

D R A F T

FOR APPROVAL

UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT

PREFATORY NOTE

Introduction

This Act provides an unincorporated and flexible organizational structure buttressed and combined with cooperative principles and values in order to obtain increased equity investment opportunity for capital intensive and start-up cooperative enterprises. It is an alternative to other cooperative and unincorporated structures already available under state laws. The Act is a free-standing act separate and apart from current cooperative acts and, therefore, is not a statutory replacement of other law but; rather, another statutory option.

It attempts to provide a flexible breastwork of mandatory and default rules that are grounded in cooperative values and member governance. The flexibility in this Act necessarily means that it is not “hard-wired” to assure that it will be qualified as a cooperative; for example, various provisions of federal law.

On the other hand, to the extent it is already possible to qualify as a “cooperative” for federal purposes without being organized as a state law cooperative, other flexible forms of business organizations, like the LLC, may be used for cooperative purposes. This Act, however, provides an efficient default template that encourages planners to utilize tested cooperative principles that reflect traditional cooperative values at a deeper level than provided in those other structures.

This Act draws heavily from existing statutes which contemplate unincorporated cooperative structures and a greater use of outside equity by “investors” in Minnesota, Tennessee, Iowa, and Wisconsin and to a lesser extent Wyoming. A chart comparing these statutes appears at the end of this Prefatory Note. Similar legislation is pending in Nebraska as of April 15, 2007.

Introduction and Process

Nature of the Act and Cooperatives

This Act does not replace any existing state co-op laws and, therefore, fulfills a different niche in the cooperative economic ecosystem just as cooperative enterprises fill a niche in the organizational ecosystem. Thus, some provisions of the Act differ markedly from the more corporate-like framework of existing traditional cooperative statutes. The entity formed under this Act is intended to provide an unincorporated cooperative structure as an alternative to limited liability company which has centralized management. In selected ways, “investor members” are similar to limited partners in a limited partnership formed under the Uniform Limited Partnership (2001).

Nonetheless, it seeks to provide an alternative which accounts for cooperative principles to a *greater* extent, with *less* room for design abuse than can be engineered in a combination of entities. Finally, though some features of the cooperative association are very similar to the features of other entities and descriptive analogies to other entities may be helpful, it is imperative to understand that the cooperative association is a unique entity with important distinctions from each of the other entities to which it may be compared.

The overarching question raised by this project is what it means to be a cooperative. Older traditional statutes have found meaning and form by finding the definition of a cooperative in other law or by stating that the cooperative must be operated pursuant to a “cooperative plan,” or on a “cooperative basis;” terms that are without fixed meaning even within the industry. As a practical matter, perhaps, the most important definition of “cooperative” appears under the guise of the definition of operating on a “cooperative basis” found in federal income tax law.

The definitions of these terms have evolved over time, at least on the margin (and concerning select issues). For example, the Internal Revenue Service changed its interpretation on the issue of whether operating on a cooperative basis required more than 50 percent of the cooperative's business be done with members on a patronage basis. (Rev. Rul. 93-21, 1993-1 C.B. 188, stating that the 50 percent threshold is not necessary).

A frequently quoted passage from a *dissent* written by Justice Brandeis (and joined by Holmes) stated:

That no one plan of organization is to be labeled as truly co-operative to the exclusion of others was recognized by Congress in connection with co-operative banks and building and loan associations [citation omitted]. With the expansion of agricultural co-operatives it has been recognized repeatedly.

Frost v. Corporation Comm. (Oklahoma), 278 U.S. 515 (1929) (Brandeis, J., dissenting, Westlaw p. 14).

Brandeis, as of 1929, also stated:

And experts in the Department of Agriculture, charged with disseminating information to farmers and legislatures, have warned against any crystallization of the co-operative plan, so as to exclude any type of co-operation.

Cooperative Values and This Act

Cooperative values undergird and animate many of the Act's provisions. As a result, understanding the Act at a fundamental level is aided by an overview of cooperative values and

principles.

There are several formulations of “cooperative principles.” One such formulation is set forth at the end of this portion of the Prefatory Note. As a matter of general consensus they include voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and, concern for community. This draft contains specific provisions that contemplate these values.

One of the fulcrums regarding cooperative values in this draft is Section 104, captioned “Nature of Limited Cooperative Association.” It addresses the values of voluntary membership, member economic participation, and autonomy and independence. Again, autonomy must be placed within the practical context of long-term debt and equity. Voluntary membership remains voluntary in the sense that this act requires consent. Open membership has been compromised under similar existing law and remains so here in order to allow (but not require) the formation of “closed” cooperatives. Closed cooperative structure is necessary for patron members to share the increased value of their equity and to provide member liquidity. These features make a business formed in general conformance with other cooperative values more attractive.

Section 904, captioned “Allocations of Profits and Losses,” expressly provides for the values of member economic participation; education, training and information; and cooperation among cooperatives. One of the key balancing points of the Act concerns “democratic member control.” Sections 411(a), 412, 414, 704, 716(a), and 1406 (as well as the other voting provisions on fundamental changes) all concern this trade-off.

“Concern for community” is directly addressed in Section 720 which varies the law generally applicable to, for example, corporate directors, to allow the directors of a limited cooperative to consider a number of community constituencies in making decisions.

Importantly, this draft is flexible enough to form a limited cooperative which operates like a traditional cooperative. Indeed, none of the new features are required; rather, they are permitted.

In sum, this draft expressly considers the important traditional cooperative values and provides reasoned departures from those values only where economically necessary for purposes of this Act. Its intention is to expand the use of entities recognizing cooperative principles.

A final caveat about specific provisions applies to the flexibility of the Act more generally is worth emphasizing. The Act provides the law which governs the merger and conversion of limited cooperative associations. It does not attempt to change existing law concerning other entities. Thus, for example, a limited cooperative association would need to be authorized by other law to convert to a limited cooperative association and action on the conversion of the limited partnership would be governed by limited partnership law. This Act,

simply “accepts” the conversion governed by that other law, it does not provide authority for the other organization to do it.

Fundamental changes like conversions or mergers, therefore, require the “constituent entities” in cross-entity transactions to coordinate two separate state laws. The planner for all such fundamental changes; however, is forewarned there are also separate bodies of law at both the state and federal level, too, that must be coordinated to avoid catastrophic unintended consequences. One of several probable sources of other law which must be coordinated is the law of taxation.

General Background Information

For purposes of additional background information, one of several recognized statements on cooperative values follows:

INTERNATIONAL CO-OPERATIVE ALLIANCE
ICA Centennial Manchester, England 1995
STATEMENT ON THE CO-OPERATIVE IDENTITY

DEFINITION

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.

VALUES

Co-operatives 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.

PRINCIPLES

The co-operative principles are guidelines by which co-operatives put their values into practice.

1st Principle: Voluntary and Open Membership

Co-operatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2nd Principle: Democratic Member Control

Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in a democratic manner.

3rd Principle: Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4th Principle: Autonomy and Independence

Co-operatives are autonomous, self-help organizations controlled by their members. If they enter into agreements with other organizations, including governments, or raise capital from external

sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5th Principle: Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public — particularly young people and opinion leaders – about the nature and benefits of co-operation.

6th Principle: Co-operation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7th Principle: Concern for Community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

The Drafting Committee for this Act was established by the Conference at the 2003 Annual Meeting pursuant to a Study Report and met for the first time December 12-14, 2003. It met each Spring and Fall since then. The first meeting of the Drafting Committee discussed substantive and general drafting and formatting issues, including the level of detail appropriate for the act and used the “Wyoming Processing Cooperative Law” as a model. The Committee determined that a higher level of detail than that found in the Wyoming law and that following the general “look and feel” of general and traditional cooperative acts, was appropriate. Discussion at subsequent meetings frequently focused on substantive issues within the context of the Minnesota Cooperative Associations Act.

A new cooperative model gained some popularity, particularly in the Upper Midwest starting in the 1970’s by using a combination of entities or existing entity law including existing cooperative statutes with unique organic features. The features that distinguish these cooperatives, sometimes called “New Generation” cooperatives, from other cooperatives include: (1) a new equity accumulation program based on substantial upfront investments by patron members, (2) a tie-in between equity investment and the right and obligation to deliver a fixed quantity of product to the cooperative each year, and (3) a right of patron-members to transfer their equity to another person eligible to become a patron-member at whatever price is acceptable to both parties. While traditional cooperatives usually seek to maximize membership, these cooperatives are “closed-end” with a limited number of members.

While New Generation cooperatives involve some significant departures from traditional cooperative structure, they have been organized under traditional cooperative statutes. Thus they have limited voting rights to patron-users and allocated earnings to users based on use.

The new cooperative acts on which this Act is based differ in several important ways from traditional cooperative laws. First, the entities created are unincorporated associations. Therefore they may be taxed as partnerships rather than as cooperative associations or corporations under “check-the-box” regulations. Second, depending on the statute, up to 85 percent of the voting rights can be vested in non-patron investor members. And third, again depending on the statute, up to 85 percent of the earnings can be directed to non-patron investor members on the basis of investment. The stated purpose of those laws, as well as this project, is

to provide a vehicle for economic development (especially, though by no means exclusively, in rural areas).

The new cooperative acts are more flexible than traditional cooperative acts and such flexibility moves away from fail-safe statutory drafting for purposes of qualifying as a “cooperative” under other federal and state laws and regulations. The primary “other laws” are anti-trust law, taxation, securities law, and access to special cooperative loan provisions and institutions like the Farm Credit System.

An example of how other laws relate to the law of cooperatives is the Capper-Volstead Act of 1922. Without the Capper-Volstead Act, the Sherman Act of 1890 would apply to make most farmer marketing contracts with cooperatives *per se* illegal restraints of trade because the contracts fix prices. That is, when farmers market products through cooperatives they agree on prices they will charge and may agree to sell *exclusively* to the cooperative. The Capper-Volstead Act provides limited, but important, protection from the Sherman Act. In order for a cooperative to qualify for the protection: (1) only agricultural producers may be voting members; (2) the cooperative must be operated for the mutual benefit of members as producers; (3) no member may have more than one vote *or* dividends on stock may not exceed 8% per year; and (4) the value of products marketed for members must be greater than the value of products marketed for nonmembers. Many traditional state agricultural (and general purpose) cooperative statutes “hard-wire” compliance with Capper-Volstead by, for example, mandating the 8% dividend limit on equity.

One of the goals of the Act is to allow planners the flexibility to qualify limited cooperative associations and cooperative organizations under existing law.

For example, the following five (5) statutes have quantitative requirements that are not hard-wired into the Act:

(1) 7 U.S.C. § 291 (quantitative requirement in definition of cooperative in Capper-Volstead federal antitrust exemption);

(2) 12 U.S.C. § 1141j(a) (quantitative requirement in definition of cooperative for farm credit purposes);

(3) 12 U.S.C. § 2129 (quantitative requirement in definition of cooperative for borrowing from bank for cooperatives);

(4) 49 U.S.C. § 303(b) (quantitative requirement in definition of cooperative for ICC exemption); and

(5) 12 U.S.C. § 3015 (§105 (a), Pub.L. 95-351, 92 Stat. 499, 506 (August 20, 1978)) (quantitative requirement in definition of cooperative in National Consumer Cooperative

Bank Act).

(Taken from *Conway County Farmers Association v. U.S.*, 588 F.2d 592, 1978 U.S. App. LEXIS 7273, 78-2 U.S. Tax Cas. (CCH) P9840, 42 A.F.T.R. 2d (RIA) 6323.)

A focus on current technical nonorganizational statutory and administrative standards has the effect of cabining the use of limited cooperatives because those standards frequently apply to cooperatives in a specific industry and vary for particular purposes across industries. Further, a focus on existing standards in regulatory law ignores the history that regulatory law changes over time. Such a focus is misplaced, too, because the standards are interpretations of cooperative values and principles in narrow contexts for specific purposes rather than the values and principles themselves.

The point of this is the Cooperative Association Act could attempt to hardwire results for certain other law but in doing so it could eliminate the flexibility of the statute. It is likely the ultimate results under other law and regulation will need to be left to practitioners and users of the Act to craft structures that will obtain the benefits of various other statutes as desired. It may ultimately require administrative determinations and rulings for final guidance in specific instances. *See* Section 1702.

Traditionally, cooperatives have been organized as corporations under State laws specifically enacted to authorize the creation of businesses operated on a cooperative basis. The statutes direct organizers to follow so-called cooperative principles of user-control, user-benefit, and user-ownership. Voting rights are only available to patron-users of the cooperative's services and earnings are allocated to patrons on the basis of use, rather than on the basis of investment. Member-patrons are the primary source of equity, which is accumulated over time in the form of retained earnings allocated to equity accounts of the patrons on the basis of each patron's pro rata share of business conducted each year with the cooperative. No market exists for this equity and it is usually only redeemable at face value by the cooperative at the discretion of the cooperative's board of directors.

This Act draws from other organizational law including the Uniform Limited Partnership Act (2001), limited liability company acts, the Minnesota Cooperative Associations Act, several modern "traditional" cooperative acts (specifically including, without limitation: Colorado, Ohio, Oregon, and Wisconsin), and the Model Business Corporation Act. As used in the Comments accompanying the Act "RULLCA" is the Revised Uniform Limited Liability Company Act (2006); "ULLCA" is the Uniform Limited Liability Company Act (1996); "ULPA (2001)" is the Uniform Limited Partnership Act (2001); "RULPA (1976/1985)" is the Revised Uniform Limited Partnership Act (1976/1985); "MBCA" or "RMBCA" is the Revised Model Business Corporation Act.

On the other hand, this draft provides more flexibility for attracting capital from outside the community of users and gives cooperatives the authority to mitigate the effects of the lock-in

of capital by organic rule. Thus, it allows wide latitude for both patron members/participants (*e.g.* producers/users of the cooperative) and investor member/participants, within limitations, to provide for the sharing of net proceeds, surplus, or profit and governance participation between patron and investor member/participants. The constraints on investor member participation in this draft are tighter than those found in most, if not all, the “new generation” cooperative statutes. This clearly distinguishes this cooperative draft from limited liability company statutes in an attempt to maintain the “co-op brand.”

The following charts compare selected key provisions of the existing statutes providing four entities similar to this Act.

CITATION ¹	SCOPE	PATRON VOTES	PATRON ELECTED DIRECTORS
<p>“Wyoming Processing Cooperative law [sic]” (enacted 2001). <i>Wyo. Stat. Annot.</i> §17-10-201.</p>	<p>Formed under a cooperative plan to market and “Change the form or marketability of crops, livestock and other agricultural products and other purposes that are necessary or convenient to facilitate the production or marketing of agricultural products by patron members and other purposes that are related to the business of the cooperative.” <i>Wyo. Stat. Annot.</i> §17-10-205.</p>	<p>Each patron has one vote but may have more. “On any matter of the cooperative, the entire patron members voting power shall be voted collectively based upon the majority of patron members voting on the issue.” <i>Wyo. Stat. Ann.</i> §17-10-230.</p>	<p>At least one-half of the voting power on general matters shall be allocated to 1 or more directors elected by patron members. <i>Wyo. Stat. Annot.</i> §17-10-217.</p>
<p>“Minnesota Cooperative Associations Act” (2003 session laws). <i>Minn. Stat. Annot.</i> §305B.001.</p>	<p>Based on a cooperative plan “for any lawful purpose.” The general language is followed by delineated items preceded by “including.” The delineated items are themselves broad including “for any other purposes that cooperatives are authorized by law.” <i>Minn. Stat. Annot.</i> §305B.201.</p>	<p>Patron vote based on block voting; bylaws may not reduce the collective patron vote to less than 15 percent of the total vote. <i>Minn. Stat. Annot.</i> §305B.545(1).²</p>	<p>At least one-half of the voting power on general matters shall be allocated to 1 or more directors elected by patron members. <i>Minn. Stat. Annot.</i> §305B.411(b), (c).</p>

¹ Listed in chronological order of adoption.

² It appears §308B.555 may reduce the percentage further through transfer but the provision is subject to different interpretation. Subdivision 3 states: “The articles or bylaws may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote on patron membership interests under this section.”

CITATION	SCOPE	PATRON VOTES	PATRON ELECTED DIRECTORS
<p>“Tennessee Processing Cooperative Law” (effective 2005). <i>Tenn. Code Annot.</i> §43-38-101.</p>	<p>Requires a cooperative plan, lists specific ag. processing and marketing functions and “for all other purposes that cooperatives are authorized.” <i>Tenn. Code Annot.</i> §43-38-201. Commissioner of Agriculture must approve articles and its approval seems constrained to ag. processing. <i>Tenn. Code Annot.</i> §43-38-203(g).</p>	<p>Each patron member has one vote but may have more. “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.” <i>Tenn. Code Annot.</i> §43-38-522. <i>See Tenn. Code Annot.</i> §§43-38-501.</p>	<p>At least one director must be elected by patron members but at least 51 percent of the voting power on general matters must be allocated to directors elected exclusively by patron members. <i>Tenn. Code Annot.</i> §43-38-606(a).</p>

CITATION	SCOPE	PATRON VOTES	PATRON ELECTED DIRECTORS
<p>“Iowa Cooperative Associations Act” (effective 2005) <i>Iowa Code Annot.</i> Ch. 501A.</p>	<p>Any lawful purpose followed by a nonexclusive listing (“including but not limited to”). One of the listed items is “[f]or any other purpose that a cooperative is authorized by law under chapter 499 [“Cooperative Associations”; “any lawful purposes” therein, expressly incl. agriculture and electric by discussing them elsewhere] or 501 [“Cooperative Corporations”; “any lawful business” therein.] <i>Iowa Code Annot.</i> Ch. 501A.501.</p>	<p>Patron members vote on a collective block vote; bylaws may not reduce patron member vote to less than 15 percent of the total vote. <i>Iowa Code Annot.</i> Ch. 501A.810.³</p>	<p>The quick rule of thumb is at least one-half of the voting power “shall be allocated” to the board members elected by patron members. However, it may be less on certain matters.⁴</p>

³ Iowa uses the same language as Minnesota with the same effect. *Iowa Code Annot.* §501A.812(2).

⁴ The statutory provision follows: “b. A majority of the directors shall be members and a majority of the directors shall be elected exclusively by the members holding patron membership interests unless otherwise provided in the articles or bylaws. c. The voting power of the directors may be allocated according to equity classifications or allocation units of the cooperative. If the cooperative authorizes non-patron membership interests, one of the following must apply: (1) At least one-half of the voting power on matters of the cooperative that are not specific to equity classifications or allocation units shall be allocated to the directors elected by members holding patron membership interests. (2) The directors elected by the members holding patron membership interests shall have at least an equal voting power or shall not have a minority voting power on general matters of the cooperative that are not specific to equity classifications or allocation units.” *Iowa Code Annot.* Ch. 501A.703(2)(b) & (c).

CITATION	SCOPE	PATRON VOTES	PATRON ELECTED DIRECTORS
<p>“Wisconsin Cooperative Associations Act” (effective 2006) <i>Wisc. Stat. Annot.</i> §193.005 (note that the reviser of statutes captions the chapter, “Unincorporated Cooperative Associations”).</p>	<p>Any lawful purpose (<i>Wisc. Stat. Annot.</i> §193.201); BUT not “furnishing natural gas, heat, light, power, or water to its members” (<i>Wisc. Stat. Annot.</i> §193.203).</p>	<p>Patron members vote on a collective block vote; the articles or bylaws may not reduce the collective patron member vote to less than 51 percent of the total member vote. The following language appears in the same section: “Unless the articles or bylaws provide otherwise, no issue that patron members may vote upon may be approved unless, in determining the collective vote of the patron members, the number of patron members voting to approve the issue is a majority of all members voting on the issue.” <i>Wisc. Stat. Annot.</i> §193.545.⁵</p>	<p>“[A] majority of the directors shall be elected exclusively by patron members, unless otherwise provided in the articles or bylaws.” Also provides for a non-voting financial expert. <i>Wisc. Stat. Annot.</i> §193.411(2)(b).</p>

⁵ The articles or bylaws may provide for voting my nonmembers. *Wisc. Stat. Annot.* §193.555. It does not effect, however, the required percentage of patron member vote.

CITATION	SCOPE	PATRON VOTES	PATRON ELECTED DIRECTORS
<p>“Nebraska Limited Cooperative Association Act” (as of first reading 01/12/2007, not yet passed) LB 368, §1, 100th Leg., 1st Sess. (2007).</p>	<p>For any lawful purpose EXCEPT for the purpose of being a financial institution which is subject to supervision by the Department of Banking (or which would be if chartered by the Nebraska) <i>or</i> the business of insurance. LB 368 §4(2).</p>	<p>Each patron participant must have at least one vote. The aggregate voting power of patron participants must be 51 percent, voted collectively, but may be reduced by the articles or bylaws to no less than 15 percent. LB 368 §39(2).</p>	<p>At least fifty percent of the board of directors members must be elected exclusively by patron participants. LB 368 §56.</p>
<p>“Uniform Limited Cooperative Association Act”, NCCUSL, March 2007, Committee Draft (hereinafter “ULCAA”), §101.</p>	<p>For “any lawful purpose, whether or not for profit, [except] [designated prohibited purposes].” ULCAA §105(b) (no designated prohibited purposes in current draft). <i>Cf.</i> ULCAA §104 (“Nature of Limited Cooperative Association”).</p>	<p>Each patron member has at least one vote. ULCAA §411. <i>See</i> ULCAA §412 (“Determination of Voting Power of Patron Member”). Requires two-thirds of voting power be held by patron members. Majority of all members voting at the meeting unless it is an extraordinary matter AND at least one-half the votes cast by patron members are in the affirmative. ULCAA §414.</p>	<p>A majority of the board must be elected exclusively by patron members. ULCAA §704. Each director has one-vote. ULCAA §716.</p>

CITATION	AMENDMENT OF ARTICLES	MEMBER VOTING	ALLOCATION ⁶
<p>“Wyoming Processing Cooperative law [sic]” (enacted 2001). <i>Wyo. Stat. Annot.</i> §17-10-201.</p>	<p>Typical corporate-like process. Majority of member votes cast (assuming a quorum).</p>	<p>Present, alternative method if authorized by the board; no proxy (but delegate voting not proxy). <i>Wyo. Stat. Annot.</i> §17-10-230.</p>	<p>Based on contributions unless otherwise provided. Patrons, collectively, shall have not less than 15 percent. Same rule for distributions. <i>Wyo. Stat. Annot.</i> §17-10-222; §17-10-233. For reserves etc. see §17-10-234.</p>
<p>“Minnesota Cooperative Associations Act” (2003 session laws). <i>Minn. Stat. Annot.</i> §305B.001.</p>	<p>Typical corporate process; default by majority of votes cast (assuming quorum is present). <i>Minn. Stat. Annot.</i> §308B.221 Subdiv. 1(2)(I).</p>	<p>Present; alternative method if authorized by board; no proxy (but delegate voting not proxy). <i>Minn. Stat. Annot.</i> §308B.565 which seems to allow voting by proxy.</p>	<p>Based on contributions unless otherwise provided. Patrons must have 50 percent of profits allocation in any fiscal year except articles or bylaws may reduce to 15 percent. Same rule for distributions. <i>Minn. Stat. Annot.</i> §308B.721.</p>

⁶ It is possible that the required percentage may be reduced further in some states through provision that reserves be allocated solely from patron members.

CITATION	AMENDMENT OF ARTICLES	MEMBER VOTING	ALLOCATION
<p>“Tennessee Processing Cooperative Law” (effective 2005). <i>Tenn. Code Annot.</i> §43-38-101.</p>	<p>Typical corporate process; default is by majority of votes cast (assuming a quorum is present). <i>Tenn. Code Annot.</i> §43-38-402(a)(2).</p>	<p>Present; mail or alternative method if authorized by board; not by proxy (district etc. not proxy). <i>Tenn. Code Annot.</i> §43-38-522(c), (d); 43-38-521.</p>	<p>Based on contributions unless otherwise provided and patrons must have at least 15 percent of both allocations and distributions. <i>Tenn. Code Annot.</i> §43-38-901. <i>See Tenn. Code Annot.</i> §43-38-902 (creation of reserves); §43-38-501(e).</p>
<p>“Iowa Cooperative Associations Act” (effective 2005) <i>Iowa Code Annot.</i> Ch. 501A.</p>	<p>Typical corporate process; default is by majority of the votes cast (assuming a quorum is present). <i>Iowa Code Annot.</i> Ch. 501A.506.</p>	<p>Present, mail, or other authorized method. No proxy (delegates not proxy). <i>Iowa Code Annot.</i> Ch. 501A.810.</p>	<p>Based on contributions unless otherwise provided and patrons must be allocated at least 50 percent of profits in any fiscal year. Articles, bylaws, or patron member votes may reduce to 15 percent. <i>Iowa Code Annot.</i> Ch. 501A.1005(1). Distributions are governed similarly. <i>Iowa Code Annot.</i> Ch. 501A.1005(2). <i>See also Iowa Code Annot.</i> Ch. 501A.1006 (defining net income).</p>

CITATION	AMENDMENT OF ARTICLES	MEMBER VOTING	ALLOCATION
<p>“Wisconsin Cooperative Associations Act” (effective 2006) <i>Wisc. Stat. Annot.</i> §193.005 (note that the reviser of statutes captioned the chapter, “Unincorporated Cooperative Associations”).</p>	<p>Assuming a quorum, by a majority of votes cast. <i>Wisc. Stat.</i> <i>Annot.</i> §193.221.</p>	<p>Present, mail, authorized alternate ballot, proxy. <i>Wisc.</i> <i>Stat. Annot.</i> §193.545(2), (3); §193.565 (proxy).</p>	<p>Patron members must have 51 percent of both profit allocations and distributions. The patron members, by majority vote, may authorize lower amount but not less than 30 percent. <i>Wisc. Stat. Annot.</i> §193.601(4).</p>
<p>“Nebraska Limited Cooperative Association Act” (as of first reading 01/12/2007, not yet passed) LB 368, §1, 100th Leg., 1st Sess. (2007).</p>	<p>Corporate-style process. Approved by at least two-thirds vote (bylaws by majority). LB 368 §113.</p>	<p>Presence required except the articles or bylaws may provide for alternative means for voting. Proxy voting is prohibited. LB 368 §43.</p>	<p>The default rule is at least 50 percent of the net proceeds, savings, margins, profits and losses must be allocated to patron participants in a fiscal year. Articles or bylaws may reduce to no less than 15 percent. LB 368 §80(2). Reserves, etc., see §80(3). The board of directors is authorized to make distributions to participants. LB 368 §81.</p>

CITATION	AMENDMENT OF ARTICLES	MEMBER VOTING	ALLOCATION
<p>“Uniform Limited Cooperative Association Act”, NCCUSL, March 2007, Committee Draft (hereinafter “ULCAA”), §101.</p>	<p>Approval of amendment of articles and specific items whether in articles or bylaws is by two-thirds vote and <i>at least</i> a majority of the patron vote. The two-thirds may be modified by organic rule. The majority can be modified upward. ULCAA §1406.</p>	<p>Present; alternative method if provided in organic rules; no proxies. ULCAA §415.</p>	<p>The default is “all to patrons”; if investor members are present then default allocation is based on contributions to investor members and patronage for patron members. The organic rules may reduce to no less than 50 percent BUT sums paid to members on product or services and sums due “as stated fixed return on equity” do not “count” in determining the numerator. The board may set aside, whether allocated or unallocated, capital reserves and reserves for specific purposes. ULCAA §904. Distributions are at discretion of board and (implicitly) are not subject to the allocation requirements. ULCAA §905.</p>

1 **UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT**

2
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

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

7 **Comment**

8 The title of this Act indicates a limited cooperative association is a type of cooperative
9 different from cooperatives formed under corporate style statutes, is an unincorporated
10 association, and has aspects of limited liability companies and other unincorporated entities
11 combined with aspects of cooperative organizations thought by many to be the “traditional”
12 cooperative.
13

14 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

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

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

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

1 116(a)(1).

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

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

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

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

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

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

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

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

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

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

22 (16) “Member” means a person that is admitted as a patron member or investor member,

1 or both, in a limited cooperative association. The term does not include a person that has
2 dissociated as a member.

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

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

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

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

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

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

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

17 (24) “Person” means an individual, corporation, business trust, cooperative, estate, trust,
18 partnership, limited partnership, limited liability company, limited cooperative association, joint
19 venture, association, public corporation, government or governmental subdivision, agency, or
20 instrumentality, or any other legal or commercial entity.

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

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

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

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

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

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

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

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

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

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

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

21 **Comment**

22 This Section contains definitions for terms used throughout the Act, while Section 1501

1 contains definitions specific to provisions of [Article] 15 on conversions and mergers.

2
3 **Subsection (1) [Articles of Organization]** – This Act purposely uses the term “articles
4 of organization” instead of “certificate of organization” or “articles of incorporation.” The
5 articles of organization may state substantive rules and together with the bylaws governing the
6 association and its members. For example, throughout this Act there are references to “unless the
7 organic rules otherwise provide.” Persons forming an association under this Act may find it
8 advisable in some circumstances to place provisions varying the default rules under the Act in the
9 articles of organization. The articles of organization filed under this Act may be more detailed
10 than a certificate of organization of a limited liability company filed under the RULLCA (2006).
11 Required items are listed in Section 302. In addition, other sections of this Act require items to
12 be included in the articles of organization to be effective. *See* Section 302, comment. Because
13 an association under this Act is not an incorporated entity, it would be inappropriate to call the
14 “articles” articles of incorporation. A record that performs the similar function for a foreign
15 cooperative in its state of formation is included in the term.

