's financial interests to the total financial interests of the members after all other obligations are satisfied. For purposes of this subsection, unless the organic rules otherwise provide, "financial interests" means the amounts recorded in the names of members in the records of the association at the time the distribution is made, including amounts paid to become a member, amounts allocated but not distributed to members, and amounts of distributions authorized but not yet paid to members.

SECTION 1108. KNOWN CLAIMS AGAINST DISSOLVED LIMITED COOPERATIVE ASSOCIATION.

(a) Subject to subsection (d), a dissolved limited cooperative association may dispose of the known claims against it by following the procedure in subsection (b).

(b) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice must:

- (1) specify the information required to be included in a claim;
- (2) provide an address to which the claim must be sent;
- (3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
- (4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited cooperative association is barred if the requirements of subsection (b) are met, and:

- (1) the association is not notified of the claimant's claim, in a record, by the

deadline specified in the notice under subsection (b)(3);

(2) in the case of a claim that is timely received but rejected by the dissolved association, the claimant does not commence an action to enforce the claim against the association within 90 days after receipt of the notice of the rejection; or

(3) in the case of a claim that is timely received but is neither accepted nor rejected by the association within 120 days after the deadline for receipt of claims, the claimant does not commence an action to enforce the claim against the association within 90 days after the 120 day period.

(d) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that is contingent on that date.

SECTION 1109. OTHER CLAIMS AGAINST DISSOLVED LIMITED COOPERATIVE ASSOCIATION.

(a) A dissolved limited cooperative association may publish notice of its dissolution and request persons having claims against the association to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited cooperative association's principal office is located or, if the association does not have a principal office in this state, in the [county] in which the association's designated office is or was last located;

(2) describe the information required to be contained in a claim and provide an address to which the claim is to be sent; and

(3) state that a claim against the association is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

(c) If a dissolved limited cooperative association publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved association within three years after the publication date of the notice:

(1) a claimant that is entitled to but did not receive notice in a record under

Section 1108; and

(2) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) against the dissolved limited cooperative association, to the extent of its undistributed assets; or

(2) if the association's assets have been distributed in connection with winding up the association's activities, against a member or holder of financial rights to the extent of that person's proportionate share of the claim or the association's assets distributed to the person in connection with the winding up, whichever is less, to the extent the person's total liability for all claims under this subsection does not exceed the total amount of assets distributed to the person as part of the winding up of the association.

SECTION 1110. COURT PROCEEDING.

(a) Upon application by a dissolved limited cooperative association that has published a notice under Section 1109, the court in the [county] where the association's principal office or, if none in this state, its designated office in this state is located may determine the amount and form of security to be provided for payment of claims against the association that are contingent or have not been made known to the association or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the association, are reasonably estimated to arise after the effective date of dissolution.

(b) Within 10 days after filing an application pursuant to subsection (a), a dissolved limited cooperative association shall give notice of the proceeding to each known claimant holding a contingent claim.

(c) The court may appoint a representative in a proceeding brought under this section to represent all claimants whose identities are unknown. The reasonable fees and expenses of the representative, including all reasonable expert witness fees, shall be paid by the dissolved limited cooperative association.

(d) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court satisfies the association's obligations with respect to claims

that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member who received a distribution.

SECTION 1111. ADMINISTRATIVE DISSOLUTION.

(a) The [Secretary of State] may dissolve a limited cooperative association administratively if the association does not:

(1) pay, within 60 days after the due date, any fee, tax, or penalty due to the [Secretary of State] under this [act] [or other law]; or

(2) deliver its annual report to the [Secretary of State].

(b) If the [Secretary of State] determines that a ground exists for administratively dissolving a limited cooperative association, the [Secretary of State] shall file a record of the determination and serve the association with a copy of the record.

(c) If, within 60 days after service of a copy of the [Secretary of State's] determination that a ground exists for dissolving a limited cooperative association, the association does not correct each ground for dissolution or demonstrate to the satisfaction of the [Secretary of State] that each uncorrected ground determined by the [Secretary of State] does not exist, the [Secretary of State] shall administratively dissolve the association by preparing, signing, and filing a declaration of dissolution which states the grounds for dissolution. The [Secretary of State] shall serve the association with a copy of the declaration.

(d) A limited cooperative association administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets and to give notice to claimants under Sections 1108 and 1109.

(e) The administrative dissolution of a limited cooperative association does not terminate the authority of its agent for service of process.

Legislative Note: *In adopting jurisdictions that do not generally permit administrative dissolution of entities that do not pay required fees, taxes or penalties to governmental agencies other than the [Secretary of State], the words "or other law" in paragraph 1111(a)(1) should be deleted.*

SECTION 1112. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

(a) A limited cooperative association that has been administratively dissolved may apply to the [Secretary of State] for reinstatement within two years after the effective date of dissolution. The application must be delivered to the [Secretary of State] for filing and state:

- (1) the name of the association and the effective date of its administrative dissolution;
 - (2) that the grounds for dissolution either did not exist or have been eliminated;
- and
- (3) that the association's name satisfies the requirements of Section 109.

