

D R A F T

FOR DISCUSSION ONLY

AGRICULTURAL AND AGRICULTURAL RELATED COOPERATIVES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

For Drafting Committee Meeting December 12-14, 2003

With Preliminary Reporter's Notes

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TABLE OF CONTENTS

Preliminary Reporter's Note	1
-----------------------------------	---

ARTICLE 1 GENERAL PROVISIONS

SECTION 101. SHORT TITLE	18
SECTION 102. RESERVATION OF POWER TO AMEND OR REPEAL	19
SECTION 103. DEFINITIONS	20
SECTION 104. FILING FEE; RULES AND REGULATIONS; ANNUAL REPORTS AND LICENSE TAXES	24
SECTION 105. REGISTERED AGENT; CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT	24
SECTION 106. ORGANIZATIONAL PURPOSE	28

ARTICLE 2 FORMATION AND ARTICLES OF ORGANIZATION

SECTION 201. ORGANIZERS	30
SECTION 202. COOPERATIVE NAME	30
SECTION 203. ARTICLES OF ORGANIZATION	31
SECTION 204. AMENDMENT OF ARTICLES	35
SECTION 205. AMENDMENT OF ORGANIZATIONAL DOCUMENTS TO BE GOVERNED BY THIS ARTICLE	37
SECTION 206. EXISTENCE	38
SECTION 207. BYLAWS	38
SECTION 208. POWERS	40
SECTION 209. COOPERATIVE RECORDS	42

ARTICLE 3 AGRICULTURAL PRODUCT MARKETING CONTRACTS

SECTION 301. AGRICULTURAL PRODUCT MARKETING CONTRACTS	44
---	----

ARTICLE 4
DIRECTORS AND OFFICERS

SECTION 401. BOARD GOVERNS COOPERATIVE	48
SECTION 402. NUMBER OF DIRECTORS	48
SECTION 403. ELECTION OF DIRECTORS	48
SECTION 404. FILLING VACANCIES	50
SECTION 405. REMOVAL OF DIRECTORS	50
SECTION 406. LIMITATION OF DIRECTOR'S LIABILITY	51
SECTION 407. OFFICERS	55

ARTICLE 5
MEMBERS

SECTION 501. MEMBERSHIP INTERESTS	60
SECTION 502. GROUPING OF MEMBERS	71
SECTION 503. MEMBER VIOLATIONS; LIABILITY FOR COOPERATIVE DEBTS	71
SECTION 504. MEMBERS REGULAR MEETINGS	73
SECTION 505. MEMBERS SPECIAL MEETINGS	74
SECTION 506. CERTIFICATION OF MEETING NOTICE	75
SECTION 507. FAILURE TO RECEIVE MEETING NOTICE	75
SECTION 508. QUORUM	75
SECTION 509. MEMBER VOTING RIGHTS	77
SECTION 510. PATRON MEMBER VOTING IN COOPERATIVES CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR ASSOCIATIONS .	80
SECTION 511. VOTE OF OWNERSHIP INTERESTS HELD BY COOPERATIVE	81

ARTICLE 6
CONTRIBUTIONS AND DISTRIBUTIONS

SECTION 601. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS	82
SECTION 602. ALLOCATIONS AND DISTRIBUTIONS TO PATRON MEMBERS	83
SECTION 603. DISTRIBUTION OF UNCLAIMED PROPERTY	84

ARTICLE 7
MERGER, CONSOLIDATION AND DISSOLUTION

SECTION 701. MERGER AND CONSOLIDATION	86
SECTION 702. LIQUIDATION	90
SECTION 703. METHODS OF DISSOLUTION	91
SECTION 704. WINDING UP	91
SECTION 705. REVOCATION OF DISSOLUTION PROCEEDINGS	92
SECTION 706. STATUTE OF LIMITATIONS	93
SECTION 707. ARTICLES OF DISSOLUTION	93
SECTION 708. APPLICATION FOR COURT-SUPERVISED VOLUNTARY DISSOLUTION	94
SECTION 709. COURT-ORDERED REMEDIES OR DISSOLUTION	94
SECTION 710. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED VOLUNTARY DISSOLUTION	97
SECTION 711. RECEIVER QUALIFICATIONS AND POWERS	98
SECTION 712. DISSOLUTION ACTION BY ATTORNEY GENERAL; ADMINISTRATIVE DISSOLUTION	99
SECTION 713. FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION PROCEEDINGS	100
SECTION 714. DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION PROCEEDINGS	100
SECTION 715. COURT-SUPERVISED DISSOLUTION ORDER	101
SECTION 716. FILING COURT'S DISSOLUTION ORDER	101
SECTION 717. BARRING OF CLAIMS	102
SECTION 718. RIGHT TO SUE OR DEFEND AFTER DISSOLUTION	103

Preliminary Reporter's Note

Introduction

The purpose of this initial draft of the Agricultural and Agricultural Related Cooperative Act is to raise some of the primary issues that must be initially discussed and tentatively decided by the Committee in order to give the Reporter direction for the next draft. Thus, it would be somewhat remarkable (in the pathological sense) if the next draft has any close resemblance to this draft either in textual language or, possibly, even organization. Even so, the Reporter believes it helpful to provide statutory language and a draft act that contains sections dealing with most of the issues that must be addressed. This approach is consistent with Conference protocol.

This preliminary note contains two parts in addition to the introduction. They are (1) background information concerning this drafting project and (2) a brief overview of the first structure of the draft of the act.

The brief overview is divided into two sections. The first section contains the charge of the committee and the scope of the task at hand including the perceived need for the act. This information will be helpful for all participants. The second section, which is the longest of any of the sections or parts, attempts to provide a general substantive overview of cooperatives. It is incomplete by necessity. The Commissioners are likely familiar with this information, and many of the participants will be generally familiar with this information. Therefore, the information therein may prove only marginally helpful and should be read at leisure.

The second major part of the preliminary note attempts to explain the format of the first draft and a brief commentary explaining the Reporter's choice of the base statutory text.

Background Information

A. Committee Charge and Scope

The Committee is charged with drafting an Agricultural and Agriculturally Related Cooperative Act. Its genesis of the charge is reflected by recently enacted statutes in Wyoming and Minnesota. Saskatchewan enacted a similar coop act before either of these states enacted new acts. The Wyoming and Minnesota state statutes vary in scope and application. Minnesota's statute, the Minnesota Cooperative Associations Act, applies more generally to cooperatives than the Wyoming Processing Cooperative Law and its provisions much more detailed. Nonetheless, neither Act replaces other cooperative acts or related law in those states.

B. General Overview of Cooperatives

Basic and Traditional Legal Structure.

1 There are many similarities between cooperatives and other forms of business. Thus,
2 cooperatives organize under state statutes. Historically these statutes generally tracked the law
3 governing corporations in the various states. Typically, therefore, cooperatives have articles of
4 incorporation, bylaws, and a board of directors elected by its members. Cooperative statutes
5 frequently expressly refer to either the state's general business corporation act or its not-for-profit
6 corporation act to fill statutory gaps that may arise under the cooperative act. Many states have
7 both "stock" and "nonstock" cooperative statutes.

8 A key distinction between cooperatives and other forms of business organizations is that a
9 cooperative distributes its income to a particular member in accordance with the member's use
10 (patronage) of the cooperative's services. Indeed, one source flatly states: "The primary function
11 of a cooperative is the allocation of economic benefits, either in the form of net savings or net
12 earnings, to the member-patron based on the quantity of business done with the
13 member-patron."¹ This function, "is consistent with the goal of maximizing members' interests
14 and the notion that the cooperative is an extension of the members' business operations."² The
15 following illustrates this principle in the context of a commodities marketing cooperative:

16 To accomplish this objective, a cooperative attempts to market patrons' commodities at
17 the highest possible price and purchase quality inputs at the lowest possible cost. The
18 resulting savings (usually referred to as net income rather than profits) belong to the
19 patrons and are distributed to them at least annually, usually in the form of patronage
20 refunds, though not necessarily all in cash. Typically, at least 20% is paid out as a cash
21 patronage refund and the balance is invested in the user's name as a retained patronage
22 refund. The retained portion is redeemed at a later time, usually when the user has
23 stopped using the cooperative.³

24 The focus on patronage as a metric for the allocation of net income limits the amount of
25 income and other sources of distribution from other sources available to pay for the use of capital
26 and, sometimes, state statutory law limits dividends paid on account of equity contribution
27 (return on capital) to 8 percent (although 8 percent is important for anti-trust and not tax
28 reasons).

29 The focus on returning income and savings based on patronage is consistent with the
30 historical values of cooperatives. The foundation of the law is the "Rochdale Principles." The
31 "Rochdale Principles" originated with the Rochdale Equitable Pioneers Society in 1844. The
32 Society was an English workers society and it established twelve principles; which seem to have
33 coalesced into four generally accepted principles. These principles are: "(1) business at cost with
34 net returns paid to members based on patronage; (2) democratic control, one person, one vote; (3)

¹ McEowen and Harl, *Taxation of Cooperatives*, BNA-Tax Mgmt. Series at 3.

² *Id.*

³ *Id.* at 3-4.

1 limited dividends on invested capital; and (4) ownership (or beneficial membership) limited to
2 patrons.”⁴ Additionally, most cooperatives have an “open” membership and allow nonmembers
3 to do business with the cooperative. The Rochdale Society ran a store (consumer cooperative)
4 and it might be safe to assume that the store was not capital intensive.⁵

5 State statutory provisions are generally consistent with these general principles (no matter of
6 their exact formulation). Thus, for example, state statutes variously govern the voting rights of
7 members. It is fair to say that most statutes provide for voting based on the one member – one
8 vote principle. That is, each member has one vote regardless of the amount of patronage by that
9 member in the current or preceding year and regardless of the amount of capital either
10 contributed by that member or allocated but retained in the member’s equity account. Such a
11 voting scheme is similar to default voting in the Uniform Partnership Act (both 1914 and 1997)
12 and some limited liability company acts. Some states, however, provide for outside investment
13 by allowing the issuance of preferred stock with very limited governance and dividend rights.

14 As stated previously, most statutes also allow for open use by non-members of the
15 cooperative. Net income derived from nonmember use is sometimes called “non-member
16 patronage.” Other miscellaneous and variable provisions in state statutes strictly govern board
17 membership (to “members” and, sometimes but rarely, to citizens or residents of specific states
18 or municipal subdivisions); capital retention requirements (Missouri’s stock cooperative, for
19 example, requires retaining ten percent of the net income until the retained fund equals fifty
20 percent of the paid-up capital stock); limitation on dividends (again, Missouri stock cooperatives
21 contain such a restriction); and, limiting membership to a specific occupation (agricultural
22 producers). Older statutes required ten or more *incorporators* and, reportedly, a few states
23 required new agricultural cooperatives to, in effect, receive “permission” (or at least advice) from
24 individuals holding specific titular positions in the state’s land grant college.

⁴ Hanson, “Legal Framework of Cooperative Development,” Ch. 5 *Cooperatives and Development* at 1 (in press). There is some slippage as to the number of principles. For example, J. Gary McDavid listed eight principles as the Rochdale Principles in a speech in 2002: (1) Open membership; (2) Democratic control based on one vote per member; (3) fixed low rate of interest on invested capital; (4) Patronage refunds; (5) Cash trading; (6) Good sold at retail, not wholesale, prices; (7) Promotion of education; (8) Political and religious neutrality.

The International Co-operative Alliance defines a cooperative as, “an autonomous association of person united voluntarily to meet their common economic, social, and cultural needs and aspirations through jointly-owned and democratically-controlled enterprise.” It has generated a values statement of its own as follows: “Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.” Finally the Alliance lists seven co-operative principles similar to those already set forth. Two of the principles, however, are somewhat unique in their emphasis. One of the two is that cooperatives “serve their members most effectively . . . by working together through local, national, regional, and international structures.” The other cooperatives “work for the sustainable development of their communities through policies approved by their members.”

⁵ Hanson, *supra*, at 1.

1 According to Mark Hanson: “The non-uniform development of agricultural cooperatives
2 and cooperative law has resulted in significant variations in state cooperative statutes many of
3 which were enacted from 1910 to 1925. In fact, few states have the same cooperative statute.”⁶
4 William H. Henning, NCCUSL Executive Director, briefly outlined the Conference history
5 concerning cooperatives in a memorandum to the Joint Editorial Board on Uniform
6 Unincorporated Organization Acts dated November 18, 2002. Therein he succinctly stated:

7 [I]n 1936 NCCUSL promulgated a Uniform Agricultural Cooperative Association
8 Act...that was especially designed for producers of agricultural products (The Act was
9 adopted, with modifications, in Utah, and declared obsolete by the Conference in
10 1944.). The procedures for organizing a cooperative under the uniform act were
11 consistent with the procedures for organizing ordinary business corporations, but stock
12 ownership was limited to members and there were restrictions on the payment of
13 dividends.

14 The United States Department of Agriculture developed a model non-stock cooperative act
15 in 1927. Approximately seven states adopted some version of that model. The most widely
16 adopted national model for commodity marketing purposes, however, was based on the
17 Bingham Act which predated the USDA model. It was adopted in Kentucky, for example, in
18 1922 and is sometimes referred to as the “Standard Act.”⁷

19 The variety of state cooperative statutes is evidenced by an obviously stale, but still useful,
20 book written by James Baarda and published by the United States Department of Agriculture
21 (USDA) in 1982. It is titled *State Incorporation Statutes for Farmer Cooperatives* and, as the
22 title indicates, it is limited to those statutes applicable to farmer cooperatives. Current secondary
23 sources and conversations with individuals actively involved in cooperative law by this Reporter
24 confirm that, with the exception of recent legal developments introduced in the following
25 section, much of Baarda’s analysis remains valid at least for the current purposes of illustrating
26 variety in state law.

27 Even though Baarda analyzed 86 statutes, he cautioned that his selections do “not include all
28 statutes that may be actually used by associations, and includes some that may not be available
29 under most circumstances.”⁸ Thus, the analysis neither includes general corporation statutes nor
30 nonprofit association laws even though, according to Baarda, those “statutes are occasionally
31 used for incorporation of farmer cooperatives. . . .”⁹ Important for current purposes, Baarda’s

⁶ *Id.* at 8.

⁷ Hanson, *supra* note 4, at 5.

⁸ James R. Baarda, *State Incorporation for Farmer Cooperatives*, 30 U.S.D.A. COOPERATIVE
INFORMATION REPORT at 2 (1982).

⁹ *Id.* at 3.

1 preface lists two pages of non-state specific comparative “Highlights.” For illustrative purposes
2 only, the “Highlight” concerning the financial structure and operation of cooperatives (circa
3 1982) is set forth below in its entirety:

4
5 Financial structure and operation of cooperative associations are addressed by a
6 majority of statutes, though the detail with which financial subjects are described varies
7 widely. Some statutes apply only to nonstock associations, but most apply to
8 cooperatives with or without capital stock. Subscription, payment, limits on
9 ownership, and limits on transfer of membership stock are common statutory
10 provisions. Preferred stock is noted in a majority of statutes. Other aspects of capital
11 structure noted in many statutes are: Number of shares and their value, limits on
12 capital stock dividends, reserves, and stock redemption.¹⁰

13 Interestingly Baarda suggested that, “[i]n a few States, cooperative provisions are structured so
14 identification of separate statutes is difficult; one, two, or three statutes may be involved in one
15 cluster of cooperative principles.”¹¹

16 The cooperative acts upon which most cooperatives in the United States are built date from
17 mid-twentieth century and, therefore, it is probably reasonable to assume that there has been a
18 lock-in effect with other sources of law and regulation that effect cooperatives. Several sources
19 of other law are briefly highlighted in a subsequent section of this preliminary note. It is
20 probably helpful, however, to briefly discuss the basic current income taxation of cooperatives
21 here even though tax law, at best, is an indirect source of cooperative law. The reason tax law
22 might be particularly relevant is because the daily operation of cooperatives is often coordinated
23 and constrained by the unique interaction of state law and the tax treatment of cooperatives.
24 Therefore tax law provides an important part of the current context in which the state law of
25 cooperatives is evolving even though any thumbnail outline of this area of taxation probably
26 raises more questions than it answers.

27 The federal income tax of many, but not all, cooperatives is found in Subchapter T of the
28 Internal Revenue Code (§§ 1381 et seq.). Subchapter T governs the taxation of most farmers
29 cooperatives including *exempt farmer cooperatives* under IRC § 521. Nonetheless, the
30 cooperative need not be a farmer cooperative to be governed by the general provisions of
31 Subchapter T. That is, as a general matter, “[a]ny business ‘operating on a cooperative basis’
32 uses Subchapter T when computing its tax liability.”¹² There are, however, exceptions to the
33 general statement. Indeed, Subchapter T expressly excludes utility cooperatives (rural electric
34 and telephone cooperatives taxed under § 501(c)(12)). It also expressly excludes mutual savings
35 banks, mutual insurance companies and cooperative housing corporations.

¹⁰ *Id.* at xiii.

¹¹ *Id.* at 3.

¹² *Taxation of Cooperatives*, *supra* note 1 at 7 (citing IRC § 1381(a)(2)).

1 Perhaps the most efficient way of explaining the general taxing scheme of Subchapter T is
2 simply to quote the two introductory paragraphs from the BNA Tax Management Portfolio on the
3 subject:

4 In general, earnings of a cooperative flow through the cooperative to the patrons, with
5 the cooperative not retaining any margins as profit. Thus, earnings are taxed only once.
6 The tax is ultimately paid by the cooperative patron, although under some
7 circumstances, the cooperative pays tax on a temporary basis, then receives a deduction
8 when the money is finally passed on to the patron. The rule of single taxation,
9 however, only applies if business income sources and distribution methods are
10 “cooperative” in nature. Earnings derived from nonpatronage sources and margins not
11 distributed in accordance with the Code are generally ineligible for single-level tax
12 treatment.

13 Upon the satisfaction of certain statutory conditions, cooperatives treat retained
14 patronage refunds and per-unit retains as if the funds retained had been paid to the
15 patron, deducted by the cooperative, accounted for in the patron’s income as ordinary
16 income, then invested in the cooperative. Conditions for this tax treatment include
17 agreement by the patrons to recognize full patronage refund for tax purposes even
18 though not received in cash or negotiable form.¹³

19 Taxation under Subchapter T, therefore, is a variant on regular corporate tax provisions and
20 could be seen *in approach* as roughly analogous to the way S corporation tax provisions vary the
21 regular corporate tax scheme for electing small business corporations.

22 Cooperatives eligible to be taxed as *exempt* farmer cooperatives under § 521 receive a
23 couple of tax benefits in addition to the benefits more generally afforded to cooperatives under
24 Subchapter T. The label “exempt” is a misnomer because “exempt” farmer cooperatives are *not*
25 exempt from income taxation but, rather, are allowed deductions for distributions on capital
26 stock (as compared with patronage-based distributions) and for patronage-based distributions of
27 nonpatronage dividends.

28 Eligibility for the § 521 exemption has several specific requirements and limitations some of
29 which reference underlying state governing law. One of the requirements, as set forth in § 521
30 (b)(1), mandates that the organization must be “a farmers’, fruit growers’, or like association
31 organized and operated on a cooperative basis . . . for the purpose of marketing the products of
32 members or other producers . . . or . . . for the purpose of purchasing supplies and equipment for
33 the use of members or other persons....”

34 Finally, as previously mentioned, other kinds of cooperative organizations are “truly”
35 exempt (but not necessarily charitable; charitable status allows for deductibility of donations by a

¹³ *Id.* at 5-6.

contributor) under IRC § 501. These exempt organizations must pay tax on such things as unrelated business income but are taxed separate and independent from treatment under Subchapter T.

Other Law.

State law and federal tax law are not the only law that shapes cooperatives. Anti-trust law, federally encouraged debt financing programs, and an exemption from securities regulation are important features in the cooperative law landscape.

The Capper-Volstead Act was enacted by Congress in 1922. It provides an exemption from anti-trust enforcement for cooperatives. “Cooperatives” are defined narrowly for purposes of the exemption. The definition includes, generally, farmer cooperatives “that limit membership to agricultural producers, restrict voting to one vote per member or limit dividends on equity to 8 percent per year, and handle products for members that exceeds the value of the products handled for nonmembers.”¹⁴

The Farm Credit System is important for two reasons. *First*, it is generally organized as a cooperative under federal law. *Second*, and more relevant for current purposes, it includes elements specifically designed to loan to cooperatives. According to secondary sources CoBank, ACB and St. Paul Bank for Cooperatives provide about 80 percent of the lending to farmer cooperatives. In 1997 these organizations had about \$11 billion in outstanding loans to farmer and rural utility cooperatives.¹⁵ Rural electric and telephone cooperatives also have access to funds from the National Rural Utilities Cooperative Finance Corporation. Finally, the National Cooperative Bank (NCB) “has become a leader in providing development funding for new, non-agricultural cooperatives and in devising methods of attracting outside capital to leverage its investments.”¹⁶

The exemption from securities registration, too, has eased the cost of capital formation for farmer cooperatives. Generally, this exemption is from the provisions of the Securities Act of 1933 and is available only to farmer cooperatives exempt from taxation under § 521 of the Internal Revenue Code. It is, however, a limited exemption. Indeed one of the most famous cases construing the definition of a security is *Reves v. Ernst & Young*, 494 U.S. 56 (1990), which involved the “sale” of demand promissory notes to both members and nonmembers (and that were found to be securities).