16
17 **Subsection (2) [Bylaws]** – This definition must be read in conjunction with Section 304
18 of the Act and the various provisions permitting default rules to be varied by the organic rules.
19 The definition is very broad when examined in light of subsection 304(b) that permits the bylaws
20 to contain any provision for managing and regulating the affairs of the association unless
21 prohibited by the Act or the articles of organization.

22
23 Subsection 304(a) states bylaws must be in a record.

24
25 Courts examining the relationship between a traditional cooperative and its members
26 have found the relationship to be contractual with bylaws of the cooperative, and in some cases,
27 other records being part of the contract. *E.g.*, _____. “Bylaws” has
28 been used in this Act as opposed to an operating agreement for a limited liability company or
29 partnership agreement for a partnership to reflect customary practice for this particular document
30 in a traditional cooperative. Under this Act, bylaws may have looked and felt similar to
31 corporate bylaws or may have a look and feel similar to a limited liability company operating
32 agreement or a partnership agreement.

33
34 **Subsection (3) [Contribution]** – This definition helps to distinguish capital contributions
35 from other benefits which a member or other person provides to a limited cooperative association
36 in a different capacity under Section 114. For example, if an individual provides services to the
37 association in exchange for a membership in the association, the services are a capital
38 contribution. If the association hires the individual as an employee, the services rendered to the
39 association as an employee are not contributions.

40
41 Contributions by, and allocations to, members are the subject of Article 9 and together
42 may play an important role in determining distributions and voting power.
43

1 **Subsection (4) [Cooperative]** – In this Act the term “cooperative” includes limited
2 cooperative associations and all other types of cooperatives organized under any other
3 cooperative law. It does not, however, include any entity not organized under a cooperative law
4 but operated on a cooperative basis.

5
6 **Subsection (5) [Designated office]** – A limited cooperative association organized under
7 this Act or a foreign cooperative must designate an office in this state under Section 116(a)(1).
8 The designated office is the place where the association’s agent for service of process is located
9 and where service of process may be made. “Designated office” has replaced “registered office”
10 in recent Uniform Laws.

11
12 **Subsection (6) [Distribution]** – The term includes a transfer of money or other property
13 by a limited cooperative association to a member or transferee in the form of a payment or other
14 transfer of allocated profits, dividends, cash portions of patronage dividends or refunds,
15 redemption of retained allocated amounts not previously distributed, or any other form of
16 payment or transfer with respect to the member’s or transferee’s financial rights. A distribution
17 is different from an allocation. An allocation is a bookkeeping and accounting concept under this
18 Act. “Allocation” can have important implications under income tax law. The term
19 “distribution” does not necessarily include money or other property paid to a member for goods
20 or services provided to the association.

21
22 **EXAMPLE:** Wages paid to a worker in a worker owned limited cooperative association
23 are not distributions.

24
25 **EXAMPLE:** A farmer sells oranges to an association for a fixed price. Payment of the
26 price by the association is not a distribution.

27
28 **EXAMPLE:** A farmer sells oranges to an association for a price determined by the
29 association’s proceeds from resale, less its expenses. Payment of the price by the association is
30 not a distribution.

31
32 “Financial rights” include all rights to participate in the financial results of the operations
33 of the association. For example, the term includes the rights to be allocated profits and losses, to
34 receive a proportionate share of distributions made to members, to receive dividends if dividends
35 are a method used to distribute funds, to receive patronage allocations and dividends, to receive
36 rebates, to have retained patronage allocations and per unit retains credited to the member’s
37 capital account, to receive an allocated share of losses, to receive payments for redemptions of
38 retained patronage allocations or per unit retains, to receive a return of capital however described,
39 to receive distributions upon dissolution and winding-up, as well as to receive any other
40 allocations or distributions from the association that are a result of membership in the
41 association.

42
43 The term does not include any amounts payable to the member by the association, or *vice*

1 *versa*, under contractual or other arrangements between the association and the member in
2 connection with transactions that are not strictly within the association/member relationship but
3 are rather commercial transactions between the association and the member even if the right to
4 engage in a commercial transaction is provided only to persons who are members of the
5 association.
6

7 **Subsection (9) [Financial rights]** – Financial rights and governance rights constitute
8 substantially all of the interests of a member in a limited cooperative association. There may be
9 other rights of a member to contract or otherwise transact business with the association which are
10 not financial rights or governance rights. For example, in an agriculture limited cooperative
11 association membership may be required for an agricultural producer to be entitled to deliver his
12 or her production to the association for processing. In an association where workers are the
13 patron members, membership in the association may be required to be an employee of the
14 association. Neither of these constitutes financial or governance rights but would be an integral
15 part of the membership in the association.
16

17 Financial rights are addressed, *inter alia*, in [Article] 9.
18

19 **Subsection (10) [Foreign Cooperative]** – A “foreign cooperative” is limited to entities
20 formed under statutes similar to this Act such as Minnesota, _____, Wisconsin,
21 _____, Tennessee, _____, and Iowa, _____, and for this
22 purpose, Wyoming, _____. These statutes authorize the formation of a particular
23 type of entity separate and distinct from limited liability companies, traditional cooperatives,
24 corporations for profit or not for profit, or partnerships.
25

26 A “foreign cooperative” includes an entity organized outside the United States if it were
27 organized under a statute similar to this Act.
28

29 **Subsection (12) [Governance Rights]** – “Governance rights” encompass the right of a
30 member to vote on matters affecting the association to the extent the Act or the organic rules
31 provide voting power to the member, the right to receive notices of member meetings, the right
32 to participate in meetings of a district or other subdivision of members, and the right to be
33 represented by delegates from a district or other subdivision of members. “Governance rights”
34 also include the right to petition the association or the managers and qualification to be an
35 officer, director or member of a committee of the association to the extent provided by the
36 organic rules. “Governance rights” are a second integral set of rights, together with financial
37 rights, a member has in a limited cooperative association. See Comment to Subsection (9)
38 [Financial Rights]. Governance rights are addressed, *inter alia*, in [Article] 4.
39

40 **Subsection (13) [Investor Member]** – An “investor member” is a person whose status as
41 a member derives from having invested in a limited cooperative association without having to
42 engage in business with the association. The concept of “investor members” is largely foreign to
43 traditional cooperatives. Investor members are the mechanism this Act uses to provide for the

1 combination of (1) persons who provide substantial capital to the association usually with
2 expectations of returns on the investment and (2) other persons who as patron members patronize
3 the association and are members primarily because of their patronage with the association and
4 who expect to receive benefits not from an investment in the association but rather through
5 business or relationships conducted with or through the association. This combination of persons
6 with potentially conflicting objectives is unusual, but not entirely novel, to traditional
7 cooperatives that have non-voting preferred stockholders who are not patrons. It is a
8 fundamental purpose of the Act to provide a means for this combination of persons to occur
9 inside one entity but this Act does not require that there be investor members. *See* Section
10 502(a).

11
12 **Subsection (15) [Member]** – “Member” means both patron members and investor
13 members. The definition recognizes a person can hold interests in a limited cooperative
14 association both as a patron member and as an investor member. If a person holds both types of
15 membership interests, each interest is governed by the provisions of the Act and the organic rules
16 related to the particular type of membership. *See* Section 115.

17
18 After a person has been dissociated as a member, [Article] 10, the rights of the person as
19 a member cease, but debts, obligations, or liabilities of the person to the association that arose in
20 any manner prior to dissociation continue and are enforceable as debts, obligations, or liabilities
21 of the person to the association without regard to membership status. *See* Section 1002. A
22 person who is both a patron member and an investor member could be dissociated as one but not
23 as the other.

24
25 A person may transact business with an association without being a member if the
26 association’s organic rules or operating methods permit it. The organic rules may provide that
27 the non-member may have financial rights in the association (*e.g.*, rights to allocations of net
28 profits) but not governance rights.

29
30 **Subsection (19) [Organic Rules]** – The definition of “organic rules” is confined to
31 articles of organization and bylaws of a limited cooperative association but that does not mean an
32 association may not have other contractual relationships providing benefits and obligations
33 between the association and a member through a membership agreement, marketing contract, or
34 other contractual relationship. Contracts of this type may have a material effect on the
35 relationship of a member to the association but they are not included in the statutory term for
36 purposes of this Act. The board of directors may adopt policies and procedures that are not
37 within the definition of organic rules. *See*, Section 701.

38
39 **Subsection (21) [Patron Member]** – A “patron member” is a person whose membership
40 is based primarily on conducting patronage with the limited cooperative association. It is
41 customary for patron members of traditional cooperatives to pay some fee or make some
42 investment in the cooperatives as part of the qualifications to become a member. An association
43 organized under this Act may likewise charge a fee or require an investment. Those fees or

1 investments do not transform the patron member to an investor member or imply a dual capacity.
2 That status is governed by the organic rules. An underpinning of this Act is to provide an entity
3 in which patron members may be joined by investor members whose objectives are generally a
4 return on invested capital. Fees paid or investments made by patron members to qualify for
5 membership in the association are a means to provide funds to the association in order for the
6 person as a patron member to access benefits provided by the association and not for a direct
7 return on the amounts of money paid to the association for the privilege of being a member.
8 Generally, an association must have two patron members to begin business. *See*, Section 401.
9

10 **Subsection (22) [Patronage]** – “Patronage” is a term of art adopted for this Act from
11 traditional cooperative principles and concepts. It is a basis for a person becoming a patron
12 member. Allocations of profits and losses among members and specifically to patron members,
13 and to non-members who patronize a limited cooperative association if provided by the organic
14 rules, are based in large part on methods of measuring patronage. *See*, Sections 304 and 904.
15 “Patronage” may be conducted with a limited cooperative association by members and non-
16 members if permitted by the association’s organic rules.
17

18 **Subsection (24) [Principal Office]** – “Principal Office” may be the same or different
19 than designated office.
20

21 **Subsection (26) [Required Information]** – Information required to be maintained under
22 Section 113 is significant in relation to the ability for members to access information from a
23 limited cooperative association under Section 405.
24

25 **Subsection (29) [Transfer]** – The reference to “transfer by operation of law” is
26 significant in connection with Section 503 (Transferability of Member Interest). That section
27 severely restricts a transferee’s rights (absent consent of the members or provisions in the organic
28 rules), and this definition makes those restrictions applicable, for example, to transfers ordered
29 by a family court as part of a divorce proceeding and transfers resulting from the death of a
30 member. The restrictions also apply to transfers in the context of a member’s bankruptcy, except
31 to the extent that bankruptcy law supersedes the Act.
32

33 This Act does not define “transferee” but uses it in its ordinary context of a person who
34 receives a transfer. Where used, “transferee” is used in place of “assignee” as the Conference’s
35 term of art.
36

37 **Subsection (30) [Voting Group]** – Sections 411 and 417 of the Act permits for patron
38 members to be divided by geographic districts and both patron members and investor members to
39 be divided into classes. If the members in a district or class have voting rights, the members in a
40 district or class, or a combination of them, are a voting group whose voting procedures may be
41 governed by the organic rules pursuant to Section 417. Similarly situated members are required
42 to vote as a voting group where their rights are potentially effected adversely by the vote. *E.g.*,
43 Sections 1405 and 1508(d).

Subsection (31) [Voting Member] – The Act does not require that every member be entitled to vote. The organic rules could create classes of members that do not have voting rights.

Subsection (32) [Voting Power] – “Voting Power” encompasses all votes that may be cast by members as provided by this Act or the organic rules or whatever manner the Act or organic rules provide for the number of votes to be determined.

This Act does not address record dates for voting or other purposes except to the extent a fiscal year end (or other period end) is a date used for determining allocations of profits and losses. The Act does not prohibit the organic rules or the board of directors from establishing a record date for determining voting members for purposes of a vote.

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

Comment

Source: UPA Section 107 (1997) which was adapted from RMBCA Section 1.02 and RULPA (1976/1985).

This Section does not appear in the ULPA (2001) or the RULLCA (2006).

As explained in the Official Comment to the RMBCA, the genesis of these provisions is *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat) 518 (1819), which held that the United States Constitution prohibits the application of newly enacted statutes to existing corporations, while suggesting the efficacy of a reservation of power provision. The purpose of the Section is to avoid any possible argument that a legal entity or its members have a vested right in any specific statutory provision and to ensure that the adopting jurisdiction may in the future modify its enabling statute as it deems appropriate and require existing entities to comply with the statutes as modified.

An amendment or repeal of this Act would not affect a cause of action that had accrued prior to the amendment or repeal. This does not mean that a member of an association has a vested interest in the Act or the organic rules as they existed prior to the amendment or repeal. A cause of action could not be affected by an amendment or repeal if all the elements of the cause of action existed prior to the amendment or repeal. The amendment or repeal of this Act will not itself create a cause of action.

SECTION 104. NATURE OF LIMITED COOPERATIVE ASSOCIATION. A

limited cooperative association organized under this [act] is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons which permits combining:

(1) ownership, financing, and receipt of benefits by the members for whose interests the association is formed; and

(2) separate investments in the association by members who may receive returns on their investments and a share of control.

Comment

Section 104 together with Section 105(a) provides the fundamental characteristic of “separate entity” to a limited cooperative association. This characteristic is inextricably connected to both the liability shield, Section 404, and the charging order provision, Section 505.

Cooperatives are unique organizations and the uniqueness is defined by cooperative values and principles. The values and principles have been stated in various ways. From the various statements the following statement can be distilled:

A cooperative is an autonomous and independent organization owned, financed, and controlled by the persons who use it and which provides and distributes benefits to those persons based on the amount of their use while also seeking to provide education, training, and information with a concern for community responsibility.

James B. Dean, “Cooperative Businesses,” *The Practitioners Guide to Colorado Business Organizations*, Chapter 12, p. 5 (Colorado Continuing Legal Education, 200).

Cooperative values and principles have also been stated in a four-part summary:

- service at cost;
- financial obligation and benefits proportional to use;
- limited return on equity capital;
- democratic control.

Meyer, “Understanding Cooperatives,” *Cooperative Information Report* 45, § 2, p. 2

(Cooperative Services – Rural Development Administration, USDA, 1994).

This Act seeks to follow cooperative values and principles within the context of a different form of organization. This Section draws on traditional cooperative principles of voluntary membership (“persons united”) in an organization owned by them (“through a jointly owned enterprise”) where governance is democratically controlled by the members (“primarily controlled by those persons”) for their mutual benefit (“to meet their mutual interests”). The Section recognizes the two types of members in a limited cooperative association that varies an association organized under this Act from traditional cooperative organizations by combining patron owners of the association with investor owners.

A more comprehensive listing of cooperative values and principles is contained in the following statement adopted by the International Co-operative Alliance at a centennial convention in Manchester, England. *See*, Prefatory Note.

SECTION 105. PURPOSE AND DURATION OF LIMITED COOPERATIVE ASSOCIATION.

(a) A limited cooperative association is an entity distinct from its members.

(b) A limited cooperative association may be organized for any lawful purpose, whether or not for profit [except designated prohibited purposes].

(c) Unless the articles of organization state a term for a limited cooperative association’s existence, the association has a perpetual duration.

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

Comment

1 **Subsection (a)** – This Section, together with Section 104, identifies the “separate entity”
2 concept of a limited cooperative association. *See* Section 104, Comment.
3

4 **Subsection (b)** – The phrase “any lawful purpose, whether or not for profit” means a
5 limited cooperative association need not be formed or operated with a profit motive. Existing
6 law in some states provides cooperatives may be formed under not-for-profit cooperative
7 statutes. Traditional cooperative values include that a cooperative will be operated “at cost.”
8

9 Like RULLCA (2006) Section 104(b) this Act does not use the term business in
10 connection with the purchase of the entity. The expansive approach to purpose in this Act also
11 comports both with ULLCA (1996) and with ULPA (2001). *See* ULLCA (1996) §§ 112(a)
12 (captioned with reference to “Nature of Business” and permitting “any lawful purpose, subject to
13 any law of this State governing or regulating business”) and 101(3) (defining “Business” as
14 including “every trade, occupation, profession, and other lawful purpose, whether or not carried
15 on for profit”); ULPA (2001), Section 104(b) (permitting a limited partnership to be organized
16 for any “lawful” purpose). *Compare* UPA (1997) § 6 (defining a general partnership as
17 organized for profit), RUPA § 101(6) (same), and RULPA (1976/85) § 106 (delineating the
18 “Nature of [a limited partnership’s] Business” by linking back to “any business that a partnership
19 without limited partners may carry on”).
20

21 The subsection does not bar a limited cooperative association from being organized to
22 carry on charitable activities, and this Act does not include any protective provisions pertaining
23 to charitable purposes. Those protections must be (and typically are) found in other law,
24 although sometimes that “other law” appears within a state’s non-profit corporation statute. *See*,
25 *e.g.*, MINN. STAT. § 317A.811 (2006) (providing restrictions on charitable organizations that
26 seek to “dissolve, merge, or consolidate, or to transfer all or substantially all of their assets” but
27 imposing those restrictions only on “corporations” which are elsewhere defined as corporations
28 incorporated under the non-profit corporation act).
29

30 Section 1702 emphasizes that protective and other regulatory provisions outside this Act
31 remain applicable to associations. Some state laws and regulations provide for consumer
32 protections in connection with activities carried on by certain entities, *e.g.*, common ownership
33 communities, practicing certain professions. In some areas federal regulatory laws exist. Those
34 laws and regulations are not to be supplanted by this Act or the organic rules of an association
35 organized under this Act.
36

37 **Subsection (c)** – In this context, the word “perpetual” states the default rule consistent
38 with statutes governing other entities. As in many current limited liability company statutes, this
39 Act provides several methods that could be used to override perpetuity: a term specified in the
40 articles of organization and occurrences specified in Sections 1102, 1103, 1105, and 1111. In
41 this Act, “perpetuity” means that the Act does not require a definite term and creates no nexus
42 between the dissociation of a member and the dissolution of the association. (The dissociation of
43 an association’s last remaining member does threaten dissolution under the compulsory

1 provisions of Section 1102(3).)

2
3 **SECTION 106. POWERS.** A limited cooperative association may sue and be sued in
4 its own name and do all things necessary or convenient to carry on its activities. An association
5 may maintain an action against a member for harm caused to the association by a violation of a
6 duty to the association or the organic law or organic rules.

7 **Comment**

8 Following RULLCA (2006), § 105, and ULLCA (2001), § 105, this Act omits as
9 unnecessary any detailed list of specific powers. *Compare* ULLCA, § 12 (containing a detailed
10 list).

11
12 The capacity to sue and be sued is mentioned specifically. It cannot be varied by the
13 organic rules. The Section affirms the right of a limited cooperative association to maintain an
14 action against a member in the circumstances described.

15
16 The omission of any reference to non-members in connection with a limited cooperative
17 association maintaining an action against a member does not imply that an association may not
18 sue non-members or restrict the association from engaging in business or other transactions with
19 non-members. Transactions with non-member patrons would be governed primarily by contract
20 law and not by this Act, but the organic rules would need to provide for allocations and
21 distributions to non-member patrons if they are to reserve them. *See*, Section 304.

22
23 **SECTION 107. GOVERNING LAW.** The law of this state governs:

24 (1) the internal affairs of a limited cooperative association; and

25 (2) the relations among the members of the association and between the members and the
26 association.

27 **Comment**

28 Like any other legal concept, “internal affairs” in subsection (1) may be indeterminate at
29 its edges. However, the concept certainly includes interpretation and enforcement of the organic
30 rules. While likely included within “internal affairs,” subsection (2) makes it clear the laws of
31 this state govern relations among the members as members and relations between the limited

1 cooperative association and a member as a member. *Compare* RESTATEMENT (SECOND) OF
2 CONFLICT OF LAWS Section 302, Comment A (defining “internal affairs” with reference to a
3 corporation as “the relations inter se of the corporation, its shareholders, directors, officers or
4 agents”).

5
6 This Section may not be varied by the organic rules. This does not mean that provisions
7 of this Act that permit the organic rules to vary default provisions of the Act relating to internal
8 affairs of a limited cooperative association cannot be varied as permitted by the Act. *See, e.g.*,
9 Sections 411 and 413 (voting by patron members and investor members). This is recognized
10 specifically in Section 112(a).
11

12 **SECTION 108. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by
13 particular provisions of this [act], the principles of law and equity supplement this [act].

14 **SECTION 109. NAME.**

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

17 (1) the name of any entity organized or authorized to transact business in this
18 state;

19 (2) a name reserved or registered under Section 110; and

20 (3) an alternative name approved for a foreign cooperative authorized to transact
21 business in this state.

22 (b) The name of a limited cooperative association must contain the words “limited
23 cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA”.

24 “Limited” may be abbreviated as “Ltd.”. “Cooperative” may be abbreviated as “Co-op” or
25 “Coop”. “Association” may be abbreviated as “Assoc.” or “Assn.”.

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

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

4 (1) the user, registrant, or owner of the name consents in a record to the use and
5 applies in a form satisfactory to the [Secretary of State] to change the reserved or registered name
6 to a name that is distinguishable upon the records of the [Secretary of State] from the name
7 applied for; or

8 (2) the applicant delivers to the [Secretary of State] a certified copy of the final
9 judgment of a court establishing the applicant's right to use the name in this state.

10 **Comment**

11 **Source:** RULLCA (2006) Section 108(c)(1).
12

13 This Section does not affect fictitious or assumed name statutes. A foreign cooperative
14 must comply with those statutes in the adopting jurisdiction as provided in Section 1305.
15

16 **Subsection (b)** – The name of a limited cooperative association must contain the
17 prescribed words or abbreviations to differentiate an association organized under this Act from
18 traditional cooperatives or other entities organized under other statutes.
19

20 **SECTION 110. RESERVATION OF NAME.**

21 (a) A person may reserve the exclusive use of the name of a limited cooperative
22 association, including a fictitious name for a foreign cooperative whose name is not available
23 under Section 109, by delivering an application to the [Secretary of State] for filing. The
24 application must set forth the name and address of the applicant and the name proposed to be
25 reserved. If the [Secretary of State] finds that the name applied for is available under Section
26 109, the name must be reserved for the applicant's exclusive use for a nonrenewable period of

120 days.

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

Comment

The Act does not provide for renewal of a reserved name. It does not prevent a person from subsequent filing reservations for the same name for successive 120 day periods.

[SECTION 111. USE OF TERM “COOPERATIVE”.

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

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

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

Many cooperative statutes include name protection provisions unique among organizational laws. If the adopting jurisdiction has a prohibition of the use of the word “cooperative” or a permitted abbreviation by any entity other than a cooperative organized under a statute providing for the formation of cooperative entities, this Act will not violate that statute if this Section is adopted with a reference to that statute in subsection (a). Moreover, if this Section is adopted with a reference to the other statute in subsection (b), restrictions on the use of the word “cooperative” or a permitted abbreviation under that statute may be enforced by a limited cooperative association or a member of an association organized under this Act. Alternatively, the adopting jurisdiction could amend the other statute to permit an association

1 *organized under this Act to use the word “cooperative” or a permitted abbreviation without*
2 *violating that statute and to enforce the restrictions on the use of the word or abbreviations*
3 *under that statute.*
4

5 *If the adopting jurisdiction does not have a statute prohibiting the use of the word*
6 *“cooperative” or a permitted abbreviation by any entity that is not organized as a cooperative,*
7 *the adopting jurisdiction may wish to consider providing a prohibition and remedies in this*
8 *Section.*
9

10 **SECTION 112. EFFECT OF ORGANIC RULES.**

11 (a) The relations between a limited cooperative association and its members are
12 consensual and governed by this [act], the organic rules and contract. Subject to any limitations
13 or prohibitions contained in this [act] the organic rules may provide for any matters concerning
14 the relations between and among an association and its members, the activities of the association,
15 and the conduct of its activities.

16 (b) The articles of organization of a limited cooperative association may:

- 17 (1) state a term of existence for the association under Section 105(c);
18 (2) vary the limitations on the obligations and liability of members for association
19 obligations under Section 404;
20 (3) vary the board of directors meeting quorum under Section 715(a);
21 (4) vary the matters the board of directors may consider in making a decision
22 under Section 720;
23 (5) specify events of dissolution under Section 1102(1);
24 (6) provide for member approval for asset dispositions under Section 1601; [and]
25 [[(7)] subject to Section 720 of this [act] to provide for the elimination or
26 limitation of liability of a director to the association or its members for money damages pursuant

1 to Section 718 of this [act];

2 [(8)] provide for permitting or making obligatory indemnification under Section
3 801(a) of this [act]];

4 [(9)] provide for any matters that may be contained in the organic rules including
5 those under subsection(c).

6 (c) The organic rules of a limited cooperative association may:

7 (1) increase the information required to be maintained by Section 113 or provided
8 to members under Section 405(k);

9 (2) provide restrictions on transactions between a member and an association
10 under Section 114;

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

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

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

16 (6) require a statement of purposes in the annual meeting notice under Section
17 408(b);

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

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

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

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

5 (11) provide for qualification, election, terms, removal, filling vacancies, and
6 member approval for compensation of directors in accordance with Sections 703 through 705,
7 707, 709, and 710;

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

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

12 (14) increase the percentage of vote necessary for board action under Section
13 716(b);

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

16 (16) provide for officers and their appointment, designation, and authority under
17 Section 722;

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

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

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

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

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

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

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

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

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

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

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

(A) resolution to dissolve under Section 1105;

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

(C) a plan of conversion under Section 1503;

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

(E) a disposition of assets under Section 1604.

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

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

Comment

Many of the provisions of this Act are default rules which may be varied by organic rules. Subsection (b) provides interpretive rules to help identify provisions that cannot be varied. The Act follows the general approach used in organizational statutes in states like Delaware which

1 provide textual guidance within the text of each section. It does, however, follow the format
2 used, for example, in RULLCA (2006) by providing a specific list of sections within the Act that
3 may be varied only within specific parameters or to make clear that certain items were subject to
4 variance. Outside these provisions the organic rules are free to address issues. Stated simply,
5 silence of the Act means that the organic rules and contract apply.
6

7 **Subsection (a)** – Provides that items not addressed by the Act are subject to the organic
8 law and contract. See Comment to Section ____ (concerning the relationship of organic law and
9 contract under the law of cooperatives). Admittedly this subsection may seem amorphous. It
10 reflects the *sui generis* nature of cooperatives.
11

12 **Subsection (b) and (c)** – These subsections list other specific subsections of the Act
13 where the Act expressly provides for flexibility though sometimes within boundaries.
14

15 **Subsection (d)** - Calls specific attention to a provision which requires attention by
16 drafters but which does not supply a default rule.
17

18 **SECTION 113. REQUIRED INFORMATION.**

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

21 (1) a list showing the full name, last known street address and, if different,
22 mailing address, and term of office of each director and officer;

23 (2) the initial articles of organization and all amendments to and restatements of
24 the articles, together with a signed copy of any powers of attorney under which any articles,
25 amendments, or restatements have been signed;

26 (3) the initial bylaws and all amendments to and restatements of the bylaws;

27 (4) all filed articles of merger;

28 (5) any financial statements of the association for the six most recent years;

29 (6) the six most recent annual reports delivered by the association to the

30 [Secretary of State];

(7) the minutes of members' meetings for the six most recent years;

(8) all actions taken by members without a meeting for the six most recent years;

(9) a list containing the full name, in alphabetical order, and last known street address and, if different, mailing address of:

(A) each patron member; and

(B) each investor member;

and if the association has districts or classes of members, the list must contain information from which each current member in a district or class may be identified;

(10) the federal, state, and local income tax returns and any reports of the association for the six most recent years;

(11) accounting records maintained by the association in the ordinary course of its operations for the six most recent years;

(12) the minutes of directors' meetings for the six most recent years;

(13) all actions taken by directors without a meeting for the six most recent years;

(14) the amount of money contributed and agreed to be contributed by each member;

(15) a description and statement of the agreed value of other contributions made and contributions agreed to be made by each member;

(16) the times at which, or events on the happening of which, any additional contribution to be made by each member is to be made;

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

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

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

Comment

This Section defines a minimum amount of information that must be maintained by a limited cooperative association. The listed items do not specify all records that may be advisable for an association to maintain for legal or business purposes. The Section does not prohibit an association from maintaining other records.

Although the Section provides periods during which some of the listed items are to be maintained for purposes of this Act, this does not define the time frame for which the items should be maintained for other purposes, *e.g.*, records for purposes of taxation. Of course, business practices may require that certain records such as minutes of directors and members meetings be maintained for longer periods. Items that do not contain a specification of a time period with them are not necessarily to be maintained permanently. The period for maintenance of records is a matter for determination by the association except for the required minimum periods. The maintenance of records may also be governed by other law. *E.g.*, immigration compliance records, discovery under civil procedure.

This Section is coordinated with Section 405 “Right of Member and Former Member to Information” that provides rights of members and former members to access most of the information required under this Section under the conditions provided in that Section.

A similar provision to this Section appears in ULPA (2001) § 111 and RMBCA § 16.01. It does not appear in RUPA or RULLCA (2006). RULLCA (2006) § 410(a)(1) has a different format and a potentially broader application. *Compare* RUPA (1997) § 403. This Act does not draw a distinction between “kept” (meaning retain permanently) and “maintained” (meaning retain for shorter periods of time). As in ULPA (2001) and RMBCA, this Act uses “maintained” for all purposes.