(b) If the [Secretary of State] determines that an application contains the information required by subsection (a) and that the information is correct, the [Secretary of State] shall:

- (1) prepare a declaration of reinstatement;
- (2) sign and file the original of the declaration; and
- (3) serve a copy of the declaration on the association.

(c) When reinstatement under this section becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited cooperative association may resume or continue its activities as if the administrative dissolution had not occurred.

SECTION 1113. DENIAL OF REINSTATEMENT; APPEAL.

[(a)] If the [Secretary of State] denies a limited cooperative association's application for reinstatement following administrative dissolution, the [Secretary of State] shall prepare, sign, and file a notice that explains the reason for denial and serve the association with a copy of the notice.

[(b)] Within 30 days after service of a notice of denial of reinstatement by the [Secretary of State], a limited cooperative association may appeal the denial by petitioning the [appropriate court] to set aside the dissolution. The petition must be served on the [Secretary of State] and contain a copy of the [Secretary of State's] declaration of dissolution, the association's application for reinstatement, and the [Secretary of State's] notice of denial.

(c) The court may order the [Secretary of State] to reinstate the dissolved cooperative association or may take other action the court considers appropriate.]

SECTION 1114. STATEMENT OF DISSOLUTION.

(a) A limited cooperative association that has dissolved or is about to dissolve may deliver to the [Secretary of State] for filing a statement of dissolution that states:

- (1) the name of the association;
- (2) the date the association dissolved or will dissolve; and
- (3) any other information the association considers relevant.

(b) A person has notice of a limited cooperative association's dissolution on the later of:

- (1) 90 days after a statement of dissolution is filed; or
- (2) the effective date stated in the statement of dissolution.

SECTION 1115. STATEMENT OF TERMINATION.

(a) A dissolved limited cooperative association that has completed winding up may deliver to the [Secretary of State] for filing a statement of termination that states:

- (1) the name of the association;
- (2) the date of filing of its initial articles of organization; and
- (3) that the association is terminated.

(b) The filing of a statement of termination does not itself terminate the limited cooperative association.

[ARTICLE] 12

ACTION BY MEMBER

***Legislative Note:** This entire [article] is bracketed to indicate its adoption in an adopting jurisdiction is optional depending on whether an adopting jurisdiction places the substantive law regarding derivative actions in its statutes relating to entities or places in its civil procedure law, including its rules of civil procedure. If an adopting jurisdiction places derivative actions in its entity statutes, this [article] should be adopted. If the adopting jurisdiction places its derivative actions in its civil procedure law, this [article] should not be adopted although the adopting jurisdiction could place a cross reference to that law as the body of this [article]. If the adopting jurisdiction's laws regarding derivative actions specifically reference particular types of entities to which derivative actions are to be applicable, this [act] should be referenced in those laws.*

This Act does not contain provisions regarding direct claims of a member of a limited cooperative association against the association leaving those claims to other law.

SECTION 1201. DERIVATIVE ACTION. A member may maintain a derivative action to enforce a right of a limited cooperative association if:

- (1) the member adequately represents the interests of the association;
- (2) the member demands that the association bring an action to enforce the right; and
- (3) any of the following occur:
 - (A) the association does not, within 90 days after the member makes the demand, agree to bring the action;
 - (B) the association notifies the member that it has rejected the demand;
 - (C) irreparable injury to the association would result by waiting 90 days after the member makes the demand; or
 - (D) the association agrees to bring an action demanded and fails to bring the action within a reasonable time.

SECTION 1202. PROPER PLAINTIFF.

(a) A derivative action to enforce a right of a limited cooperative association may be maintained only by a person that is a member or a dissociated member at the time the action is commenced and:

- (1) was a member when the conduct giving rise to the action occurred; or

(2) whose status as a member devolved upon the person by operation of law or organic rules from a person that was a member at the time of the conduct.

(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member to be substituted as plaintiff.

SECTION 1203. PLEADING. In a derivative action to enforce a right of a limited cooperative association, the complaint must state with particularity:

- (1) the date and content of the plaintiff's demand and the association's response;
- (2) if 90 days have not expired since the demand, how irreparable injury to the association would result by waiting for the expiration of 90 days; or
- (3) if the association agreed to bring an action demanded, that the action has not been brought within a reasonable time.

SECTION 1204. COURT APPROVAL FOR DISCONTINUANCE OR SETTLEMENT. A derivative action to enforce a right of a limited cooperative association may not be discontinued or settled without the [appropriate court's] approval.

SECTION 1205. PROCEEDS AND EXPENSES.

- (a) Except as otherwise provided in subsection (b):
- (1) any proceeds or other benefits of a derivative action to enforce a right of a limited cooperative association, whether by judgment, compromise, or settlement, belong to the association and not to the plaintiff; and
 - (2) if the plaintiff in the derivative action receives any proceeds, the plaintiff shall immediately remit them to the association.
- (b) If a derivative action to enforce a right of a limited cooperative association is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the association.]