Finally the USDA’s Cooperative Services unit is part of its Rural Business-Cooperative Service within the Rural Development Mission Area. Ways in which Cooperative Services assist

¹⁴ Hanson, *supra* note 4 at 4.

¹⁵ *Co-ops 101*, *infra* note 21, at 21.

¹⁶ *Id.* at 9.

cooperatives include development assistance, technical assistance, education, research, and grant programs that fund cooperative research and educational efforts.

Categorizing Cooperatives.

Cooperatives are major players in the national economy. For example: (1) the net business value of agricultural cooperatives in 2000 was \$99.7 billion; (2) there are 3,346 agricultural cooperatives marketing about thirty percent of farmers' products in the United States; (3) more than twenty cooperatives have annual sales in excess of \$1 billion; (4) retailer-owned food and hardware cooperatives make it possible for independent store owners to compete with large "chains"; (5) cooperative health maintenance organizations (HMOs) provide health care services to nearly 1.4 million people in the United States; and (6) more than 48,000 different cooperatives provide more than 120 million people with a wide range of goods and services and nearly forty percent of the U.S. population belong to a cooperative.¹⁷ Moreover, a study published by the United States Department of Agriculture (USDA) reported that "new-generation and traditional co-ops have major beneficial impacts on rural communities."¹⁸ An official summary of the Report states:

During the 1990s, more than 50 new cooperatives were established in the Upper Midwest, with most of them based in rural communities. This surge of interest in forming new-generation cooperatives (NGCs) is creating spin-off economic benefits to the communities where these businesses locate.¹⁹

The study focused only on the Midwest during late 1997 and early 1998.

"New generation cooperatives" (NGC) are discussed in greater detail later in this memorandum (see, *supra*, "Recent Legal and Economic Developments"); however, a case study illustrates the organizing principles of the NGC and its potential economic benefit to members and the community.

One of the most successful and well-known value-added agricultural cooperatives is Dakota Growers Pasta Company (DGPC) which is owned by approximately 1,000 farmers in North Dakota, Montana, and Minnesota. It began operation in a \$40 million pasta factory near Carrington, North Dakota in 1993. By 1995 it produced about 100 million pounds of its own branded pasta in fifty different varieties. It doubled its capacity in 1997 with a \$5 million plant expansion funded, in part, by the sale of equities. In 2001 it purchased two processing plants near Minneapolis and, again, expanded its production facility at Carrington.

¹⁷ National Cooperative Business Association website, www.ncba.coop/stats.cfm (last visited 6/10/2003).

¹⁸ "Generating Rural Progress: A Summary of USDA/RBS Research Report 177" at www.rurdev.usda.gov/rbs/pub/aug00 (last visited 4/23/2003).

¹⁹ *Id.*

1 The plant has provided premium prices to farmers, created almost 200 jobs in Carrington,
2 and earned farmer-members a twenty percent annual return through 1995. In 1999 the shares,
3 which were originally issued at \$3.85, were worth approximately \$10.²⁰ Obviously, not all
4 NGCs (or even most of them) have achieved this kind of success. Nonetheless the DGPC
5 cooperative is an example of the NGC model.

6 Interestingly, Dakota Growers Past Company might be an example, too, of the restrictions
7 of the current cooperative structure because in July 2002 it converted from a cooperative to a
8 corporation. A story in the Grand Forks Herald (Ap. 7, 2002) which quoted SEC filings stated:

9 The filing says the change would enhance the possibility of relationships with strategic
10 partners and improve the liquidity of the corporation's capital stock. Conversion will
11 afford greater access to capital markets, which may allow it to expand its business over
12 time, the company says in the filing.

13 The document says the company is unlikely to obtain significant additional capital from
14 its current members or other durum wheat producers and has been having difficulty
15 getting durum - a consequence of widespread disease problems in recent North Dakota
16 crops.

17 In the last three years, the company has relied on non-members for durum but doesn't
18 say how much. The co-op maintains it hasn't run afoul of federal income tax rules but
19 acknowledges concerns.

20 (T)here is legal authority suggesting that, if a cooperative's inputs are obtained
21 predominantly from non-patron sources, its tax status as a cooperative might be
22 jeopardized, the filing says.

23 Cooperatives are limited neither to agriculture nor marketing and may be categorized
24 several ways. A few of the most important are by geographical territory served, by governance
25 system, and by the function served.²¹ Geographical territory categorization is based on the area
26 served and the best known categorization scheme includes local, super local, regional, national
27 and international. For geographical categorization purposes "super local" cooperatives typically
28 serve an area of two or more counties and frequently have several branches within that territory
29 while "regional cooperatives" serve an area anywhere from a few counties to one or more states.

30 Cooperatives are also categorized by governance system (or membership structure). This
31 categorization includes division between and among centralized cooperatives, federated

²⁰ New Generation Cooperative Case Studies Expanded 2001, p.27 (Illinois Institute for Rural Affairs).

²¹ Frederick, *Co-ops 101: An Introduction to Cooperatives*, Cooperative Information Report 55, p.20 (USDA, Rural Business-Cooperative Service, 1997) (hereinafter "*Co-ops 101*").

1 cooperatives and mixed cooperatives. The “centralized cooperative” has individuals and other
2 business entities as members. “Federated cooperatives,” on the other hand, have other
3 cooperatives as members:

4 Local cooperatives commonly form federateds to perform activities too complex and
5 expensive for them to do individually, such as manufacturing production supplies,
6 tapping major financial markets, and marketing on a national or worldwide scale.²²

7 “Mixed cooperatives,” unsurprisingly, have a mixture of membership which may include either
8 individuals or other non-cooperative entities *and* other cooperatives.

9 The most detailed categorization system is based on function performed. The basic
10 functional types include marketing, purchasing, and service provision but each of the basic
11 functional types may be subdivided much further.²³ Most marketing cooperatives involve some
12 portion of a broadly defined agriculture industry. Nonetheless: “New marketing ventures are
13 developing in such diverse industries as handicrafts, professional services and information
14 technology.”²⁴

15 *Marketing cooperatives* may negotiate favorable prices for members, serve as
16 “first-handlers” by aggregating bulk produce for sale, or further process or manufacture goods
17 from the base product or commodity (value-added processing cooperatives). Some marketing
18 cooperatives process and brand products and integrate all processes including delivery to grocery
19 or other retail or consumer cooperative stores. Examples of the cooperatives engaged in
20 processing, branding, and distribution include Land O’Lakes, Ocean Spray, Tree Top, and
21 Welch.

22 In addition to providing farmers’ supplies like fertilizer, fuel and feed; *purchasing*
23 *cooperatives* include many well known non-farm business purchasing cooperatives like True
24 Value, Ace Hardware, IGA, and Shurfine Foods. Restaurant purchase cooperatives have been
25 established for franchisees in the Burger King, KFC and Popeyes organizations and Wendy’s
26 franchisees use a financing cooperative. Finally, one of the fastest growing areas is
27 pharmaceutical purchasing for hospitals and independent pharmacies.

28 *Service cooperatives* apply fertilizer for farmers and provide electricity and telephone

²² *Id.* at 21.

²³ A slightly different functional classification includes the following categories: Marketing Cooperatives, business Purchasing Cooperative, Worker’s Productive Cooperatives, Financial Cooperatives, Insurance Cooperatives, Labor Unions, Trade Associations; Self-Help Cooperatives, and Consumer Cooperatives. Consumer Cooperatives, in turn, include consumer stores, housing cooperatives, condominiums, electric, telephone and other utility cooperatives, and health cooperatives. Packel, *The Organization and Operative of Cooperatives*, p.xv (1970).

²⁴ *Co-ops 101*, *supra* note 21 at 21.

1 service. According to the USDA:

2 Nonagricultural service cooperatives are also flourishing. Credit unions and the
3 National Cooperative Bank provide credit on a cooperative basis to nonfarm
4 individuals and cooperatives. School systems, health care providers, and insurance
5 buyers are among the general public segments making use of service cooperatives.²⁵

6 Insurance service cooperatives are sometimes known as cooperative health alliances and
7 such alliances have been formed by employers in Seattle, Memphis, and Sacramento, among
8 other cities. Direct health care is provided by HMOs. Moreover, *financing cooperatives* are
9 anecdotally becoming popular.

10 Finally, for purposes of categorization, there is another “old” kind of co-op that is more
11 popular in Europe than the United States. It is the “Workers’ Productive Cooperative” which in
12 some ways resembles the operation and function of an Employee Stock Ownership Plan (ESOP).
13 “Workers’ is broadly defined to include professionals.

14 Recent Developments.

15 In the late 1980s and 1990s, at least Minnesota, Colorado, Iowa, Oregon and Ohio redrafted
16 their cooperative statutes.²⁶ The recodification of Minnesota’s cooperative statutes is
17 instructive: “In Minnesota, five different stock and nonstock cooperative statutes were recodified
18 and revised into one corporate cooperative statute” in 1989.²⁷ Moreover, Hanson states that
19 “many” states loosened the statutory restrictions in their commodity marketing acts to allow
20 nonagricultural producers to form cooperatives. Again according to Hanson, “[t]he modern
21 corporate cooperative statutes are general cooperative statutes with certain provisions to
22 accommodate agricultural producer cooperatives.”²⁸

23 A major part of this renewed interest in cooperative business organizations and cooperative
24 organization statutes is the evolution of value-added agricultural cooperative illustrated by the
25 case vignette, *supra*, in “The Cooperative Industry” portion of this memorandum. A book
26 published by the Illinois Institute for Rural Affairs delineates this evolution as follows:

27 The development of cooperatives in the Upper Midwest from the 1970s through the
28 1990s provides vivid examples of several new phenomena and trends. Among the
29 most important are the New Generation Cooperatives (NGCs). The term, used since

²⁵ *Id.* at 23.

²⁶ Hanson, *supra* note 4 at 6.

²⁷ *Id.*

²⁸ *Id.*

1 the mid-1990s, was proposed by the Centre for the Study of Cooperatives, University
2 of Saskatchewan, Canada [citation omitted]. These NGCs represent the newest wave of
3 U.S. co-ops. While earlier generations had emerged in the 1900s, the 1920s, and again
4 in the 1940s, NGCs have several features that distinguish them from traditional farmers
5 co-ops.²⁹

6 These distinguishing NGC features include: (1) a focus on value-added processing; (2)
7 expanded use of equity as a funding source; and, (3) restricted membership with equity shares
8 limited by the requirements to build plant, process, and/or product (thus, many NGCs are
9 “closed-end” while generally retaining the one member one vote concept and maintaining
10 effective governing control in producers while at the same time providing a governance “voice”
11 for nonproducer outside investors).³⁰

12 In 1996 Iowa enacted a cooperative statute specifically designed for agricultural value-added
13 purposes. It was a corporation-based statute and it required, among other things, that “farming
14 entities” have at least 60 percent of the voting and financial rights.³¹ Further, it provided
15 “authorized persons” to have 75 percent of the voting and financial rights.³² Some organizations
16 incorporated under the 1996 Iowa Act sought “Exempt Farmer Cooperative” Certification from
17 the IRS under § 521 and, according to Hanson, questions were raised whether they qualified for §
18 521 status as operating on a cooperative basis.³³ As a result of these questions the Iowa statute
19 was amended to replace corporate terms like “incorporation,” “stock” and “shareholders” with
20 unincorporated entity terms like “organizers”, “members” and “interests” so that the organization
21 might qualify for partnership income tax status (like a limited liability company under state law)
22 and, therefore, be taxed on a purer flow-through basis under Subchapter K.

23 This different statutory design approach which attempts to take advantage of partnership tax
24 classification should not be underestimated because it evidences that the organizers were willing
25 to leave the traditional protective confines of the corporate tax structure as modified by
26 Subchapter T in order to make value-added processing financially viable based on a different
27 capital structure. In other words, the approach evolved from perceived real-world need.

28 Wyoming enacted a “Wyoming Processing Cooperative Law,” effective in 2001, for
29 purposes similar to Iowa’s law. The impetus for the Wyoming law was from lamb producers in

²⁹ Igor Kotov, “New Generation Cooperatives: A Short History of the Idea and the Enterprise,” *NEW GENERATION COOPERATIVES: CASE STUDIES EXPANDED 2001* at 19 (2001).

³⁰ *Id.* at 19-20.

³¹ Hanson, *supra* note 4 at 10.

³² *Id.*

³³ *Id.* (Citation omitted.)

1 Wyoming and adjoining states. Its purpose was to allow the producers to “acquire lamb, meat,
2 wool and pelt processing and marketing businesses to make lamb production more marketable on
3 a cooperative basis.”³⁴ It was drafted to allow for partnership taxation or, at the discretion of the
4 particular entity, to elect corporate taxation and thereby be eligible for Subchapter T and,
5 perhaps, § 521 tax treatment. As a result, the Wyoming Act is more flexible than traditional
6 cooperative acts and gives far more freedom to the organizers in their entity documents than
7 typically afforded under traditional cooperative statutes.

8 Neither the Wyoming nor the Iowa cooperative statutes have received revenue rulings,
9 however, an entity organized under the Wyoming Act has apparently received a private letter
10 ruling (PLR) from the Internal Revenue Service indicating that it will be eligible for partnership
11 income tax classification. Identifying facts are excised from published letter rulings.
12 Nonetheless PLR 2001-125369 included the following statement of relevant fact:

13 Company A is a new entity that will be organized on Date 1, under the State
14 Cooperative LLC Act (Act). The Act was enacted on Date 2, with an effective date of
15 Date 1. The Act defines “Cooperative” as association organized under this article
16 conducting business on a cooperative plan as provided under this Article.

17 It concluded:

18 In the present case, Company A is organized as an unincorporated association under the
19 Act, which does not refer to an association as incorporated or as a corporation, body
20 corporate, or body politic... Therefore, it is an “eligible entity” and not a per se
21 corporation under section 301.7701-2(b)(1).

22 Minnesota enacted a new agricultural processing statute during the past legislative session;
23 one was introduced in Wisconsin, and; an industry study group has been formed in Iowa. It is
24 not known whether legislative study activity in other states has been undertaken.

25 The Legal, Tax & Accounting Committee of the National Council of Farmer Cooperatives
26 (NCFC) has been following the legal and economic developments concerning cooperatives
27 closely. It has not taken a position on any specific changes and its general approach to the new
28 acts is prudently cautious. Nevertheless, J. Gary McDavid, a member of that committee,
29 individually observed that the success of cooperatives might be attributed to several factors
30 including: “1. Tax, SEC, antitrust, and other benefits provided to co-ops, 2. Special banks that
31 provided financing for co-ops, 3. Encouragement and assistance from USDA and NCFC, and 4.
32 the fact the concept worked.”³⁵

³⁴ *Id.*

³⁵ J. Gary McDavid, “Evolving Cooperative Structures,” *Study subcommittee: Legal, Tax & Accounting Conference of the National Council of Farmer Cooperatives*, Jan. 21, 2002, at 1.

1 He also identified several current structural challenges for cooperatives (and the continued
2 viability of the cooperative business organization) given the advent of other entity choices.
3 Structural challenges included “lack of outside equity” and the “inability to access going concern
4 value.”³⁶ Other challenges included “competition from LLCs” and the desire of investment
5 return on the part of member-investors and stock options in order to retain qualified
6 management.³⁷ He specifically stated, “some cooperatives have converted to LLCs and many
7 new ventures are structured as LLCs... [because] LLCs are flexible vehicles and allow patronage
8 and non-patronage income to pass through to the members.”³⁸ McDavid’s comments seem to be
9 supported generally by agricultural economists.

10 An article in the 1995 *American Journal of Agricultural Economics* lists five problems
11 inherent in operating within the traditional cooperative structure. All five relate to “vaguely
12 defined property rights.”³⁹ According to the article, a *free-rider problem* exists for
13 open-membership cooperatives because new members receive the same patronage dividends as
14 do members who originally invested in the cooperative; *portfolio* and *horizon* problems arise due
15 to lack of share transferability; that is, members cannot adjust their investment over time to
16 match their investment profiles; and, there is a disincentive for members to invest more capital
17 because of lack of liquidity of the investment and lack of the ability for the investor to time sales
18 (e.g. redemption fixed upon death or retirement). Finally, the *control* and *influence cost*
19 *problems* (e.g., agency cost and monitoring costs) inherent in any nonpublicly traded business are
20 present in cooperatives. According to follow-up research conducted in 1996 and 1997,
21 “[e]mpirical work confirmed the connection between theory and practice.”

22 The research analyzed,

23 [A]ll rural or agricultural-related cooperative formations in the Upper Midwest
24 between 1988 and 1996 . . . and made the following observations:

- 25
- 26 1. More than 80 percent of cooperative formations in the Upper Midwest adopted
27 non-traditional cooperative organization characteristics.
 - 28 2. Why? According to the results of the survey – to solve for a set of problems cause
29 by vaguely defined property rights.
 - 30 3. A coordinated set of simple organizational policies to solve for vaguely defined

³⁶ *Id.* at 2.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Michael L. Cook, *The Future of U.S. Agricultural Cooperatives: A Neo-Institutional Approach*, 77
AMER. J. AGR. ECON. 1153 AT 1156 (1995).

property rights; transferable and appreciable equity shares, defined membership, uniform grower agreements, and a minimum upfront equity investment requirement were identified.

4. Ninety-six percent of the cooperatives in the survey reduced the free-rider problem by linking member investment to use.
5. Ninety-four percent allowed members the ability to adjust their asset portfolio to meet the risk preferences by allowing the transfer of equity shares.
6. In addition, 93.6 percent of the cooperatives allowed producers to realize changes in the cooperative's value upon divestment of their equity shares.
7. Defined (closed) membership policies were popular among newly organized agricultural cooperatives with 98 percent of the survey cooperatives implementing a defined membership structure.
8. Direct investment through the sale of nonvoting equity stock was the primary method employed to raise producer equity in these cooperatives. Nearly 98.7 percent of equity raised from producers took this form.⁴⁰

The findings, above, are consistent with theoretical suggestions to amend the cooperative form to include some combination of such features as transferability of equity shares, appreciable equity shares, defined membership, legally binding delivery contract or uniform grower agreement, and minimum up-front equity investment.⁴¹ These features, however, are not necessarily consistent with cooperative values as described by the Rochdale Principles.

In 2000 the USDA proposed to expand the authority of its Cooperative Services unit to include programs to all types of rural cooperatives. The goal of the expanded authority of Cooperative Services would be to provide, "[t]he same bundle of services currently offered to farmer cooperatives..., with proper budget support and staffing, to rural nonfarm cooperative businesses such as those in housing, health care, child and elder care, credit, rural utility, purchasing and worker owned [cooperatives].⁴² Moreover, at least as of June 29, 2002, the House and Senate Appropriations Committees had increased appropriation for rural development grant programs. There is other evidence of strong interest in Congress in the cooperative industry.

⁴⁰ Michael L. Cook, Constantine Iliopoulos, *Beginning to Inform the Theory of the Cooperative Firm: Emergence of the New Generation Cooperative* 1999 THE FINNISH JOURNAL OF BUSINESS ECONOMICS 525 at 530 (Issue 4).

⁴¹ *Id.*

⁴² Speech at www.usdaeconomists.org (last visited 4/23/03).

1 Another possible reason for renewed interest in agricultural cooperatives within the federal
2 government might be the changing international trade climate concerning direct farm subsidies.
3 As the immediate past Deputy Administrator of the Rural Business-Cooperative Service stated at
4 the USDA Economists Group Meeting in late 1999:

5 Current trends that are leading to a renewed interest in cooperatives include
6 industrialization and concentration, increased contracting, phase-out of farm price
7 supports... and the “new generation” cooperative phenomena.⁴³

8 He also noted that there was an increase of mergers or consolidation of cooperatives in
9 many sectors in order for cooperatives to become global competitors.

10 **A Brief Overview of the First Discussion Draft**

11 The primary purpose of the first draft is to structure the discussion of global issues. The Act
12 itself is the Wyoming Processing Cooperative Act with few revisions or additions. The
13 comments provide comparative provisions from the Minnesota Cooperative Associations Act.

14 The Wyoming Act was selected primarily because it is closer to the initial charge to the
15 Committee and the articulated scope of the Agricultural and Agricultural Related Cooperative
16 Drafting Project. The Wyoming Processing Cooperative Act also exhibits a more traditional
17 unincorporated entity “look and feel” which is shared by other uniform entity acts. Minnesota’s
18 Act is broader and more detailed reflecting a different drafting approach similar to its state LLC
19 act which has a more corporate “look and feel.” The more corporate styled LLC style is shared,
20 for example, with LLC Acts in North Dakota, Tennessee, and Nevada.