Subsection (a) – The requirement that a record of the required information be “available” at the “principal office” of the association does not mean the record must be maintained there at all times. It is sufficient if the record can be obtained and made available at the office within the time frames under Section 405, including records maintained electronically or in other forms.

1 Unlike ULPA (2001), this Act does not require the record to be maintained at a limited
2 cooperative association's "designated office" because under this Act and similar statutes the
3 association could have multiple designated offices if it operates in multiple jurisdictions because
4 a designated office may just be an office of the association for purposes of having a location for
5 the registered agent. To impose a requirement that the records be maintained in each of those
6 offices could be overly burdensome to the association and the designated office is not likely to
7 have the space nor the equipment to maintain the records required to be maintained by this
8 Section because a designated office may not be an office of the association except for purposes of
9 having a location for the registered agent.

10
11 The association's principal office under the Act is the principal executive office of the
12 association or a foreign cooperative wherever located. Section 102(25).

13
14 The form of the record in which the information must be maintained is any form included
15 in the definition of "record" in Section 102(26).

16
17 **Subsections (a)(2) and (3)** – These requirements apply to superseded as well as current
18 articles of organization and bylaws.

19
20 **Subsections (a)(8) and (13)** – These subsections do not require a limited cooperative
21 association to make a record of consents given and votes taken although this may be required by
22 Sections 416 and 712.

23
24 **Subsection (a)(15)** – The information required by this provision is essential for
25 determining the rights and interests of a member generally and are especially important where a
26 member is both a patron member and an investor member. It is also necessary because it is
27 referenced in Section 405(f) which permits a member to access the member's own information
28 with respect to a limited cooperative association and where a member with dual capacity
29 dissociates in one capacity but not the other.

30
31 **Subsection (a) (16)** – The emphasis in this subsection is on "all members". The
32 subsection does not require communications to individual members that are not directed to all
33 members of a limited cooperative association or a class of members in the association to be
34 maintained.

35
36 **SECTION 114. BUSINESS TRANSACTIONS OF MEMBER WITH LIMITED**
37 **COOPERATIVE ASSOCIATION.** Subject to the organic rules or a specific contract relating
38 to a transaction, a member may lend money to and transact other business with a limited
39 cooperative association in the same manner as a person that is not a member.

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

Comment

Source: ULPA (2001) Section 113.

One person can be both a patron member and an investor member at the same time. Membership is governed by the provisions of the Act and the organic rules for each type of membership, respectively. *See* Comments to subsection 102(15).

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

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

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

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

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

1 **Comment**

2 The Act uses the more current term “designated office” rather than “registered office” for
3 the office to be maintained in this state where the registered agent of a limited cooperative
4 association is located.
5

6 Section 205 provides for damages if the record designating the designated office or
7 registered agent of a limited cooperative association is inaccurate and a person suffers a loss
8 because of the inaccuracy.
9

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

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

16 (1) the name of the limited cooperative association;

17 (2) the street address and, if different, mailing address of its designated office;

18 (3) if the designated office is to be changed, the street address and, if different,
19 mailing address of the new designated office;

20 (4) the name of its agent for service of process; and

21 (5) if the agent for service of process is to be changed, the name of the new agent.

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

- 1 (1) the name of the foreign cooperative;
- 2 (2) the name, street address and, if different, mailing address of its designated
- 3 office;
- 4 (3) if the current agent for service of process or an address of the designated office
- 5 is to be changed, the new information;
- 6 (4) the street address and, if different, mailing address of its principal office; and
- 7 (5) if the street address or, if different, the mailing address of its principal office is
- 8 to be changed, the street address and, if different, the mailing address of the new principal office.
- 9 (c) Except as otherwise provided in Section 204, a statement of change is effective when
- 10 filed by the [Secretary of State].

11 **Comment**

12 Section 205 provides for damages if the record changing the designated office or

13 registered agent of a limited cooperative association is inaccurate and a person suffers a loss

14 because of the inaccuracy.

15

16 **SECTION 118. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

17 (a) To resign as an agent for service of process of a limited cooperative association or

18 foreign cooperative, the agent must deliver to the [Secretary of State] for filing a statement of

19 resignation containing the name of the association or foreign cooperative.

20 (b) After receiving a statement of resignation under subsection (a), the [Secretary of

21 State] shall file it and mail or otherwise provide or deliver a copy to the limited cooperative

22 association or foreign cooperative at its principal office.

23 (c) An agency for service of process of a limited cooperative association or foreign

cooperative terminates on the earlier of:

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

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

Comment

An agent for service of process (registered agent) of a limited cooperative association may resign by following the procedure provided in this Section. Section 205 provides for damages if the record relating to the resignation is inaccurate and a person suffers a loss because of the inaccuracy.

SECTION 119. SERVICE OF PROCESS.

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

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

(c) Service of process, notice, or a demand on the [Secretary of State] as agent of a limited cooperative association or foreign cooperative may be made by delivering to the

1 [Secretary of State] two copies of the process, notice, or demand. The [Secretary of State] shall
2 forward one copy by registered or certified mail, return receipt requested, to the association or
3 foreign cooperative at its principal office.

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

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

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

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

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

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

15 **Comment**

16 **Source:** RULLCA (2001) Section 116, ULPA (2001) Section 117, which is based on
17 ULLCA (1996) Section 111.

1 [ARTICLE] 2

2 FILING AND ANNUAL REPORTS

3
4 SECTION 201. SIGNING OF RECORDS DELIVERED FOR FILING TO
5 [SECRETARY OF STATE].

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

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

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

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

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

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

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

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

23
24 **Comment**
25

1 **Source** – Based on RULLCA (2006) Section 203.

2
3 This Act does not provide that a person signing a record or delivering it for filing does so
4 under penalties of perjury. For that approach, *see* RULLCA (2006) § 207(c). A person who knew
5 information in a record was inaccurate and signed the record, or caused another person to sign it on
6 the person's behalf, may be liable for damages to any person who suffers a loss by relying on the
7 inaccurate record. Section 205.

8
9 **Subsection (b)** – This subsection does not require that the agent's authority be memorialized
10 in a writing or other record.
11

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

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

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

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

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

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

23 **Comment**

24 **Source:** – Based on RULLCA (2006) Section 204 and ULPA (2001) Section 205, which
25 are based on RULPA (1976/1985) Section 205, which was the source of ULLCA (1996) Section
26 120.
27

28 **SECTION 203. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY**

1 **OF STATE]; EFFECTIVE TIME AND DATE.**

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

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

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

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

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

19 (3) if the record specifies a delayed effective date but not an effective time, at
20 12:01 a.m. on the earlier of:

21 (A) the specified date; or

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

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

(A) the specified date; or

(B) the 90th day after the record is filed.

Comment

Source – Based on RULLCA (2006) Section 205 and ULPA (2001) Section 206, which was based on ULLCCA (1996) Section 206.

This Act uses the concept of “filing” to refer to the official act of the [Secretary of State], which is typically preceded by a person “delivering” some record “to the [Secretary of State] for filing.”

Subsections (c)(3)(B) and (c)(4)(B) – If a person delivers to the [Secretary of State] for filing a record that contains an over-long delay in the effective date, the [Secretary of State]: (i) will not reject the record; and (ii) is neither required nor authorized to inform the person that this Act will truncate the period of delay specified in the record.

SECTION 204. CORRECTING FILED RECORD.

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

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

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

(2) specify the incorrect information and the reason it is incorrect or the manner

1 in which the signing was defective; and

2 (3) correct the incorrect information or defective signature.

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

7 **Comment**

8 **Source** – Based on RULLCA (2006) Section 206 and ULPa (2001) Section 207, which
9 was based on ULLCA (1996) Section 207.

10
11 This Section does not require correction of a filed record that has become inaccurate
12 because of the passage of time or a change in circumstances that renders information in the
13 record as originally filed to become inaccurate after the original filing date.
14

15 **SECTION 205. LIABILITY FOR FALSE INFORMATION IN FILED RECORD.**

16 If a record delivered to the [Secretary of State] for filing under this [act] and filed by the
17 [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance on
18 the information may recover damages for the loss from a person that signed the record or caused
19 another to sign it on the person's behalf and knew at the time the record was signed that the
20 information was inaccurate.

21 **Legislative Note** – *In adopting jurisdictions that do not require signatures on records delivered*
22 *for filing, the jurisdiction may want to consider revising the Section to cause the liability to be*
23 *applicable to the person or persons delivering the record for filing or causing the record to be*
24 *filed.*
25

26 **SECTION 206. CERTIFICATE OF GOOD STANDING OR AUTHORIZATION.**

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

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

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

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

14 **Comment**

15
16 This Act uses the term “certificate of good standing” instead of the more current term
17 “certificate of existence.” The Committee believed a “certificate of good standing” remains a
18 commonly understood term. “Good Standing” includes many of the items further delineated by
19 RULLCA (2006) § 208 and ULPA (2001) § 209. Section 206(b) also differs from RULLCA
20 (2006) and ULPA (2001).
21

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

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

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

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

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

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

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

9 (c) The first annual report must be delivered to the [Secretary of State] between [January
10 1 and April 1] of the year following the calendar year in which the limited cooperative
11 association was formed or the foreign cooperative was authorized to transact business in this
12 state. An annual report must be delivered to the [Secretary of State] between [January 1 and
13 April 1] of each subsequent calendar year.

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

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

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

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

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

8
9 **Comment**

10
11 This Act does not have a provision providing for the effective date of notices. It leaves
12 the determination of the effective date of notice here, and elsewhere, to other law.
13

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

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

20
21 *If the adopting jurisdiction has a centralized statute providing a unified fee structure the*
22 *bracketed language should be a cross-reference to the appropriate unified schedule.*

1 [ARTICLE] 3

2 FORMATION AND ARTICLES OF ORGANIZATION

3
4 SECTION 301. ORGANIZERS. A limited cooperative association must be organized
5 by one or more organizers who are individuals.

6 Comment

7 This Section needs to be read in conjunction with Section 401 that requires the existence
8 of at least two patron members before a limited cooperative association may commence business
9 (unless the sole member is a cooperative). Nonetheless, this Act permits the organizing of
10 “shelf” limited cooperative associations (associations formed without members at the time of
11 organization and no requirement that there be members at any time after delivery of articles of
12 organization for filing with the designated public official). RULLCA (2006) § 201 takes a
13 different approach by permitting articles of organization to be filed without the limited liability
14 company having members but not becoming effective until the company has at least one member
15 within a recommended 90 day period after the articles are filed; if a member does not exist at the
16 end of the 90 days, the articles become void thereby eliminating “shelf” limited liability
17 companies for practical purposes.
18

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

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

- 24 (1) the name of the association;
- 25 (2) the purposes for which the association is formed;
- 26 (3) the street address and, if different, mailing address of the association’s initial
27 designated office and the name, street address and, if different, mailing address of the

1 association's initial agent for service of process;

2 (4) the name and street and mailing addresses of each organizer; and

3 (5) the term for which the association is to exist if other than perpetual.

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

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

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

12 **Comment**

13 A limited cooperative association is both a creature of statute and contract like
14 partnerships, limited liability companies and some traditional cooperatives.

15
16 This Section governs how a limited cooperative association comes into existence. An
17 association is formed only if (i) articles of organization are prepared, signed and delivered to the
18 specified public official for filing, (ii) the public official files the articles, (iii) the articles are in
19 substantial compliance with this Section, and (iv) the articles become effective under Section
20 203(c). To commence business an association must have patron members. *See*, Section 401.

21
22 A limited cooperative association is a unique unincorporated association. This Act
23 borrows terminology and concepts from corporate, limited liability company, partnership and
24 traditional cooperative laws but an association organized under this Act despite some similarities
25 is none of those.

26
27 Despite its foundational importance, the articles of organization of a limited cooperative
28 association is not required to contain significant amounts of information. The bylaws of an
29 association play a more dominant role and to a substantial degree play a role similar to the
30 operating agreement of a limited liability company or the partnership agreement of a partnership.
31

1 **Subsection (a)(1)** – Section 109 contains name requirements. To be acceptable for filing,
2 articles of organization must state a name for a limited cooperative association that complies with
3 Section 109. *See*, Section 109, comment.
4

5 **Subsection (a)(2)** – For “the purposes for which the association is formed,” the articles of
6 organization may state “any lawful purpose.” *See* Section 105(b).
7

8 **SECTION 303. ORGANIZATION OF LIMITED COOPERATIVE** 9 **ASSOCIATION.**

10 (a) After a limited cooperative association is formed:

11 (1) if initial directors are named in the articles of organization, the initial directors
12 shall hold an organizational meeting to adopt initial bylaws and carry on any other business
13 brought before the directors at the meeting; or

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

18 (b) Initial directors need not be members.

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

21 **Comment**

22 The articles of organization of a limited cooperative association are not required to list
23 initial directors. This Section addresses the steps to be taken by the initial directors at a first
24 meeting of the directors and how initial directors are designated if they are not named in the
25 articles.
26

27 To facilitate the organizing process, the initial directors do not need to be members of the
28 association.

1 Subsection (a) contemplates adoption of initial bylaws by the initial directors. There are
2 circumstances, however, under which bylaws might not be required such as where all provisions
3 required to be in the bylaws or articles of organization are in the articles of organization. *See*
4 Section 304.
5

6 **SECTION 304. BYLAWS.**

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

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

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

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

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

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

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

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

24 (6) a statement concerning:

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

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

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

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

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

13 **Comment**

14 Bylaws of traditional cooperatives have generally been considered to be part of the
15 contract between the cooperatives and its members. *See* Section 102(2), comment.

16
17 The responsibility for adopting the original bylaws is placed on the initial directors.
18 Section 303.

19
20 Without bylaws much of the relationship between the limited cooperative association and
21 its members likely will be covered by the Act's default rules. The Act does not provide a penalty
22 and does not work a dissolution of a limited cooperative association or cause it not to be duly
23 organized solely if it fails to adopt bylaws.

24
25 This Act provides default rules for many items that can be covered in bylaws and permits
26 the bylaws to vary many of those default rules. This Act does not address or provide for all
27 matters that are permitted to be covered in an association's bylaws. *See* Section 112. Best
28 practices probably dictate that bylaws contain comprehensive provisions for the governance and
29 financial structure of the association.

1 **Subsection (a)** – This subsection states the scope of required bylaw provisions for a
2 limited cooperative association. It draws upon requirements for operating agreements of limited
3 liability companies, partnership agreements of partnerships and bylaws of cooperatives as
4 required under various statutes. The primary focus of the required provisions is on governance
5 and financial rights.
6

7 Oral bylaws are not permitted by this Act, however, not all policies or procedures adopted
8 by the board of directors pursuant to subsection 701(b) need be contained in the bylaws.
9 Compare subsection 304(b) with Section 701(b).
10

11 **Subsection (a)(1)** - This subsection, together with Section 901, requires the organic rules
12 to set forth the financial rights and obligations between the members and the limited cooperative
13 association. The items contained in subsection (a)(1)(A) broadly include both financial benefits
14 and burdens. Therefore, for example, additional capital contribution requirements must be
15 provided for in the organic rules.

1 [ARTICLE] 4

2 MEMBERS

3
4 SECTION 401. MEMBERS. To begin business, a limited cooperative association must
5 have at least [two] patron members unless the sole member is a cooperative.

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

10
11 Comment

12 Subject to other applicable law in an adopting jurisdiction, if a membership interest
13 (patron or investor) is held in co-ownership by two or more persons, the organic rules may
14 provide the co-owners will be treated as one person or will be treated individually as separate
15 persons.
16

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

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

21 Comment

22 This Section combines elements of traditional cooperatives, limited liability companies
23 and partnerships in determining how persons become members. Traditional cooperatives usually
24 provide for the qualifications and the process for admitting members in their bylaws but do not
25 require member consent for admission to membership. Limited liability companies and
26 partnerships usually provide for these in their operating agreements or partnership agreements,
27 respectively, and frequently require member consent for admission as a member or partner in the
28 entity.
29

30 Most limited liability company statutes address in separate provisions: (i) how a limited
31 liability company obtains its initial member or members; and (ii) how additional persons might

1 later become members. This Act does not follow that approach. The organic rules need to
2 provide for both. There are no default rules covering this. Section 503 of the Act does address
3 transfers of membership interests and restrictions on transfers. The organic rules are permitted to
4 change certain of the default rules provided there.

5
6 **Subsection (3)** – Even if the organic rules provide details of how members of a limited
7 cooperative association are admitted to membership, those provisions could be overridden with
8 the consent of all of the members.
9

10 **SECTION 403. NO RIGHT OR POWER AS MEMBER TO BIND LIMITED**

11 **COOPERATIVE ASSOCIATION.** A member does not have the right or power as a member
12 to act for or bind the limited cooperative association solely by reason of being a member.

13 **Comment**

14 This section eliminates any power of a member to act as an agent for a limited
15 cooperative association simply by being a member. It does not prohibit an association from
16 specifically appointing a member to act as an agent of the association, *e.g.*, by an act of the board
17 of managers, with power to bind the association.
18

19 **SECTION 404. NO LIABILITY AS MEMBER FOR LIMITED COOPERATIVE**

20 **ASSOCIATION OBLIGATIONS.** Unless the articles of organization otherwise provide:

21 (1) an obligation of a limited cooperative association, whether arising in contract, tort, or
22 otherwise, is not the obligation of a member; and

23 (2) a member is not personally liable, by way of contribution or otherwise, for an
24 obligation of the association solely by reason of being a member.

25 **Comment**

26 This section shields members from debts, obligations, and liabilities of a limited
27 cooperative association unless the articles of organization provide otherwise. The shield may not
28 be removed in bylaws. This section is irrelevant to claims seeking to hold a member or manager
29 directly liable on account of the member's own conduct.
30

1 **EXAMPLE:** A member personally guarantees a debt of a limited cooperative
2 association. This Section is irrelevant to the member’s liability as a guarantor.

3
4 **EXAMPLE:** A member purports to bind a limited cooperative association while lacking
5 any agency law power to do so. The association is not bound, but the member is liable
6 for having breached the “warranty of authority” (an agency law doctrine). This Section
7 does not apply. The liability is not *for* an obligation of the association, but rather is the
8 member’s direct liability resulting because the association is *not* indebted, obligated or
9 otherwise liable. RESTATEMENT (THIRD) OF AGENCY Section 6.10 (2006).

10
11 The Section also does not apply to claims by the association against a member for
12 unfulfilled contributions of the member.

13
14 The shield provided by this Section extends to liability to other members or the
15 association by way of contribution.

16
17 The Section has no application to managers whose liability is addressed in Sections 702
18 and 718 through 720.

19
20 This Act does not address the doctrine of “piercing the corporate veil” which is well-
21 established, and which courts regularly (and sometimes almost reflexively) apply to limited
22 liability companies. Because of the formalities required in the formation of a limited cooperative
23 association organized under this Act, corporate law regarding “piercing the corporate veil”
24 (including the factor of “disregard of corporate formalities”) could properly be applied to
25 associations organized under this Act even though they are unincorporated associations.

26
27 **SECTION 405. RIGHT OF MEMBER AND FORMER MEMBER TO**
28 **INFORMATION.**

29 (a) Within 10 business days of receipt by a limited cooperative association of a demand
30 made in a record, the association shall permit a member to obtain, inspect, and copy required
31 information under Section 113(a)(1) through (8) during regular business hours in the
32 association’s principal office. A member need not have any particular purpose for seeking the
33 information. The association is not required to provide the same information under Section
34 113(a)(2) through (8) to the same member more than once during a six-month period.

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

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

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

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

9 (4) the demand is reasonable.

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

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

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

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

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

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

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

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

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

6 (f) Within 10 business days of receipt by a limited cooperative association of a demand
7 made by a member in a record, but not more often than once in a six-month period, the
8 association shall deliver to the member a record stating the information with respect to the
9 member required by Section 113(a)(15).

10 (g) If a member dies or is adjudged incompetent, Section 1003 applies.

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

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

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

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

21 (l) The organic rules may require a limited cooperative association to provide more
22 information than required by this section and may establish conditions and procedures for

1 providing the information.

2 **Comment**

3 This Section provides to members of a limited cooperative association rights of
4 inspection of records of the association that must be maintained by it under Section 113, but the
5 Section does not require an association to maintain any records that are not specifically required
6 to be maintained under Section 113. These rights may not be reduced by the organic rules
7 although subsection (h) does permit an association to impose reasonable restrictions on the use of
8 information obtained by a member under this Section.

9
10 There is a burden on a member seeking records if the member is not located in the
11 jurisdiction in which the association's principal office is located and is, therefore, required to
12 travel. This burden is reduced by the member being entitled to engage an attorney or agent in the
13 jurisdiction where the principal office is located in order to access the records under Section
14 405(j). Nothing prevents the association from making records available at locations in addition
15 to the principal office.

16
17 If there is a change in information obtained by a member under this Section, the changed
18 information is new information for purposes of this Section. The Section anticipates that both a
19 member and the limited cooperative association will act in good faith with respect to the rights
20 and obligations of each under this Section. The general doctrine of "good faith and fair dealing"
21 from contract law should apply to this Section.

22
23 **Subsection (a)** – The subsection permits a member to request, inspect and copy records
24 specified in Section 113(1) through (8) that are records that should be generally available and
25 relate to the organization, general financial condition and membership actions of the association.
26 No particular purpose is required for the inspection and copying.

27
28 **Subsection (b)** – The subsection permits a member to request, inspect and copy records
29 specified in Section 113(9), (10), (12), (13) and (16) that may be records more likely to contain
30 confidential information or information that may be more difficult to understand or harder for an
31 association to produce than the records referenced in subsection (a). To obtain access to these
32 records a member must act in good faith and state a "proper purpose" for seeking the records that
33 must be directly connected to the member's purpose. "Proper purpose" is a well recognized
34 term. Corporate law guidance could properly be applied to this subsection. This subsection
35 follows closely provisions in RMBCA § 16.02.

36
37 Records listed in Section 113(11), (14) and (15) are not covered by the inspection rights
38 of this subsection because of concerns over confidentiality and privacy.

39
40 **Subsection (c)** – If a limited cooperative association refuses to produce information
41 demanded by a member, it must state why it refused.

1
2 **Subsection (d)** – A person dissociated as a member may obtain any of the information
3 referenced in subsections (a) or (b) but in either case must follow the procedures for a member
4 seeking to obtain information under subsection (b). The right to inspect and copy records does
5 not extend to a transferee of a member who has not been admitted as a member in the limited
6 cooperative association.

7
8 **Subsection (f)** – A member may obtain information regarding the member’s own interest
9 in the limited cooperative association but the member may not obtain information about any
10 other member except the names and addresses of other members under subsection (b).

11
12 **Subsection (h)** – The subsection permits a limited cooperative association to include
13 nondisclosure restrictions on the use of information obtained by a member under the Section.
14 Certain of the information to which a member may have access under this Section could contain
15 confidential information of the association. The association has the right to reasonably restrict
16 the uses to which the information may be put by the member. The restriction could be in
17 contractual form and a violation of the contract could result in damages or a right to injunctive
18 relief in favor of the association.

19
20 Cooperative associations present a contradiction with respect to information about the
21 associations. Cooperatives are to be owned and controlled by their members. Members need
22 information for that purpose. Most cooperatives are, however, representative democracies
23 governed by a board of directors or similar body elected by the members. This may reduce the
24 need for information on the part of members and permit a cooperative to withhold confidential
25 information from the members. The “particular purpose” provision of subsection (b) allows an
26 evaluation of the need for the information demanded by the member making the demand to be
27 measured against the need for the association to protect confidential information from general
28 release.
29

30 **SECTION 406. ANNUAL MEMBERS’ MEETING.**

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

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

36 (c) Unless the organic rules otherwise provide, members may attend or conduct an annual

members' meeting through any means of communication if all members attending the meeting can communicate with each other during the meeting.

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

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

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

Comment

Section 406(a) requires every limited cooperative association to hold an annual meeting of members each year. Unlike corporate statutes, this Section does not require an election of directors to the board of directors at the annual meeting, but this is implied from subsection 705(a) that provides a director's term expires at the annual meeting following the director's election or appointment unless otherwise the organic rules otherwise provide. If an annual meeting is not held, directors' terms are extended under Section 705(c) until a successor is elected or appointed and qualified. The purpose of an annual meeting is not limited and provides an appropriate forum for a member to raise any relevant question about the association's operations unless the articles of organization otherwise provide. *See* Section 408(b).

The requirement of Section 406(a) that an annual meeting be held is phrased in mandatory terms to ensure that every member entitled to participate in the meeting has unqualified rights to have the annual meeting be held, but unlike many corporate statutes, there is no specific provision authorizing a court to intercede if a meeting is not held. This is implied from the mandatory nature of the provision. Rather than having an annual meeting, the members may take action by written consent under Section 416. Section 406(f) provides that failure to hold the annual meeting does not affect the validity of any action taken by the association.

The organic rules or the board of directors may fix the time and place for annual meetings. This gives the limited cooperative association the flexibility to meet at various times and various places depending on convenience and circumstances. Where authority is granted to the board to fix the time and place of the annual meeting, the authority must be exercised in good faith. *See Schnell v. Chris-Craft Industries, Inc.*, 285 A.2d 437 (Del. 1971) (relating to

1 corporations).

2
3 **SECTION 407. SPECIAL MEMBERS' MEETING.**

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

5 (1) as provided in the organic rules;

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

8 (3) by demand in a record signed by members holding at least 20 percent of the
9 votes of any class or group entitled to be cast on the matter that is the purpose of the meeting
10 stated in the demand; or

11 (4) by demand in a record signed by members holding at least 10 percent of all
12 votes entitled to be cast on the matter that is the purpose of the meeting stated in the demand.

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

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

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

21 (e) Unless the organic rules otherwise provide, members may attend or conduct special
22 members' meetings through the use of any means of communication if all members attending the

meeting can communicate with each other during the meeting.

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

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

Comment

This Section provides the means for calling and holding special meetings of the voting members of a limited cooperative association. Any meeting of members other than an annual meeting is a special meeting. The principal difference between an annual meeting under this Act and a special meeting is that any issue relevant to the association matter may be discussed at an annual meeting subject only to special notice requirements for certain matters under this Act, *e.g.*, voting on amendments to the organic rules, mergers, sales of assets, and only issues provided in the call and notice of a special meeting may be discussed at a special meeting.

While Section 406 does not provide specific authority for members to call an annual meeting, this Section permits certain percentages of members to demand that a special meeting be called so long as the purpose of the meeting is stated. If an annual meeting is not held, members could demand that a special meeting be held to consider specific items that would ordinarily be considered at an annual meeting.

Members may suggest a place for a special meeting, but the ultimate authority for determining the place is in the organic rules or the board of directors under Section (d). The Act does not specifically state who sets the time and date of a special meeting but presumably this would be the board of directors acting for the limited cooperative association under the notice provisions of Section 408(a).

Although not specifically stated, if similar demands for a special meeting are received by a limited cooperative association, the board of directors should have reasonable discretion to combine or otherwise coordinate the demands into one meeting.

SECTION 408. NOTICE OF MEMBERS' MEETING.

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

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

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

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

8 **Comment**

9 This Act does not contain a provision that relieves a limited cooperative association from
10 giving notice to a member if mailings to the member have been returned as undeliverable over a
11 period of time as is found in RMBCA § 16.06 a number of state corporate statutes.

12
13 Under corporate statutes, generally, only shareholders who are entitled to vote at a
14 meeting are entitled to notice. *See, e.g.*, RMBCA § 7.05(a). This Act requires that notice of
15 meetings be given to all members of a limited cooperative association whether they are entitled
16 to vote at the meeting or not.

17
18 **Subsection (d)** – The subsection permits oral instead of written notice if oral notice of a
19 members' meeting is "reasonable under the circumstances." This recognizes there may be
20 situations when oral notice is appropriate, but it is likely this would be an exception rather than a
21 rule. If membership would be small enough that oral notice might be appropriate, the members
22 could take action by consent under Section 416.

23 24 **SECTION 409. WAIVER OF MEMBERS' MEETING NOTICE.**

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

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

meeting.

Comment

In order to obtain an effective waiver of notice of meetings of members of a limited cooperative association, waivers must be obtained from both voting and non-voting members.

Subsection (b) – Unlike RMBCA § 7.06(b)(2), this Act does not specifically provide for a member’s objection to be made at the time a particular matter is raised for consideration at a special meeting if the member desires to challenge consideration of the matter because it is beyond the stated purposes contained in the meeting notice or for other reasons. This Act requires objections to be made at the beginning of the meeting or promptly after the member’s arrival at the meeting if the member does not wish attendance at the meeting to constitute waiver of notice of a meeting.

The reference to “vote for or assent to” refers to a vote or assent on specific matters being submitted for action by the members at a meeting if the member is objecting to consideration being given to the matter at the meeting or, if the member objects to the meeting being held at all, to voting on or assenting to any matter submitted for action at the meeting.

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

Comment

This Section states a default rule. Absent a provision in the organic rules to the contrary, one person with a voting interest in a limited cooperative association who is in attendance at a duly called meeting would constitute a quorum for the meeting, the meeting could proceed, and actions taken at the meeting would be valid.