[ARTICLE] 13

FOREIGN COOPERATIVES

SECTION 1301. GOVERNING LAW.

(a) The law of the state or other jurisdiction under which a foreign cooperative is organized governs relations among the members of the foreign cooperative and between the members and the foreign cooperative.

(b) A foreign cooperative may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the foreign cooperative is organized and the law of this state.

(c) A certificate of authority does not authorize a foreign cooperative to engage in any activity or exercise any power that a limited cooperative association may not engage in or exercise in this state.

SECTION 1302. APPLICATION FOR CERTIFICATE OF AUTHORITY.

(a) A foreign cooperative may apply for a certificate of authority to transact business in this state by delivering an application to the [Secretary of State] for filing. The application must state:

(1) the name of the foreign cooperative and, if the name does not comply with Section 109, an alternative name adopted pursuant to Section 1305;

(2) the name of the state or other jurisdiction under whose law the foreign cooperative is organized;

(3) the street address and, if different, mailing address of the principal office and, if the law of the jurisdiction under which the foreign cooperative is organized requires the foreign cooperative to maintain another office in that jurisdiction, the street address and, if different, mailing address of the required office;

(4) the street address and, if different, mailing address of the cooperative's designated office in this state, and the name of the cooperative's agent for service of process at the designated office; and

(5) the name, street and, if different, mailing address of each of the foreign cooperative's current directors and officers.

(b) A foreign cooperative shall deliver with a completed application under subsection (a) a certificate of good standing [or existence] or a similar record signed by the [Secretary of State] or other official having custody of the cooperative's publicly filed records in the state or other jurisdiction under whose law the foreign cooperative is organized.

Legislative Note: This [act] refers to a certificate of good standing rather than a certificate of existence. If an adopting jurisdiction uses the term "certificate of existence" that term should be substituted for "certificate of good standing" in subsection (b).

SECTION 1303. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.

(a) Activities of a foreign cooperative which do not constitute transacting business in this state under this [article] include:

- (1) maintaining, defending, and settling an action or proceeding;
- (2) holding meetings of the foreign cooperative's members or directors or carrying on any other activity concerning its internal affairs;
- (3) maintaining accounts in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign cooperative's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or electronic means, through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and
- (10) transacting business in interstate commerce.

(b) For purposes of this [article], the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign cooperative to service of process, taxation, or regulation under any law of this state other than this [act].

SECTION 1304. FILING OF CERTIFICATE OF AUTHORITY. Unless the [Secretary of State] determines that an application for a certificate of authority does not comply with the filing requirements of this [act], the [Secretary of State], upon payment by the foreign cooperative of all filing fees, shall file the application, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign cooperative or its representative.

SECTION 1305. NONCOMPLYING NAME OF FOREIGN COOPERATIVE.

(a) A foreign cooperative whose name does not comply with Section 109 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternative name that complies with Section 109. A foreign cooperative that adopts an alternative name under this subsection and then obtains a certificate of authority with that name need not also comply with [fictitious or assumed name statute]. After obtaining a certificate of authority with an alternative name, a foreign cooperative's business in this state must be transacted under that name unless the foreign cooperative is authorized under [fictitious name statute] to transact business in this state under another name.

(b) If a foreign cooperative authorized to transact business in this state changes its name to one that does not comply with Section 109, it may not thereafter transact business in this state until it complies with subsection (a) and obtains an amended certificate of authority.

SECTION 1306. REVOCATION OF CERTIFICATE OF AUTHORITY.

(a) A certificate of authority of a foreign cooperative to transact business in this state may be revoked by the [Secretary of State] in the manner provided in subsection (b) if the foreign cooperative does not:

- (1) pay, within 60 days after the due date, any fee, tax, or penalty due to the

[Secretary of State] under this [act] [or law of this state other than this [act];

(2) deliver, within 60 days after the due date, its annual report;

(3) appoint and maintain an agent for service of process; or

(4) deliver for filing a statement of change within 30 days after a change has occurred in the name of the agent or the address of the foreign cooperative's designated office.

(b) To revoke a certificate of authority of a foreign cooperative to transact business in this state, the [Secretary of State] must prepare, sign, and file a notice of revocation and send a copy to the foreign cooperative's registered agent for service of process in this state or, if the foreign cooperative does not appoint and maintain an agent for service of process in this state, to the cooperative's principal office. The notice must state:

(1) the revocation's effective date, which must be at least 60 days after the date the [Secretary of State] sends the copy; and

(2) the foreign cooperative's noncompliance that is the reason for the revocation.

(c) The authority of a foreign cooperative to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign cooperative cures each failure to comply stated in the notice. If the foreign cooperative cures the failures, the [Secretary of State] shall so indicate on the filed notice.

***Legislative Note:** In adopting jurisdictions that do not generally permit a certificate of authority to be revoked because entities do not pay required fees, taxes or penalties to governmental agencies other than the [Secretary of State], the words "or law of this state other than this [act]" in subsection (a) should be deleted.*

SECTION 1307. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE.

(a) To cancel its certificate of authority to transact business in this state, a foreign cooperative must deliver to the [Secretary of State] for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under Section 203.

