

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/3/09
A Bill

HOUSE BILL 1544

5 By: Representatives Harrelson, Williams
6 By: Senator Luker
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO ENACT THE UNIFORM LIMITED COOPERATIVE
11 ASSOCIATION ACT (2007); AND FOR OTHER PURPOSES.
12

13 **Subtitle**

14 TO ENACT THE UNIFORM LIMITED COOPERATIVE
15 ASSOCIATION ACT (2007).
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 4 is amended to add an additional
21 chapter to read as follows:

22 CHAPTER 36 -- UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT (2007)

23 SUBCHAPTER 1 -- GENERAL PROVISIONS

24 4-36-101. Short title.

25 This chapter may be cited as the Uniform Limited Cooperative
26 Association Act (2007).
27

28 4-36-102. Definitions.

29 In this chapter:

30 (1) "Articles of organization" means the articles of
31 organization of a limited cooperative association required by § 4-36-302.
32 The term includes the articles as amended or restated.

33 (2) "Board of directors" means the board of directors of a
34 limited cooperative association.

35 (3) "Bylaws" means the bylaws of a limited cooperative
36 association. The term includes the bylaws as amended or restated.



1 (4) “Certificate of authority” means a certificate issued by the
2 Secretary of State for a foreign cooperative to transact business in this
3 state.

4 (5) “Contribution”, except as used in § 4-36-1008(c), means a
5 benefit that a person provides to a limited cooperative association to become
6 or remain a member or in the person’s capacity as a member.

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

9 (7) “Designated office” means the office that a limited
10 cooperative association or a foreign cooperative is required to designate and
11 maintain under § 4-36-117(a)(1).

12 (8) “Director” means a director of a limited cooperative
13 association.

14 (9) “Distribution,” except as used in § 4-36-1007(e), means a
15 transfer of money or other property from a limited cooperative association to
16 a member because of the member’s financial rights or to a transferee of a
17 member’s financial rights.

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

19 (11) “Financial rights” means the right to participate in
20 allocations and distributions as provided in § 4-36-1001 et seq. and § 4-36-
21 1201 et seq. but does not include rights or obligations under a marketing
22 contract governed by § 4-36-701 et seq.

23 (12) “Foreign cooperative” means an entity organized in a
24 jurisdiction other than this state under a law similar to this chapter.

25 (13) “Governance rights” means the right to participate in
26 governance of a limited cooperative association.

27 (14) “Investor member” means a member that has made a
28 contribution to a limited cooperative association and

29 (A) is not required by the organic rules to conduct
30 patronage with the association in the member’s capacity as an investor member
31 in order to receive the member’s interest; or

32 (B) is not permitted by the organic rules to conduct
33 patronage with the association in the member’s capacity as an investor member
34 in order to receive the member’s interest.

35 (15) “Limited cooperative association” means an association
36 organized under this chapter.

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

4 (17) "Member's interest" means the interest of a patron member
5 or investor member under § 4-36-601.

6 (18) "Members meeting" means an annual members meeting or
7 special meeting of members.

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

10 (20) "Organic rules" means the articles of organization and
11 bylaws of a limited cooperative association.

12 (21) "Organizer" means an individual who signs the initial
13 articles of organization.

14 (22) "Patron member" means a member that has made a contribution
15 to a limited cooperative association and:

16 (A) is required by the organic rules to conduct patronage
17 with the association in the member's capacity as a patron member in order to
18 receive the member's interest; or

19 (B) is permitted by the organic rules to conduct patronage
20 with the association in the member's capacity as a patron member in order to
21 receive the member's interest.

22 (23) "Patronage" means business transactions between a limited
23 cooperative association and a person which entitle the person to receive
24 financial rights based on the value or quantity of business done between the
25 association and the person.

26 (24) "Person" means an individual, corporation, business trust,
27 cooperative, estate, trust, partnership, limited partnership, limited
28 liability company, limited cooperative association, joint venture,
29 association, public corporation, government or governmental subdivision,
30 agency, or instrumentality, or any other legal or commercial entity.