21 Both the Minnesota and Wyoming Cooperative Acts contemplate enabling cooperatives to
22 organize for broader purposes than those traditionally contemplated by agricultural or farmer
23 cooperatives. They are designed to enable the formation of “new generation” cooperatives. The
24 Minnesota Act, however, may be used by any cooperative formed for a broad variety of purposes.
25 Nonetheless, neither the Wyoming Processing Cooperative Act and, to a lesser and arguable
26 extent, the Minnesota Cooperative Association Act seek to replace existing state cooperative
27 statutes. That is, neither contain repealer provisions. Thus, these two act may be contrasted with
28 revisions to the cooperative laws in states like Oregon and Colorado which have unified and
29 restated most of the organic law of all cooperatives in their states in a single cooperative act. The
30 purpose of the latter acts, therefore, differs from the current scope of this project.

31 Other uniform laws and drafting projects that might be relevant for comparison purposes
32 include the Revised Uniform Limited Partnership Act (2001), the Uniform Limited Liability
33 Company Act which is currently the subject of a revision committee, and the Revised Uniform

⁴³ *Id.*

1 Partnership Act (1997). Additionally, the Conference has undertaken a joint drafting project with
2 the ABA on multiple entity transactions (e.g., mergers, conversions, share exchanges). The joint
3 drafting project (META) contemplates a “hub and spokes” or “junction box” structure attempting
4 to unify the law governing these transactions for all entities in a single place with reference back
5 to the underlying corporate or specific unincorporated entity law where necessary. Thus, META
6 may directly affect this project.

7 Finally, of course, cooperatives have traditionally been incorporated and are, therefore, a
8 variety of corporation. The traditional use of a corporate model leads to two observations: (1)
9 practitioners and the public have developed expectations about cooperative statutes and (2) the
10 existing statutes do not necessarily reflect the traditional policy or traditional language of
11 unincorporated entities. Of course most entities share the same basic concerns and needs no
12 matter of the organizational statute. For these reasons, another comparative source for
13 cooperative law is corporate law like the Revised Model Business Corporation Act (RMBCA).

14 The common issues reflect two different analytical paradigms that need to be addressed by
15 an act governing an entity. The first paradigm is simply the life-cycle of the entity; that is,
16 getting, operating and getting out. Simply an organizational act must contemplate the entire life
17 cycle. In addition, the life-cycle paradigm suggests an analysis of purpose. The other paradigm
18 is more issue specific and relationship driven and includes the definition of “member” and the
19 relationship between and among members; between members and the entity; between the
20 members and the agents of the entity; between the agents of the entity and the entity; and
21 between and among the entity, the members, the entity’s agents and third parties. Each of these
22 relationships can be further divided into governance and fiduciary issues and financial issues.

1 **AGRICULTURAL AND AGRICULTURAL RELATED COOPERATIVES ACT**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the [Uniform, Model]
5 Agricultural and Agricultural Related Cooperatives Act.

6 **Comment**

7 This draft does not contain a section on purpose. Following are examples of sections
8 concerning purpose in existing law in Wyoming and Colorado.

9 Wyoming General Cooperative Act § 17-10-101:

10 **Purpose of Chapter.** In order to promote, foster, and encourage the intelligent and orderly
11 marketing of agricultural products through cooperation, and to eliminate speculation and waste,
12 and to make the distribution of agricultural products as direct as can be efficiently done between
13 producer and consumer, and to stabilize the marketing problems of agricultural products, this act
14 is passed.

15 Colorado Rev. Stat. (General Coop Law) § 7-56-102:

16 **Legislative declaration.**

17 (1) The general assembly finds and declares that:

18 (a) The cooperative form of doing business provides an efficient and effective method
19 for persons to market their goods and services and to obtain services and supplies, and it is in the
20 best interests of the people of the state of Colorado to promote, foster, and encourage the
21 utilization of cooperatives in appropriate instances.

22 (b) The cooperative marketing law of the state of Colorado has provided for the
23 promotion, fostering, and encouragement of the intelligent and orderly marketing of agricultural
24 products through cooperation; has eliminated speculation and waste; has made distribution of
25 marketing of agricultural products; and has provided for the organization and incorporation of
26 cooperative marketing associations for the marketing of such products, all as contemplated at the

1 time of the original adoption of the cooperative marketing law.

2 (c) It is in the best interests of the people of the state of Colorado to preserve the
3 provisions of the cooperative marketing law as it has been in force and interpreted in the state
4 and to continue the provisions thereof for agriculture, but also to expand the provisions of the
5 law to provide greater direction and flexibility in its provisions and to enable all types of
6 industries and enterprises to avail themselves of the benefits of the cooperative form of doing
7 business in accordance with the provisions of this article.

8 * * *

9 Text of paragraph (1)(d) effective July 1, 2004.

10 (d) It is in the best interests of the people of the state of Colorado to allow those
11 cooperatives that have been formed under or are subject to other articles of this title to remain
12 under said article or to elect to come under this article.

13 **SECTION 102. RESERVATION OF POWER TO AMEND OR REPEAL.** The [name
14 of state legislature] has power to amend or repeal all or part of this Act at any time and all
15 domestic and foreign cooperatives subject to this Act are governed by the amendment or repeal.

16 **Comment**

17 This language is from RMBCA § 1.02. The purpose of this section in the RMBCA is to
18 avoid the argument that a cooperative has vested or contractual rights in any statutory provisions.
19 It would also apply to provisions contained in the articles of organization or bylaws. This is a
20 common provision for corporate organizations but far less common for unincorporated
21 organizations.

22 This section raises, *albeit* indirectly, the issue of whether this act should default to a gap
23 filling statute and, if so, which one: (1) existing cooperative statutes in the states; (2) general
24 corporate law; (3) some category of unincorporated law. Considerations include uniformity,
25 flexibility, and the effect of any default on “other laws” and programs related to cooperatives.
26 The comparative provisions, below, also include a statement of policy concerning the
27 applicability of state restraint of trade statutes.

28 Minnesota Cooperative Associations Act § 308B.101:

29 The State reserves the right to amend or repeal the provisions of this chapter by law. A
30 cooperative organized or governed by this chapter is subject to this reserved right.

Wyoming General Cooperative Act § 17-10-123:

Legality of associations. No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between the association and its members, or any agreements authorized in this act be considered illegal or in restraint of trade.

Wyoming General Cooperative Act § 17-10-125:

Applicability of general corporation laws. The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act.

Wyoming General Cooperative Act § 17-10-102:

Definitions; associations deemed nonprofit; short title.

(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(c) The term "association" or "cooperative" means any corporation organized under this act.

(d) The term "person" shall include individuals, firms, partnerships, corporations and associations.

(e) Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members as such, but only for their members as producers.

* * *

SECTION 103. DEFINITIONS.

(a) As used in this article:

(i) "Address" means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which may

1 not be a post office box;

2 (ii) "Articles" means the articles of organization of a cooperative as originally
3 filed and subsequently amended;

4 (iii) "Association" means an organization conducting business on a cooperative
5 plan under the laws of this state or another state that is chartered to conduct business under other
6 laws of this state or another state;

7 (iv) "Board" means the board of directors of a cooperative;

8 (v) "Business entity" means a company, limited liability company, limited liability
9 partnership or other legal entity, whether domestic or foreign, association or body vested with the
10 power or function of a legal entity;

11 (vi) "Cooperative" means an association organized under this article conducting
12 business on a cooperative plan as provided under this article;

13 (vii) "Domestic business entity" means a business entity organized under the laws
14 of this state;

15 (viii) "Filed with the secretary of state" means that a document meeting the
16 applicable requirements of this article, signed and accompanied by the required filing fee, has
17 been delivered to the secretary of state of this state. The secretary of state shall endorse on the
18 document the word "Filed" or a similar word determined by the secretary of state and the month,
19 day, and year of filing, record the document in the office of the secretary of state, and return a
20 document to the person or entity who delivered it for filing;

21 (ix) "Foreign business entity" means a business entity that is not a domestic
22 business entity;

1 (x) "Member" means a person or entity reflected on the books of the cooperative
2 as the owner of governance rights of a membership interest of the cooperative and includes
3 patron and nonpatron members;

4 (xi) "Membership interest" means a member's interest in a cooperative consisting
5 of a member's financial rights, a member's right to assign financial rights, a member's governance
6 rights and a member's right to assign governance rights. Membership interest includes patron
7 membership interests and nonpatron membership interests;

8 (xii) "Members' meeting" means a regular or special members' meeting;

9 (xiii) "Nonpatron membership interest" means a membership interest that does not
10 require the holder to conduct patronage business for or with the cooperative to receive financial
11 rights or distributions;

12 (xiv) "Patron" means a person or entity who conducts patronage business with the
13 cooperative;

14 (xv) "Patronage" means business, transactions, or services done for or with the
15 cooperative as defined by the cooperative;

16 (xvi) "Patron member" means a member holding a patron membership interest;

17 (xvii) "Patron membership interest" means the membership interest requiring the
18 holder to conduct patronage business for or with the cooperative, as specified by the cooperative
19 to receive financial rights or distributions;

20 (xviii) "Signed" means that the signature of a person has been written on a
21 document, and, with respect to a document required by this article to be filed with the secretary
22 of state, means that the document has been signed by a person authorized to do so by this article,

the articles or bylaws, or by a resolution approved by the directors or the members. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically or in any other manner reproduced on the document;

(xix) "The act" means _____ through _____.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-202.

This section will probably be expanded as the need arises in discussing the substantive provisions contained elsewhere. Moreover, the definition of "signing" must be conformed with other uniform laws to provide for the notion of record.

Preliminary matters that need be addressed include whether (1) the Act should include a definition of "agriculture," "agriculturally related," "farmer," "value added," and "cooperative." The committee determination on the last four definitions will cascade throughout the Act and the drafting process. Moreover, it is noted that no definitions for "foreign cooperative" or related "foreign" terms are included. For other related comparative provisions in existing law, see the comments to the next several sections.

Colorado Rev. Stat. (General Coop Law) §7-56-103:

Definitions. As used in this article, unless the context otherwise requires:

(1) "Agricultural cooperative" means a cooperative in which the members, including landlords and tenants, are all producers of agricultural products.

(2) "Agricultural products" means agronomic, horticultural viticultural, aquacultural, forestry, dairy, livestock, poultry, bee, and any other farm or ranch products.

* * *

Text of subsec. (6) introductory paragraph effective July 1, 2004.

(6) "Cooperative means any entity formed under or subject to this article by election or otherwise, including a cooperative formed under comparable law of another jurisdiction doing business in this state, and having the following characteristics:

(a) The business of the cooperative is operated at cost by adjusting the prices charged for goods or services or by returning any net margins at the end of a fiscal year on a patronage basis

1 to members and other persons qualified to share in the net margins pursuant to the articles or
2 bylaws;

3 (b) Dividends on stock or interest on equity capital is limited, as prescribed in the
4 articles pursuant to Section 7-56-201 or bylaws pursuant to Section 7-56-208 of the cooperative;

5 (c) Voting rights are limited to members of the cooperative as prescribed in the articles
6 or bylaws of the cooperative;

7 (d) The cooperative's business is carried on for the mutual benefit of its members; and

8 (e) Members are not liable for any debt, obligation, or liability of the cooperative.

9 * * *

10 **SECTION 104. FILING FEE; RULES AND REGULATIONS; ANNUAL REPORTS**
11 **AND LICENSE TAXES.**

12 (a) Unless otherwise provided, the filing fee for documents filed under this article with
13 the secretary of state shall be subject to the provisions of [the general business corporation law of
14 this state]. The secretary of state shall promulgate rules and regulations necessary to implement
15 the provisions of this article.

16 (b) The provisions of [the general business corporation law of this state] regarding the
17 filing of reports, license taxes and records shall apply to cooperatives formed under this article.

18 **Comment**

19 The source for this provision is Wyoming Rev. Stat. § 17-10-203.

20 This section uses a junction-box style reference to cover many filings under this Act.

21 **SECTION 105. REGISTERED AGENT; CHANGE OF REGISTERED OFFICE OR**
22 **REGISTERED AGENT.**

1 (a) Each cooperative shall have and continuously maintain in this state:

2 (i) A registered office which may be, but need not be, the same as its place of

3 business;

4 (ii) A registered agent, which agent may be either an individual resident in this

5 state whose business office is identical with such registered office, or a domestic corporation, or

6 a foreign corporation authorized to transact business in this state, having a business office

7 identical with such registered office.

8 (b) A cooperative may change its registered office or agent, or both, upon filing in the

9 office of the secretary of state a statement setting forth:

10 (i) The name of the cooperative;

11 (ii) The address of its then registered office;

12 (iii) If the address of its registered office be changed, the address to which the

13 registered office is to be changed;

14 (iv) The name of its then registered agent;

15 (v) If its registered agent be changed, the name of its successor registered agent;

16 (vi) That the address of its registered office and the address of the business office

17 of its registered agent, as changed, will be identical;

18 (vii) That the change was authorized by affirmative vote of a majority of the board

19 of directors of the cooperative.

20 (c) The statement shall be signed and delivered to the secretary of state. If the secretary

21 of state finds that the statement conforms to the provisions of this act, he shall file the statement

22 in his office, and upon filing the change of address of the registered office or the appointment of

1 a new registered agent or both, as the case may be is effective.

2 (d) Any registered agent of a cooperative may resign as agent upon filing a written
3 notice thereof, signed with one (1) original and one (1) exact or conformed copy, with the
4 secretary of state, who shall forthwith mail a copy thereof to the cooperative at its principal
5 mailing address as defined and prescribed by the secretary of state. The appointment of the agent
6 shall terminate upon the expiration of thirty (30) days after receipt of notice by the secretary of state.

7 (e) If any cooperative has failed for thirty (30) days to appoint and maintain a registered
8 agent in this state, or has failed for thirty (30) days after change of its registered office or
9 registered agent to file in the office of the secretary of state a statement of the change it shall be
10 deemed to be transacting business within this state without authority and to have forfeited any
11 franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made
12 effective in the following manner. The secretary of state shall mail by certified mail a notice of
13 its failure to comply with aforesaid provisions. Unless compliance is made within thirty (30) days
14 of the delivery of notice, the cooperative shall be deemed defunct and to have forfeited its
15 certificate of organization acquired under the laws of this state. Provided, that any defunct
16 cooperative may at any time within two (2) years after the forfeiture of its certificate, in the
17 manner herein provided, be revived and reinstated, by filing the necessary statement under this
18 act and paying a reinstatement fee established by the secretary of state by rule, together with a
19 penalty of one hundred dollars (\$100.00). The reinstatement fee shall not exceed the costs of
20 providing the reinstatement service. The cooperative shall retain its registered name during the
21 two (2) year reinstatement period under this section.

22 **Comment**

1 The source for this provision is Wyoming Rev. Stat. § 17-10-204.

2 The following comparative sections from the Minnesota law more directly address issues of
3 foreign entities and doing business. Note the provisions are “corporate” in nature through
4 analogues of the provisions may be found in unincorporated statutes.

5 Minnesota § 308B.151(6)(g):

6 (g) A member of a foreign cooperative is not liable for the debts and obligations of the
7 foreign cooperative solely by reason of the business entity’s having transacted business in this
8 state without a valid certificate of authority.

9 Minnesota § 308B.151(7):

10 **Transactions not Constituting Transacting Business.**

11 (a) The following activities of a foreign cooperative, among others, do not constitute
12 transacting business within the meaning of this section:

13 (1) maintaining, defending, or settling any proceeding;

14 (2) holding meetings of its members or carrying on any other activities concerning its
15 internal affairs;

16 (3) maintaining bank accounts;

17 (4) maintaining offices or agencies for the transfer, exchange, and registration of the
18 foreign cooperative’s own securities or maintaining trustees or depositories with respect to those
19 securities;

20 (5) selling through independent contractors;

21 (6) soliciting or obtaining orders, whether by mail or through employees or agents or
22 otherwise, if the orders require acceptance outside this state before they become contractors;

23 (7) creating or acquiring indebtedness, mortgages, and security interests in real or
24 personal property;

25 (8) securing or collecting debts or enforcing mortgages, and security interests in
26 property securing the debts;

27 (9) holding, protecting, renting, maintaining, and operating real or personal property in
28 this state;

1 (10) selling or transferring title to property in this state to any person; or

2 (11) conducting an isolated transaction that is completed within 30 days and that is not
3 one in the course of repeated transactions of a like manner.

4 (b) The term “transacting business” as used in this section has no effect n personal
5 jurisdiction under section 543.19.

6 (c) For purposes of this section, any foreign cooperative that own income-producing real or
7 tangible personal property in this state, other than property exempted under paragraph (a), is
8 considered to be transacting business in this state.

9 (d) The list of activities in paragraph (a) is not exhaustive. This subdivision does not apply
10 in determining the contracts or activities that may subject a foreign cooperative to service of
11 process or taxation in this state or to regulation under any other law of this state.

12 Minnesota § 308B.225:

13 **Subdivision 1. Authority.** A business entity organized and doing business under other
14 statutes of this state or under the laws of other states that has conducted or will conduct business
15 as a cooperative may become subject to this chapter by amending its organizational documents to
16 conform to the requirements of this chapter. A business entity that becomes subject to this
17 chapter must provide its members with a disclosure statement of the rights and obligations of the
18 members and the capital structure of the cooperative before becoming subject to this chapter.

19 **Subdivision 2. Entities in this State.** A business entity organized under other statutes of
20 this state may amend its articles in the manner provided under the statute that it is governed by
21 for the adoption of amendments to comply with the provisions of this article and file the
22 amended articles with the secretary of state to be a cooperative governed under this chapter. The
23 separate existence of the business entity under the other statutes ceases with the filing of articles
24 to be governed under this chapter.

25 **Subdivision 3. Entities Organized in Other States.** A business entity organized under
26 laws of other states shall amend its organizational documents in the manner required by the laws
27 of the state where it was organized to comply with the provisions of this chapter. After the
28 organizational documents are amended, the business entity shall file a certified copy of the
29 organizational documents, as amended, with the secretary of state to comply with the provisions
30 of this chapter with the fees and requirements prescribed for filing articles. After filing, the
31 business entity is a cooperative in this state organized under and subject to the provisions of this
32 chapter.

33 **SECTION 106. ORGANIZATIONAL PURPOSE.** A cooperative may be formed and

1 organized on a cooperative plan as provided under this article to market, process, or otherwise
2 change the form or marketability of crops, livestock and other agricultural products, including
3 manufacturing and further processing of those products and other purposes that are necessary or
4 convenient to facilitate the production or marketing of agricultural products by patron members
5 and other purposes that are related to the business of the cooperative.

6 **Comment**

7 The source for this provision is Wyoming Rev. Stat. § 17-10-205.

8 This is the organization purpose of the cooperative and not of “this act.” *See* Section 103
9 Comments.

10 Minnesota § 308B.201:

11 **Organizational Purpose.** A cooperative may be formed and organized on a cooperative
12 plan for any lawful purpose, including:

13 (1) to market, process, or otherwise change the form or marketability of products, including
14 crops, livestock, and other agricultural products, the manufacturing and further processing of
15 those products, other purposes that are necessary or convenient to facilitate the production or
16 marketing of products by patron members and others, and other purposes that are related to the
17 business of the cooperative;

18 (2) to provide products, supplies, and services to its members; and

19 (3) for any other purposes that cooperatives are authorized by law.

1 **ARTICLE 2**

2 **FORMATION AND ARTICLES OF ORGANIZATION**

3 **SECTION 201. ORGANIZERS.** A cooperative may be organized by one (1) or more
4 organizers who shall be adult natural persons, who may act for themselves as individuals or as
5 the agents of other entities. The organizers forming the cooperative need not be members of the
6 cooperative.

7 **Comment**

8 The source for this provision is Wyoming Rev. Stat. § 17-10-206.

9 The ability to use organizers contains a number of sleeping issues concerning the entire act
10 including specific issues in Article 2. The Article 2-specific issues include, *inter alia*, the
11 governing role of the various organic documents. Unincorporated entities are typically formed
12 by agreement and the filing of notice “certificates” that reflect but do not control the agreement
13 itself. Thus, the use of nonmember organizers begs the existence of an underlying agreement. In
14 corporate law, on the other hand, the articles (and bylaws) govern the entity and shareholder
15 agreements, in a way, supplemental.

16 The use of organizers also raises the issue of “shelf” cooperatives. This issue has been
17 discussed at length in the current drafting committee for the Revised Uniform Limited Liability
18 Company Act.

19 Again, the choice of governance structure here will cascade through the Act and may
20 implicate other state and federal law related to cooperatives.