With the interaction of Sections 409 and 410, a member who attends a meeting for the sole purpose of objecting to the meeting would nevertheless be present for purposes of a quorum under Section 410. Section 409 relates solely to a waiver of notice not to presence at a meeting for purposes of a quorum count.

SECTION 411. VOTING BY PATRON MEMBERS.

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

1 Section 412.

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

4 **Comment**

5 In following cooperative principles of ownership by the patrons of the cooperative and
6 democratic control, most traditional cooperative statutes have limited voting power of any one
7 member to one vote. The “one member, one vote” principle is a requirement in a number of
8 federal statutes relating to agricultural cooperatives for the cooperative to be considered to be a
9 cooperative or operating on a “cooperative basis” but many of those statutes provide an
10 alternative based on the cooperative principle of a limited return on investment by providing a
11 percentage limitation on returns that may be paid on member investments in their cooperative.
12 *See, e.g.,* _____. In recent years,
13 revisions to some traditional state cooperative statutes have permitted percentage voting by
14 members although in some cases with a limitation. For example, the Colorado Cooperative Act
15 permits voting by patronage or patronage equity in the cooperative, but all members must have at
16 least one vote and no member may have more than two and one-half percent of the total votes of
17 the members of the cooperative. In _____
18 _____.

19
20 **Subsection (a)** – This Act permits the organic rules to provide for more than one vote per
21 member in a limited cooperative association, but in the absence of other provisions in the organic
22 rules defaults to one member one vote. Section 412 provides the means through which the
23 organic rules may allocate voting power among the patron members. The subsection refers only
24 to a “greater quantum” so that each member must have at least one vote unless voting power is
25 based on percentages or a method other than a specific number of votes. *See* Comment to
26 paragraph 412(2).
27

28 **Subsection (b)** – Cooperatives that have drawn members from large geographic areas
29 have frequently divided the members into geographic districts for purposes of the election of
30 directors or voting generally on matters affecting the cooperative. Because the voting power in
31 traditional cooperatives has usually, although not exclusively, been confined to one class of
32 voting membership or stock, there has been little need for classifying members by class of
33 membership or stock for voting purposes.
34

35 This Act permits more complex membership structures than are frequently seen in
36 traditional cooperatives. This subsection authorizes the association to divide patron members
37 into districts, classes of membership, or combinations of districts and classes. The same
38 authority is applied to investor members in Section 413.

1 **SECTION 412. DETERMINATION OF VOTING POWER OF PATRON**

2 **MEMBER.** The organic rules may allocate voting power among patron members on the basis of
3 one or a combination of:

4 (1) one member, one vote;

5 (2) use or patronage;

6 (3) equity; or

7 (4) if a patron member is a cooperative, the number of its patron members.

8 **Comment**

9 If the “one member, one vote” principle in paragraph (1) is not followed, the Act requires
10 that a greater quantum of voting can be established by utilizing only in three other bases: a
11 member’s use or patronage of the limited cooperative association, a member’s equity in the
12 association, or if the member of the association is itself a cooperative by the number of patron
13 members in the member cooperative. The association may combine two, three, or all four
14 methods in establishing the voting power among patron members.
15

16 **Paragraph (2)** – Use or patronage of the limited cooperative association can be measured
17 in a variety of ways. For example, it can be based on a dollar volume of business conducted by a
18 patron member with the association.
19

20 **EXAMPLE:** A member sells and delivers wheat to the association. The member
21 is paid \$60,000 for the wheat sold and delivered. Over a one year period, the
22 association paid \$2,000,000 for all the wheat it purchased from all of its members.
23 The association’s organic rules base voting power on patronage measured by the
24 purchase price paid to each member for wheat purchased by each member during
25 the year. The member that was paid \$60,000 would be entitled to 3% of the
26 voting power of all of the voting members in the association but not to less than at
27 least one vote.

28 If the association had ten members, and each had only one vote, each
29 member would have one-tenth of the voting power. In the Example where the
30 voting is based on percentages, the fact that the member does not have ten percent
31 of the voting power would be irrelevant because the member is entitled to vote the
32 member’s percentage of total member patronage as determined under the organic
33 rules of the association. Voting power in the association in the Example is not
34 based on a specific number of votes per member but rather on percentages.
35

1 Other types of patronage measurement include the quantity of business a member
2 conducts with the association measured in units, weight or other methods of measuring
3 quantities, hours worked in a worker owned association, or square footage occupied in a housing
4 association. With respect to a housing association and other possible businesses or activities the
5 owners of which may seek to organize under this Act, regulatory requirements under other laws
6 of the jurisdiction may prevent a particular business or activity from utilizing this Act. For
7 example, public disclosure requirements under common ownership acts may prevent a
8 cooperative housing project from organizing under this Act because the definitions of a housing
9 cooperative under the other statute or specific requirements for a housing cooperative under the
10 other statute may make it impossible to meet the requirements for organizing under this Act.
11

12 **Paragraph (3)** – The organic rules could base voting on a percentage of equity in the
13 limited cooperative association or on each dollar of equity in the association. The equity could
14 be paid in capital or retained allocations in the capital accounts of the members that have not
15 been distributed, or a combination of both.
16

17 **EXAMPLE:** A member has \$1,000 of paid in capital in an association that has a
18 total of \$20,000 in paid in capital from all voting members. In addition, the
19 member has \$15,000 of retained allocations in the member's capital account that
20 have not been distributed. All of the members together have \$100,000 of retained
21 allocations in their capital accounts collectively.

22 The organic rules of the association could provide that voting power will
23 be based on paid in capital. The member would have 1/20, or 5%, of the total
24 voting power in the association.

25 The organic rules could provide that voting power will be based on
26 retained allocations. The member would have 15/100, or 15%, of the total voting
27 power.

28 The organic rules could provide that voting power will be based on total
29 equity in the association, a combination of paid in capital and retained allocations.
30 The member would have a total of \$16,000 in equity (\$1,000 of paid in capital
31 plus \$15,000 of retained allocations). Total equities of the association as a whole
32 would be \$120,000 (\$20,000 of paid in equity plus \$100,000 of retained
33 allocations). The member would have 16/120, or 13.3%, of the total voting
34 power.
35

36 **Paragraph (4)** – The paragraph does not refer to a limited cooperative association itself
37 but rather to a cooperative that is a patron member of the association. In that case, the organic
38 rules could provide that in counting the total voting power in the association the number of
39 members of the cooperative member could be counted among the voting members.
40

41 **EXAMPLE:** An association has 20 individual members and a cooperative entity
42 as a member that itself has 15 members. The organic rules could provide that you
43 add all the individual members of the association and the 20 members of the

1 cooperative together for a total of 35 votes of which 15 would be cast by the
2 cooperative member.
3

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

8 **Comment**

9 The organic rules must provide for investor members. If they do not do so, all of the
10 members must be patron members. *See* Section 502(a). If the organic rules provide for investor
11 members, they may provide for any means of allocating voting power among them including the
12 use of classes and combinations of classes. If the organic rules do not provide another means of
13 allocating voting power, each investor member will have only one vote following the cooperative
14 “one person, one vote” principle. *See* Comment to Section 411.
15

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

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

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

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

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

26 (3) The organic rules may provide for the percentage of the affirmative votes that must be

1 cast by investor members to approve the matter.

2 **Comment**

3 This Act seeks to balance financial and governance rights between patron members and
4 investor members if a limited cooperative association has both types of members. In doing so,
5 this Act does not follow the similar statutes in Minnesota, Wisconsin, Tennessee and Iowa that
6 were adopted during the development of this Act. This Act establishes a floor under the voting
7 power in a limited cooperative association that must be given to patron members which may not
8 be varied downward as can be done in the other statutes. The organic rules may provide for
9 greater voting power for patron members. Throughout this Act the same voting formula is
10 utilized whenever voting by members is specified.

11
12 **Paragraph (a)** – At least a majority of the voting power in an association must be in the
13 patron members if the association has both patron and investor members.

14
15 Except for amendments to the organic rules, conversions, mergers and dispositions of
16 assets where this Act or the organic rules provide for a greater quantum of votes than a majority,
17 an affirmative vote of a majority of the members voting at the meeting will be required for the
18 members to take action, but in addition the action will not be effective unless at least a majority
19 of the votes cast by patron members must be in the affirmative unless the organic rules require a
20 larger percentage. The organic rules may not reduce the required patron member vote although
21 they can increase it.

22
23 **EXAMPLE:** An association has 30 members of which 20 are patron members
24 and 10 are investor members all of whom attend and vote at a meeting of
25 members. The bylaws provide for voting on a “one member, one vote” basis.
26 The association has a majority of the total voting power in patron members. On a
27 particular proposition, 12 of the patron members vote “yes” and eight vote “no.”
28 Four investor members vote “yes” and six vote “no.” A majority of the members
29 (16) voted “yes” and a majority of the patron members voted “yes.” The
30 proposition passes.

31
32 **EXAMPLE:** In the preceding example, eight of the patron members vote
33 “yes” and 12 vote “no.” All of the investor members vote “yes.” Clearly a
34 majority of all the members (18 of 30) voted “yes” but the proposition does not
35 pass because a majority of the patron members did not vote “yes.”

36
37 **EXAMPLE:** In the first example, 18 patron members vote “yes” and two vote
38 “no.” All of the investor members vote “no.” The proposition passes because a
39 majority of the members (18 of 30) voted “yes” and a majority of the patron
40 members (18 of 20) voted “yes” even though the proposition received no votes
41 from the investor members.

1 The organic rules may provide for the quantum of affirmative votes of the investor
2 members that must be affirmative for a matter to be approved. That quantum does not
3 necessarily need to be a majority but if any quantum is established it would prevent the result in
4 the third preceding example.
5

6 **SECTION 415. MANNER OF VOTING.**

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

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

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

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

16 **Comment**

17 **Subsection (a)** – Many traditional cooperatives have not permitted voting by a proxy at
18 membership meetings. This Act permits the organic rules to provide for voting by a proxy. If
19 the organic rules do not permit voting by proxy either specifically or by silence, voting by a
20 proxy is not permitted.
21

22 The word “proxy” is often used ambiguously, sometimes referring to the grant of
23 authority to vote, sometimes to the document granting the proxy, and sometimes to the person to
24 whom the authority is granted. This Act uses the term “proxy voting” to mean voting by a person
25 to whom authority is granted.
26

27 The appointment of a proxy is essentially the appointment of an agent and is governed by
28 agency law and principles except that subsection (c) permits the organic rules to override agency
29 law and principles by establishing the manner and terms for appointment of a proxy. The
30 organic rules are entitled to provide how an appointment is to be made and proven, the term of an
31 appointment, whether a proxy may be irrevocable, whether a transferor of a voting membership

1 interest may retain or reserve voting rights including the right to appoint a proxy, and any other
2 matter relating to a proxy that is not inconsistent with the Act. This subsection provides that
3 voting by a delegate from a district or class is not voting by a proxy.
4

5 **Subsection (b)** – If voting by a proxy is permitted, patron members may only give
6 authorization to another patron member and investor members may only give authorization to
7 another investor member. If a member is both a patron member and an investor member, the
8 member must authorize only another patron member to vote for the member, and an investor
9 member may only authorize another investor member to vote for the member. A member that is
10 both a patron member and an investor member may not authorize a person who is only a patron
11 member or an investor member to vote both membership interests of the member giving the
12 authorization.
13

14 **Subsection (c)** – The subsection gives broad power for the organic rules to provide for
15 membership voting to be conducted in other ways than by being in attendance at a meeting or by
16 authorizing a vote to be cast by a proxy. The power can be extended to all or less than all matters
17 brought before the members at a meeting. The power can be utilized to prohibit other means of
18 voting. Secret ballots could be required. Voting by mail or electronic means could be
19 authorized.
20

21 An association may desire to study whether it is wise or a best practice to authorize both
22 voting by mail or electronic means and by a proxy at the same time. If voting by mail or
23 electronic means is permitted, votes may be cast without the benefit of discussion provided by
24 attendance at a meeting. Although a member authorizing a proxy to vote for the member would
25 not have that benefit, at least the proxy would. If mail or electronic ballots are not permitted, less
26 than a representative vote may be obtained.
27

28 **SECTION 416. ACTION WITHOUT A MEETING.**

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

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

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

35 **Comment**

1 Some of the recent amendments to state corporation statutes and to those limited liability
2 company statutes that address meetings of the members provide for consent in writing to action
3 by shareholders or members may be less than unanimous and will be effective if signed and
4 delivered by a sufficient number of shareholders or members that would be sufficient to pass a
5 matter if it were voted on at a meeting or by a majority of shareholders or members signing
6 written consents to action. This Act retains the historical and more prevalent requirement that
7 written consent to action must be unanimous.
8

9 **SECTION 417. DISTRICTS AND DELEGATES; CLASSES OF MEMBERS.**

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

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

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

16 (b) A delegate elected under subsection (a)(2) has one vote unless voting power is
17 otherwise allocated.

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

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

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

24 (d) A delegate elected under subsection (c)(2) has one vote unless the organic rules
25 provide for aggregate or representative voting.

Comment

This Section provides the specific authorization for a limited cooperative association to divide patron members into geographic districts and all members into classes through its organic rules. The preferences, rights, and limitations applicable to any class authorized may be provided in the organic rules. The organic rules may provide for members to hold meetings by district or class, the election of directors from districts or classes, and the authority of members in districts or classes to elect delegates to annual or special membership meetings. Delegates to membership meetings have only one vote unless the organic rules provide for different allocation of voting from districts under Section 412 or different aggregate or representative voting under Sections 411 through 413.

Section 1405 addresses voting by district, class or other voting groups with respect to proposed amendments to the organic rules.

1 [ARTICLE] 5

2 MEMBER'S INTEREST

3
4 SECTION 501. MEMBER'S INTEREST. A member's interest:

5 (1) is personal property;

6 (2) consists of:

7 (A) governance rights;

8 (B) financial rights; and

9 (C) the right or obligation, if any, to do business with the limited cooperative
10 association; and

11 (3) may be in certificated or uncertificated form.

12 Comment

13 This Act has its genesis in cooperative principles and laws together with elements of
14 limited liability companies and to a lesser extent aspects of general and limited partnerships and
15 corporate laws. The entity that may be formed under this Act is an unincorporated entity. As
16 such and with the flexibility of organizational structure and rights and obligations within that
17 structure, the relationships between the limited cooperative association and its members (and to
18 some extent among the members themselves) take on aspects of a contractual nature. This is
19 consistent with cooperative common law where the courts have frequently found the
20 relationships between a cooperative and its members and among its members to be contractual.

21 *See, e.g.,* _____
22 _____.
23 In those circumstances, the articles of incorporation and bylaws of a cooperative are elements of
24 the contract even when the cooperative is organized under a corporate form of cooperative
25 statute. *See, e.g.,* _____.

26
27 This Act envisions similar interpretation for an entity formed under this Act as with
28 entities formed under a corporate based cooperative statute, or limited liability companies and
29 partnerships that are clearly contractual in nature under the statutes and agreements providing for
30 the structure and operation of those entities.
31

1 This Act provides for the fundamental governance rights and financial rights within a
2 limited cooperative association and between the association and its members as well as the
3 governance and financial relationships among all the members. The Act also permits the organic
4 rules of an association to vary, with certain limitations (*see, e.g.*, Section 414 that requires certain
5 voting power for patron members), many of the default rules provided by the Act so that the
6 governance and financial relationships within the association can be designed to fit the objectives
7 and needs of the association and its members.
8

9 **Paragraph (1)** – Unlike RULLCA (2006) and ULPA (2001), this Act treats a member’s
10 entire interest in a limited cooperative association as personal property. Section 503(a) does,
11 however, specify that only financial rights are transferable unless the organic rules otherwise
12 provide. It also delineates how restrictions on transfer are to be evidenced, and the results of
13 transfers.
14

15 **Paragraph (2)** – The paragraph delineates in summary form the three basic rights of a
16 member’s interest in a limited cooperative association. Detailed provisions with respect to
17 governance rights and financial rights are contained in other parts of the Act. In cooperative
18 entities, a fundamental principle is the right or obligation of a member to engage in business with
19 the cooperative. This is recognized in subparagraph (C). This right may include the right to
20 enter into a contract with the cooperative, but the contract itself is not part of the member’s
21 interest in the association unless the contract itself makes it part of the membership interest. The
22 rights and obligations of a member under a marketing contract authorized by [Article] 6 of the
23 Act and organic rules adopted under it stands alone from the membership in the association
24 unless the organic rules or the marketing contract otherwise provide. On the other hand, a
25 membership agreement utilized by some cooperatives may be part of the governance or financial
26 rights in the cooperative. This Act does not prohibit any agreement between the association and
27 its members from becoming part of the governance and financial rights and obligations of a
28 member as a member in the association.
29

30 The bylaws or other governing documents in some cooperatives provide elements of a
31 marketing or other contract within them. In those cases, the contract may become part of the
32 governance and financial rights of a member with respect to the cooperative. The same result
33 would occur with respect to an association formed under this Act.
34

35 If a limited cooperative association uses a membership agreement as part of the contract
36 between the association and a member, this is not the same type of agreement as a control
37 agreement under which members may enter into an agreement to coordinate voting and other
38 aspects of control of an entity.
39

40 Some traditional cooperatives provide in their organic rules and operating policies that
41 simply engaging in business with the cooperative constitutes an application for membership in
42 the cooperative or automatically constitutes a person as a member of the cooperative. An
43 example of this are rural telephone cooperatives that provide that a request for service also

1 constitutes an application for membership and, in some cases, require a person to be a member to
2 obtain telephone service. This Act would not prohibit these types of provisions in the organic
3 rules.
4

5 Traditional cooperatives may engage in business with persons who are not members of
6 the cooperative unless prohibited by the organic rules. Traditionally cooperatives have referred to
7 those persons as “non-member patrons.” This Act does not prevent a limited cooperative
8 association from engaging in business or other activities with a non-member. These
9 arrangements are not addressed in this Act. They are subject to contractual relationships beyond
10 the scope of this Act. If an association engages in business or other activities with non-members,
11 the organic rules may authorize the non-members to share in allocations of the net income of the
12 association but this would be done by contract although some traditional cooperatives expressly
13 address this in the organic rules. The organic rules of an association could address this as well.
14

15 **Paragraph (3)** – A limited cooperative association formed under this Act is not required
16 to issue membership certificates, but it may do so. If it does so, it is required to note restrictions
17 on transfer of membership interests on the certificate under Section 503(a)(2).
18

19 **SECTION 502. PATRON AND INVESTOR MEMBERS’ INTERESTS.**

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

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

24 (1) if admitted as a patron member, remains a patron member;

25 (2) if admitted as an investor member, remains an investor member; and

26 (3) if admitted as a patron member and investor member remains a patron and
27 investor member if not dissociated in one of the capacities.

28 **Comment**

29 **Subsection (a)** – A limited cooperative association may have both patron members and
30 investor members. Investor members are not permitted unless the organic rules provide for them.
31

32 **Subsection (b)** – If the organic rules of a limited cooperative association provide for

investor members, persons who become a member as either a patron member or as an investor member will remain that type of member so long as the person remains a member of the association. If a person holds memberships in both capacities, Section 115 provides for a similar result for both capacities. If a person holds memberships in both capacities, the member could dissociate in one capacity but not in the other or, subject to the Act and the organic rules of the association, could transfer one type of membership interest but not the other.

SECTION 503. TRANSFERABILITY OF MEMBER'S INTEREST.

(a) Unless the organic rules otherwise provide, a member's interest other than financial rights is not transferable.

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

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

(1) set forth in the organic rules and the member records of the association; and

(2) conspicuously noted on any certificates evidencing a member's interest.

(d) A transferee of a member's financial rights, to the extent transferred, has the right to share in the allocation of profits or losses and to receive the distributions to the member transferring the interest.

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

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

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

Comment

This Article is based on unincorporated organizational law and cooperative principles. It reflects practice in most traditional membership cooperatives. This basis is particularly notable in this Section. Unincorporated entities frequently restrict the transfer of membership or partnership interests. Some of the genesis of the restrictions on transfer arose out of a requirement of federal income tax regulations that made non-transferability of membership or partnership interests desirable to obtain tax treatment as a partnership. This emphasis on non-transferability for income tax purposes has been eliminated by the “check-the-box” regulations. Treas. Regs. Section _____. More fundamentally, because of the contractually based nature of many unincorporated entities, such as partnerships and limited liability companies, it has been seen as desirable to limit transferability of interests in those entities because they are an association of persons who, at least theoretically, agreed to associate with one another with knowledge of who the others in the organization are and not with an assignee of an interest holder who is a third-party stranger.

This Section may appear to offer more flexibility regarding transfers of membership interests in a limited cooperative association than appear on the surface in RULLCA and ULPA (2001), but the differences between this Act and those statutes may only be superficial. The default rules in subsections (a) and (b) provide that financial rights in an association are transferable but governance rights are not. This is similar to the results under RULLCA and ULPA (2001). The organic rules of an association may, however, vary these default rules to make them more or less restrictive. In its organic rules, an association may make membership interests fully transferable and permit a transferee to become a member of the association.

This Section has no application to contractual rights and obligations between a limited cooperative association and members under contracts that exist outside a member’s financial or governance rights in an association and the right or obligation of a member to do business with the association.

As in other parts of the Act, what constitutes effective “notice” in this Section is left to other law. Provisions dealing with adequate “notice” could also be written in the organic rules.

Subsection (a) – If there are restrictions on transfers of interests in a limited cooperative association, except financial rights, they must be set forth in the organic rules, the association’s membership records, and on certificates of interest if the association issues certificates, which it need not do under Section 501(c).

Subsection (b) – For financial rights in a limited cooperative association not to be transferable, the restriction must be set forth in the organic rules. The default rule that absent limitations in the organic rules, financial rights are transferable is based in the laws related to other types of entities where financial rights are considered to be personal property, as recognized in subsection 501(1), that may not be subject to restrictions on alienation. *See, e.g.,*

1 _____ . If an association and its
2 members desire to restrict transfers of financial rights, the restrictions are permitted by this Act,
3 but any restrictions need to reflect the common law limiting restrictions on transfers of personal
4 property.
5

6 **Subsection (d)** – If a transferee is entitled under the Act and the organic rules to receive
7 an assignment of financial rights from a member of a limited cooperative association, the
8 transferee is entitled to share in allocations of profits and losses of the association. This does not
9 mean a transferee would have a greater right than the transferor. If it is a requirement that a
10 patron member transact patronage with an association to participate in allocations of profits and
11 losses, a transferee of financial rights from that member would not be permitted to receive a
12 share of allocations of profits and losses if the transferee did not transact patronage with the
13 association during the period for which the allocations are determined.
14

15 **Subsection (e)** – A transferee of the financial rights of a member of a limited cooperative
16 association does not automatically become a member of the association because of the transfer.
17 For an assignee to become a member with both financial and governance rights requires an act of
18 the association to constitute a transferee a member of the association. The Act does not define
19 the nature of the act. It could be an act of the Board of Directors or a delegation by the Board of
20 the power to admit a transferee as a member to an officer of the association or another person and
21 that person taking the necessary admission action.
22

23 **Subsection (f)** – The subsection recognizes an administrative necessity by relieving a
24 limited cooperative association of any obligation with respect to a transfer of a membership
25 interest in the association, or any portion of an interest, if the association has no knowledge or
26 notice of the transfer or attempted transfer. The burden is on the transferor or transferee to make
27 the association aware of the transfer or attempted transfer.
28

29 **Subsection (g)** – An assignment of all or a portion of a member's interest in a limited
30 cooperative association in violation of a restriction on assignment is not effective against a
31 person who had knowledge of the restriction. Conversely, if an assignee had no notice of the
32 restriction, the assignment is likely to be effective.
33

34 **SECTION 504. SECURITY INTEREST AND SET-OFF.**

35 (a) Subject to subsection (b), a member or transferee may grant a security interest only in
36 financial rights in a limited cooperative association. The granting of a security interest in
37 financial rights is not a transfer for purposes of Section 503. The limitation contained in this
38 subsection does not apply to a member's interest that may be transferred in its entirety under the

1 organic rules.

2 (b) The organic rules may restrict or eliminate the granting of a security interest in
3 financial rights and may permit a security interest to be granted in governance rights. The
4 limitation of subsection (a) to financial rights does not apply in the case of a member's interest
5 that is not subject to a restriction or prohibition on transfer under the organic rules.

6 (c) A limited cooperative association has a continuing perfected security interest in the
7 financial rights of a member to secure payment of any indebtedness or other obligation of the
8 member to the association. Notwithstanding [Sections 308 and 309 of UCC Article 9], the
9 security interest has priority over all other perfected security interests unless otherwise agreed by
10 the association. The association may enforce its security interest by set-off against the member's
11 financial rights in the association.

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

14 **Comment**

15 **Subsections (a) and (b)** – Together these subsections default to permitting a member or
16 transferee to grant a security interest only in financial rights in a limited cooperative association,
17 but permit the organic rules to provide a range of permissions and restrictions from making a
18 grant of a security interest in a membership interest in the association by members or transferees
19 completely permissible or totally restricted subject to any restrictions on alienation of financial
20 rights provided by other law, including common law.

21
22 **Subsection (c)** – A limited cooperative association that allocates and distributes
23 estimated net profits during the accounting year may discover at the close of the year that it has
24 overpaid its members. For example, this could occur in cooperatives that pay for goods or
25 commodities by distributing to the member patrons under marketing contracts (often called “net
26 proceeds contracts”) net proceeds as received from sale of the goods or commodities by the
27 cooperative, that make advances towards estimated patronage dividends, or receive too many
28 capital contributions from per unit retains. The cooperative needs a method to obtain repayment
29 to attempt to avoid a loss that would otherwise be borne by the cooperative and its other

1 members. Section 504(c) provides a limited cooperative association with a continued perfected
2 security interest over all other perfected security interests to secure payment of any indebtedness
3 or other obligation of a member to the association. By giving this security interest to the
4 association priority over all other perfected security interests, the Section makes the time at
5 which the indebtedness or other obligation to the association came into being irrelevant with
6 respect to the time other security interests were perfected. This provision constitutes a balancing
7 of the interests of the member and other creditors of the member, on the one hand, and the
8 association and its creditors, on the other hand.

9
10 If another secured creditor requires a means to protect its security interest, it can seek a
11 subordination agreement from the limited cooperative association or it could seek an assignment
12 of proceeds that would reach distributions made by the association to a member once the monies
13 or other property constituting the distributions leave the hands of the association.
14

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

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

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

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

28 (2) make all other orders that the circumstances of the case may require to give

1 effect to the charging order.

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

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

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

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

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

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

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Comment

Except for Section (h), this Section follows RULLCA § 505 modified only to fit this Act.

Charging order provisions appear in various forms in UPA, ULPA, RULPA, ULLCA, RULLCA, and ULPA (2001). RULLCA § 505 built on those acts, while: (i) modernizing the language; (ii) making explicit certain points that had been at best implicit; and (iii) seeking to delineate more precisely the types of extraordinary circumstances that would have to exist before a court enforcing a charging order would be justified in interfering with a limited liability company's management or activities.

This Section balances the needs of a judgment creditor of a member or transferee with the needs of the limited cooperative association and its members. The Section achieves that balance by allowing the judgment creditor to collect on the judgment from distributions with respect to financial rights of the judgment debtor in the association while prohibiting interference in the management and activities of the association by the judgment creditor or a court. If the organic rules permit the entire interest of a member in an association to be transferrable, this Section only permits a charging order to reach the member's or transferee's financial rights. It does not permit a charging order to reach governance rights in the association. If the organic rules prohibit any assignment of the financial rights of a member or transferee, this Section would nevertheless permit a charging order to reach the member's or transferee's right to distributions with respect to financial rights.

Under this Section, the judgment creditor of a member or transferee is entitled to a charging order against the relevant financial rights. While in effect, that order entitles the judgment creditor to whatever distributions would otherwise be due to the member or transferee whose interest is subject to the order. However, the judgment creditor has no say in the timing or amount of those distributions. The charging order does not entitle the judgment creditor to accelerate any distributions or to otherwise interfere with the management and activities of the limited cooperative association.

"Distributions" may be made in a variety of ways under Section 905. Some of these ways would constitute book entries on the limited cooperative association's records. The charging order could reach those entries as well as property, including intangible property, used for making the distribution, but this would not compel the association to accelerate the time at which the property would be converted to money by the association in its ordinary course of operations.

This Section may not be varied by the organic rules.

Subsection (a) – The phrase "judgment debtor" encompasses both members and transferees. As a matter of civil procedure and due process, an application for a charging order must be served both on the limited cooperative association and the member or transferee whose financial rights are to be charged.