31 (25) "Principal office" means the principal executive office of
32 a limited cooperative association or foreign cooperative, whether or not in
33 this state.

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

1 (27) “Required information” means the information a limited
2 cooperative association is required to maintain under § 4-36-114.

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

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

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

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

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

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

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

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

23
24 4-36-103. Limited cooperative association subject to amendment or
25 repeal of chapter.

26 A limited cooperative association governed by this chapter is subject
27 to any amendment or repeal of this chapter.

28
29 4-36-104. Nature of limited cooperative association.

30 (a) A limited cooperative association organized under this chapter is
31 an autonomous, unincorporated association of persons united to meet their
32 mutual interests through a jointly owned enterprise primarily controlled by
33 those persons, which permits combining:

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

36 (2) separate investments in the association by members who may

1 receive returns on their investments and a share of control.

2 (b) The fact that a limited cooperative association does not have one
3 or more of the characteristics described in subsection (a) does not alone
4 prevent the association from being formed under and governed by this chapter
5 nor does it alone provide a basis for an action against the association.

6
7 4-36-105. Purpose and duration of limited cooperative association.

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

10 (b) A limited cooperative association may be organized for any lawful
11 purpose, whether or not for profit.

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

14
15 4-36-106. Powers.

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

21
22 4-36-107. Governing law.

23 The law of this state governs:

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

26 (2) the liability of a member as member and a director as
27 director for the debts, obligations, or other liabilities of a limited
28 cooperative association.

29
30 4-36-108. Supplemental principles of law.

31 Unless displaced by particular provisions of this chapter, the
32 principles of law and equity supplement this chapter.

33
34 4-36-109. Requirements of other laws.

35 (a) This chapter does not alter or amend any law that governs the
36 licensing and regulation of an individual or entity in carrying on a specific

1 business or profession even if that law permits the business or profession to
2 be conducted by a limited cooperative association, a foreign cooperative, or
3 its members.

4 (b) A limited cooperative association may not conduct an activity
5 that, under law of this state other than this chapter, may be conducted only
6 by an entity that meets specific requirements for the internal affairs of
7 that entity unless the organic rules of the association conform to those
8 requirements.

9
10 4-36-110. Relation to restraint of trade and antitrust laws.

11 To the extent a limited cooperative association or activities conducted
12 by the association in this state meet the material requirements for other
13 cooperatives entitled to an exemption from or immunity under any provision of
14 a restraint of trade or antitrust law of this state, the association and its
15 activities are entitled to the exemption or immunity. This section does not
16 create any new exemption or immunity for an association or affect any
17 exemption or immunity provided to a cooperative organized under any other
18 law.

19
20 4-36-111. Name.

21 (a) Use of the term "cooperative" or its abbreviation under this
22 chapter is not a violation of a provision restricting the use of the term to
23 a cooperative under another law of this state.

24 (b) The name of a limited cooperative association must contain the
25 words "limited cooperative association" or "limited cooperative" or the
26 abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd."
27 "Cooperative" may be abbreviated as "Co-op" or "Coop". "Association" may be
28 abbreviated as "Assoc." or "Assn.". A limited cooperative association or a
29 member may enforce the restrictions on the use of the term "cooperative"
30 under this chapter and under a provision restricting the use of the term to a
31 cooperative under another law of this state.

32 (c) Except as otherwise provided in subsection (d), a limited
33 cooperative association may use only a name that is available. A name is
34 available if it is distinguishable in the records of the Secretary of State
35 from:

36 (1) the name of any entity organized or authorized to transact

1 business in this state;

2 (2) a name reserved under § 4-36-112; and

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

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

8 (1) the person with ownership rights to use the name consents in
9 a record to the use and applies in a form satisfactory to the Secretary of
10 State to change the name used or reserved to a name that is distinguishable
11 upon the records of the Secretary of State from the name applied for; or

12 (2) the applicant delivers to the Secretary of State a certified
13 copy of the final judgment of a court establishing the applicant's right to
14 use the name in this state.