21 Finally, “Plan of Cooperative” is nowhere defined.

22 **SECTION 202. COOPERATIVE NAME.**

23 (a) The name of a cooperative shall distinguish the cooperative upon the records in the
24 office of the secretary of state from the name of a domestic business entity or a foreign business
25 entity, authorized or registered to do business in this state or a name the right to which is, at the

1 time of organization, reserved or provided for by law.

2 (b) The cooperative name shall be reserved for the cooperative during its existence.

3 **Comment**

4 The source for this provision is Wyoming Rev. Stat. § 17-10-207.

5 Several States provide for penalties for noncooperative organizations using the term
6 cooperative as part of their names.

7 **SECTION 203. ARTICLES OF ORGANIZATION.**

8 (a) The organizers shall prepare the articles, which shall include:

9 (i) The name of the cooperative;

10 (ii) The purpose of the cooperative;

11 (iii) The principal place of business for the cooperative and the name and address
12 of its registered agent in this state;

13 (iv) The period of duration for the cooperative, if the duration is not to be perpetual;

14 (v) The capital structure of the cooperative including a statement of the classes
15 and relative rights, preferences, and restrictions granted to or imposed upon each class of member
16 interests, the rights to share in profits or distributions of the cooperative, and the authority to
17 issue member interests, which may be designated to be determined by the board;

18 (vi) A provision designating the voting and governance rights, including which
19 membership interests have voting power and any limitations or restrictions on the voting power,
20 which shall be in accordance with the provisions of this article;

21 (vii) A statement that patron membership interests with voting power shall be
22 restricted to one (1) vote for each member regardless of the amount of patron membership

1 interests held in the affairs of the cooperative or a statement describing the allocation of voting
2 power allocated as prescribed in this article;

3 (viii) A statement that membership interests held by a member are transferable
4 only with the approval of the board or as provided in the bylaws;

5 (ix) The names, post office addresses, and terms of office of the directors of the
6 first board;

7 (x) A statement as to how profits and losses will be allocated and cash will be
8 distributed between patron membership interests collectively and nonpatron membership
9 interests collectively, a statement that net income allocated to a patron membership interests as
10 determined by the board in excess of dividends and additions to reserves shall be distributed on
11 the basis of patronage, and that the records of the cooperative shall include the interests of patron
12 membership interests and nonpatron membership interests which may be further described in the
13 bylaws, of any classes, and in the reserves; and

14 (xi) The registered address of the cooperative.

15 (b) The articles shall contain the provisions in subsection (a) of this section, except that
16 the names, post office addresses of the directors of the first board may be omitted after their
17 successors have been elected by the members or the articles are amended in their entirety.

18 (c) The articles may contain any other lawful provision.

19 (d) The articles shall be signed by the organizers.

20 (e) The original articles shall be filed with the secretary of state. The fee for filing the
21 articles with the secretary of state shall be subject to the provisions of _____.

22 (f) When the articles of organization have been filed with the secretary of state and the

1 required fee has been paid to the secretary of state, it shall be presumed that:

2 (i) All conditions precedent that are required to be performed by the organizers
3 have been complied with;

4 (ii) The organization of the cooperative has been chartered by the state as a
5 separate legal entity; and

6 (iii) The secretary of state shall issue a certificate of organization to the
7 cooperative.

8 **Comment**

9 The source for this provision is Wyoming Rev. Stat. § 17-10-208.

10 The Wyoming Processing Cooperative Act follows the unincorporated entity model and
11 provides for a certificate. Nonetheless the articles require significant detail. There is some
12 language in this section that needs to be vetted. For example, the term “chartered” may be out of
13 place. Other unincorporated entity acts contain express statements concerning governing
14 agreements. Examples of these provisions are set forth in this comment. Minnesota expressly
15 addresses the effect of a “member control agreement” which is largely consistent with a similar
16 idea contained in § 7.32 of the RMBCA. *See* Section 207.

17 Delaware Limited Liability Company Act § 18-1011:

18 **Construction and Application of Chapter and Limited Liability Company Agreement.**

19 (a) The rule that statutes in derogation of the common law are to be strictly construed shall
20 have no application to this chapter.

21 (b) It is the policy of this chapter to give the maximum effect to the principle of freedom of
22 contract and to the enforceability of limited liability company agreements.

23 (c) To the extent that, at law or in equity, a member or manager or other person has duties
24 (including fiduciary duties) and liabilities relating thereto to a limited liability company or to
25 another member or manager or to another person that is a party to or is otherwise bound by a
26 limited liability company agreement:

27 (1) Any such member or manager or other person acting under the limited liability
28 company agreement shall not be liable to the limited liability company or to any such other

1 member or manager or to any other such person for the member's or manager's or other person's
2 good faith reliance on the provisions of the limited liability company agreement; and

3 (2) The member's or manager's or other person's duties and liabilities may be
4 expanded or restricted by provisions in the limited liability company agreement.

5 * * *

6 Uniform Limited Liability Company Act § 103:

7 **Effect of Operating Agreement; Nonwaivable Provisions.**

8 (a) Except as otherwise provided in subsection (b), all members of a limited liability
9 company may enter into an operating agreement, which need not be in writing, to regulate the
10 affairs of the company and the conduct of its business, and to govern relations among the
11 members, managers, and company. To the extent the operating agreement does not otherwise
12 provide, this [act] governs relations among the members, managers, and company.

13 (b) The operating agreement may not:

14 (1) unreasonably restrict a right to information or access to records under Section 408;

15 (2) eliminate the duty of loyalty under Section 409(b) or 603(b)(3), but the agreement
16 may:

17 (i) identify specific types or categories of activities that do not violate the duty of
18 loyalty, if not manifestly unreasonable; and

19 (ii) specify the number or percentage of members or disinterested managers that
20 may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that
21 otherwise would violate the duty of loyalty.

22 (3) unreasonably reduce the duty of care under Section 409(c) or 603(b)(3);

23 (4) eliminate the obligation of good faith and fair dealing under Section 409(d), but the
24 operating agreement may determine the standards by which the performance of the obligation is
25 to be measured, if the standards are not manifestly unreasonable;

26 (5) vary the right to expel a member in an event specified in Section 601(6);

27 (6) vary the requirement to wind up the limited liability company's business in a case
28 specified in Section 801(3); or

1 (7) restrict rights of a person, other than a manager, member, and transferee of a
2 member's distributional interest, under this [act].

3 Minnesota § 308B.731 Member Control Agreements.

4 **Subdivision 1. Authorization.** A written agreement among persons who are then
5 members, including a sole member, or who have signed subscription or contribution agreements,
6 relating to the control of any phase of the business and affairs of the cooperative, its liquidation,
7 dissolution and termination, or the relations among members or persons who have signed
8 subscription or contribution agreements is valid as provided in subdivision 2. Wherever this
9 chapter provides that a particular result may or must be obtained through a provision in the
10 articles or bylaws, the same result can be accomplished through a member control agreement
11 valid under this section or through a procedure established by a member control agreement valid
12 under this section.

13 * * *

14 **SECTION 204. AMENDMENT OF ARTICLES.**

15 (a) The articles of a cooperative shall be amended as follows:

16 (i) The board by majority vote shall pass a resolution stating the text of the
17 proposed amendment. The text of the proposed amendment and an attached mail ballot, if the
18 board has provided for a mail ballot in the resolution or alternative method approved by the
19 board and stated in the resolution, shall be mailed or distributed with a regular or special meeting
20 notice to each member. The notice shall designate the time and place of the meeting for the
21 proposed amendment to be considered and voted on;

22 (ii) If a quorum of the members is registered as being present or represented by
23 alternative vote at the meeting, the proposed amendment is adopted:

24 (A) If approved by a majority of the votes cast; or

25 (B) For a cooperative with articles or bylaws requiring more than majority
26 approval or other conditions for approval, the amendment is approved by a proportion of the

1 votes cast or a number of total members as required by the articles or bylaws and the conditions
2 for approval in the articles or bylaws have been satisfied.

3 (b) After an amendment has been adopted by the members, the amendment shall be
4 signed by the chair, vice-chair, records officer, or assistant records officer and a copy of the
5 amendment filed in the office of the secretary of state.

6 (c) A certificate shall be prepared stating:

7 (i) The vote and meeting of the board adopting a resolution of the proposed
8 amendment;

9 (ii) The notice given to members of the meeting at which the amendment was
10 adopted;

11 (iii) The quorum registered at the meeting; and

12 (iv) The vote cast adopting the amendment.

13 (d) The certificate shall be signed by the chair, vice-chair, records officer or financial
14 officer and filed with the records of the cooperative.

15 (e) A majority of directors may amend the articles if the cooperative does not have any
16 members with voting rights.

17 **Comment**

18 The source for this provision is Wyoming Rev. Stat. § 17-10-209.

19 One of the major global issues this section raises is the quantum of the vote required to
20 amend the articles. Great variety exists even within unincorporated acts. Nonetheless uniform
21 acts concerning amendment of agreements currently require unanimity.

22 **SECTION 205. AMENDMENT OF ORGANIZATIONAL DOCUMENTS TO BE**

1 **GOVERNED BY THIS ARTICLE.**

2 (a) A business entity organized and doing business under other statutes of this state or
3 under the laws of other states that has or will conduct business as a cooperative may become
4 subject to this article by amending its organizational documents to conform to the requirements
5 of articles of organization under this article.

6 (b) A business entity organized under other statutes of this state may amend its articles
7 in the manner provided under the statute that it is governed by for the adoption of amendments to
8 comply with the provisions of this article and file the amended articles with the secretary of state
9 to be a cooperative governed under this article. The status of the business entity under the other
10 statutes terminates with the filing of articles to be governed under this article.

11 (c) A business entity organized under laws of other states shall amend its
12 organizational documents in the manner required by the laws of the state where it was organized
13 to comply with the provisions of this article. After the organizational documents are amended,
14 the business entity shall file a certified copy of the organizational documents as amended with
15 the secretary of state to comply with the provisions of this article with the fees and requirements
16 prescribed for filing articles. After filing, the business entity is a cooperative in this state
17 organized under and subject to the provisions of this article.

18 **Comment**

19 The source for this provision is Wyoming Rev. Stat. § 17-10-210.

20 The issue about the quantum of the required vote raised in the comment to section 204
21 exists in this section, too. This section 205, together with sections 204 (articles) and 207
22 (bylaws) also raise the issue of the primacy of any organic law including that provided by statute.

23 Section 205 also provides an opportunity to discuss the issue of “business entity” and the

1 applicability of this act for “businesses not-for-profit”; “charitable businesses”; and cooperation
2 between governmental entities and businesses (however defined).

3 Finally, subsection (b) and (c) contemplate conversions from one entity type to another.
4 Whether conversions should be allowed is a policy issue. How such conversions should be
5 executed, if allowed, needs to be discussed.

6 **SECTION 206. EXISTENCE.**

7 (a) The existence of a cooperative shall begin when the articles are filed with the
8 secretary of state.

9 (b) A cooperative shall have a perpetual duration unless the cooperative provides for a
10 limited period of duration in the articles of organization.

11 **Comment**

12 The source for this provision is Wyoming Rev. Stat. § 17-10-211.

13 **SECTION 207. BYLAWS.**

14 (a) A cooperative shall have bylaws governing the cooperative's business affairs,
15 structure, the qualifications, classification, rights and obligations of members, and the
16 classifications, allocations and distributions of membership interests.

17 (b) The bylaws of a cooperative may be adopted or amended by the directors as
18 provided in subsection (c) of this section, or at a regular or special members' meeting if:

19 (i) The notice of the meeting contains a statement that the bylaws or restated
20 bylaws will be voted upon and copies are included with the notice, or copies are available upon
21 request from the cooperative and summary statement of the proposed bylaws or amendment is
22 included with the notice;

1 (ii) A quorum is registered as being present or represented by mail or alternative
2 voting method if the mail or alternative voting method is authorized by the board; and

3 (iii) The bylaws or amendment is approved by a majority vote cast, or for a
4 cooperative with articles or bylaws requiring more than majority approval or other conditions for
5 approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of
6 the total members as required by the articles or bylaws and the conditions for approval in the
7 articles or bylaws have been satisfied.

8 (c) Until the next annual or special members' meeting, the majority of directors may
9 adopt and amend bylaws for the cooperative that are consistent with subsection (d) of this section
10 which may be further amended or repealed by the members at an annual or special members' meeting.

11 (d) Bylaws may contain any provision relating to the management or regulation of the
12 affairs of the cooperative that are not inconsistent with law or the articles, and shall include the following:

13 (i) The number of directors, and the qualifications, manner of election, powers,
14 duties, and compensation, if any, of directors;

15 (ii) The qualifications of members and any limitations on their number;

16 (iii) The manner of admission, withdrawal, suspensions, and expulsion of members;

17 (iv) Generally the governance rights, financial rights, assignability of governance
18 and financial rights, and other rights, privileges and obligations of members and their
19 membership interests, which may be further described in member control agreements.

20 **Comment**

21 The source for this provision is Wyoming Rev. Stat. § 17-10-212.

22 Note that subsection (d)(iv) uses the term “member control agreements.” This section might

1 be compared with the comparative statutory provisions contained in the Comment to Section
2 203. Note, too, that bylaws are required.

3 **SECTION 208. POWERS.**

4 (a) In addition to other powers, a cooperative as an agent or otherwise:

5 (i) May perform every act and thing necessary or proper to the conduct of the
6 cooperative's business or the accomplishment of the purposes of the cooperative;

7 (ii) Has other rights, powers, or privileges granted by the laws of this state to other
8 cooperatives, except those that are inconsistent with the express provisions of this article; and

9 (iii) Has the powers given in this section.

10 (b) A cooperative may buy, sell, or deal in its own products, the products of the
11 cooperative's individual members, patrons or nonmembers, the products of another cooperative
12 association, or of its members or patrons, or the products of another person or entity. A
13 cooperative may negotiate the price at which the products the cooperative is selling may be sold.

14 (c) A cooperative may enter into or become a party to a contract or agreement for the
15 cooperative or for the cooperative's individual members or patrons or between the cooperative
16 and its members.

17 (d) A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange
18 and convey as a legal entity real estate, buildings and personal property as the business of the
19 cooperative may require including the sale or other disposition of assets required by the business
20 of the cooperative as determined by the board.

21 (e) A cooperative may erect buildings or other structures or facilities on the
22 cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

1 (f) A cooperative may issue bonds or other evidence of indebtedness and may borrow
2 money to finance the business of the cooperative.

3 (g) A cooperative may make advances to the cooperative's members or patrons on
4 products delivered by the members or patrons to the cooperative.

5 (h) A cooperative may accept deposits of money from other cooperatives, associations
6 or members from which it is constituted.

7 (j) A cooperative may loan or borrow money to or from individual members,
8 cooperatives or associations from which it is constituted with security that it considers sufficient
9 in dealing with the members, cooperatives, or associations.

10 (k) A cooperative may purchase, acquire, hold, or dispose of the ownership interests of
11 another business entity whether organized under the laws of this state or another state and assume
12 all rights, interests, privileges, responsibilities and obligations arising out of the ownership interests.

13 (m) A cooperative may acquire and hold ownership interests in another business entity
14 organized under the laws of this state or another state of the United States, including a business
15 entity organized:

16 (i) As a federation of associations;

17 (ii) For the purpose of forming a district, state, or national marketing, sales or
18 service agency; or

19 (iii) For the purpose of acquiring marketing facilities at terminal or other markets
20 in this state or other states.

21 (n) A cooperative may purchase, own, and hold ownership interests, memberships,
22 interests in nonstock capital, evidences of indebtedness of any domestic business entity or foreign

business entity when reasonably necessary or incidental to accomplish the purposes stated in the articles.

(o) A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, associations or business entities from which it is constituted.

(p) A cooperative may take, receive, and hold real and personal property, including the principal and interest of money or other funds and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative in its articles and may exercise fiduciary powers in relation to taking, receiving, and holding the real and personal property.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-213. (MISSING SUBSECTIONS (i) AND (l))

SECTION 209. COOPERATIVE RECORDS.

(a) A cooperative shall keep as permanent records minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of meetings of the members and of the board.

(b) A cooperative shall maintain appropriate accounting records.

(c) A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(d) A cooperative shall keep a copy of each of the following records at its principal office:

(1) its articles and other governing instruments;

(2) its bylaws or other similar instruments;

1 (3) a record of the names and addresses of its members, in a form that allows preparation
2 of an alphabetical list of members with each member's address;

3 (4) the minutes of members' meetings, and records of all actions taken by members
4 without a meeting by unanimous written consent in lieu of a meeting, for the past three years;

5 (5) all written communications within the past three years to members as a group or to
6 any class of members as a group;

7 (6) a list of the names and business addresses of its current board members and officers;

8 (7) a copy of its most recent periodic registration delivered to the secretary of state under
9 section _____; and

10 (8) all financial statements prepared for periods ending during the last fiscal year.

11 (e) Except as otherwise limited by this chapter, the board of a cooperative shall have
12 discretion to determine what records are appropriate for the purposes of the cooperative, the
13 length of time records are to be retained, and policies relating to the confidentiality, disclosure,
14 inspection, and copying of the records of the cooperative.

15 **Comment**

16 The source for this provision is Minnesota § 308B.245.

17 The scope of records is covered in uniform unincorporated acts under the label "required
18 records." This section is important for determining the informational rights of various players
19 and, thus, is related integrally to other duties and rights.

1 **ARTICLE 3**

2 **AGRICULTURAL PRODUCT MARKETING CONTRACTS**

3 **SECTION 301. AGRICULTURAL PRODUCT MARKETING CONTRACTS.**

4 (a) A cooperative and its patron member or patron may make and execute a marketing
5 contract, requiring the patron member or patron to sell a specified portion of his agricultural
6 product or specified commodity produced from a certain area exclusively to or through the
7 cooperative or facility established by the cooperative.

8 (b) If a sale is contracted to the cooperative, the sale shall transfer title to the product
9 absolutely, except for a recorded lien or security interest, to the cooperative on delivery of the
10 product or at another specified time if expressly provided in the contract. The contract may allow
11 the cooperative to sell or resell the product of its patron member or patron with or without taking
12 title to the product, and pay the resale price to the patron member or patron, after deducting all
13 necessary selling, overhead and other costs and expenses, including other proper reserves and interest.

14 (c) A single term of a marketing contract shall not exceed ten (10) years, but a
15 marketing contract may be made self-renewing for periods not exceeding five (5) years each,
16 subject to the right of either party to terminate by giving written notice of the termination during
17 a period of the current term as specified in the contract.

18 (d) The bylaws or the marketing contract, or both, may set a specific sum as liquidated
19 damages to be paid by the patron member or patron to the cooperative for breach of any
20 provision of the marketing contract regarding the sale or delivery or withholding of a product and
21 may provide that the member or patron shall pay the costs, premiums for bonds, expenses and

1 fees if an action is brought on the contract by the cooperative. The remedies for breach of
2 contract are valid and enforceable in the courts of this state. The provisions shall be enforced as
3 liquidated damages and are not to be considered or regarded as a penalty.

4 (e) If there is a breach or threatened breach of a marketing contract by a patron member
5 or patron, the cooperative is entitled to an injunction to prevent the further breach of the contract
6 and to a decree of specific performance of the contract. Pending the adjudication of the action
7 after filing a certified complaint showing the breach or threatened breach and filing a sufficient
8 bond, the cooperative is entitled to a temporary restraining order and preliminary injunction
9 against the patron member or patron.

10 (f) Any person who knowingly induces or attempts to induce any member or patrons of
11 a cooperative organized under this article to breach his marketing contract with the cooperative,
12 or who maliciously and knowingly spreads false reports about the finances or management
13 thereof, shall be guilty of a misdemeanor and subject to a fine of not less than one hundred
14 dollars (\$100.00), and not more than one thousand dollars (\$1,000.00), for each such offense;
15 provided, that this section shall not apply to a bona fide creditor of such cooperative, or the agent
16 or attorney of any such bona fide creditor, endeavoring to make collections of the indebtedness.

17 (g) In addition to the penalty provided in subsection (f) of this section, the person,
18 corporation or other entity may be liable to the cooperative for civil damages for any violation of
19 the provisions of subsection (f) of this section. Each violation shall constitute a separate offense
20 and is subject to the penalties in this subsection and subsection (f) of this section.

21 **Comment**

22 The source for this provision is Wyoming Rev. Stat. § 17-10-214.

1 Minnesota § 308B.311:

2 **Agricultural Product Marketing Contracts**

3 **Subdivision 1. Authority.** A cooperative and its patron member or patron may make and
4 execute a marketing contract, requiring the patron member or patron to sell a specified portion of
5 the patron member's or patron's agricultural product or specified commodity produced from a
6 certain area exclusively to or through the cooperative or facility established by the cooperative.