(b) A foreign cooperative transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(c) The failure of a foreign cooperative to have a certificate of authority to transact

business in this state does not impair the validity of a contract or act of the foreign cooperative or prevent the foreign cooperative from defending an action or proceeding in this state.

(d) A member of a foreign cooperative is not liable for the obligations of the foreign cooperative solely by reason of the foreign cooperative's having transacted business in this state without a certificate of authority.

(e) If a foreign cooperative transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the [Secretary of State] as its agent for service of process for action arising out of the transaction of business in this state.

SECTION 1308. ACTION BY [ATTORNEY GENERAL]. The [Attorney General] may maintain an action to restrain a foreign cooperative from transacting business in this state in violation of this [article].

[ARTICLE] 14

AMENDMENT OF ORGANIC RULES

SECTION 1401. AUTHORITY TO AMEND ORGANIC RULES.

(a) A limited cooperative association may amend its organic rules under this [article]. In addition the initial board of directors may amend the bylaws of an association under Section 304.

(b) Unless the organic rules otherwise provide, a member does not have a vested property right resulting from any provision in the organic rules, including provisions relating to management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association.

SECTION 1402. NOTICE AND ACTION ON AMENDMENT OF ARTICLES OF ORGANIZATION OR BYLAWS. To amend its organic rules:

(1) either:

(A) a majority of the association's board of directors, or a greater percentage if required by the organic rules, must approve the proposed amendment; or

(B) the board of directors must have received a petition in a record that:

(i) proposes an amendment; and

(ii) is signed by at least 10 percent of the patron members or 10 percent of the investor members; and

(2) the board of directors must call a members' meeting to consider the amendment, to be held within 90 days following approval of the proposed amendment by the board or receipt by the board of a petition in accordance with paragraph (1)(B), and must mail or otherwise transmit or deliver in a record to each member:

(A) the proposed amendment, or a summary of the proposed amendment and a statement of the manner in which a copy of the amendment in a record may be reasonably obtained by a member;

(B) a recommendation that the members approve the amendment, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(C) a statement of any condition of the board's submission of the amendment to

the members; and

(D) notice of the meeting at which the proposed amendment will be considered, which must be given in the same manner as notice for a special members' meeting.

SECTION 1403. METHOD OF VOTING ON AMENDMENT OF ORGANIC RULES. Members may vote on a proposed amendment to the organic rules as provided in Section 415.

SECTION 1404. CHANGE TO AMENDMENT OF ORGANIC RULES AT MEETING.

(a) A substantive change to a proposed amendment of the organic rules may not be made at the members' meeting at which a vote on the amendment occurs.

(b) Any non-substantive change to a proposed amendment of the organic rules at a meeting need not be separately voted upon by the board of directors.

(c) A vote to adopt a change to a proposed amendment to the organic rules not prohibited by subsection (a) must be by the same percentage of votes required to pass a proposed amendment.

SECTION 1405. VOTING BY DISTRICT, CLASS, OR VOTING GROUP.

(a) In addition to the approval required under Section 1406 if the organic rules provide for voting by district or class, or if there is one or more identifiable voting group that a proposed amendment to the organic rules would affect differently from other members with respect to matters identified in Section 1406(e)(1) through (5), approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required in Sections 414 and 1406.

(b) If a proposed amendment to the organic rules would affect members in two or more districts or classes entitled to vote separately under subsection (a) in the same or a substantially similar way, the districts or classes affected must vote as a single voting group unless the organic rules otherwise provide for separate voting.

SECTION 1406. APPROVAL OF AMENDMENT.

(a) Subject to Section 1405 and subsection (c), an amendment to the articles of organization must be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under Section 1402; and

(2) if the association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a larger percentage vote by patron members.

(b) Subject to Section 1405 and subsections (e) and (f)(2), an amendment to the bylaws must be approved by:

(1) at least a majority vote of the voting power of all members present at a members' meeting called under Section 1402, unless the organic rules require a greater percentage; and

(2) if a limited cooperative association has investor members, a majority of the votes cast by patron members, unless the organic rules require a larger affirmative vote by patron members.

(c) The organic rules may provide that the percentage vote under subsections (a)(1) or (b)(1) be:

(1) a different percentage which must not be less than a majority of members voting at the meeting; or

(2) measured against the voting power of all members; or

(3) a combination of subsections (c)(1) and (c)(2).

(d) Consent in a record by a member must be delivered to a limited cooperative association before delivery of an amendment to the articles of organization or restated articles of organization for filing pursuant to Section 1407 or 1408, if as a result of the amendment the member will have:

(1) personal liability for an obligation of the association; or

(2) an obligation or liability for an additional contribution.

(e) A vote required under subsection (a) is required to amend bylaws if the proposed amendment modifies:

(1) the equity capital structure of the limited cooperative association, including the rights of the association's members to share in profits or distributions, or the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting

groups of similarly situated members;

- (2) the transferability of a member's interest;
- (3) the manner or method of allocation of profits or losses among members;
- (4) the quorum for a meeting and the rights of voting and governance, not

including the manner of voting or the modification of district boundaries, which, unless otherwise provided in the organic rules, may be determined by the board of directors; or

(5) unless otherwise provided in the organic rules, the terms for admission of new members.