15
16 4-36-112. Reservation of name.

17 (a) A person may reserve the exclusive use of the name of a limited
18 cooperative association, including a fictitious name for a foreign
19 cooperative whose name is not available under § 4-36-111, by delivering an
20 application to the Secretary of State for filing. The application must set
21 forth the name and address of the applicant and the name proposed to be
22 reserved. If the Secretary of State finds that the name applied for is
23 available under § 4-36-111, the Secretary of State shall reserve the name for
24 the applicant's exclusive use for a nonrenewable period of 120 days.

25 (b) A person that has reserved a name for a limited cooperative
26 association may transfer the reservation to another person by delivering to
27 the Secretary of State a signed notice of the transfer which states the name,
28 street address, and, if different, the mailing address of the transferee. If
29 the person is an organizer of the association and the name of the association
30 is the same as the reserved name, the delivery of articles of organization
31 for filing by the Secretary of State is a transfer by the person to the
32 association.

33
34 4-36-113. Effect of organic rules.

35 (a) The relations between a limited cooperative association and its
36 members are consensual. Unless required, limited, or prohibited by this

1 chapter, the organic rules may provide for any matter concerning the
2 relations among the members of the association and between the members and
3 the association, the activities of the association, and the conduct of its
4 activities.

5 (b) The matters referred to in paragraphs (1) through (12) may be
6 varied only in the articles of organization. The articles may:

7 (1) state a term of existence for the association under § 4-36-
8 105(c);

9 (2) limit or eliminate the acceptance of new or additional
10 members by the initial board of directors under § 4-36-303(b);

11 (3) vary the limitations on the obligations and liability of
12 members for association obligations under § 4-36-504;

13 (4) require a notice of an annual members meeting to state a
14 purpose of the meeting under § 4-36-508(b);

15 (5) vary the board of directors meeting quorum under § 4-36-
16 815(a);

17 (6) vary the matters the board of directors may consider in
18 making a decision under § 4-36-820;

19 (7) specify causes of dissolution under § 4-36-1202(1);

20 (8) delegate amendment of the bylaws to the board of directors
21 pursuant to § 4-36-405(f);

22 (9) provide for member approval of asset dispositions under § 4-
23 36-1501;

24 (10) subject to § 4-36-820, provide for the elimination or
25 limitation of liability of a director to the association or its members for
26 money damages pursuant to § 4-36-818;

27 (11) provide for permitting or making obligatory indemnification
28 under § 4-36-901(a); and

29 (12) provide for any matters that may be contained in the
30 organic rules, including those under subsection (c).

31 (c) The matters referred to in paragraphs (1) through (25) may be
32 varied only in the organic rules. The organic rules may:

33 (1) require more information to be maintained under § 4-36-114
34 or provided to members under § 4-36-505(k);

35 (2) provide restrictions on transactions between a member and an
36 association under § 4-36-115;

1 (3) provide for the percentage and manner of voting on
2 amendments to the organic rules by district, class, or voting group under §
3 4-36-404(a);

4 (4) provide for the percentage vote required to amend the bylaws
5 concerning the admission of new members under § 4-36-405(e)(5);

6 (5) provide for terms and conditions to become a member under §
7 4-36-502;

8 (6) restrict the manner of conducting members meetings under §§
9 4-36-506(c) and 4-36-507(e);

10 (7) designate the presiding officer of members meetings under §§
11 4-36-506(e) and 4-36-507(g);

12 (8) require a statement of purposes in the annual meeting notice
13 under § 4-36-508(b);

14 (9) increase quorum requirements for members meetings under § 4-
15 36-510 and board of directors meetings under § 4-36-815;