7 **Subdivision 2. Title to Products.** If a sale is contracted to the cooperative, the sale shall
8 transfer title to the product absolutely, except for a recorded lien or security interest against the
9 agricultural products of the patron member or patron in the state central notification system and
10 liens granted against farm products under federal law, to the cooperative on delivery of the
11 product or at another specified time if expressly provided in the contract. The contract may
12 allow the cooperative to sell or resell the product of its patron member or patron with or without
13 taking title to the product, and pay the resale price to the patron member or patron, after
14 deducting all necessary selling, overhead, and other costs and expenses, including other proper
15 reserves and interest.

16 **Subdivision 3. Term of Contract.** A single term of a marketing contract shall not exceed
17 ten years, but a marketing contract may be made self-renewing for periods not exceeding five
18 years each, subject to the right of either party to terminate by giving written notice of the
19 termination during a period of the current term as specified in the contract.

20 **Subdivision 4. Damages for Breach of Contract.** The bylaws or the marketing contract,
21 or both, may set a specific sum as liquidated damages to be paid by the patron member or patron
22 to the cooperative for breach of any provision of the marketing contract regarding the sale or
23 delivery or withholding of a product and may provide that the member or patron shall pay the
24 costs, premiums for bonds, expenses, and fees if an action is brought on the contract by the
25 cooperative. The remedies for breach of contract are valid and enforceable in the courts of this
26 state. The provisions shall be enforced as liquidated damages and are not considered a penalty.

27 **Subdivision 5. Injunction Against Breach of Contract.** If there is a breach or threatened
28 breach of a marketing contract by a patron member or patron, the cooperative is entitled to an
29 injunction to prevent the further breach of the contract and to a decree of specific performance of
30 the contract. Pending the adjudication of the action after filing a complaint showing the breach
31 or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary
32 restraining order and preliminary injunction against the patron member or patron.

33 **Subdivision 6. Penalties for Contract Interference and False Reports.** Penalties for
34 Contract Interference and False Reports. Any person who knowingly induces or attempts to
35 induce any member or patron of a cooperative organized under this chapter to breach a marketing
36 contract with the cooperative, or who maliciously and knowingly spreads false reports about the

1 cooperative's finances or management, is guilty of a misdemeanor and subject to a fine of not
2 less than \$100, and not more than \$1,000, for each such offense.

3 **Subdivision 7. Civil Damages for Contract Interference and False Reports.** In addition
4 to the penalty provided in subdivision 6, the person may be liable to the cooperative for civil
5 damages for any violation of subdivision 6. Each violation shall constitute a separate offense.

6 Oregon Rev. Stat. (General Cooperative Act) § 62.370:

7 **Action for civil penalty for inducing breach of contract with cooperative or spreading**
8 **false reports about cooperative.** In addition to the remedies provided in ORS 62.365(2), any
9 person who knowingly and maliciously induces or attempts to induce any member of a
10 cooperative to breach a contract of the member with the cooperative authorized by ORS 62.355,
11 or who knowingly and maliciously spreads any false report about the finances or management of
12 a cooperative is liable, in a civil action, to the cooperative aggrieved, in the penal sum of \$500
13 for each offense.
14

1 **ARTICLE 4**

2 **DIRECTORS AND OFFICERS**

3 **SECTION 401. BOARD GOVERNS COOPERATIVE.** A cooperative shall be governed
4 by its board.

5 **Comment**

6 The source for this provision is Wyoming Rev. Stat. § 17-10-215.

7 **SECTION 402. NUMBER OF DIRECTORS.** The board shall have not less than three (3)
8 directors.

9 **Comment**

10 The source for this provision is Wyoming Rev. Stat. § 17-10-216.

11 **SECTION 403. ELECTION OF DIRECTORS.**

12 (a) Directors shall be elected for the term, at the time, and in the manner provided in
13 this section and the bylaws. A majority of the directors shall be members and at least one (1)
14 director shall be elected exclusively by the members holding patron membership interests. The
15 voting authority of the directors may be allocated according to allocation units or equity
16 classifications of the cooperative provided that at least one-half (1/2) of the voting power on
17 general matters of the cooperative shall be allocated to one (1) or more directors elected by
18 members holding patron membership interests or in the alternative the one (1) or more directors
19 elected by the members holding patron membership interests shall have an equal or shall not

1 have a minority voting power on general matters of the cooperative.

2 (b) Directors shall be elected at the regular members' meeting for the terms of office
3 prescribed in the bylaws. Except for directors elected at district meetings, all directors shall be
4 elected at the regular members' meeting.

5 (c) For a cooperative with districts or other units, members may elect directors on a
6 district or unit basis if provided in the bylaws. The directors may be nominated or elected at
7 district meetings if provided in the bylaws. Directors who are nominated at district meetings shall
8 be elected at the annual regular members' meeting by vote of the entire membership, unless the
9 bylaws provide that directors who are nominated at district meetings are to be elected by vote of
10 the members of the district at the annual regular members' meeting.

11 (d) The following shall apply to alternative voting:

12 (i) A member may not vote other than by their presence at a meeting for a director
13 unless alternative voting is authorized for election of directors by the articles or bylaws;

14 (ii) The ballot shall be in a form prescribed by the board;

15 (iii) The member shall mark the ballot for the candidate chosen and mail the ballot
16 to the cooperative in a sealed plain envelope inside another envelope bearing the member's name,
17 or shall vote in the alternative manner prescribed by the board;

18 (iv) If the ballot of the member is received by the cooperative on or before the date
19 of the regular members' meeting, the ballot shall be accepted and counted as the vote of the
20 absent member.

21 (e) If a member of a cooperative is not a natural person, and the bylaws do not provide
22 otherwise, the member may appoint or elect one (1) or more natural persons to be eligible for

election as a director to the board.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-217.

SECTION 404. FILLING VACANCIES. If a patron member director's position becomes vacant for a director that was elected by patron members, the board shall appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting. If the vacating director was not a patron member, the board shall appoint a patron member to fill the vacant position. At the next regular or special members' meeting, the members or patron members shall elect a director to fill the unexpired term of the vacant director's position.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-218.

SECTION 405. REMOVAL OF DIRECTORS. The members electing a director may remove the director at a members' meeting for cause related to the duties of the position of director and fill the vacancy caused by the removal.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-219.

The Wyoming Act provides for removal for cause only. The Minnesota Act allows removal without cause. The closest comparative provision in limited liability company law is the removal of a manager; in limited partnership law it is the removal of a general partner although in those entities the individual managers and general partners also have agency authority.

1 Minnesota § 308B.421:

2 **REMOVAL OF DIRECTORS**

3 **Subdivision 1. Modification**

4 The provisions of this section apply unless modified by the articles or the bylaws.

5 **Subdivision 2. Removal of Directors.** A director may be removed at any time, with or
6 without cause, if:

7 (1) the director was named by the board to fill a vacancy;

8 (2) the members have not elected directors in the interval between the time of the
9 appointment to fill a vacancy and the time of the removal; and

10 (3) a majority of the remaining directors present affirmatively vote to remove the director.

11 **Subdivision 3. Removal by Members.** Any one or all of the directors may be removed at
12 any time, with or without cause, by the affirmative vote of the holders of a majority of the voting
13 power of membership interests entitled to vote at an election of directors; provided that if a
14 director has been elected solely by the patron members or the holders of a class or series of
15 membership interests as stated in the articles or bylaws, then that director may be removed only
16 by the affirmative vote of the holders of a majority of the voting power of the patron members for
17 a director elected by the patron members or of all membership interests of that class or series
18 entitled to vote at an election of that director.

19
20 **Subdivision 4. Election of Replacements.** New directors may be elected at a meeting at
21 which directors are removed.

22 **SECTION 406. LIMITATION OF DIRECTOR'S LIABILITY.**

23 (a) A director's personal liability to the cooperative or members for monetary damages
24 for breach of fiduciary duty as a director may be eliminated or limited in the articles except as
25 provided in subsection (b) of this section.

26 (b) The articles may not eliminate or limit the liability of a director:

27 (i) For a breach of the director's duty of loyalty to the cooperative or its members;

- 1 (ii) For acts or omissions that are not in good faith or involve intentional
2 misconduct or a knowing violation of law;
- 3 (iii) For a transaction from which the director derived an improper personal
4 benefit; or
- 5 (iv) For an act or omission occurring before the date when the provision in the
6 articles eliminating or limiting liability becomes effective.

7 **Comment**

8 The source for this provision is Wyoming Rev. Stat. § 17-10-220.
9 Minnesota § 308B.455:

10 **Subdivision 1. Standard of Conduct.** A director shall discharge the duties of the position
11 of director in good faith, in a manner the director reasonably believes to be in the best interests of
12 the cooperative, and with the care an ordinarily prudent person in a like position would exercise
13 under similar circumstances. A person who so performs those duties is not liable by reason of
14 being or having been a director of the cooperative.

15 **Subdivision 2. Reliance.**

16 (a) A director is entitled to rely on information, opinions, reports, or statements, including
17 financial statements and other financial data, in each case prepared or presented by:

18 (1) one or more officers or employees of the cooperative who the director reasonably
19 believes to be liable and competent in the matters presented;

20 (2) counsel, public accountants, or other persons as to matters that the director
21 reasonably believes are within the person's professional or expert competence; or

22 (3) a committee of the board upon which the director does not serve, duly established
23 by the board, as to matters within its designated authority, if the director reasonably believes the
24 committee to merit confidence.

25 (b) Paragraph (a) does not apply to a director who has knowledge concerning the matter in
26 question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

27 **Subdivision 3. Presumption of Assent and Dissent.** A director who is present at a

meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

(1) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the director is not considered to be present at the meeting for any purpose of this chapter;

(2) votes against the action at the meeting; or

(3) is prohibited by a conflict of interests from voting on the action.

Subdivision 4. Consideration. In discharging the duties of the position of director, a director may, in considering the best interests of the cooperative, consider the interests of the cooperative's employees, customers, suppliers, and creditors, the economy of the state, and long-term as well as short-term interest of the cooperative and its patron members, including the possibility that these interests may be best served by the continued independence of the cooperative.

Minnesota § 308B.461:

Subdivision 1. Conflict and Procedure when Conflict Arises.

(a) A contract or other transaction between a cooperative and one or more of its directors, or between a cooperative and a business entity in or of which one or more of its directors are governors, directors, managers, officers, or legal representatives or have a material financial interests, is not void or voidable because the director or directors or the other business entities are parties or because the director or directors are present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the cooperative at the time it was authorized, approved, or ratified and:

(i) the material facts as to the contract or transaction and as to the director's or director's interest are disclosed or known to the members; and

(ii) the material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors are not counted in determining the presence of a quorum and must not vote; or

1 (2) the contract or transaction is a distribution, contract, or transaction that is made
2 available to all members or patron members as part of the cooperative's business.

3 (b) If a committee is elected or appointed to authorize, ratify, or approve a contract or
4 transaction under this section, the members of the committee must not have a conflict of interest
5 and be charged with representing the best interests of the cooperative.

6 **Subdivision 2. Material Financial Interest.** For purposes of this section:

7 (1) a resolution fixing the compensation of a director or fixing the compensation of another
8 director as a director, officer, employee, or agent of the cooperative, is not void or voidable or
9 considered to be a contract or other transaction between a cooperative and one or more of its
10 directors for purposes of this section even though the director receiving the compensation fixed
11 by the resolution is present and voting at the meeting of the board or a committee at which the
12 resolution is authorized, approved, or ratified or even though other directors voting upon the
13 resolution are also receiving compensation from the cooperative; and

14 (2) a director has a material financial interest in each organization in which the director or
15 the spouse; parents; children and spouses of children; brothers and sisters and spouses of brothers
16 and sisters; and the brothers and sisters of the spouse of the director or any combination of them
17 have a material financial interest. For purposes of this section, a contract or other transaction
18 between a cooperative and the spouse; parents; children and spouses of children; brothers and
19 sisters and spouses of brothers and sisters; and the brothers and sisters of the spouse of a director
20 or any combination of them, is considered to be a transaction between the cooperative and the
21 director.

22 Minnesota § 308B.465:

23 **Subdivision 1. Articles may Limit Liability.** A director's personal liability to the
24 cooperative or members for monetary damages for breach of fiduciary duty as a director may be
25 eliminated or limited in the articles or bylaws except as provided in subdivision 2.

26 **Subdivision 2. Restrictions on Liability Limitation.** The articles or bylaws may not
27 eliminate or limit the liability of a director:

28 (1) for a breach of the director's duty of loyalty to the cooperative or its members;

29 (2) for acts or omissions that are not in good faith or involve intentional misconduct or a
30 knowing violation of law;

31 (3) for knowing violations of securities laws under section 80A.23 or for illegal
32 distributions;

1 (4) for a transaction from which the director derived an improper personal benefit; or

2 (5) for an act or omission occurring before the date when the provision in the articles or
3 bylaws eliminating or limiting liability become effective.

4 **SECTION 407. OFFICERS.**

5 (a) The board shall elect:

6 (i) A chair; and

7 (ii) One (1) or more vice-chairs.

8 (b) The board shall elect or appoint:

9 (i) A records officer; and

10 (ii) A financial officer.

11 (c) The board may elect additional officers as the articles or bylaws authorize or require.

12 (d) The offices of records officer and financial officer may be combined.

13 (e) The chair and first vice-chair shall be directors and members. The financial officer,
14 records officer, and additional officers need not be directors or members.

15 (f) The board may employ a chief executive officer to manage the day-to-day affairs
16 and business of the cooperative.

17 (g) Other than the chief executive officer, members may remove an officer at a
18 members' meeting for cause related to the duties of the position of the officer and fill the vacancy
19 caused by the removal.

20 **Comment**

21 The source for this provision is Wyoming Rev. Stat. § 17-10-221.

1 This section seems to contemplate the election or appointment of a CEO (subsection (g)) but
2 does not require such an officer. It does require the election of a chair. It appears somewhat
3 uncertain whether the chair or the required officers, in absence of a CEO, have agency authority
4 on behalf of the entity.

5 Minnesota § 308B.471:

6 **Subdivision 1. Definitions.**

7 (a) The definitions in this subdivision apply to this section.

8 (b) “Cooperative” includes a domestic or foreign cooperative that was the predecessor of the
9 cooperative referred to in this section in a merger or other transaction in which the predecessor’s
10 existence ceased upon consummation of the transaction.

11 (c) “Official capacity” means:

12 (1) with respect to a director, the position of the director in a cooperative;

13 (2) with respect to a person other than a director, the elective or appointive office or
14 position held by the person, member of a committee of the board, the employment relationship
15 undertaken by an employee of the cooperative, or the scope of the services provided by members
16 of the cooperative who provide services to the cooperative; and

17 (3) with respect to a director, chief executive officer, member, or employee of the
18 cooperative who, while a member, director, chief executive officer, or employee of the
19 cooperative, is or was serving at the request of the cooperative or whose duties in that position
20 involve or involved service as a governor, director, manager, officer, member, partner, trustee,
21 employee, or agent of another organization or employee benefit plan, the position of that person
22 as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the
23 case may be, of the other organization or employee benefit plan.

24 (d) “Proceeding” means a threatened, pending or completed civil, criminal, administrative,
25 arbitration, or investigative proceeding, including a proceeding by or in the right of the
26 cooperative.

27 (e) “Special legal counsel” means counsel who has not represented the cooperative or a
28 related organization, or a director, manager, member of a committee of the board, or employee
29 whose indemnification is in issue.

30 **Subdivision 2. Indemnification.**

31 (a) Subject to the provisions of subdivision 4, a cooperative shall indemnify a person made

1 or threatened to be made a party to a proceeding by reason of the former or present official
2 capacity of the person against judgments, penalties, fines, including, without limitation,
3 judgments, penalties, fines, including, without limitation, excise taxes assessed against the
4 person with respect to an employee benefit plan, settlements, and reasonable expenses, including
5 attorney fees and disbursements incurred by the person in connection with the proceeding, if,
6 with respect to the acts or omissions of the person complained of in the proceeding, the person:

7 (1) has not been indemnified by another organization or employee benefit plan for the
8 same judgments, penalties, fines, including, without limitation, excise taxes assessed against the
9 person with respect to an employee benefit plan, settlements, and reasonable expenses, including
10 attorney fees and disbursements incurred by the person in connection with the proceeding with
11 respect to the same acts or omissions;

12 (2) acted in good faith;

13 (3) received no improper personal benefit and the person has not committed an act for
14 which liability cannot be eliminated or limited under section 308B.465, subdivision 2;

15 (4) in the case of a criminal proceeding, had not reasonable cause to believe the
16 conduct was unlawful; and

17 (5) in the case of acts or omissions occurring in the official capacity described in
18 subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the
19 best interests of the cooperative, or in the case of acts or omissions occurring in the official
20 capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the
21 conduct was not opposed to the best interests of the cooperative. If the person's acts or
22 omissions complained of in the proceeding relate to conduct at a director, officer, trustee,
23 employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to
24 the best interests of the cooperative if the person reasonably believed that the conduct was in the
25 best interests of the participants or beneficiaries of the employee benefit plan.

26 (b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a
27 plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet
28 the criteria set forth in this subdivision.

29 **Subdivision 3. Advances.** Subject to the provisions of Subdivision 4, if a person is made
30 or threatened to be made a party to a proceeding, the person is entitled, upon written request to
31 the cooperative, to payment or reimbursement by the cooperative of reasonable expenses,
32 including attorney fees and disbursements incurred by the person in advance of the final
33 disposition of the proceeding:

34 (1) upon receipt by the cooperative of a written affirmation by the person of a good faith
35 belief that the criteria for indemnification set forth in subdivision 2 have been satisfied, and a

1 written undertaking by the person to repay all amounts paid or reimbursed by the cooperative, if
2 it is ultimately determined that the criteria for indemnification have not been satisfied; and

3 (2) after a determination that the facts then known to those making the determination would
4 not preclude indemnification under this section.

5 The written undertaking required by clause (1) is an unlimited general obligation of the
6 person making it, but need not be secured and shall be accepted without reference to financial
7 ability to make the repayment.

8 **Subdivision 4. Prohibition or Limit on Indemnification or Advances.** The articles or
9 bylaws either may prohibit indemnification or advances of expenses otherwise required by this
10 section or may impose conditions on indemnification or advances of expenses in addition to the
11 conditions contained in subdivisions 2 and 3, including, without limitation, monetary limits on
12 indemnification or advances of expenses if the conditions apply equally to all persons or to all
13 persons within a given class. A prohibition or limit on indemnification or advances of expenses
14 may not apply to or affect the right of a person to indemnification or advances of expenses with
15 respect to any acts or omissions of the person occurring before the effective date of a provision in
16 the articles or the date of adoption of a provision in the bylaws establishing the prohibition or
17 limit on indemnification or advances of expenses.

18 **Subdivision 5. Reimbursement to Witnesses.** This section does not require, or limit the
19 ability of a cooperative to reimburse expenses, including attorney fees and disbursements
20 incurred by a person in connection with an appearance as a witness in a proceeding at a time
21 when the person has not been made or threatened to be made a party to a proceeding.

22 **Subdivision 6. Determination of Eligibility.**

23 (a) All determinations whether indemnification of a person is required because the criteria
24 set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or
25 reimbursement of expenses in advance of the final disposition of a proceeding as provided in
26 subdivision 3 must be made:

27 (1) by the board by a majority of a quorum, if the directors who are, at the time, parties
28 to the proceeding are not counted for determining either a majority or the presence of a quorum;

29 (2) if a quorum under clause (1) cannot be obtained by a majority of a committee of the
30 board consisting solely of two or more directors not at the time parties to the proceeding duly
31 designated to act in the matter by a majority of the full board, including directors who are parties;

32 (3) if a determination is not made under clause (1) or (2) by special legal counsel
33 selected either by a majority of the board or a committee by vote under clause (1) or (2) or if the
34 requisite quorum of the full board cannot be obtained and the committee cannot be established by

1 a majority of the full board, including directors who are parties;

2 (4) if a determination is not made under clauses (1) to (3) by the affirmative vote of the
3 members, but the membership interests held by parties to the proceeding must not be counted in
4 determining the presence of a quorum, and are not considered to be present and entitled to vote
5 on the determination; or

6 (5) if an adverse determination is made under clauses (1) to (4) or paragraph (b), or if
7 no determination is made under clauses (1) to (4) or paragraph (b) within 60 days after (i) the
8 later to occur of the termination of a proceeding or a written request for indemnification to the
9 cooperative, or (ii) a written request for an advance of expenses, as the case may be, by a court in
10 this state, which may be the same court in which the proceeding involving the person's liability
11 took place upon application of the person and any notice the court requires. The person seeking
12 indemnification or payment or reimbursement of expenses under this clause has the burden of
13 establishing that the person is entitled to indemnification or payment or reimbursement of
14 expenses.

15 (b) With respect to a person who is not, and was not at the time of the acts or omissions
16 complained of in the proceedings, a director, chief executive officer, or person possessing,
17 directly or indirectly, the power to direct or cause the direction of the management or policies of
18 the cooperative, the determination whether indemnification of this person is required because the
19 criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to
20 payment or reimbursement of expenses in advance of the final disposition of a proceeding as
21 provided in subdivision 3 may be made by an annually appointed committee of the board, having
22 at least one member who is a director. The committee shall report at least annually to the board
23 concerning its actions.