(f) Subject to subsection (e), the articles of organization may delegate amendment of the bylaws in whole or in part to the board of directors without requiring member approval.

(g) If the articles of organization delegate amendment of bylaws to the board of directors, the board must provide a description of the amendment to the members in a record within 30 days after the amendment of the bylaws, but the description may be provided at the next annual meeting of members if the meeting is held within the 30-day period.

SECTION 1407. RESTATED ARTICLES OF ORGANIZATION. A limited cooperative association, by the affirmative vote of a majority of the board of directors taken at a meeting for which the purpose is stated in the notice of the meeting, may adopt restated articles of organization that contain the original articles as previously amended. Restated articles may contain amendments if the restated articles are adopted in the same manner and with the same vote as required for amendments to the articles under Section 1406(a). Upon filing, restated articles supersede the existing articles and all amendments.

SECTION 1408. AMENDMENT OR RESTATEMENT OF ARTICLES OF ORGANIZATION.

(a) To amend its articles of organization, a limited cooperative association must deliver to the [Secretary of State] for filing an amendment of the articles of organization, or restated articles of organization or articles of conversion, merger, or consolidation pursuant to [Article] 15 which contain one or more amendments of the articles of organization, stating:

- (1) the name of the association;
- (2) the date of filing of the association's initial articles of organization; and

(3) the changes the amendment makes to the articles of organization as most recently amended or restated.

(b) Before the beginning of the initial meeting of the board of directors of a limited cooperative association, an organizer of the association which knows that information in the filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances shall promptly:

(1) cause the articles to be amended; or

(2) if appropriate, deliver an amendment to the [Secretary of State] for filing pursuant to Section 203.

(c) Articles of organization may be amended at any time for any proper purpose as determined by the limited cooperative association.

(d) If restated articles of organization are adopted, the restated articles of organization may be delivered to the [Secretary of State] for filing in the same manner as an amendment.

(e) Upon filing, an amendment of the articles of organization or other record containing an amendment of the articles of organization which has been properly adopted by the members is effective as provided in Section 203(c).

[ARTICLE] 15

CONVERSION AND MERGER

SECTION 1501. DEFINITIONS. In this [article]:

(1) “Constituent limited cooperative association” means a limited cooperative association that is a party to a consolidation or merger.

(2) “Constituent entity” means an entity that is party to a consolidation or merger.

(3) “Converted entity” means the organization into which a converting entity converts pursuant to Sections 1502 through 1505.

(4) “Converting limited cooperative association” means a converting entity that is a limited cooperative association.

(5) “Converting entity” means an entity that converts into another entity pursuant to Sections 1502 through 1505.

(6) “Organizational documents” means articles of incorporation, bylaws, articles of organization, operating agreements, partnership agreements, or other documents serving a similar function in the creation and governance of an entity.

(7) “Personal liability” means personal liability for a debt, liability, or other obligation of an entity imposed, by operation of law or otherwise, by a person that co-owns or has an interest in the entity:

(A) by the entity’s organic law solely by reason of the person co-owning or having an interest in the entity; or

(B) by the entity’s organizational documents under a provision of the entity’s organic law authorizing those documents to make one or more specified persons liable for all or specified parts of the entity’s debts, liabilities, and other obligations solely because the person co-owning or having an interest in the entity.

(8) “Surviving entity” means an entity into which one or more other entities are merged. A surviving entity may exist before the merger or be created by the merger.

SECTION 1502. CONVERSION.

(a) An entity that is not a limited cooperative association may convert to a limited cooperative association and a limited cooperative association may convert to an entity that is not a

limited cooperative association pursuant to this section, Sections 1503 through 1505, and a plan of conversion, if:

- (1) the other entity's organic law authorizes the conversion;
 - (2) the conversion is not prohibited by the law of the jurisdiction that enacted the other entity's organic law; and
 - (3) the other entity complies with its organic law in effecting the conversion.
- (b) A plan of conversion must be in a record and must include:
- (1) the name and form of the entity before conversion;
 - (2) the name and form of the entity after conversion;
 - (3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration; and
 - (4) the organizational documents of the proposed converted entity.

SECTION 1503. ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED COOPERATIVE ASSOCIATION.

(a) For a limited cooperative association to convert to another entity, a plan of conversion must be approved by a majority of the board of directors, or a greater percentage if required by the organic rules, and the board of directors must call a members' meeting to consider the plan of conversion, hold the meeting within 90 days following approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

- (1) the plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;
- (2) a recommendation that the members approve the plan of conversion, or if the board determines that because of a conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;
- (3) a statement of any condition of the board's submission of the plan of conversion to the members; and
- (4) notice of the meeting at which the plan of conversion will be considered, which must be given in the same manner as notice of a special members' meeting; and

(b) Subject to subsections (c) and (d), a plan of conversion must be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under subsection (a); and

(2) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a larger percentage vote by patron members.