16 (10) allocate voting power among members, including patron
17 members and investor members, and provide for the manner of member voting and
18 action as permitted by §§ 4-36-511 – 4-36-517;

19 (11) authorize investor members and expand or restrict the
20 transferability of members' interests to the extent provided in §§ 4-36-602 –
21 4-36-604;

22 (12) provide for enforcement of a marketing contract under § 4-
23 36-704(a);

24 (13) provide for qualification, election, terms, removal,
25 filling vacancies, and member approval for compensation of directors in
26 accordance with §§ 4-36-803 – 4-36-805, 4-36-807, 4-36-809, and 4-36-810;

27 (14) restrict the manner of conducting board meetings and taking
28 action without a meeting under §§ 4-36-811 and 4-36-812;

29 (15) provide for frequency, location, notice and waivers of
30 notice for board meetings under §§ 4-36-813 and 4-36-814;

31 (16) increase the percentage of votes necessary for board action
32 under § 4-36-816(b);

33 (17) provide for the creation of committees of the board of
34 directors and matters related to the committees in accordance with § 4-36-
35 817;

36 (18) provide for officers and their appointment, designation,

1 and authority under § 4-36-822;

2 (19) provide for forms and values of contributions under § 4-36-
3 1002;

4 (20) provide for remedies for failure to make a contribution
5 under § 4-36-1003(b);

6 (21) provide for the allocation of profits and losses of the
7 association, distributions, and the redemption or repurchase of distributed
8 property other than money in accordance with §§ 4-36-1004 – 4-36-1007;

9 (22) specify when a member's dissociation is wrongful and the
10 liability incurred by the dissociating member for damage to the association
11 under § 4-36-1101(b) and (c);

12 (23) provide the personal representative, or other legal
13 representative of, a deceased member or a member adjudged incompetent with
14 additional rights under § 4-36-1103;

15 (24) increase the percentage of votes required for board of
16 director approval of:

17 (A) a resolution to dissolve under § 4-36-1205(a)(1);

18 (B) a proposed amendment to the organic rules under § 4-
19 36-402(a)(1);

20 (C) a plan of conversion under § 4-36-1603(a);

21 (D) a plan of merger under § 4-36-1607(a); and

22 (E) a proposed disposition of assets under § 4-36-1503(1);

23 and

24 (25) vary the percentage of votes required for members approval
25 of:

26 (A) a resolution to dissolve under § 4-36-1205;

27 (B) an amendment to the organic rules under § 4-36-405;

28 (C) a plan of conversion under § 4-36-1603;

29 (D) a plan of merger under § 4-36-1608; and

30 (E) a disposition of assets under § 4-36-1504.

31 (d) The organic rules must address members' contributions pursuant to
32 § 4-36-1001.

33
34 4-36-114. Required information.

35 (a) Subject to subsection (b), a limited cooperative association shall
36 maintain in a record available at its principal office:

1 (1) a list containing the name, last known street address and,
2 if different, mailing address, and term of office of each director and
3 officer;

4 (2) the initial articles of organization and all amendments to
5 and restatements of the articles, together with a signed copy of any power of
6 attorney under which any article, amendment, or restatement has been signed;

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

9 (4) all filed articles of merger and statements of conversion;

10 (5) all financial statements of the association for the six most
11 recent years;

12 (6) the six most recent annual reports delivered by the
13 association to the Secretary of State;

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

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

18 (9) a list containing:

19 (A) the name, in alphabetical order, and last known street
20 address and, if different, mailing address of each patron member and each
21 investor member; and

22 (B) if the association has districts or classes of
23 members, information from which each current member in a district or class
24 may be identified;

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

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

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

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

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

36 (15) a description and statement of the agreed value of

1 contributions other than money made and agreed to be made by each member;

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

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

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

10 (b) If a limited cooperative association has existed for less than the
11 period for which records must be maintained under subsection (a), the period
12 records must be kept is the period of the association's existence.

