



THE UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT (ULCAA) (2007) (LAST AMENDED 2013)

- A Summary -

The Uniform Limited Cooperative Association Act (ULCAA) is designed to promote rural development by creating the option of a statutorily-defined entity that combines traditional cooperative values with modern financing mechanisms by providing two distinct categories of members: patron members and investment members. The act may also be useful in an urban setting, where individuals can use the cooperative structure to democratically own, run, and share in the benefit of their business in combination with modern financing techniques. ULCAA builds on traditional law governing cooperatives, but recognizes a growing trend toward the "New Generation Cooperative" (NGC), which can combine features not readily available under traditional law, such as legally binding delivery contracts and the opportunity for outside equity investment. This act creates a new form of business entity and is an alternative to other cooperative and unincorporated structures. It is more flexible than most current laws, and provides a default template that encourages planners to utilize tested cooperative principles for a broad range of entities and purposes.

The cooperative industry includes many interests, including, but not limited to, farmers, consumers, financial groups, and insurance organizations. In ULCAA, a "cooperative" is defined as an unincorporated association (a "limited cooperative association") of individuals or businesses that unite to meet their mutual interests by creating and using a jointly owned enterprise. The act contemplates the formation of various types of limited cooperative associations, including marketing, advertising, bargaining, processing, purchasing, real estate, and worker owned cooperatives. A limited cooperative association under the act can be organized to pursue any lawful purpose. For example, the act would allow a group of wheat farmers to build a value-added pasta facility, keeping their business in a cooperative form while being able to attract and utilize investment capital. It might also be used by an urban food cooperative to attract investment capital to build facilities for the operation of the cooperative's business.

ULCAA was promulgated in 2007. It was amended in 2011 and 2013 to harmonize, to the extent possible, the language in the provisions that are the same as provisions in the other uniform unincorporated entity acts.

Key highlights of ULCAA, as amended, include:

- Operating definitions for the act, and an outline of the nature and powers of limited cooperative associations. ULCAA also deals with the effect of organic rules, required record retention, service of process, and business dealings between members and the limited cooperative association.

- Requirements for records that must be filed with the state agency that regulates business entities, and the procedures for signing and filing of records with that appropriate agency. The act also provides for the form and content of the limited cooperative's annual report to the responsible agency, and designates the appropriate state law governing filing fees.
- A statutory formation process for limited cooperative associations, including the required contents of articles of organization and bylaws, and the initial organizing directors. The act also governs amendments to and restatements of (and related requirements) the organic rules of an association.
- Qualifications for membership in a limited cooperative association, and the rights and powers that come with belonging to the organization. ULCAA also addresses the required Annual Meeting of members and procedures for calling special members' meetings. ULCAA delineates the procedures for providing notices for member meetings, quorum and voting, the allocation of voting power among patron members, voting by investor members, and action taken without meetings.
- Establishment of patron and investor members, and establishment of their interests as personal property interests, consisting of governance rights, financial rights, and the possible right or obligation to do business with the association. ULCAA defers to the organic rules on transferability of interests and (in some cases) security interests in members' rights and set-offs, but in the event the rules are silent, does not allow transfer of or security interests in non-financial rights. ULCAA also allows charging orders against debtor-members or transferees.
- Authorization of marketing contracts between the limited cooperative association and third parties (not necessarily patron members). If a marketing contract is for the sale of products, commodities, or goods to an association, then title transfers to the association absolutely upon delivery, or upon a specific time expressly provided for in the contract. ULCAA also authorizes the association to create an enforceable security interest in the products, commodities, or goods delivered, and to sell such, and pay the sales price on a pooled (or other) basis after deducting selling and processing costs, expenses, overhead, etc. Initially, marketing contracts cannot last longer than 10 years, but they may be made self-renewing for additional 5-year periods.
- Establishment of the directors of the limited cooperative association, their qualifications, and their authority and powers. ULCAA provides procedures for the election of directors and provides a default term of service in the event that the organic rules are silent on term length. In the event of a director's resignation, removal, or suspension from the board, or if a vacancy occurs otherwise, the act sets forth (at a minimum) default provisions on filling the vacancy while permitting a great deal of flexibility to the organic rules to tailor procedures to the association's needs. Meeting and notice procedures are also set forth under the act, along with various director rights and standards of conduct, and authority is granted for the appointment of association officers.

- Designation of the governing law for indemnification of directors and other individuals who incur liability on behalf of the association and a grant of authority to the association to purchase insurance on these parties' behalf.
- Unless otherwise provided by the association's organic rules, a statutory recognition that member contributions to a limited cooperative association may consist of tangible or intangible personal property, or any other benefit to the association, including money, labor, services, promissory notes, agreements to contribute, and contracts to be performed. The board may determine the "value" of the contribution for purposes of determining whether a member has met its obligation to contribute. Unless an agreement to make a contribution varies the statutory requirements, ULCAA provides default provisions on contribution agreements and their obligation on members. Profits and losses must be allocated between patron members, unless the organic rules provide otherwise, and the patron membership cannot be allocated any less than 50% of profits, even if investor members are allowed. Subject to the organic rules, before determining the amount of profits, the board may set aside a portion of the profits to create or accumulate: a capital reserve; reasonable reserves for specific purposes, such as expansion or replacement of capital assets; or education, training, and information. Distributions may be made in any form, including cash, capital credits, allocated patronage equities, etc. The interest of patron members in limited cooperative associations have the same exemption from state securities laws that they would in traditional cooperative associations under existing law.
- Addressing the right of a member to dissociate and the consequences of dissociation, and dissolution of the limited cooperative association itself (judicial, voluntary, and administrative).
- Statutory establishment of the right of a member to maintain a derivative action to enforce an association's right where the association fails to or will not enforce that right.
- Permission for "foreign" limited cooperatives to apply for and receive a certificate of authority to transact business in the enacting jurisdiction.
- A statutory process and required filings for mergers, conversions, interest exchanges and domestication of a limited cooperative association, and the legal effect of these transactions.
- Provision for member-approved and non-member-approved disposition of the association's assets.

For more information on ULCAA, please contact Kari Bearman at (312) 450-6617 or by email at kbearman@uniformlaws.org.