1 **Subsection (b)** – Paragraph (2) refers to “other orders” rather than “additional orders”.
2 Therefore, given appropriate circumstances, a court may invoke either paragraph (1) or (2), or
3 both.
4

5 **Subsection (b)(1)** – The receiver contemplated here is not a receiver for the limited
6 cooperative association, but rather a receiver for the distributions. The principal advantage
7 provided by this paragraph is an expanded right to information. However, that right goes no
8 further than “the extent necessary to effectuate the collections of distributions pursuant to a
9 charging order”.
10

11 **Subsection (b)(2)** – This paragraph must be understood in the context of the balance
12 described in the introduction to this Section’s Comment. In particular, the court’s power to make
13 orders “that the circumstances of the case may require” is limited to “giv[ing] effect to the
14 charging order.”
15

16 **Example:** A judgment creditor with a charging order believes that the limited
17 cooperative association should invest less of its surplus in operations, leaving more funds
18 for distributions. The creditor moves the court for an order directing the association to
19 restrict re-investment. Subsection (b)(2) does not authorize the court to grant the motion.
20

21 **Example:** A judgment creditor with a judgment for \$10,000 against a member obtains a
22 charging order against the member’s transferable interest. Having been properly served
23 with the order, the limited cooperative association nonetheless fails to comply and makes
24 a \$3,000 distribution to the member. The court has the power to order the association to
25 pay \$3,000 to the judgment creditor to “give effect to the charging order.”
26

27 Under subsection (b)(2), the court also has the power to decide whether a particular
28 payment is a distribution, because that decision determines whether the payment is part of the
29 financial rights subject to the charging order. To the extent a payment is not a distribution, it
30 may not be part of the financial rights and, if not, would not be subject to subsection (g).
31

32 Issues have arisen in the income tax area, as well as in some non-tax areas, with respect to
33 whether monies distributed by for profit corporations or allocated and distributed by S
34 corporations as dividends to stockholders employed by the corporations are really compensation
35 or whether amounts treated by a corporation as compensation for services rendered by a
36 stockholder are really disguised dividends. Whether a charging order applies to amounts
37 constituting reasonable compensation for present or past services or reasonable payments made
38 in the ordinary course of business under a bona fide retirement program or other benefits program
39 or for other purposes for which compensation is ordinarily due, is question of importance to this
40 Section. It may require a court to examine the true nature and purpose of monies or other
41 property transferred to a member who is an employee of a limited cooperative association. The
42 same issues can arise with limited liability companies. There to date, case law is scant, but there
43 is authority holding that compensation is a distribution. *PB Real Estate, Inc. v. Dem II*

1 *Properties*, 719 A.2d 73, 75 (Conn. Appl Ct. 1998) (rejecting the defendants’ claim that the
2 payments at issue were merely compensation for their services to their law firm, which was
3 organized as a limited liability company; noting that the defendants’ characterization was at odds
4 with the firm’s business records and tax returns; holding that the payments received were
5 distributions subject to the charging order).

6
7 As in RULLCA, this Act has no specific rules for determining the fate or effect of a
8 charging order when the limited cooperative association undergoes a merger or conversion under
9 Article 15.

10
11 **Subsection (c)** – The phrase “that distributions under the charging order will not pay the
12 judgment debt within a reasonable period of time” comes from case law. *See, e.g., Nigri v. Lotz*,
13 453 S.E.2d 780, 783 (Ga. Ct. App. 1995).

14
15 Enforcement of a charging order is by a foreclosure sale of the interest to which the
16 charging order applies. If a limited cooperative association permits free transferability of a
17 member’s or transferee’s interest in the association and if a member or transferee granted a
18 security interest in the entire interest of the member or transferee in the association, subsection
19 (h) permits the charging order to apply to the entirety of the judgment debtor’s interest in the
20 association. The ultimate application of a charging order under this Section is dependent on the
21 association’s organic rules. The purchaser at the foreclosure sale would not necessarily be
22 permitted to become a member of the association unless all conditions for membership under the
23 organic rules were satisfied even with free transferability of interests and a security interest
24 covering the entire membership interest. Subsection (g) eliminates all other remedies available
25 to the judgment creditor seeking to use a charging order with respect to a membership interest in
26 the association. *But see* Comment to subsection (g).

27
28 **Subsection (e)** – The Comment to subsection (e) of RULLCA § 503 states: “This Act
29 [RULLCA] jettisons the confusing concept of redemption and substitutes an approach that more
30 closely parallels the modern, real-world possibility of the LLC or its members buying the
31 underlying judgment (and thereby dispensing with any interference the judgment creditor might
32 seek to inflict on the LLC).”

33
34 This subsection follows RULLCA’s approach although in cooperatives equity accounts
35 are frequently redeemed in part to provide funds to members and, in part, to maintain ownership
36 of the cooperative by active members. Both of these perhaps contradictory concepts are
37 addressed and coordinated in this Act. The definition of “distribution” in Subsection 102(6) is
38 broad enough to include payments in redemption of a membership interest in a limited
39 cooperative association making those payments part of a member’s financial rights. A charging
40 order could reach distributions to redeem the interest. The procedure provided in RULLCA and
41 followed in this Act is appropriate under this Act.

1 At the same time, when possible, buying the judgment remains superior to the mechanism
2 provided by this subsection, because this subsection requires full satisfaction of the underlying
3 judgment, while the limited cooperative association or the other members might be able to buy
4 the judgment for less than face value. On the other hand, this subsection operates without need
5 for the judgment creditor's consent, so it remains a valuable protection in the event a judgment
6 creditor seeks to do mischief to the association.

7
8 Whether a limited cooperative association's decision to invoke this subsection is within
9 or outside the "ordinary course" of a limited liability company's "activities" that may require a
10 membership vote if there is a disagreement is a question which RULLCA leaves to all the
11 circumstances. Comment to subsection (e) of RULLCA Section (e). This subsection of this Act
12 addresses the question directly by requiring in the last subsection of the Act consent from all the
13 members whose interests are not subject to the charging order for the association to use its funds
14 to pay the judgment creditor under this subsection. This Act does not provide for a membership
15 vote for the association to use its funds to buy the membership interest outside of this subsection.
16

17 **Subsection (g)** – This subsection does not override Article 9 of the Uniform Commercial
18 Code, which may provide different remedies for a secured creditor acting in that capacity. A
19 secured creditor with a judgment might decide to proceed under Article 9 alone, under this
20 Section alone, or under both Article 9 and this Section. In the last-mentioned circumstance, the
21 constraints of this Section would apply to the charging order but not to the Article 9 remedies.
22 The effect of Section 504 with respect to the creation of security interests in membership
23 interests in a limited cooperative association and set-offs needs to be considered in connection
24 with Article 9 security interests and related remedies if a creditor seeks a security interest in a
25 membership interest in an association in which the creditor's debtor is a member.
26

27 This subsection is not intended to prevent a court from effecting a "reverse pierce" of the
28 entity's liability veil where appropriate. In a reverse pierce, the court conflates the entity and its
29 owner to hold the entity liable for a debt of the owner. *Litchfield Asset Mgmt., Corp. v. Howell*,
30 799 A.2d 298, 312 (Conn. App. Ct. 2002) (approving a reverse pierce where a judgment debtor
31 had established a limited liability company in a patent attempt to frustrate the judgment creditor).
32

33 **Subsection (h)** – This subsection makes the Section dependent on the provisions of the
34 organic rules with respect to the rights a charging order may reach.

1 [ARTICLE] 6

2 MARKETING CONTRACTS

3
4 SECTION 601. AUTHORITY. In this [article], “marketing contract” means a contract
5 between a limited cooperative association and another person that need not be a patron member:

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

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

11 Comment

12 Agricultural cooperatives that market or process members’ agricultural commodities have
13 had in traditional cooperative statutes in many states the benefit of provisions that authorize the
14 cooperative to enter into marketing contracts that specifically authorize sums for or methods to
15 establish liquidated damages for a breach of the contract by a member who has contracted to sell
16 and deliver or consign to the cooperative the agricultural commodities produced by the member.
17 Absent these statutory authorizations, marketing contracts had been held to be void as against
18 public policy in the early 1900s and the damages provided in the contracts were treated as
19 unenforceable penalties. *E.g.*, *Burns v. Wray Farmers’ Grain Co.*, 65 Colo. 425, 176 P. 487
20 (1918) (agreement void); *Rifle Potato Growers’ Coop. Ass’n v. Smith*, 78 Colo. 171, 240 P. 937
21 (1925) (agreement upheld and is not invalid because it permits injunctive relief or specific
22 performance); *Mountain States Beet Growers’ Mkt. Ass’n v. Monroe*, 84 Colo. 300, 269 P. 886
23 (1928) (discussion on history of marketing contracts). Section 604 addresses the enforcement of
24 remedies that may be in the contract or the organic rules directly.

25
26 This Article and this Section follow those previous traditional cooperative statutes as well
27 as existing statutes authorizing the formation of marketing limited cooperatives associations
28 which also authorize the use of marketing contracts containing enforcement provisions, including
29 liquidated damages. The Act broadens the application of marketing contracts from marketing
30 contracts solely for agricultural commodities. Its authorization of marketing contracts extends to
31 the sale of products processed from any type of product, commodity, or goods furnished by a
32 member and to commodities, products, and goods of any kind that are marketed through the

1 association. Oregon has provided for a similar breadth in its traditional cooperative statute, ____
2 Oregon Statutes Sections _____.
3

4 This Article has no application to contracts for the purchase of any item by a limited
5 cooperative association for its members in the role of a purchasing entity for the members.
6 Likewise, it does not have any application to any other type of contractual relationship between
7 the association and a member other than a marketing contract. It does not authorize nor prevent
8 the enforcement of remedies, including liquidated damages and injunctive relief, under other
9 types of contracts. Those contracts are governed under the law of contracts except for the
10 contractual relationships between an association and its members which are governed by this Act,
11 the organic rules, and other legal principles.
12

13 **Subsection (1)** – A marketing contract may cover a portion or all of a member’s
14 products, commodities, or goods. It need not be a total output contract to be subject to this
15 Article.
16

17 **Subsection (2)** – This subsection permits a marketing contract to provide for any
18 relationship between the member and the limited cooperative association. The limited
19 cooperative association could be a buyer, a sales agent for the member, a consignee of the
20 member, or could permit the association to act in any other capacity in connection with
21 marketing the member’s products, commodities, or goods.
22

23 **SECTION 602. MARKETING CONTRACTS.**

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

27 (b) A marketing contract may:

28 (1) authorize a limited cooperative association to grant a security interest in the
29 products, commodities, or goods delivered; and

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

1 **Comment**

2
3 **Subsection (a)** – This subsection addresses the question of when title passes to products,
4 commodities, or goods delivered and sold to a limited cooperative association for marketing
5 under a marketing contract. The question often has no clear answer if the contract does not
6 provide one. This subsection defaults to the date of delivery but recognizes the contract may
7 provide a different time.
8

9 **Subsection (b)(1)** – The subsection recognizes that a limited cooperative association may
10 need to borrow money to carry on its operations, including making payments to its member
11 patron suppliers, before it has the opportunity to sell products, commodities, or goods delivered
12 to it for marketing. To assist the association in borrowing, a marketing contract may permit the
13 association to grant a security interest in the products, commodities, or goods delivered to it even
14 if title has not passed to the association.
15

16 **Subsection (b)(2)** – This subsection authorizes a marketing contract to provide a variety
17 of ways to determine the purchase price to be paid for products, commodities, or goods delivered
18 to the association for marketing, including a pooling of products, commodities, or goods for
19 marketing and sale and payment of a purchase price based on the results of marketing the entire
20 pool. The Act does not provide for default rules. The marketing contract must provide the
21 details.
22

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

28 **Comment**

29 This Section limits the primary term of a marketing contract to a maximum of 10 years
30 which is in accord with similar provisions in traditional cooperative statutes that authorize
31 marketing contracts.
32

33 **SECTION 604. REMEDIES FOR BREACH OF CONTRACT.**

34 (a) A marketing contract or the organic rules relating to a marketing contract may

1 establish the right to injunctive relief, specific performance, and liquidated damages and are
2 enforceable in accordance with the terms of the contract or the organic rules.

3 (b) The remedies in subsection (a) are not penalties and are in addition to any other
4 available remedies.

5 (c) This [article] does not affect the remedies available to a limited cooperative
6 association under a contract with a member as a member under Section 114 which is not a
7 marketing contract.

8 **Comment**

9 **Subsection (a)** – Many traditional cooperative statutes that provide for marketing
10 contracts in agriculture have detailed provisions regarding the enforcement of remedies provided
11 in the contract or the organic rules. This Section identifies three primary remedies which a
12 marketing contract may provide and authorizes their enforcement as provided in the contract or
13 the organic rules.

14
15 The reference to the “organic rules” is made to recognize that some traditional
16 cooperatives have the terms of marketing contracts in their organic rules. That could also be
17 accomplished under this Article although it may not be considered “best practices” for a limited
18 cooperative association to do so. Modification of the organic rules of a limited cooperative
19 association may be difficult to achieve at a time when modification of a group of marketing
20 contracts is needed for the exigencies of the business of the association and its members.

21
22 **Subsection (b)** – This subsection is critical in avoiding court decisions from the early
23 1900s. *See* Section 601, comment.

24
25 **Subsection (c)** – This Article has no effect on contract other than marketing contracts.

1 [ARTICLE] 7

2 DIRECTORS AND OFFICERS

3 Comment

4 While much of this Act draws its substance from limited liability company and
5 partnership concepts and statutes, this Article dealing with boards of directors draws heavily
6 from for profit corporation statutes including many provisions of RMBCA on which many
7 traditional cooperative statutes are modeled. This Act requires an elected board of directors for
8 general governance of a limited cooperative association. A substantial number of the provisions
9 of this Article, as in other Articles, may be modified by the organic rules, but in the absence of
10 modification, the Article provides sufficient default rules that a board of directors can be elected
11 and function.

12 SECTION 701. EXISTENCE AND POWERS OF BOARD OF DIRECTORS.

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

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

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

21 Comment

22 Subsection (a) - This subsection is modeled on section 62.280(2) of the Oregon
23 Cooperative Cooperation Act. The subsection does not limit the number of directors to the
24 number of members where there are fewer than three participants, but in that case it does require
25 there to be a number of directors equal to the number of members. The flexibility to deviate
26 below three directors when there are fewer than three members recognizes the industry practice
27 of having wholly-owned cooperative subsidiaries of a cooperative. This Act permits a limited
28 cooperative association organized under it to be a subsidiary of another cooperative entity. It
29 seems ill-advised to require three directors if there are only two members although an association

1 with two members could have more than three directors. Subsection 703(e)(1) would permit that
2 association to have one director who is a non-member if provided in the organic rules, but would
3 limit the number of directors in a two-member association to three. Subsection 701(a) provides
4 the members great flexibility, but not unfettered flexibility, in organizing their own board
5 governance structure.
6

7 **Subsection (b)** - This Act follows statutes for most entities which have a governing body
8 or other individuals authorized by statute or the entity's organic rules to manage or provide for
9 the direction of the entity. This follows the representative democratic approach followed in
10 many traditional cooperatives.
11

12 **Subsection (c)** - Simply being a director does not confer agency authority on a person to
13 act on behalf of a limited cooperative association.
14

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

20 **Comment**

21 **Source** - Derived from ULPA (2001) Section ____.

22 This Section is "new" to the law of cooperatives as a positive statement of law but not as
23 a statement of a cooperative principle.
24

25 **SECTION 703. QUALIFICATIONS OF DIRECTORS AND COMPOSITION OF**
26 **BOARD.**

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

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

29 (c) Unless the organic rules otherwise provide, and subject to Section 303 and

1 subsections (d) and (e), each director of a limited cooperative association must be a member of
2 the association or an individual who is designated by a member that is not an individual and who
3 is a member for purposes of director qualification.

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

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

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

9 (2) two directors if there are five through eight directors; or

10 (3) one-third of the total number of directors if there are nine or more directors.

11 **Comment**

12 This Section follows traditional cooperative approaches for the qualifications of directors
13 in that, although a limited number of non-members may be directors, the directors must be
14 individuals and must be a member of the limited cooperative association or a designee of a
15 member that is not an individual. An officer or employee of the association may be a director,
16 *see* subsection (d), but would be required to be a member, a designee of a member that is not an
17 individual, or a non-member director if non-member directors are authorized by the organic rules
18 within the limitations of subsection (e), and meet any other qualifications for eligibility to be a
19 director established in the organic rules under subsection (c).

20
21 **Subsection (b)** - The organic rules provide additional qualifications for eligibility to be a
22 director, but those qualifications may not be contrary to the required provisions of this Section.

23
24 **Subsection (e)** - In keeping with traditional cooperative governance structures which
25 require directors to be members, although a limited number of non-member directors are
26 permitted if provided in the organic rules, the directors must be predominantly members or
27 designees of members who are not individuals. This is a traditional cooperative policy that is
28 different from corporate policy and the general thrust of federal securities laws for publicly
29 traded corporations. Traditional cooperative policy requires the governance of the cooperative to
30 be in the hands of the members who are its owners and users and who provide the primary
31 financial support of the cooperative. This Act follows that policy but provides some flexibility
32 from it in recognition of the possibility of having investor members in a limited cooperative

1 association and in recognition of the potential usefulness of having a limited number of
2 nonmember directors to provide outside advice and counsel in the affairs of the association.
3

4 **SECTION 704. ELECTION OF DIRECTORS.**

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

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

7 (A) one director if there are two or three directors;

8 (B) two directors if there are four or five directors;

9 (C) three directors if there are six through eight directors; or

10 (D) one-third of the directors if there are nine or more directors; and

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

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

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

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

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

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

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

Comment

Subsection (a) - Following traditional cooperative policies of requiring directors to be members who in traditional cooperatives are the owners, users and providers of primary financial support of the cooperative, this subsection provides for the minimum number of directors who must be patron members. The organic rules may require that there be a greater number of patron directors. The majority of the directors, whether they are patron members or investor members or designees of members who are not individuals, must be elected by the patron members.

Subsection (b) - Although a majority of the directors must be elected by patron members, this subsection permits a limited cooperative association through its organic rules to have great flexibility in the manner of electing the remaining directors. If the organic rules do not provide otherwise, the investor members will elect the remaining directors.

Subsection (c) - Subject to the requirements of subsection (a) regarding the number of directors who must be patron members, the organic rules may provide for some or all of the directors of a limited cooperative association to be elected by districts or classes of members that may be established pursuant to Section 417. An association could have some directors elected by districts or classes and some elected at large. In the context of this Act, the term "classes" of members is broader than the distinction between patron member and investor member distinction but includes that distinction.

Subsection (d) - If provided by the organic rules, directors may be nominated or elected directly by members in districts or classes without a vote of the entire membership or the districts or classes may elect delegates to nominate or vote for directors at the annual meeting of a cooperative association without nominations from or votes by the entire membership.

Subsection (e) - If a class of members has only one member in it, as could occur if there were a number of patron members but only one investor member, the single member of the class may appoint a director rather than requiring the director to stand for election, but this must be provided by the organic rules. This subsection permits minority representation on the board of directors if a class of membership that meets other requirements of the Act for creation of a class is created to consist of a minority group of members.

Subsection (f) - Cumulative voting for directors is not permitted in most traditional cooperatives. This subsection permits the organic rules to provide for cumulative voting. Corporate statutes typically no longer define "cumulative voting." This subsection follows that

1 approach. Best practices would provide a definition in the organic rules if cumulative voting is
2 to be permitted.

3
4 **Subsection (g)** - This subsection requires directors to be elected at an annual meeting of
5 the members except in accordance with subsection (e) if a class of members has only one
6 member, if elections of directors are to be placed in districts or classes created under Section 417,
7 or if a vacancy is to be filled pursuant to Section 709. The organic rules may also provide for
8 methods of election other than at an annual meeting of members. This would include permitting
9 the board of directors to appoint any non-member directors that may be authorized by the organic
10 rules subject to the limitations on the number of non-member directors in subsection 703(e).
11

12 **SECTION 705. TERM OF DIRECTOR.**

13 (a) Unless the organic rules otherwise provide, and subject to subsections 705(c) and (d)
14 and Section 303(c), the term of a director of a limited cooperative association expires at the
15 annual members' meeting following the directors' election or appointment. The term of a
16 director may not exceed three years.

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

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

21 (d) Unless the organic rules otherwise provide, a director does not serve the remainder of
22 the director's term if the director ceases to be a patron member or an investor member or
23 otherwise ceases to qualify to be a director.

24 **Comment**

25 This Section coordinates with Section 709 relating to filling a vacancy on the board of
26 directors of a limited cooperative association.
27

28 **Subsection (a)** - This subsection provides for the annual election of directors at the
29 annual members' meeting but the organic rules may provide for longer terms not to exceed three

1 years. Exceptions are provided for initial directors whose terms are governed by Section 303(c),
2 for holdover directors under subsection 705(c), and for directors who cease to qualify to be a
3 director under subsection 705(d).

4
5 This Act is silent as to whether staggered terms are permitted for directors, but if the
6 organic rules provide for terms longer than annual, the organic rules could also provide for
7 staggered terms of directors.

8
9 **Subsection (b)** - This subsection permits directors to serve unlimited numbers of terms
10 but the organic rules could provide term limitations for directors.

11
12 **Subsection (c)** - This subsection provides for “holdover” directors so that directorships
13 do not automatically become vacant at the expiration of their terms but the same persons
14 continue in office until successors qualify for office. Thus the power of the board of directors to
15 act continues uninterrupted even though an annual members’ meeting is not held or the members
16 are deadlocked and unable to elect directors at the meeting.

17
18 **Subsection (d)** - The Act leaves to the organic rules to provide whether a reduction in the
19 number of directors would shorten the term of a director, but does not terminate a director’s term
20 if the director ceases to be qualified to be a director unless the organic rules provide otherwise.
21

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

26 **Comment**

27 The resignation of a director is effective when a notice in a record is received by a limited
28 cooperative association unless the notice provides a later effective date. If the notice provides a
29 later effective date, since the person giving the notice is still a member of the board, the person
30 may participate in all decisions until the specified date, including the choice of the person’s
31 successor under Section 709. The participation of the resigning director in the decision of the
32 successor may be of importance where control of the board may be affected by the resignation
33 although Section 709 places limitations on the persons who may be appointed as replacements
34 with respect to classes of members who elected the resigning director.

35
36 Unless the organic rules provide otherwise, under subsection 709(a) a replacement
37 director serves only until the next annual members’ meeting at which time the members must

1 vote on this or another replacement to serve until the end of the term of the resigning director if
2 the term would otherwise extend beyond the annual meeting.

3
4 Vacancies created by a resignation effective at a later date may be filled before that date
5 under Section 709

6 .

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

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

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

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

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

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

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

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

24 **Comment**

1 All provisions of this Section may be varied by the organic rules providing maximum
2 latitude for a limited cooperative association in providing for removal of directors. This Act does
3 not provide for removal of a director by the board of directors or through judicial proceedings,
4 but this could be provided in the organic rules. In the absence of variation of the statutory
5 provisions by the organic rules:
6

7 (1) The Section accepts the view that since the members are the owners of the limited
8 cooperative association, they should normally have the power to change the directors at will.
9 This reverses the common law position that directors have a statutory entitlement to their office
10 and can be removed only for cause - fraud, criminal conduct, gross abuse of office amounting to
11 a breach of trust, or similar conduct.
12

13 (2) The process of removing a director by the members is commenced by a demand made
14 in a signed record (essentially a petition process) by members holding 10 percent of the voting
15 power of the membership group who could vote on the election of the director. This is greater
16 than 10 percent of the members in the group that would constitute a quorum for a meeting of the
17 members in the group and of the total votes cast in the election of the director when the director
18 was elected. The record must be delivered to the officer of the limited cooperative association
19 who is charged with keeping its records.
20

21 The organic rules may provide that a director may only be removed for cause. In that
22 case, directors would be provided with the same entitlement to office that directors enjoyed at
23 common law. This would be used if the members wished to provide assurance to directors that
24 they would remain in office unless proper cause is shown for their removal.
25

26 (3) Once the signed record of the demand is received by the limited cooperative
27 association, an officer or the board of directors must call a special members' meeting that is to be
28 held within 90 days and provide proper notice to the members of the meeting stating that the
29 removal will be considered at the meeting.
30

31 (4) A director subject to possible removal must be informed of the possible removal
32 before the members' meeting.
33

34 (5) The vote on the removal of a director by the members must be the same as the vote
35 that would be necessary to have elected the director. Thus if cumulative voting is permitted by
36 the organic rules, cumulative voting would be applicable in a removal vote. This would
37 guarantee a minority faction with sufficient votes to guarantee the election of a director under
38 cumulative voting will be able to protect that director from removal by the remaining members.
39 If cumulative voting is applicable, in computing whether or not a director elected by cumulative
40 voting is protected from removal from office under this Section, the votes should be counted as
41 thought (a) the vote to remove the director occurred in an election to elect the number of
42 directors normally elected by the voting group along with the director whose removal is sought,
43 (b) the number of votes cast cumulatively against removal of the director had been cast for the

1 director's election, and (c) all votes cast for removal of the director had been cast cumulatively in
2 an efficient pattern for the election of a sufficient number of candidates so as to deprive the
3 director whose removal is being sought of the director's office.
4

5 **SECTION 708. SUSPENSION OF DIRECTOR BY BOARD.**

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

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

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

18 **Comment**

19 Although the board of directors may not remove a director, it may suspend a director for
20 30 days for cause as defined in subsection (a). Within the 30 day period the board may call a
21 special meeting of members to consider removing the suspended director in the same manner as
22 if the board received a demand for removal from members under Section 707. In that case, the
23 suspension continues until the removal is determined at the member's meeting. If members do
24 not vote to remove the director, the director continues in office with the suspension removed.
25

26 **SECTION 709. VACANCY ON BOARD.**

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

3 (1) within a reasonable time by majority vote of the remaining directors until the
4 next annual members' meeting or a special members' meeting called to fill the vacancy; and

5 (2) for the unexpired term by members at the next annual members' meeting or a
6 special members' meeting called to fill the vacancy.

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

9 (1) the appointed director must be of that class or district; and

10 (2) the election of the director for the unexpired term must be conducted in the
11 same manner as would the election for that position without a vacancy.

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

14 **Comment**

15 **Subsection (a)** - This subsection provides that the remaining directors (without regard to
16 quorum requirements) are to fill a vacancy on the board within a reasonable time. The
17 replacement director is to serve until the next annual members's meeting or until a special
18 meeting is called by the remaining directors to fill the vacancy. If the term of the director whose
19 position is vacant would have extended beyond the next annual meeting of members, the
20 members are to vote on a person to fill the vacancy until the end of the term at an annual
21 members' meeting or a special members' meeting. The special members' meeting could be the
22 same meeting at which members were asked to vote on the removal of a director.

23
24 **Subsection (b)** - This subsection provides that if a voting group of members is entitled to
25 elect a director, only that voting group is entitled to fill a vacant office which was held by a
26 director elected by that voting group. This section is part of the consistent treatment of directors
27 elected by a voting group of members. *See Sections _____.*

28
29 **Subsection (c)** - This subsection permits the organic rules to provide that a member, who

1 alone constitutes a class of members entitled to appoint a director under subsection 704(e), may
2 appoint a director to replace a director previously appointed by the member if that director's
3 position becomes vacant. Unless the organic rules provide for this, the vacancy would be filled
4 in the same manner as other vacancies under subsections (a) and (b).
5

6 **SECTION 710. COMPENSATION OF DIRECTORS.** Unless the organic rules
7 otherwise provide, the board of directors of a limited cooperative association may fix the
8 remuneration of directors and of nondirector committee members appointed under Section
9 717(a).

10 **Comment**

11 Although the Act permits the organic rules to provide other means for establishing the
12 compensation of directors, the default rule is for the board of directors to fix the remuneration of
13 directors and nondirector committee members appointed by the board pursuant to subsection
14 717(a). This Section is consistent with current corporate practice. *See* RMBCA Section 8.11.
15

16 **SECTION 711. MEETINGS.**

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

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

23 **Comment**

24 This Section provides a maximum flexibility for directors meetings requiring only that
25 the directors meet at least once a year.
26
27

1 **SECTION 712. ACTION WITHOUT MEETING.**

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

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

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

9 **Comment**

10 Pragmatic considerations in many situations make a formal board meeting a waste of time
11 where action needs to be taken but there is no controversy or prior discussions have led to a
12 consensus of the directors that needs to be memorialized in a record of unanimous consent.
13 Where a limited cooperative association is a wholly-owned subsidiary of another cooperative
14 entity and there is only one director of the association, a record of action by the sole director is a
15 natural and efficient way to signify the action. Consent may be signified in one or more
16 documents so long as the documents constitute a record as defined in Section 102, which
17 includes the use of electronic media.

18
19 Under Section 712 the requirement of unanimous consent precludes the possibility of
20 stifling or ignoring opposing argument. If a director is opposed to the action, or is uncertain
21 about it, the director may compel discussion at a meeting by withholding consent.
22

23 **SECTION 713. MEETINGS AND NOTICE.**

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

27 (b) Unless the organic rules otherwise provide, notice of the time, date, and place of a
28 special meeting of a limited cooperative association's board of directors must be given to all

1 directors at least three days before the meeting, the notice must contain a statement of the
2 purpose of the special meeting, and the meeting is limited to the matters contained in the
3 statement.

4 **Comment**

5 Regular meetings of the board of directors may be held at designated times without
6 further notice of time, date, place or purpose. Special meetings require three days' notice and
7 must state the time, date, place and purpose. At special meetings, only the matters specified in
8 the notice may be subject to action at the meeting which is contrary to RMBCA Section 8.22.
9 This Act does not require the notice of a special meeting to be in writing.

10
11 Best practices might suggest that at least some reminder of a regular meeting and a
12 proposed agenda be given to directors prior to the meeting. This Act does not require a notice
13 because (a) any additional requirements may subvert certainty of action taken at regular
14 meetings; and (b) conforms to the purpose of this Act to provide a flexible entity to meet the
15 unique needs of different groups that may organize under the Act.