13 (c) The organic rules may require that more information be maintained.

14
15 4-36-115. Business transactions of member with limited cooperative
16 association.

17 Subject to §§ 4-36-818 and 4-36-819 and except as otherwise provided in
18 the organic rules or a specific contract relating to a transaction, a member
19 may lend money to and transact other business with a limited cooperative
20 association in the same manner as a person that is not a member.

21
22 4-36-116. Dual capacity.

23 A person may have a patron member's interest and an investor member's
24 interest. When such person acts as a patron member, the person is subject to
25 this chapter and the organic rules governing patron members. When such
26 person acts as an investor member, the person is subject to this chapter and
27 the organic rules governing investor members.

28
29 4-36-117. Designated office and agent for service of process.

30 (a) A limited cooperative association, or a foreign cooperative that
31 has a certificate of authority under § 4-36-1404, shall designate and
32 continuously maintain in this state:

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

36 (2) an agent for service of process.

1 (b) The Model Registered Agents Act, § 4-20-101 et seq.:

2 (1) Governs the appointment, authority, powers, duties,
3 termination of appointment, and all other provisions concerning an agent for
4 service of process of a limited cooperative association or a foreign
5 cooperative; and

6 (2) May be used to obtain service of process upon a limited
7 cooperative association or a foreign cooperative.

8
9
10 4-36-118. Change of designated office.

11 (a) Except as otherwise provided in § 4-36-207(e), to change its
12 designated office or the street address or, if different, mailing address of
13 its principal office, a limited cooperative association must deliver to the
14 Secretary of State for filing a statement of change containing:

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

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

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

20 (4) [Reserved.]

21 (5) [Reserved.]

22 (b) Except as otherwise provided in § 4-36-207(e), to change the
23 address of its designated office or the street address or, if different,
24 mailing address of its principal office, a foreign cooperative shall deliver
25 to the Secretary of State for filing a statement of change containing:

26 (1) the name of the foreign cooperative;

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

29 (3) if the address of the designated office is to be changed,
30 the new information;

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

33 (5) if the street address or, if different, the mailing address
34 of its principal office is to be changed, the street address and, if
35 different, the mailing address of the new principal office.

36 (c) Except as otherwise provided in § 4-36-204, a statement of change

1 is effective when filed by the Secretary of State.

2
3 4-36-119. [Reserved.]

4
5 4-36-120. [Reserved.]

6
7
8 SUBCHAPTER 2 – FILING AND ANNUAL REPORTS

9 4-36-201. Signing of records delivered for filing to Secretary of
10 State.

11 (a) A record delivered to the Secretary of State for filing pursuant
12 to this chapter must be signed as follows:

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

15 (2) A statement of cancellation under § 4-36-302(d) must be
16 signed by at least one organizer.

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

20 (4) A record filed on behalf of a dissolved association must be
21 signed by a person winding up activities under § 4-36-1206 or a person
22 appointed under § 4-36-1206 to wind up those activities.

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

25 (b) Any record to be signed under this chapter may be signed by an
26 authorized agent.

27
28 4-36-202. Signing and filing of records pursuant to judicial order.

29 (a) If a person required by this chapter to sign or deliver a record
30 to the Secretary of State for filing does not do so, the circuit court, upon
31 petition of an aggrieved person, may order:

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

34 (2) delivery of the unsigned record to the Secretary of State
35 for filing.

36 (b) An aggrieved person under subsection (a), other than the limited

1 cooperative association or foreign cooperative to which the record pertains,
2 shall make the association or foreign cooperative a party to the action
3 brought to obtain the order.

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

5
6 4-36-203. Delivery to and filing of records by Secretary of State –
7 Effective time and date.