(c) The organic rules may provide that the percentage vote under subsection (b)(1) be:

(1) a different percentage vote which must not be less than a majority of members voting at the meeting; or

(2) measured against the voting power of all members; or

(3) a combination of subsections (b)(1) and (b)(2).

(d) The vote to approve a plan of conversion may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.

(e) Consent in a record by a member must be delivered to the limited cooperative association before delivery of articles of conversion for filing if as a result of the conversion the member will have:

(1) personal liability for an obligation of the association; or

(2) an obligation or liability for an additional contribution.

(f) Subject to subsection (e) and any contractual rights, after a conversion is approved and at any time before the effective date of the conversion, a converting limited cooperative association may amend a plan of conversion or abandon the planned conversion:

(1) as provided in the plan; and

(2) except as prohibited by the plan, by the same affirmative vote of the board of directors and of the members as was required to approve the plan.

(g) The voting requirements for districts, classes, or voting groups under Section 1405 apply to approval of a conversion under this [article].

SECTION 1504. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.

(a) After a plan of conversion is approved:

(1) a converting limited cooperative association shall deliver to the [Secretary of

State] for filing articles of conversion, which must include:

(A) a statement that the limited cooperative association has been converted into another entity;

(B) the name and form of the converted entity and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted entity;

(D) a statement that the conversion was approved as required by this [act];

(E) a statement that the conversion was approved as required by the governing statute of the converted entity; and

(F) if the converted entity is an entity organized in a jurisdiction other than this state and is not authorized to transact business in this state, the street address and, if different, mailing address of an office which the [Secretary of State] may use for purposes of Section 119; and

(2) if the converting entity is not a converting limited cooperative association, the converting entity shall deliver to the [Secretary of State] for filing articles of organization, which must include, in addition to the information required by Section 302:

(A) a statement that the association was converted from another entity;

(B) the name and form of the converting entity and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting entity's governing statute.

(b) A conversion becomes effective:

(1) if the converted entity is a limited cooperative association, when the articles of conversion take effect pursuant to Section 203(c); or

(2) if the converted entity is not a limited cooperative association, as provided by the governing statute of the converted entity.

SECTION 1505. EFFECT OF CONVERSION.

(a) An entity that has been converted pursuant to this [article] is for all purposes the same

entity that existed before the conversion and is not a new entity but, after conversion, is organized under the organic law of the converted entity and is subject to that law and other law as it applies to the converted entity.

(b) When a conversion takes effect:

(1) all property owned by the converting entity remains vested in the converted entity;

(2) all debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;

(3) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited cooperative association for purposes of [Article] 11.

(c) A converted entity that is an entity organized under the laws of a jurisdiction other than this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited cooperative association if, before the conversion, the converting limited cooperative association was subject to suit in this state on the obligation. A converted entity that is an entity organized under the laws of a jurisdiction other than this state and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the [Secretary of State] under this subsection is made in the same manner and with the same consequences as in Section 119(c) and (d).

SECTION 1506. MERGER.

(a) One or more limited cooperative associations may merge with one or more other entities pursuant to this [article] and a plan of merger if:

(1) the governing statute of each of the other entities authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(3) each of the other entities complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) the name and form of each merging entity;

(2) the name and form of the surviving entity and, if the surviving entity is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each merging entity into any combination of money, interests in the surviving entity, and other consideration;

(4) if the surviving entity is to be created by the merger, the surviving entity's organizational documents;

(5) if the surviving entity is not to be created by the merger, any amendments to be made by the merger to the surviving entity's organizational documents; and

(6) if a member of a constituent limited cooperative association will have personal liability with respect to a surviving entity, the identity of the member by descriptive class or other reasonable manner.

**SECTION 1507. NOTICE AND ACTION ON PLAN OF MERGER BY
CONSTITUENT LIMITED COOPERATIVE ASSOCIATION.**

(a) For a limited cooperative association to merge with another entity, a plan of merger must be approved by a majority vote of the board of directors of the association or a greater percentage if required by the limited cooperative association's organic rules.

(b) The board of directors must call a members' meeting to consider the plan of merger, hold the meeting within 90 days following approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(1) the plan of merger, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(2) a recommendation that the members approve the plan of merger, or if the

board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(3) a statement of any condition of the board's submission of the plan of merger to the members; and

(4) notice of the meeting at which the plan of merger will be considered, which must be given in the same manner as notice of a special members' meeting.

SECTION 1508. APPROVAL OR ABANDONMENT OF MERGER BY MEMBERS.

(a) Subject to subsections (b) and (c), a plan of merger must be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under 1507(b); and

(2) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a larger percentage vote by patron members.

(b) The organic rules may provide that the percentage vote under subsection (a)(1) be:

(1) a different percentage vote which must not be less than a majority of members voting at the meeting; or

(2) measured against the voting power of all members; or

(3) a combination of subsections (b)(1) and (b)(2).

(c) The vote to approve a plan of merger may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.