16
17 The organic rules may provide for different requirements regarding notices of meetings.
18

19 **SECTION 714. WAIVER OF NOTICE OF MEETING.**

20 (a) Unless the organic rules otherwise provide, a director of a limited cooperative
21 association may waive any required notice of a meeting of the association's board of directors in
22 a record before, during, or after the meeting.

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

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

28 (2) the director promptly objects upon the introduction of any matter for which

proper notice has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

Comment

Subsection (a) - Subsection (a) provides a default rule variable by the organic rules that follows RMBCA Section 8.23 in reversing the common law rule that invalidates waivers of notice by directors after the date and time of the meeting. The RMBCA follows modern practice in viewing notice as often a technical requirement with the conclusion that waivers should be freely available.

Subsection (b) - Absent modification by the organic rules, the subsection requires a director to object to the holding of a meeting on the ground of lack of notice at the beginning of the meeting or upon the director's arrival. If, however, there is no objection to the notice of a meeting, but a matter is presented at a meeting that was not included in the notice, a director may object at the time the matter is presented.

If any director is absent at a meeting and the absence indicates there may not have been proper notice, any director may object to the meeting and that director or any absent director may attack action taken at the meeting for lack of notice. A director who stays during a meeting to which the director has objected is not presumed to have waived notice of the meeting unless the director votes for or assents to action taken at the meeting in which case the director would be considered to have waived objection to the meeting on grounds of a lack of notice.

SECTION 715. QUORUM.

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

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

(c) A director present at a meeting but objecting to notice under Section 714(b)(1) or (2)

1 does not count toward a quorum.

2 **Comment**

3 **Subsection (a)** - Unlike RMBCA Section 8.24 which permits a board of directors to have
4 a flexible number of directors, this Act requires the number of directors to be fixed either in the
5 organic rules or by a resolution of the board within parameters established by the organic rules.
6 Thus, this subsection establishes a quorum as a majority of the fixed number of directors. If a
7 higher number is to be required for a quorum, it must be provided in the articles of organization
8 and not in the bylaws.

9
10 **Subsection (b)** - This subsection permits a meeting to continue once a quorum is
11 established even if sufficient directors leave the meeting to reduce those in attendance to less
12 than a quorum. This means no director may block the board from acting simply by leaving the
13 meeting. This is a different approach than that found in RMBCA Section 8.24.

14
15 **Subsection (c)** - For purposes of establishing a quorum, a director who is present but only
16 to object to the meeting because of notice is not counted in determining the presence of a
17 quorum.
18

19 **SECTION 716. VOTING.**

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

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

24 **Comment**

25 A limited cooperative association may not provide for any director to have more than one
26 vote in connection with action by the board of directors. A majority of directors may take action
27 as a board, but the organic rules may establish a higher requirement up to unanimity on some or
28 all matters that come before the board.
29

30 **SECTION 717. COMMITTEES.**

31 (a) Unless the organic rules otherwise provide, a limited cooperative association's board

1 of directors may create one or more committees and appoint one or more individuals to serve on
2 a committee.

3 (b) Unless the organic rules otherwise provide, an individual appointed to serve on a
4 committee of a limited cooperative association need not be a director or member of the
5 association.

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

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

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

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

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

15 **Comment**

16 This Section provides substantial flexibility in the board of directors to establish
17 committees. The flexibility may be expanded or contracted by the organic rules. Although
18 unstated, for the board to act to create a committee, a majority of a quorum would be required to
19 create a committee as with any other action of the board. The Act does not provide for creation
20 of committees by anyone other than the board, but as part of management functions, management
21 could create committees to assist with functions of a limited cooperative association, but any
22 committees created by management would not have the powers that could be delegated to a
23 committee by the board of directors.

24
25 Many types of committees have become common in organizations, *e.g.*, executive
26 committees, audit committees, litigation committees, legislative committees, membership
27 committees.
28

1 In the traditions of many types of cooperatives, non-director members of the cooperative
2 are permitted to observe board meetings. These traditions may have emerged from the member
3 governance concepts in cooperatives especially those in the non-profit sector or where
4 cooperatives, such as utility cooperatives, operate within a regulatory atmosphere. This Act does
5 not address this matter. Best practices may suggest this matter be addressed in the organic rules.
6 This Act implicitly allows the board to close its meetings. In some areas, such as employment
7 law, legal principles and practices may make it advisable or necessary to close meetings of the
8 directors.

9
10 **Subsection (a)** - Under this subsection a committee may consist of only one individual.
11 This can facilitate rapid decision making when circumstances require it.

12
13 **Subsection (b) and (c)** - The directors may appoint persons who are not directors or
14 members of the limited cooperative association to a committee, but if persons are appointed who
15 are not directors, they have all the rights, duties, and obligations of a director appointed to serve
16 on a committee. This is broader than RMBCA Section 8.25 which authorizes the board of
17 directors of a corporation to create committees that consist only of board members. The
18 Comments to that Section make it clear that committees consisting of non-board members may
19 be created by the board or management of a corporation. This Act provides for the board to have
20 greater flexibility in the creation of committees but does not limit other ways in which a
21 committee may be created and its members designated.

22
23 **Subsection (d)** - The board of directors can delegate substantial powers to a committee
24 but may not do so with respect to the three subjects listed in paragraphs (1), (2) or (3).
25

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

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

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

act].

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

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

Comment

The approach taken to Sections 718 and 719 recognizes that (1) states take fundamentally different approaches to fiduciary duties within unincorporated organizations of the same kind; (2) there is variety among the states in their approach within corporate statutes; and (3) there is variety among the states in their approach in cooperative laws. The existing cooperative statutes appear to most closely follow corporate fiduciary duty formulations.

This Act establishes an unincorporated cooperative. Although an unincorporated entity, the board of directors of a limited cooperative association under this Act functions more analogously to a corporate board than the managers in a manager-managed limited liability company or general partners in a limited partnership. The flexibility of a limited liability company does, however, allow the operating agreement to establish a corporate-like board.

If a statute to which reference is made permits the organic rules to vary the standards of conduct and liability of directors, drafters of the organic rules of a limited cooperative association should take care to provide for the levels of conduct and potential liability to be imposed on directors.

SECTION 719. CONFLICT OF INTEREST.

(a) The law applicable to conflicts of interest between a director of an entity organized under [insert reference to this state’s cooperative corporation act] [insert reference to this state’s general business corporation act] governs conflicts of interest between a limited cooperative

1 association and a director or member of a committee of the board of directors of the association.

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

5 ***Legislative Note:*** See the *Legislative Note* following Section 718.

6 **Comment**

7 See the Comment to Section 718.

8 **Subsection (b)** - This subsection recognizes that in a cooperative where the members
9 both own and patronize the cooperative and where directors are usually members of the
10 cooperative there will be technical conflicts of interest if a director properly performs director's
11 functions because in doing so the director may receive a benefit even if it is a benefit shared by
12 other members. The subsection makes it clear that in those cases a director will not be held to
13 have a conflict of interest simply by performing the required duties of a director.
14

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

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

24 **Comment**

25 In keeping with traditional cooperative values and principles, *e.g.*, community interests,

1 interests of persons related to the cooperative, and other appropriate cooperative principles such
2 as education regarding cooperative organizations, this Section clearly permits the board of
3 directors of a limited cooperative association to consider matters which may be considered
4 improper for consideration in connection with other entities.
5

6 **SECTION 721. RIGHT OF DIRECTOR OR COMMITTEE MEMBER TO**

7 **INFORMATION.** A director of a limited cooperative association or a member of a committee
8 appointed under Section 717 may obtain, inspect, and copy all information regarding the state of
9 activities and financial condition of the association and other information regarding the activities
10 of the association reasonably related to the performance of the director's duties as director or the
11 committee member's duties as a member of the committee. Information obtained in accordance
12 with this Section may not be used in any manner that would violate any duty of or to the
13 association.

14 **Comment**

15 This Section authorizes a director or a member of a committee created and appointed by
16 the board of directors to have access to all information regarding a limited cooperative
17 association that is necessary for the individual to perform the functions of a director or a member
18 of a committee as the case may be. A director's or committee member's use of the information
19 is, however, limited to its use in performing the functions for which the information was obtained
20 and not in any way that would violate the individual's duty to the association or any duty of the
21 association.
22

23 **SECTION 722. APPOINTMENT AND AUTHORITY OF OFFICERS.**

24 (a) A limited cooperative association has the officers:

25 (1) provided in the organic rules; or

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

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

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

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

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

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

13 **Comment**

14 This Section provides substantial flexibility for a limited cooperative association to
15 structure its internal affairs with respect to officers. Only an officer to prepare and maintain
16 records required by Section 113 and to authenticate records is required. Practically, most limited
17 cooperative associations may need additional officers. The offices may be established through
18 the organic rules or by the board of directors if not provided in the organic rules. The Act
19 contemplates the board will appoint officers but can be modified by the organic rules and should
20 be done in larger associations where one group of officers serves under a chief executive or other
21 officer.

22
23 **Subsection (d)** - The duties, authority and obligations of officers are to be provided in the
24 organic rules and by the board of directors in accordance with the organic rules.

25
26 **Subsection (e)** - Merely by being elected or appointed as an officer of a limited
27 cooperative association, an individual does not gain contractual rights with the association.
28

29 **SECTION 723. RESIGNATION AND REMOVAL OF OFFICERS.**

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

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

6 **Comment**

7 If an officer is removed or resigns, this in and of itself will have no effect on contractual
8 rights of an officer under an employment or other contract with the association which will govern
9 the rights and obligations of the officer and the association following the removal or resignation.

10
11 This Act contains no provision directly addressing the standard of conduct of officers.
12 This is, at the least, not unusual in the world of general cooperative statutes. Thus, this Act
13 leaves much of the law governing officers to contract and agency principles.

14
15 There is a distinction between the power to remove an officer and the right to do so. This
16 Section is intended to give complete discretion to the board of directors to remove officers (the
17 power). The exercise of that power; however, may very well lead to a damage claim by the
18 officer if, for example, the officer has a separate employment contract. The exercise of the power
19 could also violate other law (*e.g.*, Title VII of the Civil Rights Act).

20
21 **Subsection (a)** - Authority for removal of an officer resides in the board of directors.
22 Removal need not be for cause.

23
24 **Subsection (b)** - Subsection (b) follows current corporate law permitting an officer to
25 resign immediately or through a resignation that becomes effective at a later date. Notice of the
26 resignation must be given to the limited cooperative association. This subsection does not
27 require any action by the association with respect to a resignation.

1 [ARTICLE] 8

2 INDEMNIFICATION

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

10 SECTION 801. INDEMNIFICATION.

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

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

19 Comment

20 Source - ULPA (2001) Section 901.

21 Subsection (a) - This subsection is similar to subsection 107(2) for domestic limited
22 cooperative associations.

23
24 Subsection (b) - This subsection makes it clear that differences between the laws of an
25 adopting jurisdiction, including this [act] and the laws of another jurisdiction will not prevent a
26 foreign cooperative formed under the law of the other jurisdiction from obtaining a certificate of
27 authority under this [act], but if the law of the other jurisdiction under which the foreign
28 cooperative is organized is not "similar" to this [act], the foreign cooperative would not be
29 eligible for a certificate of authority under this [act].

1 [ARTICLE] 9

2 CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

3
4 SECTION 901. MEMBERS' CONTRIBUTIONS. The organic rules must establish

5 the amount, manner, or method of determining any contribution requirements for members or
6 may authorize the board of directors of a limited cooperative association to establish the manner
7 and terms of any contributions by members.

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

12 Comment

13 This Section operates to require the organic rules to contain provisions governing
14 additional capital contributions from existing members and contribution requirements for new
15 members. *See also* Section 402. It allows the organic rules to provide for a structure like that in
16 limited partnerships where “capital call” provisions are drafted carefully into the agreement but
17 which may still be subject to rather broad authority in the general partner.

18
19 An amendment of the organic rules pursuant to Section 1406 is necessary to require
20 existing members to contribute additional capital if the organic rules are silent regarding
21 additional contributions by members.

22
23 Under that Section consent in a record is necessary by each member which the
24 amendment proposes to require to make additional contributions. *See* Section 1406, Comment.
25 The consent requirement, therefore, is consistent with the merger and conversion provisions in
26 [this Act] and with the default, but broader, unanimity required in partnerships.

27
28 The limited cooperative association also has information requirements concerning
29 contributions. Section 113 (a)(14).

30
31 It is certainly permissible, given the flexibility of [the Act], for the organic rules to
32 provide for pre-emptive rights for existing members or to fashion other anti-dilution provisions.

1 **SECTION 902. FORMS OF CONTRIBUTION AND VALUATION.**

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

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

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

12 **Comment**

13 **Subsection (a)** - This subsection is derived from RULLCA (2006) § 402 and provides
14 latitude for the form of contribution.
15

16 **Subsection (c)** - The board of directors, subject to modification by the organic rules, has
17 the authority and obligation to determine the value of a member's contribution and reflects the
18 central role performed by the board of directors under traditional cooperative statutes. *See*
19 RMBCA § 6.21(c) and (d).
20

21 Valuation of different forms of contributions raises the specter of unfairness or abuse if,
22 for example, services are valued optimistically. A modicum of protection from such abuse is
23 provided by director standards of conduct and liability under Section 718 and from a conflict of
24 interest under Section 719 just as under, *e.g.*, the MBCA.
25

26 This Act's approach differs from ULPA (2001) § 502(c) and RULLCA (2006) § 403 in
27 that it does not give creditors a direct right to enforce the contribution obligation of a member.
28 However, care needs to be exercised concerning the variance of the valuation in subsection (c)
29 because such variance may be construed to give creditors an indirect right similar to the watered
30 stock issue under older corporate acts.

1 **SECTION 903. CONTRIBUTION AGREEMENTS.**

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

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

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

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

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

15 (d) An agreement to make a contribution may vary the requirements of this section.

16 **Comment**

17 Pre-formation agreements to contribute to a limited cooperative association are
18 contemplated by this Section and it states default terms variable by the terms of the agreement
19 itself. The default terms are derived from RMBCA § 6.20.

20
21 Agreements after formation are not governed by this Section. Post-formation agreements
22 are contracts between the association and, subject to Section 901, are within the authority of the
23 board of directors. *See also*, Section 113 (a)(14).

24 **SECTION 904. ALLOCATIONS OF PROFITS AND LOSSES.**

25 (a) The organic rules may provide that profits of a limited cooperative association be

1 allocated among members, among persons that are not members but that conduct business with
2 the association, to an unallocated account, or to any combination thereof. Unless the organic
3 rules otherwise provide, losses of the association must be allocated in the same proportion as
4 profits.

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

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

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

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

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

18 (1) a capital reserve; and
19 (2) reasonable reserves for specific purposes, including expansion and
20 replacement of capital assets, education, training, and information concerning principles of
21 cooperation, community responsibility, and development.

22 (e) Subject to subsection (f) and the organic rules, the board of directors of a limited

cooperative association shall further allocate the amounts determined pursuant to subsections (a), (b), and (c):

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

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

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

Comment

Background

Allocation of profits and losses are typically not a matter of statute in general unincorporated or general corporate statutes. The modern trend is for organizational law to expressly govern distributions but not detail the manner or method of the internal allocation of profits and losses between and among the owners. *But see*, RUPA (1997) § 401(a) (requiring capital accounts for each partner). Rather, allocations are left to organic rule, *e.g.* the operating agreement in limited liability companies, accounting conventions for purposes of financial accounting or reporting, and state and federal income tax accounting law for purposes of income taxation. Simply, accounting and tax accounting methods are unique and varied and will apply largely independently of any state law allocation provisions.

Moreover, for general business entities there seems to be little purpose for intervention by an organizational statute in allocations. For example, the RMBCA has abandoned much of corporations capital machinery required by older statutes. For example, it no longer requires par value. RMBCA § 2.02(b)(2)(iv). The purpose of that machinery was creditor protection and the RMBCA version of that machinery began being dismantled in 1980. *See Manning and Hanks, Legal Capital* 194 (1990). Concerning those changes, a leading treatise observed: "It is conceivable, even, that the proposed changes may lead some persons for the first time to examine

1 the degree of protection afforded to creditors by the present legal capital system and discover that
2 it is a Swiss Cheese made up mainly of holes. . . .” *Id.*

3 4 Cooperatives

5
6 The trend, for good reason, in general organizational statutes is away from including
7 provisions concerning allocations. Nonetheless, regulatory law sometimes uses capital allocation
8 and balance sheet accounting for regulatory leverage, for example, in the regulation of financial
9 institutions.

10
11 *One reason* “allocations” are important in cooperative law is an analogue to regulatory
12 law. The reason has two component parts. First, allocation division is a key component to
13 determine whether an entity is operating in accordance with a “cooperative plan” which is a term
14 used in some traditional cooperative statutes; or, on a “cooperative basis” which is a term used
15 frequently in the literature on cooperative statutes, and as a term of art in income taxation for
16 determination of whether an entity is a cooperative. This Act takes the approach that the more
17 use of terms of art undefined in the text is much too ambiguous for purposes of defining a limited
18 cooperative association for state law purposes, a trap to the unwary, and would inhibit the use of
19 the Act and organizations governed by it.

20
21 *A second reason*, related to the first, is both historical and a matter of cooperative values.

22
23 One of the fundamental principles of cooperative organizations is that they operate “at
24 cost.” This is a different concept from operating “for profit” or “not for profit.” This principle
25 has provided much confusion for persons dealing with cooperatives, including regulators, who
26 seek to compartmentalize cooperatives as either “for profit” or “not for profit” organizations.
27 Cooperatives are unique in having a principle that would require a cooperative to have “no
28 profit” and “no loss” at the end of an annual accounting period.

29
30 Because of the practical impossibility for many cooperative organizations to operate
31 strictly at cost, techniques have been developed to reach the “at cost” result.

32
33 Profits are usually allocated among members (and in some among non-member patrons)
34 through some method that returns annual profits to the members on the books of the cooperative
35 or in cash payments, or a combination of both. Traditional agricultural cooperatives have usually
36 used patronage dividends (called by various names such as “patronage allocations” and
37 “allocations of net margins,” as the means to provide for net profits at the end of an accounting
38 year (or other period) to be allocated among the members. This approach is similar to the
39 allocations of net profits among partners in a partnership or members in a limited liability
40 company but is derived in a cooperative from a different philosophical basis than the methods of
41 allocations in partnerships and limited liability companies where allocations are made because of
42 the non-reporting entity basis of federal and state income tax laws. Another method utilized by
43 certain marketing cooperatives is a “per unit retain” under which the cooperative withholds a

1 portion of the purchase price to be paid to a member for goods or commodities marketed by or
2 through the cooperative as a capital contribution to the cooperative.

3
4 Some traditional cooperatives permit assessments of members if there is a loss at the end
5 of an annual accounting period. Among other techniques, losses may also be charged against
6 reserves or surplus accounts or be carried over to be offset against future profits. The method of
7 allocations of losses is usually the same as allocations of profits. This is reflected in Section 904,
8 especially Section 904(e).

9
10 This Act does not address any particular technique to be utilized by an association.
11 Section 904 does not prohibit any appropriate method to be authorized in the organic rules.
12 While based on partnership accounting techniques and rules, Section 904 overlays those
13 partnership accounting techniques and rules with the allocation techniques for patron members
14 that have been developed in traditional cooperatives for allocations of profits and losses to be
15 based on patronage. *See*, subsection 904(e)(1). The organic rules could authorize methods of
16 allocation and designate the Board of Directors or others to apply the methods to net profits or
17 losses allocated to patron members. Because investor members are not patron members, the
18 organic rules may provide methods unburdened by patronage considerations for allocating net
19 profits and losses among investor members.

20
21 *A third reason* that this Act provides rather detailed allocation provisions is because
22 “profit” is a key concept in subsection 904(c) and sets constraints on the division of profits
23 between patrons and investor members. Here the Section operates in a regulatory manner and is
24 one of the central policy matters in the Act. For comparison of existing statutes allowing for
25 cooperative associations similar to the limited cooperative association see the comparative chart
26 at the end of the Prefatory Note.

27 28 Operation of Section 904

29
30 It is imperative to recognize that Section 904 for purposes of this Act is only a part of the
31 organizational law of the adopting jurisdiction. Accounting standards, tax law, and exceptions
32 and qualifications found in other state and federal law and regulation independently apply to
33 limited cooperative associations governed by this Act. These other laws and regulations may
34 require careful drafting of organic rules to take advantage of, or comply with, those other laws.
35 Thus, a limited cooperative association may not be the best entity choice in any given planning
36 context.

37
38 The organic rules govern the allocation of profits and losses subject to limitations in
39 subsections (c) and (d). This Section establishes a series of default rules. First, in part because a
40 limited cooperative association is not required to have investor members. Subsection (b)
41 establishes the default rule that all profits and losses must be allocated to patron members. This
42 also shifts the burden of negotiating the financial structure to prospective investor members if the
43 entity anticipates having investor members. This default underscores the primacy of patron

1 members under the default rules.

2
3 Subsection (e) provides a default manner for allocating profits and losses within the
4 patron member group and within the investor member group. Within the patron member group
5 the default is based on patronage (a defined term). Within the investor member group the default
6 is based on contributions similar to, for example, ULPA (2001).

7
8 Subsection (f), and to a lesser extent subsection (d), are as much explanatory as they are
9 necessary default rules; though they do perform a default function. These subsections satisfy an
10 expectation of users of the Act familiar with both traditional cooperatives and cooperative
11 associations similar to this Act. It gives specific permission for establishing reserves and manner
12 of allocation that are common in cooperative parlance. In that regard the provisions are helpful
13 for users of the Act whom are unfamiliar with cooperatives because they introduce cooperative
14 nomenclature. Paragraph (d)(2) emphasizes the underlying importance of cooperative principles
15 and values. The reference to cooperative principles is meant to be open-ended to allow for their
16 evolution over time. The paragraph is a new formulation but similar provisions are sometimes
17 found in existing cooperative statutes.

18
19 The terms used in subsection (c) are not expressly defined by this Act because such
20 definitions are not necessary for using the Act; because some of the terms are described and
21 governed by other provisions; and because the terms are general rather than specific and
22 definitions might falsely constrain cooperative business practices.

23
24 Subsection (C), as supplemented by subsection (d), is central to the Act and the operation
25 of limited cooperative associations. The determination of the percentage floor required to be
26 allocated to patron members is a difficult policy decision. On one hand, the percentage goes to
27 the heart of what it means to be a cooperative. On the other hand, one of the purposes of this Act
28 is to encourage capital formation by allowing for investor members. To that end it is necessary
29 to provide enough flexibility in the Act to allow meaningful financial participation by investor
30 members. Existing cooperative association statutes are far from uniform concerning the
31 percentage selected.

32
33 This Act mandates a relatively high percentage compared to existing cooperative
34 association statutes but those statutes do not include the concepts contained in subsections (c)(1)
35 and (c)(2). Subsections (c)(1) and (c)(2) are new in this Act.

36
37 Subsections (c)(1) and (c)(2) recognize, that regardless of the manner of calculation, one
38 of the primary purposes of traditional cooperatives was to provide either a market for or source of
39 an economic resource; that is, to make a market. In a cooperative formed, for example, to market
40 a product the total return to members included the value of the product and any savings or profit
41 generated by the cooperative. In some cooperatives members are either paid or deemed to have
42 received a “selling price.” In other cooperatives the product delivered to the cooperative simply
43 determines the relative portion of the members’ allocation of the cooperatives results from

1 operation without fixing or determining a separate sales price of the product (“net proceeds” or
2 “agency method” arrangement). Subsection (c)(2) is limited to “stated fixed return.” It is
3 historically rooted in current cooperative law which allows for non-member “preferred” investors
4 (preferred stock).

5
6 Subsections (c)(1) and (c)(2) expressly recognize the market making component of the
7 limited cooperative association for both patron members (delivering product in this example) and
8 investor members (financing the entity) and use limited contractual mechanisms to determine the
9 value of the different in-puts to the association. Those values are then subtracted to determine
10 the amount subject to the mandatory allocation floor.

11
12 Just as in other entity planning contexts the choice of financial structure and allocation
13 provisions can dramatically vary the economics of the entity. The use of joint venture or
14 combination entity structures when coupled with contract terms and are, or management
15 contracts may be, deployed in ways which significantly effect total returns to various participants.
16

17 **SECTION 905. DISTRIBUTIONS.**

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

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

24 **Comment**

25 **Subsection (b)** - Cooperative statutes typically contain this or a similar provision
26 consistent with cooperative business practices and, perhaps, for income taxation for limited
27 cooperative associations which elect to be treated as corporations.
28

29 **SECTION 906. REDEMPTION OF EQUITY.** Unless the organic rules otherwise
30 provide and subject to Section 907, a limited cooperative association may redeem a member’s
31 equity but no redemption of a member’s equity may be made without full and final authorization

1 by the board of directors, which may be withheld for any reason in the board's sole discretion.

2 **Comment**

3 In traditional cooperatives equity retirement programs the board of directors frequently
4 has the authority as provided in Section 906. It may be significant for financial reporting and
5 income tax purposes.

6
7 It is a default rule and its exercise could be subject to contract rights.
8

9 **SECTION 907. LIMITATIONS ON DISTRIBUTIONS.**

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

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

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

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

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

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

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

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

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

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

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

12 **Comment**

13 **Source:** RULLCA (2006) Section 405, ULPA (2001) Section 508, which was derived
14 from ULLCA (1996) Section 406, which was derived from RMBCA Section 6.40.

15
16 Distributions could also be subject to the organic rules.

17
18 **Subsection (a)** - This exception applies only for the purpose of this Section. It is
19 contained, *e.g.*, in DEL. CODE ANN., tit. 6, § 18-607(a) (2006) (limited liability company).

20
21 **Subsection (e)** - This exception is directly derived from RULLCA (2006) § 405.
22

23 **SECTION 908. LIABILITY FOR IMPROPER DISTRIBUTIONS: LIMITATION** 24 **OF ACTION.**

25 (a) A director who consents to a distribution made in violation of Section 907 is
26 personally liable to the limited cooperative association for the amount of the distribution which

1 exceeds the amount that could have been distributed without the violation if it is established that
2 in consenting to the distribution the director failed to comply with Sections 718 or 719.

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

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

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

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

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

14 **Comment**

15 **Source:** ULPA (2001) Section 509, which was derived from ULLCA (1996) Section 407.
16 *See* RULLCA (2006) Section 406; RMBCA Section 8.33.

17
18 This Comment closely tracks and repeats the comment to ULPA (2001) § 509. In
19 substance and effect this Section protects the interests of creditors of the limited partnership. By
20 operation of 112(b), the organic rules may not change this Section.

21
22 **Subsection (a)** - This subsection refers both to Section 907 which includes in its
23 subsection (c) a standard of ordinary care (“reasonable in the circumstances”), and to Section 718
24 and Section 719 (concerning standards of conduct and liability of directors). Section 718 adopts
25 the standards consistent with other law in an adopting jurisdiction by reference. Thus, the
26 standard will be determined by that other law which will include some notion of the business
27 judgment rule.

28
29 A limited cooperative association’s failure to meet the standard of Section 907(c) cannot

1 by itself cause a director to be liable under Section 908(a). *Both* of the following would have to
2 occur before a failure to satisfy Section 907(c) could occasion personal liability for a director
3 under Section 908(a):
4

5 • the association “base[s] a determination that a distribution is not prohibited on
6 financial statements prepared on the basis of accounting practices and principles that are [not]
7 reasonable in the circumstances or on a [not] fair valuation or other method that is [not]
8 reasonable in the circumstances”[Section 907(c)].
9

10 *AND*
11

12 • the director’s decision to rely on the improper methodology in consenting to the
13 distribution constitutes a breach of the standard imported into [this Act] by Section 718 or
14 Section 719.
15

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

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

28 **Comment**

29 There is a great variation among the states concerning exemptions for cooperatives from
30 state securities laws and this Act does not attempt to change the settled policy of a state. Section
31 909 is further limited, however, to apply the law of the adopting jurisdiction to patron member
32 interests because those interests are most similar to membership interests in traditional
33 cooperatives. Securities exemptions may be particularly important where the limited cooperative
34 association distributes interests which might be deemed to be securities in lieu of money on a
35 regular basis. Federal securities law will, obviously, apply independently of this Act or any state
36 securities law and applicable exemptions, if any, available under federal law must be perfected in

1 accordance with that law.
2

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

8 ***Legislative Note:** The general cooperative law of many, but not all states, contains a provision*
9 *unique to cooperatives concerning the disposition of unclaimed property. Some of these*
10 *provisions allow unclaimed property to revert to the cooperative if, after reasonable search, the*
11 *member cannot be found; others may allow the cooperative to donate unclaimed property to a*
12 *charity. In states having such a provision the legislature should consider as a matter of policy*
13 *whether the same provision should be applicable to limited cooperative associations. This is the*
14 *appropriate place in this Act for cross-referencing the provision contained in other law of the*
15 *adopting jurisdiction and thereby incorporating it by reference. See, e.g., OREGON REV. STAT. §*
16 *62.425 (2003). If the referenced statute in a given state requires the cooperative's articles or*
17 *bylaws to authorize the use of the statutory provision, the authorization requirement should be*
18 *added to the list in Section 112.*

19
20 **Comment**
21

22 The probable reason that some state traditional cooperative statutes contain unique
23 provisions concerning unclaimed property it holds on behalf of members it cannot locate after
24 reasonable search is two-fold. First, many cooperatives have revolving membership and, in the
25 regular course of business, have occasional small sales that are patronage; for example, a
26 consumer food cooperative. In these cases it can be reasonably anticipated that there will be
27 numerous accounts with small balances that will not be claimed. Second, cooperative principles
28 and values emphasize community and operation on a cost basis. While operation at cost is not
29 synonymous with either not-for-profit or charity; it may be appropriate to distinguish
30 cooperatives from general for-profit for purposes of treatment of any unclaimed property.