8 (a) A record authorized or required by this chapter to be delivered to
9 the Secretary of State for filing must be captioned to describe the record's
10 purpose, be in a medium and format permitted by the Secretary of State, and
11 be delivered to the Secretary of State. If the filing fees have been paid,
12 and unless the Secretary of State determines that the record does not comply
13 with the filing requirements of this chapter, the Secretary of State shall
14 file the record.

15 (b) The Secretary of State, upon request and payment of the required
16 fee, shall furnish a certified copy of any record filed by the Secretary of
17 State under this chapter to the person making the request.

18 (c) Except as otherwise provided in §§ 4-36-118 and 4-36-204, a record
19 delivered to the Secretary of State for filing under this chapter may specify
20 an effective time and a delayed effective date that may include an effective
21 time on that date. Except as otherwise provided in §§ 4-36-118 and 4-36-204,
22 a record filed by the Secretary of State under this chapter is effective:

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

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

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

32 (A) the specified date; or

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

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

36 (A) the specified date; or

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

2
3 4-36-204. Correcting filed record.

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

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

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

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

16 (3) correct the inaccurate information or defective signature.

17 (c) When filed by the Secretary of State, a statement of correction is
18 effective:

19 (1) when filed as to persons relying on the inaccurate
20 information or defective signature before its correction and adversely
21 affected by the correction; and

22 (2) as to all other persons, retroactively as of the effective
23 date and time of the record the statement corrects.

24
25 4-36-205. Liability for inaccurate information in filed record.

26 If a record delivered to the Secretary of State for filing under this
27 chapter and filed by the Secretary of State contains inaccurate information,
28 a person that suffers a loss by reliance on the information may recover
29 damages for the loss from a person that signed the record or caused another
30 to sign it on the person's behalf and knew at the time the record was signed
31 that the information was inaccurate.

32
33 4-36-206. Certificate of good standing or authorization.

34 (a) The Secretary of State, upon request and payment of the required
35 fee, shall furnish any person that requests it a certificate of good standing
36 for a limited cooperative association if the records filed in the office of

1 the Secretary of State show that the Secretary of State has filed the
2 association's articles of organization, that the association is in good
3 standing, and that the Secretary of State has not filed a statement of
4 termination.

5 (b) The Secretary of State, upon request and payment of the required
6 fee, shall furnish to any person that requests it a certificate of authority
7 for a foreign cooperative if the records filed in the office of the Secretary
8 of State show that the Secretary of State has filed the foreign cooperative's
9 certificate of authority, has not revoked nor has reason to revoke the
10 certificate of authority, and has not filed a notice of cancellation.

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

15
16 4-36-207. Annual report for Secretary of State.

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

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

21 (2) the street address and, if different, mailing address of the
22 association's or foreign cooperative's designated office and the information
23 concerning its agent for service of process required by § 4-20-105(a);

24 (3) the street address and, if different, mailing address of the
25 association's or foreign cooperative's principal office; and

26 (4) in the case of a foreign cooperative, the state or other
27 jurisdiction under whose law the foreign cooperative is formed and any
28 alternative name adopted under § 4-36-1405.

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

31 (c) The first annual report must be delivered to the Secretary of
32 State between January 1 and May 1 of the year following the calendar year in
33 which the limited cooperative association is formed or the foreign
34 cooperative is authorized to transact business in this state. An annual
35 report must be delivered to the Secretary of State between January 1 and
36 May 1 of each subsequent calendar year.

1 (d) If an annual report does not contain the information required by
 2 subsection (a), the Secretary of State shall promptly notify the reporting
 3 limited cooperative association or foreign cooperative and return the report
 4 for correction. If the report is corrected to contain the information
 5 required by subsection (a) and delivered to the Secretary of State not later
 6 than 30 days after the date of the notice from the Secretary of State, it is
 7 timely delivered.

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

13 (f) If a limited cooperative association fails to deliver an annual
 14 report under this section, the Secretary of State may proceed under § 4-36-
 15 1211 to dissolve the association administratively.

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

19
 20 4-36-208. Filing fees.