(d) Consent in a record by a member must be delivered to the limited cooperative association before delivery of articles of merger for filing pursuant to Section 1509 if as a result of the merger the member will have:

(1) personal liability for an obligation of the association; or

(2) an obligation or liability for an additional contribution.

(e) Subject to subsection (d) and any contractual rights, after a merger is approved, and at any time before the effective date of the merger, a limited cooperative association that is a party to the merger may approve an amendment to the plan of merger or approve abandonment of the

planned merger:

(1) as provided in the plan; and

(2) except as prohibited by the plan, with the same affirmative vote of the board of directors and of the members as was required to approve the plan.

(f) The voting requirements for districts, classes, or voting groups under Section 1405 apply to approval of a merger under this [article].

SECTION 1509. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

(a) After each merging entity has approved a merger, articles of merger must be signed on behalf of each merging entity by an authorized representative.

(b) The articles of merger must include:

(1) the name and form of each merging entity and the jurisdiction of its governing statute;

(2) the name and form of the surviving entity, the jurisdiction of its governing statute, and, if the surviving entity is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving entity;

(4) if the surviving entity is to be created by the merger and:

(A) will be a limited cooperative association, the limited cooperative association's articles of organization; or

(B) will be an entity other than a limited cooperative association, the organizational document that creates the entity;

(5) if the surviving entity preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the entity;

(6) a statement as to each merging entity that the merger was approved as required by the entity's governing statute;

(7) if the surviving entity is a foreign organization not authorized to transact business in this state, the street address and, if different, mailing address of an office which the [Secretary of State] may use for the purposes of Section 119; and

(8) any additional information required by the governing statute of any merging

entity.

(c) Each limited cooperative association that is a party to a merger shall deliver the articles of merger to the [office of the Secretary of State] for filing.

(d) A merger becomes effective under this [article]:

(1) if the surviving entity is a limited cooperative association, upon the later of:

(A) compliance with subsection (c); or

(B) subject to Section 203(c), as specified in the articles of merger; or

(2) if the surviving entity is not a limited cooperative association, as provided by the governing statute of the surviving entity.

SECTION 1510. EFFECT OF MERGER. When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that merges into the surviving entity ceases to exist as a separate entity;

(3) all property owned by each merging entity that ceases to exist vests in the surviving entity;

(4) all debts, liabilities, and other obligations of each merging entity that ceases to exist continue as obligations of the surviving entity;

(5) an action or proceeding pending by or against any merging entity that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by law other than this [act], all rights, privileges, immunities, powers, and purposes of each merging entity that ceases to exist vest in the surviving entity;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan take effect;

(8) except as otherwise provided in the plan of merger, if a merging limited cooperative association ceases to exist, the merger does not dissolve the association for purposes of [Article] 11;

(9) if the surviving entity is created by the merger and:

(A) is a limited cooperative association, the articles of organization

become effective; or

(B) is an entity other than a limited cooperative association, the organizational document that creates the entity becomes effective; and

(10) if the surviving entity preexists the merger, any amendments provided for in the articles of merger for the organizational documents of the surviving entity become effective.

SECTION 1511. CONSOLIDATION.

(a) One or more limited cooperative associations may agree to call a merger a consolidation under this [article].

(b) All provisions governing mergers or using the term merger in this [act] apply equally to mergers that the constituent entities choose to call consolidations under subsection (a).

SECTION 1512. [ARTICLE] NOT EXCLUSIVE. This [article] does not preclude a limited cooperative association from being converted or merged under law other than this [act].

[ARTICLE] 16

DISPOSITION OF ASSETS

SECTION 1601. DISPOSITION OF ASSETS NOT REQUIRING MEMBER

APPROVAL. Unless the articles of organization otherwise provide, member approval under Section 1602 is not required for the association to:

- (1) sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the association in the usual and regular course of business; or
- (2) mortgage, pledge, dedicate to the repayment of indebtedness, or encumber in any way all or any part of the assets of the association whether or not in the usual and regular course of business.

SECTION 1602. MEMBER APPROVAL OF OTHER DISPOSITION OF ASSETS.

A sale, lease, exchange, license, or other disposition of assets of a limited cooperative association, other than a disposition described in Section 1601, requires approval of the association's members under Sections 1603 and 1604 if the disposition leaves the association without significant continuing business activity.

SECTION 1603. NOTICE AND ACTION ON DISPOSITION OF ASSETS. For a limited cooperative association to dispose of assets under Section 1602:

- (1) a majority of the board of directors, or a greater percentage if required by the organic rules, must approve the proposed disposition; and
- (2) the board of directors must call a members' meeting to consider the proposed disposition, hold the meeting within 90 days following approval of the proposed disposition by the board, and mail or otherwise transmit or deliver in a record to each member:
 - (A) the terms of the proposed disposition;
 - (B) a recommendation that the members approve the disposition, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;
 - (C) a statement of any condition of the board's submission of the proposed disposition to the members; and
 - (D) notice of the meeting at which the proposed disposition will be considered,

which must be given in the same manner as notice of a special members' meeting.