1 [ARTICLE] 10

2 DISSOCIATION

3
4 SECTION 1001. MEMBER'S DISSOCIATION.

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

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

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

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

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

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

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

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

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

1 than the date the association had notice, on that later date;

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

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

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

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

8 (B) there has been a transfer of all the member's financial rights in the
9 association, other than:

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

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

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

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

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

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

21 (iii) within 90 days after the notice is sent under clause (ii), the
22 member does not revoke its certificate of dissolution or the equivalent, or the jurisdiction of

1 formation does not reinstate the association’s charter or right to conduct business; or

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

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

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

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

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

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

12 **Comment**

13 **Source** – Derived from RULLCA (2006) Section 601; ULPA (2001) Sections 601 and
14 603.

15
16 This Act follows current phraseology in using “dissociation” as the term applied to a
17 person ceasing to be affiliated with an organization as a member or partner. Older statutes used
18 the term “withdrawal.”

19
20 This Section, together with Sections 1002 and 1003, addresses a member’s dissociation
21 from a limited cooperative association although many provisions of these Sections may be varied
22 by the organic rules. Drafters of organic rules should consider the different dynamics in
23 associations with many members versus those with a small number of members and recognize
24 those differences in their drafting of the organic rules. For example, associations with few
25 members may need to be designed with more restrictions on dissociation than would be
26 appropriate for associations with many members. This Act does not provide different rules for
27 associations with a large number of members versus associations with a small number, but the
28 organic rules could do so. This is consistent with RULLCA (2006) and ULPA (2001) where
29 dissociation of members or partners is treated generally without regard to the numbers of
30 members in the entity. Consideration should be given to the dichotomy between patron members
31 and investor members where investor members are authorized.

1 Planners should carefully consider whether all the events set forth as causing a
2 dissociation should or would trigger any redemption equity of the dissociated member in the
3 limited cooperative association.
4

5 This Act does not provide for a member's becoming incompetent as a cause for
6 dissociation. This could be addressed in the organic rules. Section 1003 does provide for the
7 representative of an incompetent member to have certain rights as a transferee and certain
8 financial rights, but not to rights to obtain information that are available to a personal
9 representative or other representative settling the estate of a deceased member.
10

11 As in other provisions of the Act, what constitutes proper notice in connection with a
12 dissociation is governed by other law.
13

14 **Subsection (a)** – This subsection recognizes the power of a person to dissociate as a
15 member of a limited cooperative association. The “power” to dissociate is different from the
16 “right” to dissociate. While a member may have the power to dissociate from an association, the
17 dissociation may be “wrongful” as a violation the organic rules, including a specific prohibition
18 on the right to dissociate, or for other reasons described in subsection (b), or may violate
19 contractual obligations between the member and the association. For example, a prohibition
20 against dissociation in the organic rules could not stop a member from dissociating from the
21 association (the power to dissociate), but the dissociation would clearly be a violation of the rules
22 (there being no right to dissociate) that could result in damages being due to the association if the
23 dissociation harmed the association.
24

25 The organic rules may not eliminate this power.
26

27 **Subsection (b)** – This subsection provides a limited number of situations when a
28 dissociation is wrongful. The situations could be expanded or contracted by the organic rules.
29

30 **Subsection (b)(2)(B)** – This provision, although subject to change by the organic rules,
31 contemplates that actions by an entity member, such as dissolving or terminating solely as a
32 means to avoid its obligations to the limited cooperative association, would be in bad faith.
33

34 **Subsection (c)** – This provision confirms that a wrongful dissociation may result in
35 liability of the dissociating member to the limited cooperative association if the dissociation
36 causes harms the association. The amount of damages would need to be proven. These damages
37 are in addition to any other liability the member owes to the association.
38

39 **Subsection (d)** – This subsection details the various means through which different types
40 of members may be dissociated from a limited cooperative association, voluntarily or
41 involuntarily.
42

43 **Subsection (d)(4)(C)** – “Partnership” in this provision includes a general partnership, a

1 limited partnership, a limited liability partnership, and any other type of partnership.

2
3 **Subsection (d)(5)** – An individual is dissociated upon death under this provision. The
4 decedent’s estate has the powers conferred by Section 1003. By contrast, subsection (d)(7)
5 applies where an estate is carrying on business and becomes a member by admission. Example:
6 An individual who was not a member of the limited cooperative association dies. The decedent’s
7 estate anticipates carrying on farming business for three years before it closes. The estate could
8 become a member of the association pursuant to the organic rules of the association for
9 admission of participants.

10
11 **Subsection (d)(9)** – A plan of merger or consolidation under [Article] 15 could provide
12 for dissociation of members in a limited cooperative association. In that case, the provisions of
13 this Act would control the rights of the dissociated members over any provisions in the plan of
14 merger or consolidation that are contrary to provisions of this Act. Otherwise, the plan could
15 provide for the rights and obligations of a member dissociated by the plan.

16 17 **SECTION 1002. EFFECT OF DISSOCIATION AS MEMBER.**

18 (a) Upon a member’s dissociation:

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

20 (2) subject to Section 1003 and [Article] 15, any financial rights owned by the
21 person in the person’s capacity as a member immediately before dissociation are owned by the
22 person as a transferee who is not admitted as a member after dissociation.

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

26 **Comment**

27 **Source** – ULPA (2001) Section 602.

28 **Subsection (a)** – In general, when a person dissociates as a member, the person’s rights
29 as a member disappear and, subject to Section 115 (Dual Capacity), the person’s status degrades
30 to that of a mere transferee. However, Section 1003, provides some special rights when
31 dissociation is caused by an individual’s death or a member has become incompetent.

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

Comment

Source – ULP A (2001) Section 704.

Section 503 limits the rights of transferees of a member's financial rights. In particular, a transferee of financial rights has no voting rights, rights to serve as a director, rights to participate in future allocations of profits or losses, and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited.

1 [ARTICLE] 11

2 DISSOLUTION

3
4 **SECTION 1101. DISSOLUTION.** A limited cooperative association may be
5 dissolved:

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

9 **Comment**

10 This Section provides there are only three ways in which a limited cooperative
11 association may be dissolved. The Act provides details in subsequent Sections as to how each of
12 the three ways is to be applied.
13

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

- 17 (1) the occurrence of an event or the coming of a time specified in the articles of
18 organization;
19 (2) the action of the association's organizers, board of directors, or members under
20 Section 1104 or 1105; or
21 (3) the expiration of 90 days after the dissociation of a member, resulting in the
22 association having one patron member and no other members, unless the association:
23 (A) has a sole member that is a cooperative; or

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

Comment

Source - Derived from ULPA (2001) Section 801.

This Act does not bifurcate members into general and limited partners as do limited partnerships organized under ULPA (2001). Although this Act permits patron members and investor members, for limited cooperative associations that have both types of members, each type of member has governance and financial rights. Although limited partners may be granted governance rights in a limited partnership, it is not customary to do so.

The exception for Sections 1103 relating to judicial dissolution and 1111 relating to administrative dissolution is to make it clear those Sections apply over this Section if there is a conflict among them.

Subsection (1) - The articles of organization may, but are not required to, state events or the coming of a time when a limited cooperative association must be dissolved. If the organic rules are to make provision of an event of the coming of a time for dissolution, the provision must be in the articles of organization and not in the bylaws to be effective. The articles could provide for dissolution to be required if the association has only five members. This does not contradict the provision in subsection (3) because it would provide a stricter standard than the number of members in subsection (3). The articles could also provide for a term of years for the association which would be consistent with the provision in subsection 301(a)(5) that requires a term be stated in the articles if the association is not to have perpetual existence.

Subsection (3) – Except for this subsection and in Section 401 that requires at least two members for a limited cooperative association to commence business, this Act does not state a requirement that there be at least two members. Those two provisions, however, when taken together would make it impossible for an association to engage in business activities without two members. In this context, “business” includes any activities an association might pursue. The only exception is where an association is wholly owned by a cooperative.

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

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

- 1 (A) the association obtained its articles of organization through fraud; or
- 2 (B) the association has continued to exceed or abuse the authority conferred upon
- 3 it by law; or
- 4 (2) in a proceeding initiated by a member, if it is established that:
- 5 (A) the directors are deadlocked in the management of the association's affairs,
- 6 the members are unable to break the deadlock, and irreparable injury to the association is
- 7 occurring or is threatened because of the deadlock;
- 8 (B) the directors or those in control of the association have acted, are acting, or
- 9 will act in a manner that is illegal, oppressive, or fraudulent;
- 10 (C) the members are deadlocked in voting power and have failed to elect
- 11 successors to directors whose terms have expired for two consecutive periods during which
- 12 annual members' meetings were held or were to be held; or
- 13 (D) the assets of the association are being misapplied or wasted.

14 **Comment**

15 This Section follows more closely a corporate model for judicially ordered dissolution
16 than that found in unincorporated entities. This is because cooperatives have many attributes of
17 corporations under current cooperative statutes. Although this Act provides for limited
18 cooperative associations to resemble unincorporated entities in many respects, it does draw on
19 corporate concepts in several areas in keeping with other types of cooperatives.

20
21 The Section permits a court to fashion remedies other than dissolution if an application to
22 dissolve is made to the court. Illustratively, a court could refuse to dissolve a limited cooperative
23 association and instead appoint provisional directors or force a buy-out of membership interests.
24 This follows what appears to be a trend in both statutory and case law of corporations.

25
26 Neither a creditor of a limited cooperative association nor a transferee may initiate an
27 action to dissolve a limited cooperative association. In the case of a creditor with a claim or
28 judgment against the association, the creditor's remedies are left to other law, such as
29 bankruptcy. If a transferee were to have the power to seek dissolution, it would provide them

1 with greater power than they have under nearly all statutes governing unincorporated entities.

2
3 **Subsection (1)** – A proceeding may be initiated by the [Attorney General] to dissolve a
4 limited cooperative association only under circumstances constituting obtaining its articles of
5 organization through fraud or continuing to exceed or abuse its legal authority.
6

7 **Subsection (2)** – Under this provision, a member may seek dissolution of a limited
8 cooperative association if the member can demonstrate one of the four conditions stated as
9 grounds for a court to dissolve the association. The burden of proof is on the member who
10 initiates the proceeding.
11

12 **Subsection (2)(B) and (D)** – The broadest provisions in the entire Act for individual
13 member rights may be these subsections. The language has the same effect as provided by UPA
14 (1997) Section 801(6)(ii) for at-will partnerships. ULPA (2001) Section 802 is much shorter and
15 more restrictive authorizing judicial dissolution only “if it is not reasonably practicable to carry
16 on the activities of the limited partnership in conformity with the partnership agreement.” These
17 subsections permit inquiry into the management and operations of a limited cooperative
18 association within the stated parameters if dissolution is sought by a member.
19

20 **SECTION 1104. VOLUNTARY DISSOLUTION BEFORE COMMENCEMENT**

21 **OF ACTIVITY.** A majority of the organizers or initial directors of a limited cooperative
22 association that has not yet begun business activity or the conduct of its affairs may dissolve the
23 association.

24 **Comment**

25 This Section reflects the practical reality that the organizers or initial directors should be
26 able to dissolve a limited cooperative association before it begins business or the conduct of
27 affairs if the circumstances warrant the conclusion the organization of the association should not
28 proceed.
29

30 **SECTION 1105. VOLUNTARY DISSOLUTION BY THE BOARD AND**

31 **MEMBERS.**

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

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

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

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

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

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

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

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

14 (1) at least two-thirds vote of the voting power of members present at a members'
15 meeting called under subsection (a)(2); and

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

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

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

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

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

Comment

Subsection (a) – This subsection follows the voting procedures in other parts of the Act for amendments to the organic rules, conversion, merger, and sale of assets.

Subsection (c) – The articles of organization or the bylaws may provide for a voting percentage to approve dissolution ranging from a majority to unanimity of the voting power of the members present at a meeting of the members. If there are investor members, at least one-half of the votes cast by patron members must be affirmative unless the organic rules require a larger percentage.

SECTION 1106. WINDING UP.

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

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

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

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

(3) prosecute and defend actions and proceedings;

(4) transfer association property;

(5) settle disputes by mediation or arbitration; and

(6) perform other necessary acts.

(c) Upon application of a limited cooperative association, any member, or a holder of financial rights, the [appropriate court] may order judicial supervision of the winding up of the

1 association, including the appointment of a person to wind up the dissolved association's
2 activities, if:

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

4 (2) the applicant establishes other good cause.

5 (d) If a person is appointed pursuant to subsection (c) to wind up the activities of a
6 limited cooperative association, the association shall promptly deliver to the [Secretary of State]
7 for filing an amendment to the articles of organization to reflect the appointment.

8 **Comment**

9 Sections 1114 and 1115 permit a limited cooperative association to deliver for filing a
10 statement of dissolution and a statement of termination, respectively. The purpose of the filings
11 is to provide public notice regarding the dissolution activities of the association. There is no
12 penalty for not filing the statements and they do not have substantive effect other than providing
13 constructive notice.

14
15 **Subsection (a)** – Dissolution changes the authority of a limited cooperative association.
16 Following dissolution, the association may only engage in activities to wind up its activities.

17
18 **Subsection (b)** – Despite the authority of a limited cooperative association following
19 dissolution, this subsection provides broad powers in the board of directors to undertake
20 activities in connection with winding up the activities of the association. The subsection is
21 expansive to enable the board of directors to take all necessary actions to conduct winding up
22 appropriately. The board has authority to designate agents and others to conduct winding up
23 activities. The subsection places the primary obligations in the winding up process in the board
24 of directors.

25
26 In winding up, if any of the limited cooperative's assets are insubstantial in value and
27 cannot be readily converted to cash, under subsection (b)(6) those assets may be abandoned or
28 donated to a charitable organization without violating the obligations of the person conducting
29 the winding up of the association.

30
31 **Subsection (c)** – When dissolution has occurred, if the board of directors of a limited
32 cooperative association fails to carry out its obligations under subsection (b), either the
33 association, a member or a holder of financial rights (including a transferee) may apply to a court
34 for supervision of the winding up process. This subsection is a safety net for members and
35 holders of financial rights if winding up is unreasonably delayed or other good cause for judicial

1 supervision can be shown.
2

3 **Subsection (d)** – This subsection is unique among statutes governing entities in requiring
4 an amendment to the articles of organization to be delivered to the [Secretary of State] for filing
5 when a person is appointed to wind up the association’s activities. This requirement is not
6 applicable if the board of directors conducts the winding up. This amendment does not require a
7 vote by the members.
8

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

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

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

23 **Comment**

24 **Subsection (a)** – This subsection follows a traditional approach to the distribution of
25 assets in winding up an entity. It leaves priorities among creditors to other law, such as the law
26 of secured versus unsecured creditors.
27

1 **Subsection (b)** – This subsection provides for a distribution to all members of assets
2 available for distribution to members after all other obligations of the limited cooperative
3 association are satisfied. The distribution is based on the financial interests of the members.
4 “Financial interests” is a specially defined term for purposes of the subsection.
5

6 The subsection permits the organic rules to provide for distributions to members. Best
7 practices would be to provide detail in the organic rules.
8

9 In some cooperatives, such as rural electric associations, other law or custom may provide
10 for a “look back” period of a designated amount of time to determine members entitled to receive
11 a distribution in the winding up process. This could be addressed in the organic rules.
12

13 **SECTION 1108. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
14 **COOPERATIVE ASSOCIATION.**

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

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

19 (1) specify the information required to be included in a claim;

20 (2) provide an address to which the claim must be sent;

21 (3) state the deadline for receipt of the claim, which may not be less than 120
22 days after the date the notice is received by the claimant; and

23 (4) state that the claim will be barred if not received by the deadline.

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

26 (1) the association is not notified of the claimant’s claim, in a record, by the
27 deadline specified in the notice under subsection (b)(3);

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

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

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

Comment

Source – Based on ULPA (2001) Section 806, which was based on ULLCA Section 807, which in turn was based on MBCA Section 14.06. *Compare* RULLCA (2006) Section 703.

This Section provides a means for a dissolved limited cooperative association to address known claims against it and to bar those claims if the claimant does not act in a timely manner or meet other requirements for giving a claim to the association. The Section also provides for the procedures to be followed by a claimant in seeking to enforce a claim against a dissolved association.

Subsection (c)(3) – This paragraph addresses what a claimant needs to do to enforce a claim against a dissolved limited cooperative association that does not act affirmatively or negatively to a claim which the claimant has properly presented to the association by the deadline for claims to be presented as stated in the notice given to claimants under subsection (b). The claimant must wait until 120 days after the deadline. The claimant must then commence an action in court to enforce the claim within 90 days following the 120-day period or the claim will be barred. RULLCA (2006) Section 704 provides for these claims in the general claims procedures of Section 1109 of this [act].

SECTION 1109. OTHER CLAIMS AGAINST DISSOLVED LIMITED COOPERATIVE ASSOCIATION.

(a) A dissolved limited cooperative association may publish notice of its dissolution and

1 request persons having claims against the association to present them in accordance with the
2 notice.

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

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

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

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

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

16 (1) a claimant that is entitled to but did not receive notice in a record under
17 Section 1108; and

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

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

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

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

7 **Comment**

8 **Source** – ULPA (2001) Section 807, which was based on ULLCA Section 808, which in
9 turn was based on MBCA Section 14.07.

10
11 This Section provides a means for a dissolved limited cooperative association to address
12 unknown claims against it and other claims not barred by Section 1108 and to bar those claims
13 three (3) years after completion of publication by the association of a notice to submit claims if a
14 claim is not presented to the association within the 3-year period. The Section also provides for
15 the procedures to be followed by a claimant in seeking to enforce a claim against a dissolved
16 association if the claim has not been barred under Section 1108.

17
18 **Subsection (d)(2)** – Liability under this paragraph would extend to anyone who has
19 received distributions under a charging order attaching to financial rights. This paragraph
20 contains no “knowledge” element.
21

22 **SECTION 1110. COURT PROCEEDING.**

23 (a) Upon application by a dissolved limited cooperative association that has published a
24 notice under Section 1109, the court in the [county] where the association’s principal office is
25 located may determine the amount and form of security to be provided for payment of claims
26 against the association that are contingent or have not been made known to the association or that
27 are based on an event occurring after the effective date of dissolution but that, based on the facts
28 known to the association, are reasonably estimated to arise after the effective date of dissolution.

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

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

8 (d) Provision by the dissolved limited cooperative association for security in the amount
9 and the form ordered by the court satisfies the association's obligations with respect to claims
10 that are contingent, have not been made known to the association, or are based on an event
11 occurring after the effective date of dissolution, and such claims may not be enforced against a
12 member who received a distribution.

13 **Comment**

14
15 **Source:** RMBCA Section 14.08.

16
17 This Section provides a dissolved limited cooperative association that has followed the
18 procedures under Section 1109 to seek judicial assistance in providing security for contingent
19 and unknown claims and claims based on an event occurring after dissolution before
20 distributions are made in liquidation. If adequate security can be provided and there remain
21 assets for distribution, the association could proceed to distribute the remaining assets.
22 Subsection (d) provides protection to the recipients of the distributions from recovery by the
23 association.

24
25 If a court determines that a limited cooperative association is dissolving for the primary
26 purpose of avoiding anticipated claims of future tort claimants, it is expected the court would use
27 its general discretionary powers and deny the protections of Section 1110 to the dissolved
28 association.
29

1 **SECTION 1111. ADMINISTRATIVE DISSOLUTION.**

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

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

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

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

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

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

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

22 ***Legislative Note:** In adopting jurisdictions that do not generally permit administrative*

1 *dissolution of entities that do not pay required fees, taxes or penalties to governmental agencies*
2 *other than the [Secretary of State], the words “or other law” in paragraph 1111(a)(1) should be*
3 *deleted.*

4
5 **Comment**
6

7 **Source** – ULPA (2001) Section 807, which was based on ULLCA Sections 809 and 810.
8 *See also* RMBCA Sections 14.20 and 14.21. *Compare* RULLCA Section 705.
9

10 **Subsection 1111(a)(2)** – Under this provision, a limited cooperative association may
11 deliver its annual report to the [Secretary of State] any time after the due date if administrative
12 dissolution has not occurred. If a ground for administrative dissolution is failure to file the
13 annual report, the filing of the annual report would be a correction of a ground for administrative
14 dissolution under subsection (c).
15

16 **SECTION 1112. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
17 **DISSOLUTION.**

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

21 (1) the name of the association and the effective date of its administrative
22 dissolution;

23 (2) that the grounds for dissolution either did not exist or have been eliminated;
24 and

25 (3) that the association’s name satisfies the requirements of Section 109.

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

28 (1) prepare a declaration of reinstatement;
29 (2) sign and file the original of the declaration; and

1 (3) serve a copy of the declaration on the association.

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

6 **Comment**
7

8 **Source** – ULPA (2001) Section 810, which was based on ULLCA Section 811. *See also*
9 RMBCA Section 14.22. *Compare* RULLCA Section 706.
10

11 **Subsection (c)** – This subsection permits a reinstated administratively dissolved limited
12 cooperative association’s reinstatement to relate back to the date of the original administrative
13 dissolution as if the dissolution had not occurred. With respect to third parties, however, who
14 may have contractual rights or claims that arose during the period following the administrative
15 dissolution, their rights and claims will not be affected by the reinstatement if the rights and
16 claims would have otherwise had the opportunity to seek redress against persons other than the
17 association with respect to any matter based on a right or claim that arose during the period after
18 dissolution but prior to reinstatement.
19

20 **SECTION 1113. DENIAL OF REINSTATEMENT; APPEAL.**

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

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

1 application for reinstatement, and the [Secretary of State's] notice of denial.

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

4 **Comment**

5
6 **Source** – ULPA (2001) Sections 810 and 811; RULLCA Sections 706 and 707. *See also*
7 RMBCA Section 14.22.
8

9 **SECTION 1114. STATEMENT OF DISSOLUTION.**

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

12 (1) the name of the association;

13 (2) the date the association dissolved or will dissolve; and

14 (3) any other information the association considers relevant.

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

16 (1) 90 days after a statement of dissolution is filed; or

17 (2) the effective date stated in the statement of dissolution.

18 **Comment**

19
20 This Section provides for the voluntary filing of a statement of dissolution with the
21 [Secretary of State]. The effect of filing the statement is to give notice that a limited cooperative
22 association has dissolved and is winding up. The effect of this notice is left to law governing
23 constructive notice through a public record. If a person is appointed to wind up the activities of a
24 dissolved association under subsection 1106(c), an amendment to the articles of organization
25 reflecting the appointment must be filed with the [Secretary of State] under subsection 1106(d).
26

27 **SECTION 1115. STATEMENT OF TERMINATION.**

28 (a) A dissolved limited cooperative association that has completed winding up may

1 deliver to the [Secretary of State] for filing a statement of termination that states:

2 (1) the name of the association;

3 (2) the date of filing of its initial articles of organization; and

4 (3) that the association is terminated.

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

7
8 **Comment**
9

10 This Section provides for the voluntary filing of a statement of termination with the
11 [Secretary of State]. The effect of filing the statement is to give notice that a limited cooperative
12 association has terminated its existence. As with statements of dissolution under Section 1114,
13 the effect of this notice is left to law governing constructive notice through a public record.
14

15 Filing of a notice of termination does not eliminate the obligations of the association and
16 those handling its winding up to complete the winding up of the association's affairs and
17 distributing its assets as required by this [act]. Upon termination, however, the entity and its
18 liability shield ends.
19

20 If a statement of dissolution or a statement of termination is not filed, and no further
21 annual reports are filed with the [Secretary of State], the [Secretary of State] will eventually
22 administratively dissolve the limited cooperative association.

1 [ARTICLE] 12

2 ACTION BY MEMBER

3
4 **Legislative Note:** *This entire [article] is bracketed to indicate its adoption in an adopting*
5 *jurisdiction is optional depending on whether an adopting jurisdiction places the substantive law*
6 *regarding derivative actions in its statutes relating to entities or places in its civil procedure law,*
7 *including its rules of civil procedure. If an adopting jurisdiction places derivative actions in its*
8 *entity statutes, this [article] should be adopted. If the adopting jurisdiction places its derivative*
9 *actions in its civil procedure law, this [article] should not be adopted although the adopting*
10 *jurisdiction could place a cross reference to that law as the body of this [article]. If the*
11 *adopting jurisdiction's laws regarding derivative actions specifically reference particular types*
12 *of entities to which derivative actions are to be applicable, this [act] should be referenced in*
13 *those laws.*

14
15 *This Act does not contain provisions regarding direct claims of a member of a limited*
16 *cooperative association against the association leaving those claims to other law.*

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

19 (1) the member adequately represents the interests of the association;

20 (2) the member demands that the association bring an action to enforce the right; and

21 (3) any of the following occur:

22 (A) the association does not, within 90 days after the member makes the demand,
23 agree to bring the action;

24 (B) the association notifies the member that it has rejected the demand;

25 (C) irreparable injury to the association would result by waiting 90 days after the
26 member makes the demand; or

27 (D) the association agrees to bring an action demanded and fails to bring the
28 action within a reasonable time.

1 **Comment**

2
3 This Section sets forth the conditions under which a member of a limited cooperative
4 association may maintain a derivative action to enforce a right of the association.
5

6 The introductory language to the Section assumes that, if a member has standing to
7 maintain a suit, the member has standing to commence the suit. The language is to make it clear
8 that the proceeding should be dismissed if, after commencement, the plaintiff ceases to represent
9 the interests of the limited cooperative association in an adequate manner such as ceasing to be a
10 member or is using the proceeding for a personal advantage. If a plaintiff no longer has standing,
11 a court could provide an opportunity for another person to intervene who would qualify to bring
12 and maintain the action. If the association takes over the litigation after it has been commenced,
13 the court would have the power to dismiss the derivative action or substitute the association as the
14 plaintiff upon proper motions and procedures.
15

16 **Subsection (1)** – Under this subsection, the member must “adequately represent the
17 interests of the association.” This is a different standard from the “shareholders similarly
18 situated” standard of statutes and rules of civil procedures in several jurisdictions which has been
19 criticized by the courts. *See Nolen v. Shaw-Walker Company*, 449 F.2d 506, 508 n.4 (6th Cir.
20 1972).
21

22 **Subsection (2)** – The subsection requires a demand to be made as a prerequisite of a
23 member instituting a derivative action. The demand must be made by the person instituting the
24 action even if a demand has been made by another person. This avoids the time and expense of
25 litigating whether a demand is necessary. It also provides the board of directors with the
26 opportunity to undertake corrective action and to take over the suit.
27

28 The subsection does not provide upon whom the demand is to be made. In most
29 circumstances the demand should be to the board of directors, but circumstances may exist which
30 would make the demand more properly directed to another person with authority.
31

32 A written demand is not specified, but best practices would require the demand to be made
33 in a manner where its contents and its delivery can be proven. The contents of the demand are not
34 specified. It should contain sufficient information to demonstrate the person making the demand
35 could initiate litigation under this [article] if litigation is pursued and to fully apprise the limited
36 cooperative association of the facts underlying the reason for the demand being made.
37

38 **Subsection (3)** – The subsection lists four occurrences that are prerequisites for a derivative
39 action to be commenced. Although it can foster litigation over what is a “reasonable time,”
40 paragraph (D) provides that standard if a limited cooperative association has agreed to bring an
41 action and fails to do so within a reasonable time. This recognizes that “reasonable” can depend on
42 facts and circumstances that make a specified time period inappropriate. Paragraph (A) provides a
43 90-day period for the association to respond to a demand but it is less likely facts and

1 circumstances would prevent the association from responding to a demand than it is for the
2 association to prepare to bring an action after it has agreed to do so.
3

4 **SECTION 1202. PROPER PLAINTIFF.**

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

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

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

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

13 **Comment**

14 **Source:** Derived from ULPA (2001) Section 1003.
15

16 The contemporaneous ownership requirement is simple, clear, and easy to apply. There has
17 been no substantial showing that this requirement has hindered the litigation of substantial lawsuits
18 in the corporate area especially with large publicly held corporations where there are sufficient
19 potential plaintiffs who are qualified even if there are substantial numbers of potential plaintiffs
20 who are not so qualified. If a plaintiff dies, the court may permit another member to be substituted
21 for the deceased plaintiff.
22
23

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

26 (1) the date and content of the plaintiff's demand and the association's response;

27 (2) if 90 days have not expired since the demand, how irreparable injury to the association
28 would result by waiting for the expiration of 90 days; or

(3) if the association agreed to bring an action demanded, that the action has not been brought within a reasonable time.

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

Comment

Discontinuance or settlement of a derivative action must be approved by the court. This can prevent the evils of strike suits where a member-plaintiff brings an action with the primary objective being to obtain a private settlement with defendants even where it may damage a defendant limited cooperative association or other members of the association.