21 (a) The Secretary of State shall collect the following fees when the
 22 documents described in this subsection are delivered to him or her for
 23 filing:

<u>DOCUMENT</u>	<u>FEE</u>
<u>(1) Articles of organization.....</u>	<u>\$ 50.00</u>
<u>(2) Application for use of indistinguishable name.....</u>	<u>No fee</u>
<u>(3) Application for reserved name.....</u>	<u>\$ 25.00</u>
<u>(4) Notice of transfer of reserved name.....</u>	<u>\$ 25.00</u>
<u>(5) Statement of change of registered agent or registered agent</u> <u>address.....</u>	<u>No fee</u>
<u>(6) Statement of resignation of registered agent.....</u>	<u>No fee</u>
<u>(7) Amendment of articles of organization.....</u>	<u>\$ 50.00</u>
<u>(8) Restatement of articles of organization with amendment of articles</u> <u>.....</u>	<u>\$ 100.00</u>
<u>(9) Articles of merger or conversion.....</u>	<u>\$ 100.00</u>
<u>(10) Articles of dissolution or termination.....</u>	<u>\$ 50.00</u>

- 1 (11) Articles of revocation of dissolution..... \$ 150.00
- 2 (12) Certificate of administrative dissolution..... No fee
- 3 (13) Application for reinstatement following administrative
- 4 dissolution..... \$ 50.00
- 5 (14) Certificate of reinstatement..... No fee
- 6 (15) Certificate of judicial dissolution..... No fee
- 7 (16) Application for certificate of authority..... \$ 300.00
- 8 (17) Application for amended certificate of authority..... \$ 300.00
- 9 (18) Application for certificate of withdrawal..... \$ 300.00
- 10 (19) Certificate of revocation of authority to transact business
- 11 No fee
- 12 (20) Articles of correction..... \$ 30.00
- 13 (21) Application for certificate of good standing or
- 14 authorization..... \$ 15.00
- 15 (22) Any other document required or permitted to be filed by this
- 16 chapter..... \$ 25.00

17 (b)(1) The Secretary of State shall collect a fee of twenty-five
 18 dollars (\$25.00) each time process is served on him or her under this
 19 chapter.

20 (2) The party to a proceeding causing service of process is
 21 entitled to recover the process fee as costs if the party prevails in the
 22 proceeding.

23 (c) The Secretary of State shall collect the following fees for
 24 copying and certifying the copy of any filed document relating to a domestic
 25 or foreign limited cooperative association:

- 26 (1) Fifty cents (50¢) per page for copying; and
- 27 (2) Five dollars (\$5.00) for the certificate.

28 (d) Except as provided in subsection (e) of this section, the
 29 Secretary of State shall collect the following fees when the documents
 30 described in this subsection are delivered by electronic means:

<u>DOCUMENT</u>	<u>FEE</u>	<u>PROCESSING FEE</u>
<u>(1) Articles of organization.....</u>	<u>\$ 40.00</u>	<u>..... \$ 5.00</u>
<u>(2) Application for reservation of name.....</u>	<u>\$ 18.50</u>	<u>..... \$ 4.00</u>
<u>(3) Certificate of amendment.....</u>	<u>\$ 40.00</u>	<u>..... \$ 5.00</u>
<u>(4) Notice of transfer of reserved name.....</u>	<u>\$ 18.50</u>	<u>..... \$ 4.00</u>
<u>(5) Notice of change of registered office or agent or both...</u>	<u>No fee</u>	<u></u>

1 (6) Application for certificate of authority.. \$ 258.00\$ 12.00

2 (e) For any document not listed in subsection (d) of this section, the
3 cost for electronic filing is:

4 (1) Four dollars (\$4.00) for the processing fee when the filing
5 fee is fifty dollars (\$50.00) or less than fifty dollars (\$50);

6 (2) Five dollars (\$5.00) for the processing fee when the filing
7 fee exceeds fifty dollars (\$50.00) but is less than one hundred dollars
8 (\$100);

9 (3) Ten dollars (\$10.00) for the processing fee when the filing
10 fee exceeds or is equal to one hundred dollars (\$100) but is less than three
11 hundred dollars (\$300); and

12 (4) Twelve dollars (\$12.00) for the processing fee when the
13 filing fee is three hundred dollars (\$300) or more.