SECTION 1604. ACTION ON DISPOSITION OF ASSETS.

(a) Subject to subsection (b), a disposition of assets under Section 1602 must be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under Section 1603(2); and

(2) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a larger percentage vote by patron members.

(b) The organic rules may provide that the percentage vote under subsection (a)(1) be:

(1) a different percentage vote which must not be less than a majority of members voting at the meeting; or

(2) measured against the voting power of all members; or

(3) a combination of subsections (b)(1) and (b)(2).

(c) Subject to any contractual obligations, after a disposition of assets is approved and at any time before the consummation of the disposition, a limited cooperative association may approve an amendment to the contract for disposition or the resolution authorizing the disposition or approve abandonment of the disposition:

(1) as provided in the contract or the resolution; and

(2) except as prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition.

(d) The voting requirements for districts, classes, or voting groups under Section 1405 apply to approval of a disposition of assets under this [article].

[ARTICLE] 17

MISCELLANEOUS PROVISIONS

[SECTION 1701. RELATION TO RESTRAINT OF TRADE AND ANTITRUST

LAWS. To the extent a limited cooperative association or activities conducted by a limited cooperative association in this state meet the material requirements for other cooperatives entitled to an exemption from or immunity under any provision of [the restraint of trade or antitrust laws of this state], the association and its activities are entitled to the exemption or immunity. This section does not create any new exemption or immunity for an association or affect any exemption or immunity provided to a cooperative organized under any other [act].]

Legislative Note: Some states' existing general cooperative or marketing cooperative statutes contain an exemption from state restraint of trade and antitrust laws. In the context of a marketing cooperative such an exemption is historical and may be helpful because cooperatives are united groups of producers whom could be interpreted to fix prices.

This Section is bracketed because some states as a matter of policy do not include an exception in their other cooperative statutes and, presumably, would not include them in this Act. Moreover because, unlike other cooperative statutes, this Act allows for investor members; it can be distinguished from cooperatives organized under other laws. It is appropriate, therefore, that states consider how their existing policy applies to limited cooperatives.

SECTION 1702. REQUIREMENTS OF OTHER LAWS.

(a) This Act does not alter or amend any law that governs the licensing and regulation of an individual or entity in carrying on a specific business or profession even if that law permits the business or profession to be conducted in or by a limited cooperative association, a foreign cooperative, or its members.

(b) A limited cooperative association may not conduct an activity that, under law of this state other than this [act], may be conducted only by an entity that meets specific requirements for the internal affairs of that entity unless the organic rules of the association conform to those requirements.

[(c) If an activity of a limited cooperative association is within the scope of [insert reference to the Uniform Common Interest Ownership Act or the Model Real Estate Cooperative Act], the requirements of [insert reference to the Uniform Common Interest Ownership Act or the

Model Real Estate Cooperative Act] apply, even if there is a conflicting provision in this [act].]

Legislative Note: *If an adopting jurisdiction has enacted the Uniform Common Interest Ownership Act or the Model Real Estate Cooperative Act, the adopting jurisdiction should add subsection (c).*

The phrase “limited cooperative associations” should be added by amendment to other statutes outside this Act that contain lists of entities and other law should be vetted and conformed as appropriate.

SECTION 1703. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1704. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1705. SAVINGS CLAUSE. This [act] does not affect an action or proceeding commenced, or right accrued, before [this [act] takes effect].

SECTION 1706. EFFECTIVE DATE. This [act] takes effect [effective date].

Legislative Note: *If the adopting state is a state which has an existing act similar to this Act (as of June 1, 2007, there are five such states), it should consider adding a new section immediately before Section 1706 providing for a phasing in of the Act’s applications to existing limited cooperative associations. The Revised Uniform Limited Liability Company Act (2006) (which faces the same issue because adopting jurisdictions of RULLCA have in place existing LLC statutes) provides an illustrative model as follows:*

APPLICATION TO EXISTING RELATIONSHIPS

(a) Before [all-inclusive date], this [act] governs only:

(1) a limited liability company formed on or after [the effective date]; and

(2) except as otherwise provided in subsection (c), a

limited liability company formed before [the effective date of this act] which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this [act].

(b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this [act] governs all limited liability companies.

(c) For the purposes applying this [act] to a limited liability company formed before [the effective date of this act]:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for the purposes of applying Section 102(1) and subject to Section 112(d), language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

The Legislative Note to RULLCA states, in relevant part:

It is recommended that the "all-inclusive" date should be at least one year after the date of enactment but no longer than two years.

Each enacting jurisdiction should consider whether: (i) this Act makes material changes to the "default" (or "gap filler) rules of jurisdiction's predecessor statute; and (ii) if so, whether subsection (c) should carry forward any of those rules for pre-existing limited liability companies. In this assessment, the focus is on pre-existing limited liability companies that have left default rules in place, whether advisedly or not. The central question is whether, for such limited liability companies, expanding subsection (c) is necessary to prevent material changes to the members' "deal."

For an example of this type of analysis in the context of another business entity act, see the Uniform Limited Partnership Act (2001), § 1206(c).