The Section does not address whether a court must provide notice to any members who might be affected by discontinuance of a derivative suit or a settlement. The court is left with the power to determine what information should be provided to others as part of its judicial administration of the suit.

SECTION 1205. PROCEEDS AND EXPENSES.

(a) Except as otherwise provided in subsection (b):

(1) any proceeds or other benefits of a derivative action to enforce a right of a limited cooperative association, whether by judgment, compromise, or settlement, belong to the association and not to the plaintiff; and

(2) if the plaintiff in the derivative action receives any proceeds, the plaintiff shall immediately remit them to the association.

(b) If a derivative action to enforce a right of a limited cooperative association is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the association.]

1

Comment

2

Subsection (b) – The court is giving broad discretion in determining who is to bear the

3

costs and expenses associated with a derivative action.

1 [ARTICLE] 13

2 FOREIGN COOPERATIVES

3
4 SECTION 1301. GOVERNING LAW.

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

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

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

14 Comment

15
16 The definition of a “foreign cooperative” in subsection 102(11) identifies a foreign
17 cooperative as an entity organized under a law “similar” to this [act]. This contemplates a statute
18 that provides for entities of the same type as a limited cooperative association under this [act], but
19 does not require the statute to approach provisions governing a foreign cooperative in the same
20 manner as this [act]. A “similar” statute would not be a general cooperative statute or a statute for
21 specialized cooperatives unless the statute provided for members of the same kind as patron
22 members and investor members under this [act] and had provisions for financial rights and
23 governance rights of types that bear a resemblance to those rights under this [act]. Ultimately, the
24 decision as to what state statutes are “similar” would need to be made by the [Secretary of State].
25 It is unlikely a [Secretary of State] would permit a “traditional” cooperative organized under a
26 “traditional” or “specialized” purpose cooperative statute to be eligible for a certificate of authority
27 under this [act], but a “traditional” cooperative organized under a statute similar in general respects
28 to this [act] could be eligible for obtaining a certificate of authority under this [act].
29

1 **SECTION 1302. APPLICATION FOR CERTIFICATE OF AUTHORITY.**

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

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

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

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

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

14 (5) the street address and, if different, mailing addresses of a designated office in
15 this state, which may be the addresses of the agent for service of process in this state; and

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

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

22 ***Legislative Note:*** This [act] refers to a certificate of good standing rather than a certificate of

1 *existence. If an adopting jurisdiction uses the term “certificate of existence” that term should be*
2 *substituted for “certificate of good standing” in subsection (b).*

3
4 **Comment**

5
6 **Source** – RULLCA (2006) Section 802; ULPA (2001) Section 902, which was based on
7 ULLCA Section 1002.

8
9 **Subsection (a)(6)** – The foreign cooperative’s current directors and their addresses must be
10 listed in an application for a certificate of authority.
11

12 **SECTION 1303. ACTIVITIES NOT CONSTITUTING TRANSACTING**
13 **BUSINESS.**

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

- 16 (1) maintaining, defending, and settling an action or proceeding;
- 17 (2) holding meetings of the foreign cooperative’s members or directors or carrying
18 on any other activity concerning its internal affairs;
- 19 (3) maintaining accounts in financial institutions;
- 20 (4) maintaining offices or agencies for the transfer, exchange, and registration of
21 the foreign cooperative’s own securities or maintaining trustees or depositories with respect to
22 those securities;
- 23 (5) selling through independent contractors;
- 24 (6) soliciting or obtaining orders, whether by mail or electronic means, through
25 employees, agents, or otherwise, if the orders require acceptance outside this state before they
26 become contracts;
- 27 (7) creating or acquiring indebtedness, mortgages, or security interests in real or

1 personal property;

2 (8) securing or collecting debts or enforcing mortgages or other security interests in
3 property securing the debts, and holding, protecting, and maintaining property so acquired;

4 (9) conducting an isolated transaction that is completed within 30 days and is not
5 one in the course of similar transactions; and

6 (10) transacting business in interstate commerce.

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

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

13 **Comment**

14
15 **Source** – RULLCA (2006) Section 803; ULPA (2001) Section 903, which was based on
16 ULLCA Section 1003.
17

18 **SECTION 1304. FILING OF CERTIFICATE OF AUTHORITY.** Unless the
19 [Secretary of State] determines that an application for a certificate of authority does not comply
20 with the filing requirements of this [act], the [Secretary of State], upon payment by the foreign
21 cooperative of all filing fees, shall file the application, prepare, sign, and file a certificate of
22 authority to transact business in this state, and send a copy of the filed certificate, together with a
23 receipt for the fees, to the foreign cooperative or its representative.
24

1 **Comment**

2
3 **Source** – RULLCA (2006) Section 804; ULPA (2001) Section 904, which was based on
4 ULLCA Section 1004 and RULPA Section 903.

5
6 A certificate of authority filed under this Section is different than a certificate of
7 authorization furnished under Section 206(b).
8

9 **SECTION 1305. NONCOMPLYING NAME OF FOREIGN COOPERATIVE.**

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

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

21 **Comment**

22
23 **Source** – RULLCA (2006) Section 805; ULPA (2001) Section 905, which was based on
24 ULLCA Section 1005.
25

26 **SECTION 1306. REVOCATION OF CERTIFICATE OF AUTHORITY.**

27 (a) A certificate of authority of a foreign cooperative to transact business in this state may

1 be revoked by the [Secretary of State] in the manner provided in subsection (b) if the foreign
2 cooperative does not:

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

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

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

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

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

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

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

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

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

1 *in subsection (a) should be deleted.*

2
3 **Comment**

4 **Source:** RULLCA (2006) Section 806; ULPA (2001) Section 906, which was based on
5 ULLCA Section 1006.
6

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

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

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

14 (c) The failure of a foreign cooperative to have a certificate of authority to transact
15 business in this state does not impair the validity of a contract or act of the foreign cooperative or
16 prevent the foreign cooperative from defending an action or proceeding in this state.

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

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

23 **Comment**

24 **Source** – RULLCA (2006) Sections 807 and 808; ULPA (2001) Section 907, which was
25

based on RULPA Section 907(d) and ULLCA Section 1008.

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

Comment

Source – RULLCA (2006) Section 809; ULPA (2001) Section 908, which was based on RULPA Section 908 and ULLCA Section 1009.

1 [ARTICLE] 14

2 AMENDMENT OF ORGANIC RULES

3
4 SECTION 1401. AUTHORITY TO AMEND ORGANIC RULES.

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

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

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

13 (1) either:

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

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

17 (i) proposes an amendment; and

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

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

1 deliver in a record to each member:

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

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

8 (C) a statement of any condition of the board's submission of the amendment to the
9 members; and

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

12 **SECTION 1403. METHOD OF VOTING ON AMENDMENT OF ORGANIC**

13 **RULES.** Members may vote on a proposed amendment to the organic rules as provided in Section
14 415.

15 **SECTION 1404. CHANGE TO AMENDMENT OF ORGANIC RULES AT**

16 **MEETING.**

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

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

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

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

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

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

12 **SECTION 1406. APPROVAL OF AMENDMENT.**

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

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

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

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

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

1 and

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

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

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

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

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

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

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

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

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

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

22 (2) the transferability of a member's interest;

1 (3) the manner or method of allocation of profits or losses among members;

2 (4) the quorum for a meeting and the rights of voting and governance, not including

3 the manner of voting or the modification of district boundaries, which, unless otherwise provided

4 in the organic rules, may be determined by the board of directors; or

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

6 members.

7 (f) Subject to subsection (e), the articles of organization may delegate amendment of the

8 bylaws in whole or in part to the board of directors without requiring member approval.

9 (g) If the articles of organization delegate amendment of bylaws to the board of directors,

10 the board must provide a description of the amendment to the members in a record within 30 days

11 after the amendment of the bylaws, but the description may be provided at the next annual meeting

12 of members if the meeting is held within the 30-day period.

13 **Comment**

14 Very few policy issues were discussed more intensely than voting by members on

15 amendments to the organic rules and the correlative voting provisions concerning dissolution

16 (Section 1105), conversion and merger (Sections 1503 and 1508), and disposition of assets

17 (Section 1604).

18

19 Voting is associated with at least two cooperative values. Nonetheless even existing

20 cooperative statutes provide a rather remarkable range of voting options. For example, within

21 limitations there can be voting or nonvoting preferred shareholders whom are not necessarily

22 required to be members. Moreover, many agricultural marketing cooperatives use district voting.

23 *See* Section 1405.

24

25 This Act, however, permits investor members and the allocation of voting between investor

26 members and patron members under it becomes a central issue resulting in rather detailed

27 provisions in subsections (a) and (b).

28

29 The “organic rules,” a defined term; include articles of organization, a public record; and

30 bylaws, a nonpublic record. *See* Sections 302 and 304. The articles of organization may be

1 amended under subsection (a); and, generally, the bylaws may be amended under subsection (b).
2 Specified items under subsection (e) may appear in either the articles or bylaws. Those items are
3 of such import that they may be amended only in the manner provided for the amendment of
4 articles, even if they appear in the bylaws. Further, amendments that would effect a member's
5 liability or obligation require the consent of that member under subsection (d). Finally, as a
6 general matter, the articles may provide the bylaws be amended by the board of directors.

7
8 **Subsection (a)** - Unless modified under subsection (c), the default voting procedure to
9 amend the articles of organization in a limited cooperative association is two-thirds of the voting
10 power present at the meeting.

11
12 In associations which permit investor members, however, a scheme which separately counts
13 the votes of all members and patron members. The Act adopts this bifurcated approach to better
14 protect the decisional power of patron members relative to investor members.

15
16 This subsection, first, requires the vote of members present (including those present by
17 proxy or voting by other means, whether the members are investor members or patron members.
18 The minimum quantum of the combined vote must be two-thirds. Next, only the votes of patron
19 members are counted. A simple majority of patron members present and voting are required to
20 adopt the amendment.

21
22 The bifurcated voting not only assures patron members of decisional authority; by
23 providing a majority of the patron members vote in the affirmative, it allows investor members a
24 real opportunity for significant voting gravity.

25
26 **EXAMPLE:** Assume a limited cooperative association under which
27 33 votes are in patron members and 33 votes are in investor members
28 and all are present and voting. The total vote required to pass the
29 amendment is two-thirds of those present. Thus, the first voting
30 prong requires at least 44 votes of the total cast be for the
31 amendment. The second prong requires at least a majority of the 33
32 patron members vote for the amendment. Thus, at least 17 of the
33 patron votes must be cast for the amendment.

34
35 Observe in the example if a majority of the patron members (17) votes in favor of the
36 amendment then the amendment will pass if 27 of the 33 votes of investor members are affirmative
37 (17 plus 27 equals 44; 44 represents a two-thirds quantum under the example).

38
39 **Subsection (b)** - The same bifurcated approach to voting taken for amendment of the
40 articles under subsection (a) is repeated for typical bylaw amendments except the first prong of the
41 voting test is reduced to the majority of those voting unless the item being amended is listed in
42 subsection (c).
43

1 One of the results of requiring the separate count of patron members' votes is that patron
2 members have a blocking power which seems consistent with cooperative values. *See* Preliminary
3 Comment. Note that using the flexibility afforded under Section 1405 could also provide blocking
4 power to investor members by establishing class voting for investor members.
5

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

13 **SECTION 1408. AMENDMENT OR RESTATEMENT OF ARTICLES OF**
14 **ORGANIZATION.**

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

- 19 (1) the name of the association;
20 (2) the date of filing of the association's initial articles of organization; and
21 (3) the changes the amendment makes to the articles of organization as most
22 recently amended or restated.

23 (b) Before the beginning of the initial meeting of the board of directors of a limited
24 cooperative association, an organizer of the association which knows that information in the filed

1 articles of organization was false when the articles were filed or has become false due to changed
2 circumstances shall promptly:

3 (1) cause the articles to be amended; or

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

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

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

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

1 [ARTICLE] 15

2 CONVERSION AND MERGER

3
4 SECTION 1501. DEFINITIONS. In this [article]:

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

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

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

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

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

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

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

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

22 (B) by the entity’s organizational documents under a provision of the entity’s

1 organic law authorizing those documents to make one or more specified persons liable for all or
2 specified parts of the entity's debts, liabilities, and other obligations solely because the person co-
3 owning or having an interest in the entity.

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

6 **Comment**

7 **Source:** RULLCA (2006) Section 1001.

8 This section and article are closely derived from RULLCA (2006) which is designed to be
9 consistent with the Model Entity Transactions Act (2006) and which is related to the Omnibus
10 Business Organization Code Drafting Project (a current joint NCCUSL and ABA project).
11 Modifications are made, however, because this Act does not provide for domestifications. This
12 Act, RULLCA (2006) and ULPA (2001) do not provide for divisions.
13

14 **SECTION 1502. CONVERSION.**

15 (a) An entity that is not a limited cooperative association may convert to a limited
16 cooperative association and a limited cooperative association may convert to an entity that is not a
17 limited cooperative association pursuant to this section, Sections 1503 through 1505, and a plan of
18 conversion, if:

19 (1) the other entity's organic law authorizes the conversion;

20 (2) the conversion is not prohibited by the law of the jurisdiction that enacted the
21 other entity's organic law; and

22 (3) the other entity complies with its organic law in effecting the conversion.

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

24 (1) the name and form of the entity before conversion;

1 (2) the name and form of the entity after conversion;

2 (3) the terms and conditions of the conversion, including the manner and basis for
3 converting interests in the converting entity into any combination of money, interests in the
4 converted entity, and other consideration; and

5 (4) the organizational documents of the proposed converted entity.

6 **Comment**

7 Action on the plan of conversion is coordinated with voting on the amendment of the
8 articles of organization under Article 14. *See* Section 1406 and Comment, Section 1406.

9
10 It is important to understand two fundamental items concerning conversions under this Act.
11 First, as a mechanical matter, this Act only governs one side of the transaction. That is, it provides
12 the law governing only those matters directly relating to limited cooperative associations. For
13 example, if a cooperative formed under law outside this Act desires to “convert” to a limited
14 cooperative association the statute under which it is formed must allow such a conversion. Second,
15 the mechanical operation of this Act is not just the typical practical boundary between acts of
16 different organizations; it also reflects a policy choice at a deeper level. The limited cooperative
17 association permits investor members which may change the dynamic in existing cooperatives.
18 For this reason, too, the Act does not attempt to change the law of other organizations. Effecting
19 those kinds of policy decisions is beyond the scope of this Act.
20

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

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

28 (1) the plan, or a summary of the plan and a statement of the manner in which a

1 copy of the plan in a record may be reasonably obtained by a member;

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

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

7 (4) notice of the meeting at which the plan of conversion will be considered, which
8 must be given in the same manner as notice of a special members' meeting; and

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

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

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

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

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

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

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

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

22 (e) Consent in a record by a member must be delivered to the limited cooperative

1 association before delivery of articles of conversion for filing if as a result of the conversion the
2 member will have:

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

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

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

8 (1) as provided in the plan; and

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

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

13 **SECTION 1504. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.**

14 (a) After a plan of conversion is approved:

15 (1) a converting limited cooperative association shall deliver to the [Secretary of
16 State] for filing articles of conversion, which must include:

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

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

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

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

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

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

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

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

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

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

16 (b) A conversion becomes effective:

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

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

21 **SECTION 1505. EFFECT OF CONVERSION.**

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

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

4 (b) When a conversion takes effect:

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

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

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

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

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

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

17 (c) A converted entity that is an entity organized under the laws of a jurisdiction other than
18 this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by
19 the converting limited cooperative association if, before the conversion, the converting limited
20 cooperative association was subject to suit in this state on the obligation. A converted entity that is
21 an entity organized under the laws of a jurisdiction other than this state and not authorized to
22 transact business in this state appoints the [Secretary of State] as its agent for service of process for

purposes of enforcing an obligation under this subsection. Service on the [Secretary of State] under this subsection is made in the same manner and with the same consequences as in Section 119(c) and (d).

SECTION 1506. MERGER.

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

- (1) the governing statute of each of the other entities authorizes the merger;
- (2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
- (3) each of the other entities complies with its governing statute in effecting the merger.

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

- (1) the name and form of each merging entity;
- (2) the name and form of the surviving entity and, if the surviving entity is to be created by the merger, a statement to that effect;
- (3) the terms and conditions of the merger, including the manner and basis for converting the interests in each merging entity into any combination of money, interests in the surviving entity, and other consideration;
- (4) if the surviving entity is to be created by the merger, the surviving entity's organizational documents;
- (5) if the surviving entity is not to be created by the merger, any amendments to be made by the merger to the surviving entity's organizational documents; and

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

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

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

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

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

14 (2) a recommendation that the members approve the plan of merger, or if the board
15 determines that because of conflict of interest or other special circumstances it should not make a
16 favorable recommendation, the basis for that determination;

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

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

21 **SECTION 1508. APPROVAL OR ABANDONMENT OF MERGER BY**
22 **MEMBERS.**

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) as provided in the plan; and

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

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

6 **SECTION 1509. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

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

9 (b) The articles of merger must include:

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

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

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

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

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

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

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

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

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

6 (8) any additional information required by the governing statute of any merging
7 entity.

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

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

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

12 (A) compliance with subsection (c); or

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

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

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

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

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

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

22 (4) all debts, liabilities, and other obligations of each merging entity that ceases to

1 exist continue as obligations of the surviving entity;

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

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

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

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

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

13 (A) is a limited cooperative association, the articles of organization become
14 effective; or

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

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

19 **SECTION 1511. CONSOLIDATION.**

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

22 (b) All provisions governing mergers or using the term merger in this [act] apply equally to

1 mergers that the constituent entities choose to call consolidations under subsection (a).

2 **Comment**

3 The use of the term “consolidation” as a term of art is becoming rare in the law of business
4 organizations. Thus this Section is unique. It follows modern organizational law in that it
5 recognizes consolidations are legally the same as mergers. The “consolidation” nomenclature,
6 however, still remains in some use in cooperative law and this Section reflects that use. In part that
7 use probably reflects some notion of cooperative values which include “equality.”
8

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

1 [ARTICLE] 16

2 DISPOSITION OF ASSETS

3
4 SECTION 1601. DISPOSITION OF ASSETS NOT REQUIRING MEMBER

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

7 (1) sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the
8 association in the usual and regular course of business; or

9 (2) mortgage, pledge, dedicate to the repayment of indebtedness, or encumber in any way
10 all or any part of the assets of the association whether or not in the usual and regular course of
11 business.

12 SECTION 1602. MEMBER APPROVAL OF OTHER DISPOSITION OF ASSETS.

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

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

19 (1) a majority of the board of directors, or a greater percentage if required by the organic
20 rules, must approve the proposed disposition; and

21 (2) the board of directors must call a members' meeting to consider the proposed
22 disposition, hold the meeting within 90 days following approval of the proposed disposition by the

board, and mail or otherwise transmit or deliver in a record to each member:

(A) the terms of the proposed disposition;

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

(C) a statement of any condition of the board's submission of the proposed disposition to the members; and

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

SECTION 1604. ACTION ON DISPOSITION OF ASSETS.

(a) Subject to subsection (b), a disposition of assets under Section 1602 must be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under Section 1603(2); and

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

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

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

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

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

1 (c) Subject to any contractual obligations, after a disposition of assets is approved and at
2 any time before the consummation of the disposition, a limited cooperative association may
3 approve an amendment to the contract for disposition or the resolution authorizing the disposition
4 or approve abandonment of the disposition:

5 (1) as provided in the contract or the resolution; and

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

8 (d) The voting requirements for districts, classes, or voting groups under Section 1405
9 apply to approval of a disposition of assets under this [article].

10 **Comment**

11 Action on the proposed disposition of assets is coordinated with voting on amendments to
12 the articles of organization. *See* Section 1406 and Comment, Section 1406.

1 [ARTICLE] 17

2 MISCELLANEOUS PROVISIONS

3
4 [SECTION 1701. RELATION TO RESTRAINT OF TRADE AND ANTITRUST

5 LAWS. To the extent a limited cooperative association or activities conducted by a limited
6 cooperative association in this state meet the material requirements for other cooperatives entitled
7 to an exemption from or immunity under any provision of [the restraint of trade or antitrust laws of
8 this state], the association and its activities are entitled to the exemption or immunity. This section
9 does not create any new exemption or immunity for an association or affect any exemption or
10 immunity provided to a cooperative organized under any other [act].]

11 *Legislative Note: Some states' existing general cooperative or marketing cooperative statutes*
12 *contain an exemption from state restraint of trade and antitrust laws. In the context of a marketing*
13 *cooperative such an exemption is historical and may be helpful because cooperatives are united*
14 *groups of producers whom could be interpreted to fix prices.*
15

16 *This Section is bracketed because some states as a matter of policy do not include an*
17 *exception in their other cooperative statutes and, presumably, would not include them in this Act.*
18 *Moreover because, unlike other cooperative statutes, this Act allows for investor members; it can*
19 *be distinguished from cooperatives organized under other laws. It is appropriate, therefore, that*
20 *states consider how their existing policy applies to limited cooperatives.*
21

22 **Comment**

23
24 Many state cooperative statutes, most particularly marketing cooperative statutes, contain
25 special exemptions from state antitrust and restraint of trade laws. This Section makes those
26 exemptions applicable to limited cooperative associations governed by this Act.
27

28 **SECTION 1702. REQUIREMENTS OF OTHER LAWS.**

29 (a) This Act does not alter or amend any law that governs the licensing and regulation of an
30 individual or entity in carrying on a specific business or profession even if that law permits the

1 business or profession to be conducted in or by a limited cooperative association, a foreign
2 cooperative, or its members.

3 (b) A limited cooperative association may not conduct an activity that, under law of this
4 state other than this [act], may be conducted only by an entity that meets specific requirements for
5 the internal affairs of that entity unless the organic rules of the association conform to those
6 requirements.

7 ***Legislative Note:*** The phrase “limited cooperative associations” should be added by amendment
8 to other statutes outside this Act that contain lists of entities and other law should be vetted and
9 conformed as appropriate.

10 **Comment**

11
12
13 Section 1702 may appear to be surplusage because it restates the application of existing
14 legal interpretive principles outside this Act. Nonetheless it serves the function of attempting to
15 make clear that this Act is limited to its terms; that it does not supersede other law, either directly
16 or by implication, including regulatory law; and that a limited cooperative association organized
17 under this Act is not exempt from separately qualifying as a “cooperative” under other law without
18 first meeting the statutory, regulatory or case based definitions for purposes of that other law.
19 Thus, it serves a similar purpose for domestic associations as does subsection 1301(c) (certificate
20 of authority does not authorize the cooperative to exercise any power not given a limited
21 cooperative association in this state) for foreign cooperatives. See RULLCA (2006) § 801(c).

22
23 To an extent, this assurance is related to concerns expressed during the drafting process
24 about the use of the term “cooperative” which caused the name of the Act to include the term
25 “limited” to distinguish it from cooperatives formed under other law. The assurance is more
26 directly related to the scope of the Act and the absence of exclusions from its scope.

27
28 **EXAMPLE 1:** Two real estate brokers desire to form a limited cooperative association for
29 the sale of residential real estate on a commission basis. Even though nothing in this Act
30 would preclude them from organizing a limited cooperative association the form of the
31 organization in which they conduct that activity is still subject to the law regulating the sale
32 of residential real estate on a commission basis including any limitations on the form of
33 organization authorized to conduct that activity. Moreover, organizing as a limited
34 cooperative association, even if allowed for this purpose, will not exempt it from the
35 application of other applicable regulation or law such as disclosure requirements or
36 standards for the maintenance of trust funds or escrow accounts.

EXAMPLE 2: Ten construction workers desire to form a worker’s cooperative as a limited cooperative association. Organizing as a limited cooperative association will not excuse the limited cooperative from any contractor bonding requirements in the law of either the jurisdiction of formation or in a foreign jurisdiction. Moreover, the limited cooperative association will be required to comply with the applicable state wage and hour provisions.

EXAMPLE 3: Same scenario as in example 2 except the jurisdiction in which the workers desire to form a limited cooperative association has a specific workers’ cooperative statute that expressly states all workers cooperatives must be organized under the workers cooperative statute. Therefore workers can not lawfully organize a workers cooperative under this Act in that jurisdiction.

EXAMPLE 4: A group of consumers desires to form a limited cooperative association to conduct business as a natural foods cooperative. The limited cooperative association must comply with the health regulations applicable to grocery businesses as well as applicable wage and hour provisions.

EXAMPLE 5: A real estate developer desires to organize as a limited cooperative association to develop property as a “housing cooperative.” Section 1-201 of the current draft of the Uniform Common Interest Ownership Act (UCIOA) states that it applies to all “common interest communities” created in the state after its effective date. In turn Section 1-103 defines “common interest community.” If the planned project organized as a limited cooperative association meets the definition of “common interest community” all the provisions of UCIOA apply to the developer.

EXAMPLE 6: Same scenario as in Example 5 except the developer desires to organize as a limited liability company (LLC) and she carefully avoids coming within the definition of “common interest community” in the current draft of UCIOA. The planned project organized as an LLC will not be required to comply with UCIOA’s requirements because it is not within the definition of “common interest community.”

The number and types of regulatory laws are too numerous to list in the text of this Act and any exclusive list of laws or activities raises the risk of inadvertent omission. For example, the application for the qualification of, and the licensing and examination of the following business professions would appear in a comprehensive statutory list: legal, medical, dental, optometry, engineers, architects, surveyors, public accountancy, opticians, psychologists, veterinary medicine, speech pathologists, audiologists, financial institutions, contractors, fumigators, pest control operators, real estate brokers and sales persons, electricians, plumbers, real estate appraisers, photographers, pharmacists, physical therapy, podiatry, barbering, nursing, social workers, embalmers and funeral directors, motor vehicle dealers, boxing contests, cable television and unaccredited degree granting institutions.

Further the list would include other general trade regulation and trade practice law such as

1 trademark and trade names, trade secrets, franchise investment, business opportunity, consumer
2 law, public accommodations, and many others.

3
4 Therefore, though not completely satisfactory, this Act includes a general statement that the
5 requirements of other laws apply to the conduct of activity by a limited cooperative association
6 organized under it.
7

8 **SECTION 1703. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

9 applying and construing this uniform act, consideration must be given to the need to promote
10 uniformity of the law with respect to its subject matter among states that enact it.

11 **Comment**

12
13 **Source:** RULLCA (2006) Section 1101; ULPA (2001) Section 1201.
14

15 **SECTION 1704. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
16 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal
17 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
18 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or
19 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
20 Section 7003(b).

21 **Comment**

22
23 **Source:** RULLCA (2006) Section 1102.
24

25 **SECTION 1705. SAVINGS CLAUSE.** This [act] does not affect an action or proceeding
26 commenced, or right accrued, before [this [act] takes effect].

27 **Comment**

28 **Source:** RULLCA (2006) Section 1103.

1 **SECTION 1706. EFFECTIVE DATE.** This [act] takes effect [effective date].

2 ***Legislative Note:** If the adopting state is a state which has an existing act similar to this Act (as of*
3 *June 1, 2007, there are five such states), it should consider adding a new section immediately*
4 *before Section 1706 providing for a phasing in of the Act's applications to existing limited*
5 *cooperative associations. The Revised Uniform Limited Liability Company Act (2006) (which*
6 *faced the same issue because adopting jurisdictions of RULLCA have in place existing LLC*
7 *statutes) provides an illustrative model as follows:*

8
9 *APPLICATION TO EXISTING RELATIONSHIPS*

10
11 (a) Before [all-inclusive date], this [act] governs only:

12
13 (1) a limited liability company formed on or after [the
14 effective date]; and

15
16 (2) except as otherwise provided in subsection (c), a
17 limited liability company formed before [the effective date of this
18 act] which elects, in the manner provided in its operating agreement
19 or by law for amending the operating agreement, to be subject to this
20 [act].

21
22 (b) Except as otherwise provided in subsection (c), on and
23 after [all-inclusive date] this [act] governs all limited liability
24 companies.

25
26 (c) For the purposes applying this [act] to a limited liability
27 company formed before [the effective date of this act]:

28
29 (1) the company's articles of organization are deemed
30 to be the company's certificate of organization; and

31
32 (2) for the purposes of applying Section 102(1) and
33 subject to Section 112(d), language in the company's articles of
34 organization designating the company's management structure
35 operates as if that language were in the operating agreement.

36
37 *The Legislative Note to RULLCA states, in relevant part:*

38
39 *It is recommended that the "all-inclusive" date should be at least*
40 *one year after the date of enactment but no longer than two years.*

41
42 *Each enacting jurisdiction should consider whether: (I) this Act*

1 *makes material changes to the “default” (or “gap filler) rules of*
2 *jurisdiction’s predecessor statute; and (ii) if so, whether subsection*
3 *(c) should carry forward any of those rules for pre-existing limited*
4 *liability companies. In this assessment, the focus is on pre-existing*
5 *limited liability companies that have left default rules in place,*
6 *whether advisedly or not. The central question is whether, for such*
7 *limited liability companies, expanding subsection (c) is necessary to*
8 *prevent material changes to the members’ “deal.”*

9
10 *For an example of this type of analysis in the context of another*
11 *business entity act, see the Uniform Limited Partnership Act (2001),*
12 *§ 1206(c).*

13
14 Of course, the specific cross-references to RULLCA provisions in the sample language
15 would not apply to this [act]. It is included here for illustrative purposes only.