24 **Subdivision 7. Insurance.** A cooperative may purchase and maintain insurance on behalf
25 of a person in that person's official capacity against any liability asserted against and incurred by
26 the person in or arising from that capacity, whether or not the cooperative would have been
27 required to indemnify the person against the liability under the provisions of this section.

28 **Subdivision 8. Disclosure.** A cooperative that indemnifies or advances expenses to a
29 person in accordance with this section in connection with a proceeding by or on behalf of the
30 cooperative shall report to the members in writing the amount of the indemnification or advance
31 and to whom and on whose behalf it was paid not later than the next meeting of members.

32 **Subdivision 9. Indemnification of Other Persons.** Nothing in this section must be
33 construed to limit the power of the cooperative to indemnify persons other than a director, chief
34 executive officer, member, employee, or member of a committee of the board of the cooperative
35 by contract or otherwise.

1 **ARTICLE 5**

2 **MEMBERS**

3 **SECTION 501. MEMBERSHIP INTERESTS.**

4 (a) The authorized amount and divisions of patron membership interests and nonpatron
5 membership interests may be increased or decreased or established or altered, in accordance with
6 the restrictions in this article by amending the articles at a regular members' meeting or at a
7 special members' meeting called for the purpose of the amendment.

8 (b) Authorized membership interests may be issued on terms and conditions prescribed
9 in the articles, bylaws, or as determined by the board. The cooperative shall disclose to any
10 person or entity acquiring membership interests to be issued by the cooperative, the organization,
11 capital structure and business prospects and risks of the cooperative, the nature of the governance
12 and financial rights of the membership interest being acquired and of other classes of
13 membership and membership interests. The cooperative shall notify all members of the
14 membership interests being offered by the cooperative. A membership interest may not be issued
15 until the subscription price of the membership interest has been paid for in cash or a cash
16 equivalent or property with the agreed upon value of the property to be contributed.

17 (c) The patron membership interests collectively shall have not less than fifteen percent
18 (15%) of the cooperative's financial rights to profit allocations and distributions.

19 (d) After issuance by the cooperative, membership interests in a cooperative may only
20 be sold or transferred with the approval of the board.

21 (e) The cooperative may solicit and issue nonpatron membership interests on terms and

1 conditions determined by the board and disclosed in the articles, bylaws or by separate disclosure
2 to the members. Each member acquiring nonpatron membership interests shall sign a member
3 control agreement which shall describe the rights and obligations of the member as it relates to
4 the nonpatron membership interests, the financial and governance rights, the transferability of the
5 nonpatron membership interests, the division and allocations of profits and losses among the
6 membership interests and membership classes, and financial rights upon liquidation. If the
7 bylaws do not otherwise provide for the allocation of the profits and losses between patron
8 membership interests and nonpatron membership interests, then the allocation of profits and
9 losses among nonpatron membership interests individually and patron membership interests
10 collectively shall be allocated on the basis of the value of contributions to capital made according
11 to the patron membership interests collectively and the nonpatron membership interests
12 individually to the extent the contributions have been accepted by the cooperative. Distributions
13 of cash or other assets of the cooperative shall be allocated among the membership interests as
14 provided in the articles and bylaws, subject to the provisions of this article. If not otherwise
15 provided, distributions shall be made on the basis of value of the capital contributions of the
16 patron membership interests collectively and the nonpatron membership interests to the extent
17 the contributions have been accepted by the cooperative.

18 (f) The bylaws may provide that the cooperative or the patron members, individually or
19 collectively, have the first privilege of purchasing the membership interests of any class of patron
20 member's membership interests offered for sale. The first privilege to purchase patron
21 membership interests may be satisfied by notice to other patron members that the patron
22 membership interests are for sale and a procedure by which patron members may proceed to

1 attempt to purchase and acquire the patron membership interests. A patron membership interest
2 acquired by the cooperative may be held to be reissued or may be retired and cancelled.

3 (g) Subject to the provisions in the bylaws, a member may dissent from and obtain
4 payment for the fair value of the member's nonpatron membership interests in the cooperative if
5 the articles or bylaws are amended in a manner that materially and adversely affects the rights
6 and preferences of the nonpatron membership interests of the dissenting member. The dissenting
7 member shall file a notice of intent to demand fair value of the membership interest with the
8 records officer of the cooperative within thirty (30) days after the amendment of the bylaws and
9 notice of the amendment to members, otherwise the right of the dissenting member to demand
10 payment of fair value for the membership interest is deemed to be waived. If a proposed
11 amendment of the articles or bylaws shall be approved by the members, a member who is entitled
12 to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of
13 the membership interest with the records officer of the cooperative before the vote on the
14 proposed action and shall not vote in favor of the proposed action, otherwise the right to demand
15 fair value for the membership interest by the dissenting member is deemed waived. After receipt
16 of the dissenting member's demand notice and approval of the amendment, the cooperative has
17 sixty (60) days to rescind the amendment or otherwise the cooperative shall remit the fair value
18 for the one (1) member's interest to the dissenting member by one hundred eighty (180) days after
19 receipt of the notice. Upon receipt of the fair value for the membership interest, the member has
20 no further member rights in the cooperative.

21 **Comment**

22 The source for this provision is Wyoming Rev. Stat. § 17-10-222.

1 Minnesota § 308B.701:

2 * * *

3 **Subdivision 4. Valuation.** The determinations of the board as to the amount or fair value
4 or the fairness to the cooperative of the contribution accepted or to be accepted by the
5 cooperative or the terms of payment or performance, including under a contribution agreement in
6 section 308B.711, and a contribution allowance agreement in section 308B.715, are presumed to
7 be proper if they are made in good faith and on the basis of accounting methods, or a fair
8 valuation or other method, reasonable in the circumstances. Directors who are present and
9 entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against
10 approving a consideration that is unfair to the cooperative, or overvalue property or services
11 received or to be received by the cooperative as a contribution, are jointly and severally liable to
12 the cooperative for the benefit of the then members who did not consent to and are damaged by
13 the action, to the extent of the damages of those members. A director against whom a claim is
14 asserted under this subdivision, except in case of knowing participation in a deliberate fraud, is
15 entitled to contribution on an equitable basis from other directors who are liable under this
16 subdivision.

17 Minnesota § 308B.705. Restatement of Value of Previous Contributions.

18 **Subdivision 1. Definition.** As used in this section, an “old contribution” is a contribution
19 reflected in the required records of a cooperative before the time the cooperative accepts a new
20 contribution.

21 **Subdivision 2. Restatement Required.** Whenever a cooperative accepts a new
22 contribution, the board shall restate, as required by this section, the value of all old contributions.

23 **Subdivision 3. Restatement as to Particular Series or Class to Which New**
24 **Contribution Pertains.**

25 (a) Unless otherwise provided in the articles or bylaws, this subdivision sets forth the
26 method of restating the value of old contributions that pertain to the same series or class to which
27 the new contribution pertains. To restate the value:

28 * * *

29 Concerning subsection (d), the Uniform Limited Liability company Act § 701 provides:

30 **Partner’s Transferable Interest.** The only interest of a partner which is transferable is the
31 partner’s transferable interest. A transferable interest is personal property.

32 Uniform Limited Liability Company Act § 702:

1 **Transfer of Partner's Transferable Interest.**

2 (a) A transfer, in whole or in part, of a partner's transferable interest:

3 (1) is permissible;

4 (2) does not by itself cause the partner's dissociation or a dissolution and winding up of
5 the limited partnership's activities; and

6 (3) does not, as against the other partners or the limited partnership, entitle the
7 transferee to participate in the management or conduct of the limited partnership's activities, to
8 require access to information concerning the limited partnership's transactions except as
9 otherwise provided in subsection (c), or to inspect or copy the required information or the limited
10 partnership's other records.

11 (b) A transferee has a right to receive, in accordance with the transfer:

12 (1) distributions to which the transferor would otherwise be entitled; and

13 (2) upon the dissolution and winding up of the limited partnership's activities the net
14 amount otherwise distributable to the transferor.

15 (c) In a dissolution and winding up, a transferee is entitled to an account of the limited
16 partnership's transactions only from the date of dissolution.

17 (d) Upon transfer, the transferor retains the rights of a partner other than the interest in
18 distributions transferred and retains all duties and obligations of a partner.

19 (e) A limited partnership need not give effect to a transferee's rights under this section until
20 the limited partnership has notice of the transfer.

21 (f) A transfer or a partner's transferable interest in the limited partnership in violation of a
22 restriction on transfer contained in the partnership agreement is ineffective as to a person having
23 notice of the restriction at the time of transfer.

24 (g) A transferee that becomes a partner with respect to a transferable interest is liable for the
25 transferor's obligations under Sections 502 and 509. However, the transferee is not obligated for
26 liabilities unknown to the transferee at the time the transferee became a partner.

27 Uniform Limited Liability Company Act § 703:

28 **Rights of Creditor of Partner or Transferee.**

1 (a) On application to a court of competent jurisdiction by any judgment creditor of a partner
2 or transferee, the court may charge the transferable interest of the judgment debtor with payment
3 of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment
4 creditor has only the rights of a transferee. The court may appoint a receiver of the share of the
5 distributions due or to become due to the judgment debtor in respect of the partnership and make
6 all other orders, directions, accounts, and inquiries the judgment debtor might have made or
7 which the circumstances of the case may require to give effect to the charging order.

8 (b) A charging order constitutes a lien on the judgment debtor's transferable interest. The
9 court may order a foreclosure upon the interest subject to the charging order at any time. The
10 purchaser at the foreclosure sale has the rights of a transferee.

11 (c) At any time before foreclosure, an interest charged may be redeemed:

12 (1) by the judgment debtor;

13 (2) with property other than limited partnership property, by one or more of the other
14 partners; or

15 (3) with limited partnership property, by the limited partnership with the consent of all
16 partners whose interests are not so charged.

17 (d) This [act] does not deprive any partner or transferee of the benefit of any exemption laws
18 applicable to the partner's or transferee's transferable interest.

19 (e) This section provides the exclusive remedy by which a judgment creditor of a partner or
20 transferee may satisfy a judgment out of the judgment debtor's transferable interest.

21 Minnesota § 308B.601:

22 **Membership Interests.**

23 **Subdivision 1. Amounts and Divisions of Membership Interests.** The authorized
24 amount and divisions of patron membership interests and, if authorized, nonpatron membership
25 interests may be increased, decreased, established, or altered, in accordance with the restrictions
26 in this chapter by amending the articles or bylaws at a regular members' meeting or at a special
27 members' meeting called for the purpose of the amendment.

28 **Subdivision 2. Issuance of Membership Interests.** Authorized membership interests may
29 be issued on terms and conditions prescribed in the articles, bylaws, or if authorized in the
30 articles or bylaws as determined by the board. The cooperative shall disclose to any person or
31 entity acquiring membership interests to be issued by the cooperative, the organization, capital
32 structure, and known business prospects and risks of the cooperative, the nature of the

1 governance and financial rights of the membership interest being acquired and of other classes of
2 membership and membership interests. The cooperative shall notify all members of the
3 membership interests being issued by the cooperative. A membership interest may not be issued
4 until the subscription price of the membership interest has been paid for in money or property
5 with the value of the property to be contributed approved by the board.

6 **Subdivision 3. Patron Membership Interests.** The patron membership interests
7 collectively shall have not less than 50 percent of the cooperative's financial rights to profit
8 allocations and distributions. If authorized in the original articles as filed, or articles or bylaws
9 adopted an by affirmative vote of the patron members, or the articles or bylaws are amended by
10 the affirmative vote of patron members, then the cooperative's financial rights to profit
11 allocations and distributions to patron members collectively may be not less than 15 percent.

12 **Subdivision 4. Transferring or Selling Membership Interests.** After issuance by the
13 cooperative, membership interests in a cooperative may only be sold or transferred with the
14 approval of the board. The board may adopt resolutions prescribing procedures to prospectively
15 approve transfers.

16 **Subdivision 5. Nonpatron Membership Interests.** If authorized by the articles, the
17 cooperative may solicit and issue nonpatron membership interests on terms and conditions
18 determined by the board and disclosed in the articles, bylaws, or by separate disclosure to the
19 members. Each member acquiring nonpatron membership interests shall sign a member control
20 agreement or agree to the conditions of the bylaws, either of which shall describe the rights and
21 obligations of the member as it relates to the nonpatron membership interests, the financial and
22 governance rights, the transferability of the nonpatron membership interests, the division and
23 allocations of profits and losses among the membership interests and membership classes, and
24 financial rights upon liquidation. If the articles or bylaws do not otherwise provide for the
25 allocations of the profits and losses between patron membership interests and nonpatron
26 membership interests, then the allocation of profits and losses among nonpatron interests
27 individually and patron membership interests collectively shall be allocated on the basis of the
28 value of contributions to capital made according to the patron membership interests collectively
29 and the nonpatron membership interests individually to the extent the contributions have been
30 accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be
31 allocated among the membership interests as provided in the articles and bylaws, subject to the
32 provisions of this chapter. If not otherwise provided in the articles or bylaws, distributions shall
33 be made on the basis of value of the capital contributions of the patron membership interests
34 collectively and the nonpatron membership interests to the extent the contributions have been
35 accepted by the cooperative.

36 **Subdivision 6. Cooperative First right to Purchase Membership Interests.** The articles
37 or bylaws may provide that the cooperative or the patron members, individually or collectively,
38 have the first privilege of purchasing the membership interests of any class of membership
39 interests offered for sale. The first privilege to purchase membership interests may be satisfied

1 by notice to other members that the membership interests are for sale and a procedure by which
2 members may proceed to attempt to purchase and acquire the membership interests. A
3 membership interest acquired by the cooperative may be held to be reissued or may be retired and
4 canceled.

5 **Subdivision 7. Payment for Nonpatron Membership Interests.** Subject to the
6 provisions in the articles and bylaws, a member may dissent from and obtain payment for the fair
7 value of the member's nonpatron membership interests in the cooperative if the articles or
8 bylaws re amended in a manner that materially and adversely affects the rights and preferences of
9 the nonpatron membership interests of the dissenting member. The dissenting member shall file
10 a notice of intent to demand fair value of the membership interest with the records officer of the
11 cooperative within 30 days after the amendment of the bylaws and notice of the amendment to
12 members, otherwise the right of the dissenting member to demand payment of fair value for the
13 membership interest is waived. If a proposed amendment of the articles or bylaws must be
14 approved by the members, a member who is entitled to dissent and who wishes to exercise
15 dissenter's rights shall file a notice to demand fair value of the membership interest with the
16 records officer of the cooperative before the vote on the proposed action and shall not vote in
17 favor of the proposed action, otherwise the right to demand fair value for the membership interest
18 by the dissenting member is waived. After receipt of the dissenting member's demand notice and
19 approval of the amendment, the cooperative has 60 days to rescind the amendment or otherwise
20 the cooperative shall remit the fair value for the member's interest to the dissenting member by
21 180 days after receipt of the notice. Upon receipt of the fair value for the membership interest,
22 the member has no further member rights in the cooperative.

23 Minnesota § 308B.605:

24 **Assignment of Financial Rights.**

25 **Subdivision 1. Assignment of Financial Rights Permitted.** Except as provided in
26 subdivision 3, a member's financial rights are transferable in whole or in part.

27 **Subdivision 2. Effect of Assignment of Financial Rights.** An assignment of a member's
28 financial rights entitles the assignee to receive, to the extent assigned, only the share of profits
29 and losses and the distributions to which the assignor would otherwise be entitled. An
30 assignment of a member's financial rights does not dissolve the cooperative and does not entitle
31 or empower the assignee to become a member, to exercise any governance rights, to receive any
32 notices from the cooperative, or to cause dissolution. The assignment shall not allow the
33 assignee to control the member's exercise of governance or voting rights.

34 **Subdivision 3. Restrictions of Assignment of Financial Rights.**

35 (a) A restriction on the assignment of financial rights may be imposed in the articles, in the
36 bylaws, in a member control agreement, by a resolution adopted by the members, by an

1 agreement among or other written action by the members, or by an agreement among or other
2 written action by the members and the cooperative. A restriction is not binding with respect to
3 financial rights reflected in the required records before the adoption of the restriction, unless the
4 owners of those financial rights are parties to the agreement or voted in favor of the restriction.

5 (b) Subject to paragraph (c), a written restriction on the assignment of financial rights that is
6 not manifestly unreasonable under the circumstances and is noted conspicuously in the required
7 records may be enforced against the owner of the restricted financial rights or a successor or
8 transferee of the owner, including a pledgee or a legal representative. Unless noted
9 conspicuously in the required records, a restriction, even though permitted by this section, is
10 ineffective against a person without knowledge of the restriction.

11 (c) With regard to restrictions on the assignment of financial rights, a would-be assignee of
12 financial rights is entitled to rely on a statement of membership interest issued by the cooperative
13 under Section 308B.611. A restriction on the assignment of financial rights, which is otherwise
14 valid and in effect at the time of the issuance of a statement of membership interest but which is
15 not reflected in that statement, is ineffective against an assignee who takes an assignment in
16 reliance on the statement.

17 (d) Notwithstanding any provision of law, articles, bylaws, member control agreement, other
18 agreement, resolution, or action to the contrary, a security interest in a member's financial rights
19 may be foreclosed and otherwise enforced, and a secured party may assign a member's financial
20 rights in accordance with chapter 336, without the consent or approval of the member whose
21 financial rights are subject to the security interest.

22 Minnesota § 308B.611:

23 **Nature of a Membership Interest and Statement of Interest Owned.**

24 **Subdivision 1. Generally.** A membership interest is personal property. A member has no
25 interest in specific cooperative property. All property of the cooperative is property of the
26 cooperative itself.

27 **Subdivision 2. Statement of Membership Interest.** At the request of any member, the
28 cooperative shall state in writing the particular membership interest owned by that member as of
29 the date the cooperative makes the statement. The statement must describe the member's rights
30 to vote, if any, to share in profits and losses, and to share in distributions, restrictions on
31 assignments of financial rights under Section 308B.605, Subdivision 3, or voting rights under
32 Section 308B.555 then in effect, as well as any assignment of the member's rights then in effect
33 other than a security interest.

34 **Subdivision 3. Terms of Membership Interests.** All the membership interests of a
35 cooperative must:

1 (1) be of one class, without series, unless the articles or bylaws establish or authorize the
2 board to establish more than one class or series within classes;

3 (2) be ordinary patron membership interests and if authorized nonpatron membership
4 interest subject to this chapter entitled to vote as provided in Section 308B.555 and have equal
5 rights and preferences in all matters not otherwise provided for by the board and to the extent that
6 the articles or bylaws have fixed the relative rights and preferences of different classes and series;
7 and

8 (3) share profits and losses and are entitled to distributions as provided in Sections
9 308B.721 and 308B.725.

10 **Subdivision 4. Rights of Judgment Creditor.** On application to a court of competent
11 jurisdiction by any judgment creditor of a member, the court may charge a member's or an
12 assignee's financial rights with payment of the unsatisfied amount of the judgment with interest.
13 To the extent so charged, the judgment creditor has only the rights of an assignee of a member's
14 financial rights under Section 308B.605. This chapter does not deprive any member or assignee
15 of financial rights of the benefit of any exemption laws applicable to the membership interest.
16 This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment
17 debtor's membership interest.

18 **Subdivision 5. Procedure for Fixing Terms.**

19 (a) Subject to any restrictions in the articles or bylaws, the power granted in this subdivision
20 may be exercised by a resolution or resolutions establishing a class or series, setting forth the
21 designation of the class or series, and fixing the relative rights and preferences of the class or
22 series. Any of the rights and preferences of a class or series established in the articles, bylaws, or
23 by resolution of the board:

24 (1) may be made dependent upon facts ascertainable outside the articles or bylaws or
25 outside the resolution or resolutions establishing the class or series, if the manner in which the
26 facts operate upon the rights and preferences of the class or series is clearly and expressly set
27 forth in the articles or bylaws or in the resolution or resolutions establishing the class or series;
28 and

29 (2) may include by reference some or all of the terms of any agreements, contracts, or
30 other arrangements entered into by the cooperative in connection with the establishment of the
31 class or series if the cooperative retains at its principal executive office a copy of the agreements,
32 contracts, or other arrangements or the portions will be included by reference.

33 (b) A statement setting forth the name of the cooperative and the text of the resolution and
34 certifying the adoption of the resolution and the date of adoption must be given to the members
35 before the acceptance of any contributions for which the resolution creates rights or preferences

1 not set forth in the articles or bylaws. Where the members have received notice of the creation of
2 membership interests with rights or preferences not set forth in the articles or bylaws before the
3 acceptance of the contributions with respect to the membership interests, the statement may be
4 filed any time within one year after the acceptance of the contributions. The resolution is
5 effective three days after delivery to the members is deemed effective by the board, or, if the
6 statement is not required to be given to the members before the acceptance of contributions, on
7 the date of its adoption by the directors.

8 **Subdivision 6. Specific Terms.** Without limiting the authority granted in this section, a
9 cooperative may have membership interests of a class or series:

10 (1) subject to the right of the cooperative to redeem any of those membership interests at the
11 price fixed for their redemption by the articles or bylaws or by the board;

12 (2) entitling the members to cumulative, partially cumulative, or noncumulative
13 distributions;

14 (3) having preference over any class or series of membership interests for the payment of
15 distributions of any or all kinds;

16 (4) convertible into membership interests of any other class or any series of the same or
17 another class; or

18 (5) having full, partial, or no voting rights, except as provided in Section 308B.555.

19 **Subdivision 7. Grant of a Security Interest.** For the purpose of any law relating to
20 security interests, membership interests, governance or voting rights, and financial rights are each
21 to be characterized as provided in Section 336.8-103, paragraph (c).

22 **Subdivision 8. Powers of Estate of a Deceased or Incompetent Member.**

23 (a) If a member who is an individual dies or a court of competent jurisdiction adjudges the
24 member to be incompetent to manage the member's person or property, or an order for relief
25 under the bankruptcy code is entered with respect to the member, the member's executor,
26 administrator, guardian, conservator, trustee, or other legal representative may exercise all of the
27 member's rights for the purpose of settling the estate or administering the member's property. If
28 a member is a business entity, trust, or other entity and is dissolved, terminated, or placed by a
29 court in receivership or bankruptcy, the powers of that member may be exercised by its legal
30 representative or successor.

31 (b) If an event referred to in paragraph (a) causes the termination of a member's
32 membership interest and the termination does not result in dissolution, then subject to the articles
33 and bylaws:

1 (1) as provided in Section 308B.605, the terminated member's interest will be
2 considered to be merely that of an assignee of the financial rights owned before the termination
3 of membership; and

4 (2) the rights to be exercised by the legal representative of the terminated member will
5 be limited accordingly.

6 **Subdivision 9. Liability of Subscribers and Members with Respect to Membership**
7 **Interests.** A subscriber for membership interests or a member of a cooperative is under no
8 obligation to the cooperative or its creditors with respect to the membership interests subscribed
9 for or owned, except to pay to the cooperative the full consideration for which the membership
10 interests are issued or to be issued.

11 **SECTION 502. GROUPING OF MEMBERS.**

12 (a) A cooperative may group members and patron members in districts, units or another
13 basis if and as authorized in its articles and bylaws which may include authorization for the board
14 to determine the groupings.

15 (b) The board may do things necessary to implement the use of districts or units
16 including setting the time and place and prescribing the rules of conduct for holding meetings by
17 districts or units to elect delegates to members' meetings.

18 **Comment**

19 The source for this provision is Wyoming Rev. Stat. § 17-10-223. See the comparative
20 provisions of the Minnesota Act in the comments to the preceeding section.

21 **SECTION 503. MEMBER VIOLATIONS; LIABILITY FOR COOPERATIVE** 22 **DEBTS.**

23 (a) A member who knowingly, intentionally, or repeatedly violates a provision of the
24 articles, bylaws, member control agreement or marketing contract with the cooperative, may be
25 required by the board to surrender the financial rights of membership interest of any class owned

1 by the member.

2 (b) The cooperative shall refund to the member for the surrendered financial rights of
3 membership interest the lesser of the book value or market value of the financial right of the
4 membership interest payable in not more than seven (7) years from the date of surrender or the
5 board may transfer all of any patron member's financial rights to a class of financial rights held
6 by members who are not patron members, or to a certificate of interest which carries liquidation
7 rights on par with membership interests and is redeemed within seven (7) years after the transfer
8 as provided in the certificate.

9 (c) Membership interests required to be surrendered may be reissued or be retired and
10 cancelled by the board.

11 (d) A member who knowingly, intentionally or repeatedly violates a provision of the
12 articles, bylaws, member control agreement, or a marketing contract, may be required by the
13 board to surrender voting power in the cooperative.

14 (e) A member is not, merely on the account of that status, personally liable for the acts,
15 debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid subscription
16 for the membership interest, unpaid membership fees, or a debt for which the member has
17 separately contracted with the cooperative.

18 **Comment**

19 The source for this provision is Wyoming Rev. Stat. § 17-10-224.
20 Minnesota § 308B.501 Members.

21 **Subdivision 1. Requirement.** A cooperative shall have one or more members.

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(b) The cooperative shall refund to the member for the surrendered financial rights of membership interest the lesser of the book value or market value of the financial right of the membership interest payable in not more than seven years from the date of surrender or the board may transfer all of any patron member's financial rights to a class of financial rights held by members who are not patron members, or to a certificate of interest, which carries liquidation rights on par with membership interests and is redeemed within seven years after the transfer as provided in the certificate.

* * *

(a) Regular members' meetings shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

(c) The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year.

(e) The cooperative shall give notice of regular members' meetings by mailing the regular members' meeting notice to each member at the member's last known post office address

1 or by other notification approved by the board and agreed to by the members. The regular
2 members' meeting notice shall be published or otherwise given by approved method at least two
3 (2) weeks before the date of the meeting or mailed at least fifteen (15) days before the date of the
4 meeting.

5 **Comment**

6 The source for this provision is Wyoming Rev. Stat. § 17-10-225.

7 **SECTION 505. MEMBERS SPECIAL MEETINGS.**

8 (a) Special members' meetings of the members may be called by:

9 (i) A majority vote of the board; or

10 (ii) The written petition of at least twenty percent (20%) of the patron members,
11 twenty percent (20%) of the nonpatron members or twenty percent (20%) of all members
12 collectively are submitted to the chair.

13 (b) The cooperative shall give notice of a special members' meeting by mailing the
14 special members' meeting notice to each member personally at the person's last known post
15 office address or an alternative method approved by the board and the member individually or the
16 members generally. For a member that is an entity, notice mailed or delivered by an alternative
17 method shall be to an officer of the entity. The special members' meeting notice shall state the
18 time, place, and purpose of the special members' meeting. The special members' meeting notice
19 shall be issued within ten (10) days from and after the date of the presentation of a members'
20 petition, and the special members' meeting shall be held within thirty (30) days after the date of
21 the presentation of the members' petition.

1 **Comment**

2 The source for this provision is Wyoming Rev. Stat. § 17-10-226.

3 **SECTION 506. CERTIFICATION OF MEETING NOTICE.**

4 (a) After mailing special or regular members' meeting notices or otherwise delivering
5 the notices, the cooperative shall execute a certificate containing the date of mailing or delivery
6 of the notice and a statement that the special or regular members' meeting notices were mailed or
7 delivered as prescribed by law.

8 (b) The certificate shall be made a part of the record of the meeting.

9 **Comment**

10 The source for this provision is Wyoming Rev. Stat. § 17-10-227.

11 **SECTION 507. FAILURE TO RECEIVE MEETING NOTICE.** Failure of a member
12 to receive a special or regular members' meeting notice does not invalidate an action that is taken
13 by members at a members' meeting.

14 **Comment**

15 The source for this provision is Wyoming Rev. Stat. § 17-10-228.

16 **SECTION 508. QUORUM.**

17 (a) The quorum for a members' meeting to transact business shall be:

18 (i) Ten percent (10%) of the total number of members for a cooperative with five
19 hundred (500) or less members; or

1 (ii) Fifty (50) members for cooperatives with more than five hundred (500) members.

2 (b) In determining a quorum at a meeting, on a question submitted to a vote by mail or
3 an alternative method, members present in person or represented by mail vote or the alternative
4 voting method shall be counted. The attendance of a sufficient number of members to constitute
5 a quorum shall be established by a registration of the members of the cooperative present at the
6 meeting. The registration shall be verified by the chair or the records officer of the cooperative
7 and shall be reported in the minutes of the meeting.

8 (c) An action by a cooperative is not valid or legal in the absence of a quorum at the
9 meeting at which the action was taken.

10 **Comment**

11 The source for this provision is Wyoming Rev. Stat. § 17-10-229.

12 Minnesota § 308B.525:

13 **Subdivision 1. Quorum.** The quorum for a members' meeting to transact business shall
14 be:

15 (1) ten percent of the total number of members for a cooperative with 500 or fewer
16 members; or

17 (2) 50 members for cooperatives with more than 500 members.

18 **Subdivision 2. Quorum for Voting by Mail.** In determining a quorum at a meeting, on a
19 question submitted to a vote by mail or an alternative method, members present in person or
20 represented by mail vote or the alternative voting method shall be counted. The attendance of a
21 sufficient number of members to constitute a quorum shall be established by a registration of the
22 members of the cooperative present at the meeting. The registration shall be verified by the chair
23 or the records officer of the cooperative and shall be reported in the minutes of the meeting.

24 **Subdivision 3. Meeting Action Invalid Without Quorum.** An action by a cooperative is
25 not valid or legal in the absence of a quorum at the meeting at which the action was taken.

1 **SECTION 509. MEMBER VOTING RIGHTS.**

2 (a) A patron member of a cooperative is only entitled to one (1) vote on an issue to be
3 voted upon by members holding patron membership interests, except that a patron member of a
4 cooperative described in Section 510 may be entitled to more than one (1) vote as provided in
5 that section. On any matter of the cooperative, the entire patron members voting power shall be
6 voted collectively based upon the vote of the majority of patron members voting on the issue. A
7 nonpatron member has the voting rights in accordance to his nonpatron membership interests as
8 granted in the bylaws, subject to the provisions of this article.

9 (b) A member or delegate may exercise voting rights on any matter that is before the
10 members as prescribed in the articles or bylaws at a members' meeting from the time the member
11 or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and
12 specific time for closing the right to vote.

13 (c) A member's vote at a members' meeting shall be in person or by mail if a mail vote
14 is authorized by the board or by alternative method if authorized by the board, and not by proxy
15 except as provided in subsection (d) of this section.

16 (d) The following shall apply to members represented by delegates:

17 (i) A cooperative may provide in the articles or bylaws that units or districts of
18 members are entitled to be represented at members' meetings by delegates chosen by the
19 members of the unit or district. The delegates may vote on matters at the members' meeting in the
20 same manner as a member. The delegates may only exercise the voting rights on a basis and with
21 the number of votes as prescribed in the articles or bylaws;

22 (ii) If the approval of a certain portion of the members is required for adoption of

1 amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates
2 shall be counted as votes by the members represented by the delegate;

3 (iii) Patron members may be represented by the proxy of other patron members;

4 (iv) Nonpatron members may be represented by proxy if authorized in the bylaws.

5 (e) The following shall apply to absentee ballots:

6 (i) A member who is or will be absent from a members' meeting may vote by mail
7 or by an approved alternative method on the ballot prescribed in this subsection on any motion,
8 resolution or amendment that the board submits for vote by mail or alternative method to the members;

9 (ii) The ballot shall be in the form prescribed by the board and contain:

10 (A) The exact text of the proposed motion, resolution or amendment to be
11 acted on at the meeting; and

12 (B) The text of the motion, resolution or amendment for which the member
13 may indicate an affirmative or negative vote.

14 (iii) The member shall express a choice by marking an appropriate choice on the
15 ballot and mail, deliver or otherwise submit the ballot to the cooperative in a plain, sealed
16 envelope inside another envelope bearing the member's name or by an alternative method
17 approved by the board;

18 (iv) A properly executed ballot shall be accepted by the board and counted as the
19 vote of the absent member at the meeting.

20 **Comment**

21 The source for this provision is Wyoming Rev. Stat. § 17-10-230.

22 Minnesota § 308B.561:

Subdivision 2. Membership Interests Held by Subsidiary. Except as provided in Subdivision 3, membership interests of a cooperative reflected in the required records as being owned by a subsidiary are not entitled to be voted on any matter.

Subdivision 3. Membership Interests Controlled in a Fiduciary Capacity. Membership interests of a cooperative in the name of, or under the control of, the cooperative or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to vote or gives the cooperative or, with respect to membership interests in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the membership interests.

Subdivision 4. Voting by Certain Representatives. Subject to Section 308B.545, membership interests under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

* * *

Subsidiary 7. Grant of Security Interest. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote.

Minnesota § 308B.545:

Subdivision 1. Member has one Vote; or Patronage Voting. A patron member of a cooperative is only entitled to one vote on an issue to be voted upon by members holding patron membership interests, except that if authorized in the articles or bylaws a patron member may be entitled to additional votes based on patronage criteria in section 308B.551. On any matter of the cooperative, the entire patron members voting power shall be voted collectively based upon the vote of the majority of patron members voting on the issue and the collective vote of the patron members shall be a majority of the vote case unless otherwise provided in the bylaws. The bylaws may not reduce the collective patron member vote to less than 15 percent of the total vote on matters of the cooperative. A nonpatron member has the voting rights in accordance to his nonpatron membership interests as granted in the bylaws, subject to the provisions of this chapter.

Subdivision 2. Right to Vote at Meeting. A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

Subdivision 3. Voting Method. A member's vote at a members' meeting shall be in person or by mail if a mail vote is authorized by the board or by alternative method of authorized

1 by the board and not by proxy, except as provided in subdivision 4.

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3 **SECTION 510. PATRON MEMBER VOTING IN COOPERATIVES**
4 **CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR**
5 **ASSOCIATIONS.**

6 (a) A cooperative that is constituted entirely or partially of other cooperatives or
7 associations may authorize by the articles or the bylaws for affiliated cooperative patron
8 members to have an additional vote for:

9 (i) A stipulated amount of business transacted between the patron member
10 cooperative and the central cooperative organization;

11 (ii) A stipulated number of patron members in the member cooperative;

12 (iii) A certain stipulated amount of equity allocated to or held by the patron
13 member cooperative in the cooperative central organization; or

14 (iv) A combination of methods in paragraphs (i) through (iii) of this subsection.

15 (b) A cooperative that is organized into units or districts of patron members, may, by
16 the articles or the bylaws, authorize the delegates elected by its patron members or, have an
17 additional vote for:

18 (i) A stipulated amount of business transacted between the patron members in the
19 units or districts and the cooperative;

20 (ii) A certain stipulated amount of equity allocated to or held by the patron
21 members of the units or districts of the cooperative; or

22 (iii) A combination of methods in paragraphs (i) and (ii) of this subsection.

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Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-231.

SECTION 511. VOTE OF OWNERSHIP INTERESTS HELD BY COOPERATIVE.

A cooperative that holds ownership interests of another business entity may, by direction of the cooperative’s board, elect or appoint a person to represent the cooperative at a meeting of the business entity. The representative has authority to represent the cooperative and may cast the cooperative’s vote at the business entity’s meeting.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-232.

1 **ARTICLE 6**

2 **CONTRIBUTIONS AND DISTRIBUTIONS**

3 **SECTION 601. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS.**

4 (a) The bylaws shall prescribe the allocation of profits and losses between patron
5 membership interests collectively and other membership interests. If the bylaws do not otherwise
6 provide, the profits and losses between patron membership interests collectively and other
7 membership interests shall be allocated on the basis of the value of contributions to capital made
8 by the patron membership interests collectively and other membership interests and accepted by
9 the cooperative. The allocation of profits to the patron membership interests collectively shall not
10 be less than fifteen percent (15%) of the total profits in any fiscal year.

11 (b) The bylaws shall prescribe the distribution of cash or other assets of the cooperative
12 among the membership interests of the cooperative. If not otherwise provided in the bylaws,
13 distribution shall be made to the patron membership interests collectively and other members on
14 the basis of the value of contributions to capital made and accepted by the cooperative by the
15 patron membership interests collectively and other membership interests. The distributions to
16 patron membership interests collectively shall not be less than fifteen percent (15%) of the total
17 distributions in any fiscal year.

18 **Comment**

19 The source for this provision is Wyoming Rev. Stat. § 17-10-233.

20 This section states that allocations and distributions are governed in the bylaws. Queries:
21 (1) Does this indicate that the bylaws operate as do agreements in other unincorporated entity
22 statutes? (2) Should adoption of the bylaws be a condition for formation?

1 **SECTION 602. ALLOCATIONS AND DISTRIBUTIONS TO PATRON MEMBERS.**

2 (a) A cooperative may set aside a portion of net income allocated to the patron
3 membership interests as the board determines advisable to create or maintain a capital reserve.

4 (b) In addition to a capital reserve, the board may, for patron membership interests:

5 (i) Set aside an amount not to exceed five percent (5%) of the annual net income
6 of the cooperative for promoting and encouraging cooperative organization; and

7 (ii) Establish and accumulate reserves for new buildings, machinery and
8 equipment, depreciation, losses, and other proper purposes.

9 (c) Net income allocated to patron members in excess of dividends on equity and
10 additions to reserves shall be distributed to patron members on the basis of patronage. A
11 cooperative may establish allocation units, whether the units are functional, divisional,
12 departmental, geographic, or otherwise and pooling arrangements and may account for and
13 distribute net income to patrons on the basis of allocation units and pooling arrangements. A
14 cooperative may offset the net loss of an allocation unit or pooling arrangement against the net
15 income of other allocation units or pooling arrangements.

16 (d) Distribution of net income shall be made at least annually. The board shall present
17 to the members at their annual meeting a report covering the operations of the cooperative during
18 the preceding fiscal year.

19 (e) A cooperative may distribute net income to patron members in cash, capital credits,
20 allocated patronage equities, revolving fund certificates, or its own or other securities.

21 (f) The cooperative may provide in the bylaws that nonmember patrons are allowed to

1 participate in the distribution of net income payable to patron members on equal terms with
2 patron members.

3 (g) If a nonmember patron with patronage credits is not qualified or eligible for
4 membership, a refund due may be credited to the patron's individual account. The board may
5 issue a certificate of interest to reflect the credited amount. After the patron is issued a certificate
6 of interest, the patron may participate in the distribution of income on the same basis as a patron
7 member.

8 **Comment**

9 The source for this provision is Wyoming Rev. Stat. § 17-10-234. What is the source and
10 significance of limiting certain reserves to five percent in subsection (b)(i)?

11 **SECTION 603. DISTRIBUTION OF UNCLAIMED PROPERTY.**

12 (a) A cooperative may, in lieu of paying or delivering to the state the unclaimed
13 property specified in its report of unclaimed property, distribute the unclaimed property to a
14 corporation or organization that is exempt from taxation. A cooperative making the election to
15 distribute unclaimed property shall file with the secretary of state:

16 (i) A verified written explanation of the proof of claim of an owner establishing a
17 right to receive the abandoned property;

18 (ii) Any error in the presumption of abandonment;

19 (iii) The name, address, and exemption number of the corporation or organization
20 to which the property was or is to be distributed; and

21 (iv) The approximate date of distribution.

22 (b) This subsection does not alter the procedure provided by law for cooperatives to

1 report unclaimed property to the state and the requirement that claims of owners are made to the
2 cooperatives for a period following the publication of lists of abandoned property.

3 (c) The right of an owner to unclaimed property held by a cooperative is extinguished
4 when the property is disbursed by the cooperative to a tax exempt organization in accordance
5 with this section.

6 **Comment**

7 The source for this provision is Wyoming Rev. Stat. § 17-10-235. There are similar
8 provisions in many other state cooperative statutes.

1 **ARTICLE 7**

2 **MERGER, CONSOLIDATION AND DISSOLUTION**

3 **SECTION 701. MERGER AND CONSOLIDATION.**

4 (a) Unless otherwise prohibited, cooperatives organized under the laws of this state
5 may merge or consolidate with each other or other business entities organized under the laws of
6 this state or another state by complying with the provisions of this section or the law of the state
7 where the surviving or new business entity will exist.

8 (b) To initiate a merger or consolidation of a cooperative, a written plan of merger or
9 consolidation shall be prepared by the board or by a committee selected by the board to prepare a
10 plan. The plan shall state:

11 (i) The names of the constituent cooperatives and other business entities;
12 (ii) The name of the surviving or new cooperative or other business entity;
13 (iii) The manner and basis of converting membership or ownership interests of the
14 constituent cooperatives or business entities into membership or ownership interests in the
15 surviving or new cooperative or business entity;

16 (iv) The terms of the merger or consolidation;
17 (v) The proposed effect of the consolidation or merger on the members and patron
18 members of the cooperative; and

19 (vi) For a consolidation, the plan shall contain the articles of the entity or
20 organizational documents to be filed with the state in which the entity is organized.

21 (c) The following shall apply to notice:

1 (i) The board shall mail a merger or consolidation or otherwise transmit or deliver
2 notice to each member. The notice shall contain:

3 (A) The full text of the plan; and

4 (B) The time and place of the meeting at which the plan will be considered.

5 (ii) A cooperative with more than two hundred (200) members may provide the
6 merger or consolidation notice in the same manner as a regular members' meeting notice.

7 (d) The following shall apply to the adoption of a plan or merger or consolidation:

8 (i) A plan of merger or consolidation is adopted if:

9 (A) A quorum of the members is registered as being present or represented by
10 mail vote at the meeting; and

11 (B) The plan is approved by two-thirds (2/3) of the votes cast, or for a
12 cooperative with articles or bylaws requiring more than two-thirds (2/3) of the votes cast or other
13 conditions for approval, the plan is approved by a proportion of the votes cast or a number of
14 total members as required by the articles or bylaws and the conditions for approval in the articles
15 or bylaws have been satisfied.

16 (ii) After the plan has been adopted, articles of merger or consolidation stating the
17 plan and that the plan was adopted according to this article shall be signed by the chair, vice-
18 chair, records officer or documents officer of each cooperative merging or consolidating;

19 (iii) The articles of merger or consolidation shall be filed in the office of the
20 secretary of state;

21 (iv) For a merger, the articles of the surviving cooperative subject to this article
22 are deemed amended to the extent provided in the articles of merger;

1 (v) Unless a later date is provided in the plan, the merger or consolidation is
2 effective when the articles of merger or consolidation are filed in the office of the secretary of state;

3 (vi) The secretary of state shall issue a certificate of organization of the merged or
4 consolidated cooperative.

5 (e) The following shall apply to the effect of a merger:

6 (i) After the effective date, the cooperatives or other business entities that are
7 parties to the plan become a single entity. For a merger, the surviving business entity is the
8 business entity designated in the plan. For a consolidation, the new cooperative or other business
9 entity is the business entity provided for in the plan. Except for the surviving or new business
10 entity, the separate existence of all business entities that are parties to the plan cease on the
11 effective date of the merger or consolidation;

12 (ii) The surviving or new business entity possesses all of the rights and property of
13 each of the merged or consolidated business entities and is responsible for all their obligations.
14 The title to property of the merged or consolidated business entity is vested in the surviving or
15 new business entity without reversion or impairment of the title caused by the merger or
16 consolidation;

17 (iii) The right of a creditor may not be impaired by the merger or consolidation
18 without the creditor's consent.

19 (f) The fee to be paid to the secretary of state for filing articles of merger or
20 consolidation shall conform with the provisions of W.S. 17-16-122.

21 **Comment**

22 The source for this provision is Wyoming Rev. Stat. § 17-10-236.

1 This section governs merger and consolidation. Again, the quantum of the vote is two-
2 thirds which is inconsistent with the uniform unincorporated acts and raises theoretical, if not
3 practical, issues.

4 A broader issue about mergers and conversion and this Act's relationship with the
5 NCCUSL-ABA's current Multi-Entity Transactions Act Drafting committee is also raised by this
6 section.

7 Other specific issues include whether this Act should include conversions (which is might in
8 another section), divisions, and share exchanges. The effect of (e)(iii) also needs to be discussed.

9 Finally, and most generally, the structure of this section will probably change to reflect the
10 general structure of other uniform unincorporated entity acts. One such structural change might
11 include bifurcating this section into articles on "Merger and Conversion" and "Miscellaneous."
12 Only because this is the last article: Are transitional provisions helpful or necessary?

13 Minnesota § 308B.805:

14 **Subdivision 3. Articles of Merger; Contents of Articles.** Articles of merger shall be
15 prepared that contain:

16 (1) the plan of merger;

17 (2) the number of outstanding membership interests of each series and class of each
18 subsidiary that is a constituent cooperative in the merger, other than the series or classes that,
19 absent this section, would otherwise not be entitled to vote on the merger, and the number of
20 membership interests of each series and class of the subsidiary or subsidiaries, other than series
21 or classes that, absent this section, would otherwise not be entitled to vote on the merger, owned
22 by the parent directly, or indirectly through related organizations; and

23 (3) a statement that the plan of merger has been approved by the parent under this section.

24 * * *

25 **Subdivision 6. Rights of Dissenting Owners.** If all of the ownership interests of one or
26 more domestic business entity subsidiaries that is a constituent party to a merger under this
27 section is not owned by the parent directly, or indirectly through related cooperatives,
28 immediately prior to the merger, the members of each domestic business entity subsidiary have
29 dissenters' rights under the law governing the entity's organization.

30 Minnesota § 308B.835:

31 **Subdivision 2. Abandonment of Merger.** A merger may be abandoned:

1 * * *

2 (c) The right of a creditor may not be impaired by the merger or consolidation without the
3 creditor's consent.

4 **SECTION 702. LIQUIDATION.**

5 (a) A cooperative shall be liquidated as provided in the articles in a manner consistent
6 with other business entities organized in this state or if not provided, may be liquidated in the
7 same manner as a limited liability company organized in this state or the members may authorize
8 a liquidation by adopting a resolution at a members' meeting. The notice of the members' meeting
9 shall include a statement that the disposition of all of the assets of the cooperative will be
10 considered at the meeting. If a quorum is present in person, by mail ballot, or alternative method
11 approved by the board at the members' meeting, the resolution approving of the liquidation is
12 adopted if:

13 (i) Approved by two-thirds (2/3) of the votes cast; or

14 (ii) For a cooperative with articles or bylaws requiring more than two-thirds (2/3)
15 for approval or other conditions for approval, the resolution is approved by the proportion of the
16 votes cast or a number of total members as required by the articles or bylaws and the conditions
17 for approval in the articles or bylaws have been satisfied.

18 (b) The board of directors by resolution may liquidate a cooperative if the board obtains
19 an opinion of an accountant that the cooperative is unlikely to continue as a business based on its
20 current finances.

21 **Comment**

22 The source for this provision is Wyoming Rev. Stat. § 17-10-238.

1 Subsection 702(a) provides alternate methods for liquidation defaulting to the limited
2 liability company act in the state. This default is a reasonable one but will, of course, lead to
3 nonuniformity. Again, the issue of whether the articles, by laws, or an agreement govern the
4 organization is raised. As drafted, subsection 702(a) provides that the articles govern this
5 transaction.

6 Section 702(b) is somewhat novel.

7 **SECTION 703. METHODS OF DISSOLUTION.** A cooperative may be dissolved by
8 the members or by order of the court.

9 **Comment**

10 The source for this provision is Wyoming Rev. Stat. § 17-10-238.

11 This provision is redundant and may not be necessary. If it is kept, it might be advisable to
12 provide statutory cross-references in the text or comment.

13 **SECTION 704. WINDING UP.**

14 (a) After the notice of intent to dissolve has been filed with the secretary of state, the
15 board, or the officers acting under the direction of the board, shall proceed as soon as possible:

16 (i) To collect or make provision for the collection of all debts due or owing to the
17 cooperative, including unpaid subscriptions for shares; and

18 (ii) To pay or make provision for the payment of all debts, obligations and
19 liabilities of the cooperative according to their priorities.

20 (b) After the notice of intent to dissolve has been filed with the secretary of state, the
21 board may sell, lease, transfer or otherwise dispose of all or substantially all of the property and
22 assets of the dissolving cooperative without a vote of the members.

23 (c) Tangible and intangible property, including money, remaining after the discharge of

1 the debts, obligations and liabilities of the cooperative may be distributed to the members and
2 former members as provided in the bylaws. If previously authorized by the members, the tangible
3 and intangible property of the cooperative may be liquidated and disposed of at the discretion of
4 the board.

5 **Comment**

6 The source for this provision is Wyoming Rev. Stat. § 17-10-239.

7 **SECTION 705. REVOCATION OF DISSOLUTION PROCEEDINGS.**

8 (a) Dissolution proceedings may be revoked before the articles of dissolution are filed
9 with the secretary of state.

10 (b) The chair may call a members' meeting to consider the advisability of revoking the
11 dissolution proceedings. The question of the proposed revocation shall be submitted to the
12 members at the members' meeting called to consider the revocation. The dissolution proceedings
13 are revoked if the proposed revocation is approved at the members' meeting by a majority of the
14 members of the cooperative or for a cooperative with articles or bylaws requiring a greater
15 number of members, the number of members required by the articles or bylaws.

16 (c) Revocation of dissolution proceedings is effective when a notice of revocation is
17 filed with the secretary of state. After the notice is filed, the cooperative may resume business.

18 **Comment**

19 The source for this provision is Wyoming Rev. Stat. § 17-10-240.

20 Subsection 705(b) uses a majority vote to revoke the dissolution but the original vote which
21 is inconsistent with the vote of two-thirds required for dissolution in section 702. If dissolution
22 and liquidation are different procedures, the distinction should be made clearer in the Act.

SECTION 706. STATUTE OF LIMITATIONS. The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative or arbitration proceedings concerning the claim by two (2) years after the date the notice of intent to dissolve is filed with the secretary of state.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-241.

The length of the statute of limitations is an important policy decision. This Act does not distinguish between known and unknown claimants. Sections 707 and 708 include other creditor protection.

SECTION 707. ARTICLES OF DISSOLUTION.

(a) Articles of dissolution of a cooperative shall be filed with the secretary of state after payment of the claims of all known creditors and claimants has been made or provided for and the remaining property has been distributed by the board. The articles of dissolution shall state:

(i) That all debts, obligations, and liabilities of the cooperative have been paid or discharged or adequate provisions have been made for them or time periods allowing claims have run and other claims are not outstanding;

(ii) That the remaining property, assets, and claims of the cooperative have been distributed among the members or pursuant to a liquidation authorized by the members; and

(iii) That legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order or decree that may be entered against the cooperative in a pending proceeding.

(b) The cooperative is dissolved when the articles of dissolution have been filed with

1 the secretary of state.

2 (c) The secretary of state shall issue to the dissolved cooperative or its legal
3 representative a certificate of dissolution that contains:

4 (i) The name of the dissolved cooperative;

5 (ii) The date the articles of dissolution were filed with the secretary of state; and

6 (iii) A statement that the cooperative is dissolved.

7 **Comment**

8 The source for this provision is Wyoming Rev. Stat. § 17-10-242.

9 This Act requires two filings upon dissolution. Section 704 contemplates a notice of intent
10 to dissolve and this section requires the filing of articles of dissolution.

11 **SECTION 708. APPLICATION FOR COURT-SUPERVISED VOLUNTARY**

12 **DISSOLUTION.** After a notice of intent to dissolve has been filed with the secretary of state
13 and before a certificate of dissolution has been issued, the cooperative or, for good cause shown,
14 a member or creditor may apply to a court within the county where the registered address is
15 located to have the dissolution conducted or continued under the supervision of the court as
16 provided.

17 **Comment**

18 The source for this provision is Wyoming Rev. Stat. § 17-10-243.

19 **SECTION 709. COURT-ORDERED REMEDIES OR DISSOLUTION.**

20 (a) A court may grant equitable relief that it deems just and reasonable in the
21 circumstances or may dissolve a cooperative and liquidate its assets and business:

1 (i) In a supervised voluntary dissolution that is applied for by the cooperative;

2 (ii) In an action by a member when it is established that:

3 (A) The directors or the persons having the authority otherwise vested in the
4 board are deadlocked in the management of the cooperative's affairs and the members are unable
5 to break the deadlock;

6 (B) The directors or those in control of the cooperative have acted
7 fraudulently, illegally or in a manner unfairly prejudicial toward one (1)
8 or more members in their capacities as members, directors or officers;

9 (C) The members of the cooperative are so divided in voting power that, for a
10 period that includes the time when two (2) consecutive regular members' meetings were held,
11 they have failed to elect successors to directors whose terms have expired or would have expired
12 upon the election and qualification of their successors;

13 (D) The cooperative assets are being misapplied or wasted; or

14 (E) The period of duration as provided in the articles has expired and has not
15 been extended as provided in this article.

16 (iii) In an action by a creditor when:

17 (A) The claim of the creditor against the cooperative has been reduced to
18 judgment and an execution on the judgment has been returned unsatisfied; or

19 (B) The cooperative has admitted in writing that the claim of the creditor
20 against the cooperative is due and owing and it is established that the cooperative is unable to pay
21 its debts in the ordinary course of business; or

22 (iv) In an action by the attorney general to dissolve the cooperative in accordance

1 with this article when it is established that a decree of dissolution is appropriate.

2 (b) In determining whether to order equitable relief or dissolution, the court shall take
3 into consideration the financial condition of the cooperative but may not refuse to order equitable
4 relief or dissolution solely on the ground that the cooperative has accumulated operating net
5 income or current operating net income.

6 (c) In deciding whether to order dissolution of the cooperative, the court shall consider
7 whether lesser relief suggested by one (1) or more parties, such as a form of equitable relief or a
8 partial liquidation, would be adequate to permanently relieve the circumstances established under
9 subparagraph (a)(ii)(B) or (C) of this section. Lesser relief may be ordered if it would be
10 appropriate under the facts and circumstances of the case.

11 (d) If the court finds that a party to a proceeding brought under this section has acted
12 arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award
13 reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

14 (e) Proceedings under this section shall be brought in a court within the county where
15 the registered address of the cooperative is located.

16 (f) It is not necessary to make members parties to the action or proceeding unless relief
17 is sought against them personally.

18 **Comment**

19 The source for this provision is Wyoming Rev. Stat. § 17-10-244.

20 Section 709 provides important minority rights and expressly adopts equitable principles.
21 One cause for ordering dissolution is deadlock which comes from corporate acts. First, is the
22 deadlock provision necessary? Second, are the powers broad enough to contemplate such
23 remedies as provisional directors?

1 **SECTION 710. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED**
2 **VOLUNTARY DISSOLUTION.**

3 (a) In dissolution proceedings before a hearing can be completed the court may:

4 (i) Issue injunctions;

5 (ii) Appoint receivers with all powers and duties that the court directs;

6 (iii) Take actions required to preserve the cooperative's assets wherever located; and

7 (iv) Carry on the business of the cooperative.

8 (b) After a hearing is completed, on notice the court directs to be given to parties to the
9 proceedings and to other parties in interest designated by the court, the court may appoint a
10 receiver to collect the cooperative's assets, including amounts owing to the cooperative by
11 subscribers on account of an unpaid portion of the consideration for the issuance of shares. A
12 receiver has authority, subject to the order of the court, to continue the business of the
13 cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the
14 cooperative either at public or private sale.

15 (c) The assets of the cooperative or the proceeds resulting from a sale, lease, transfer,
16 or other disposition shall be applied in the following order of priority:

17 (i) The costs and expenses of the proceedings, including attorneys' fees and disbursements;

18 (ii) Debts, taxes and assessments due the United States, this state and other states
19 in that order;

20 (iii) Claims duly proved and allowed to employees under the provisions of the
21 workers' compensation act except that claims under this clause may not be allowed if the
22 cooperative has carried workers' compensation insurance, as provided by law, at the time the

injury was sustained;

(iv) Claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three (3) months preceding the appointment of the receiver, if any; and

(v) Other claims proved and allowed.

(d) After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed pursuant to an approved liquidation plan.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-245.

Section 710 confirms the court has broad powers. Subsection 710(a)(iii) is similar to statutory language concerning charging orders in unincorporated entity statutes. An argument exists that the language in subsection 710(a)(iii) causes mischief. Should the two year statute of limitations for claims be reduced, as it is here, to three months?

SECTION 711. RECEIVER QUALIFICATIONS AND POWERS.

(a) A receiver shall be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. A receiver shall give a bond as directed by the court with the sureties required by the court.

(b) A receiver may sue and defend in all courts as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction of the cooperative and its property.

Comment

The source for this provision is Wyoming Rev. Stat. § 17-10-246.

1 **SECTION 712. DISSOLUTION ACTION BY ATTORNEY GENERAL;**
2 **ADMINISTRATIVE DISSOLUTION.**

3 (a) A cooperative may be dissolved involuntarily by a decree of a court in this state in
4 an action filed by the attorney general if it is established that:

5 (i) The articles and certificate of organization were procured through fraud;

6 (ii) The cooperative was organized for a purpose not permitted by this article or
7 prohibited by state law;

8 (iii) The cooperative has flagrantly violated a provision of this article, has violated
9 a provision of this article more than once or has violated more than one (1) provision of this
10 article; or

11 (iv) The cooperative has acted, or failed to act, in a manner that constitutes
12 surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

13 (b) An action may not be commenced under subsection (a) of this section until thirty
14 (30) days after notice to the cooperative by the attorney general of the reason for the filing of the
15 action. If the reason for filing the action is an act that the cooperative has done, or omitted to do,
16 and the act or omission may be corrected by an amendment of the articles or bylaws or by
17 performance of or abstention from the act, the attorney general shall give the cooperative thirty
18 (30) additional days to make the correction before filing the action.

19 (c) The provisions of [the business corporation law of this state] shall apply to the
20 administrative dissolution of any domestic cooperative and the provisions of [the business
21 corporation law of this state] shall apply to the administrative dissolution of any foreign
22 cooperative.

1 **Comment**

2 The source for this provision is Wyoming Rev. Stat. § 17-10-247.

3 **SECTION 713. FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION**
4 **PROCEEDINGS.**

5 (a) In proceedings to dissolve a cooperative, the court may require all creditors and
6 claimants of the cooperative to file their claims under oath with the court administrator or with
7 the receiver in a form prescribed by the court.

8 (b) If the court requires the filing of claims, the court shall:

9 (i) Set a date, by order, at least one hundred twenty (120) days after the date the
10 order is filed, as the last day for the filing of claims; and

11 (ii) Prescribe the notice of the fixed date that shall be given to creditors and claimants.

12 (c) Before the fixed date, the court may extend the time for filing claims. Creditors and
13 claimants failing to file claims on or before the fixed date may be barred, by order of court, from
14 claiming an interest in or receiving payment out of the property or assets of the cooperative.

15 **Comment**

16 The source for this provision is Wyoming Rev. Stat. § 17-10-248.

17 **SECTION 714. DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION**
18 **PROCEEDINGS.** The involuntary or supervised voluntary dissolution of a cooperative may be
19 discontinued at any time during the dissolution proceedings if it is established that cause for
20 dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any,

1 to redeliver to the cooperative its remaining property and assets.

2 **Comment**

3 The source for this provision is Wyoming Rev. Stat. § 17-10-249.

4 Does Section 714 lead to inefficient liquidation by “churning” motions or does it simply
5 restate the obvious?

6 **SECTION 715. COURT-SUPERVISED DISSOLUTION ORDER.**

7 (a) In an involuntary or supervised voluntary dissolution after the costs and expenses of
8 the proceedings and all debts, obligations and liabilities of the cooperative have been paid or
9 discharged and the remaining property and assets have been distributed to its members or, if its
10 property and assets are not sufficient to satisfy and discharge the costs, expenses, debts,
11 obligations and liabilities, when all the property and assets have been applied so far as they will
12 go to their payment according to their priorities, the court shall enter an order dissolving the cooperative.

13 (b) When the order dissolving the cooperative or association has been entered, the
14 cooperative or association is dissolved.

15 **Comment**

16 The source for this provision is Wyoming Rev. Stat. § 17-10-250.

17 **SECTION 716. FILING COURT’S DISSOLUTION ORDER.** After the court enters an
18 order dissolving a cooperative, the court administrator shall cause a certified copy of the
19 dissolution order to be filed with the secretary of state. The secretary of state may not charge a
20 fee for filing the dissolution order.

21 **Comment**

1 The source for this provision is Wyoming Rev. Stat. § 17-10-251.

2 Will the reference to “court administrator” and the “no fees” provision be an enactability
3 issue?

4 **SECTION 717. BARRING OF CLAIMS.**

5 (a) A person who is or becomes a creditor or claimant before, during, or following the
6 conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal,
7 administrative or arbitration proceeding during the pendency of the dissolution proceeding or has
8 not initiated a legal, administrative, or arbitration proceeding before the commencement of the
9 dissolution proceedings and all those claiming through or under the creditor or claimant, are
10 forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as
11 provided in this section.

12 (b) Within one (1) year after articles of dissolution have been filed with the secretary of
13 state pursuant to this article or a dissolution order has been entered, a creditor or claimant who
14 shows good cause for not having previously filed the claim may apply to a court in this state to
15 allow a claim:

16 (i) Against the cooperative to the extent of undistributed assets; or

17 (ii) If the undistributed assets are not sufficient to satisfy the claim, the claim may
18 be allowed against a member to the extent of the distributions to members in dissolution received
19 by the member.

20 (c) Debts, obligations, and liabilities incurred during dissolution proceedings shall be
21 paid or provided for by the cooperative before the distribution of assets to a member. A person to
22 whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy

1 against the officers, directors or members of the cooperative before the expiration of the
2 applicable statute of limitations. This subsection does not apply to dissolution under the
3 supervision or order of a court.

4 **Comment**

5 The source for this provision is Wyoming Rev. Stat. § 17-10-252.

6 **SECTION 718. RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.** After a
7 cooperative has been dissolved, any of its former officers, directors or members may assert or
8 defend, in the name of the cooperative, a claim by or against the cooperative.

9 **Comment**

10 The source for this provision is Wyoming Rev. Stat. § 17-10-253.

11 Will such defense somehow be indemnified? Is there an obligation to do so?