14
15 SUBCHAPTER 3 – FORMATION AND INITIAL ARTICLES OF ORGANIZATION OF LIMITED
16 COOPERATIVE ASSOCIATION

17 4-36-301. Organizers.

18 A limited cooperative association must be organized by one or more
19 organizers.

20
21 4-36-302. Formation of limited cooperative association – Articles of
22 organization.

23 (a) To form a limited cooperative association, an organizer of the
24 association must deliver articles of organization to the Secretary of State
25 for filing. The articles must state:

26 (1) the name of the association;

27 (2) the purposes for which the association is formed;

28 (3) the street address and, if different, mailing address of the
29 association’s initial designated office and the information concerning the
30 association’s initial agent for service of process required by § 4-20-105(a);

31 (4) the street address and, if different, mailing address of the
32 initial principal office;

33 (5) the name and street address and, if different, mailing
34 address of each organizer; and

35 (6) the term for which the association is to exist if other than
36 perpetual.

1 (b) Subject to § 4-36-113(a), articles of organization may contain any
2 other provisions in addition to those required by subsection (a).

3 (c) A limited cooperative association is formed after articles of
4 organization that substantially comply with subsection (a) are delivered to
5 the Secretary of State, are filed, and become effective under § 4-36-203(c).

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

10
11 4-36-303. Organization of limited cooperative association.

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

13 (1) if initial directors are named in the articles of
14 organization, the initial directors shall hold an organizational meeting to
15 adopt initial bylaws and carry on any other business necessary or proper to
16 complete the organization of the association; or

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

22 (b) Unless the articles of organization otherwise provide, the initial
23 directors may cause the limited cooperative association to accept members,
24 including those necessary for the association to begin business.

25 (c) Initial directors need not be members.

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

29
30 4-36-304. Bylaws.

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

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

35 (A) the classes or other types of members' interests and
36 relative rights, preferences, and restrictions granted to or imposed upon

1 each class or other type of member's interest; and

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

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

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

8 (4) a statement that a member's interest is transferable if it
9 is to be transferable and a statement of the conditions upon which it may be
10 transferred;

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

16 (6) a statement concerning:

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

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

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

24 (b) Subject to § 4-36-113(c) and the articles of organization, bylaws
25 may contain any other provision for managing and regulating the affairs of
26 the association.

27 (c) In addition to amendments permitted under § 4-36-401 et seq., the
28 initial board of directors may amend the bylaws by a majority vote of the
29 directors at any time before the admission of members.

30
31 SUBCHAPTER 4 – AMENDMENT OF ORGANIC RULES OF LIMITED COOPERATIVE ASSOCIATION

32 4-36-401. Authority to amend organic rules.

33 (a) A limited cooperative association may amend its organic rules
34 under this subchapter for any lawful purpose. In addition, the initial board
35 of directors may amend the bylaws of an association under § 4-36-304.

36 (b) Unless the organic rules otherwise provide, a member does not have

1 a vested property right resulting from any provision in the organic rules,
2 including a provision relating to the management, control, capital structure,
3 distribution, entitlement, purpose, or duration of the limited cooperative
4 association.

5
6 4-36-402. Notice and action on amendment of organic rules.

7 (a) Except as provided in §§ 4-36-401(a) and 4-36-405(f), the organic
8 rules of a limited cooperative association may be amended only at a members
9 meeting. An amendment may be proposed by either:

10 (1) a majority of the board of directors, or a greater
11 percentage if required by the organic rules; or

12 (2) one or more petitions signed by at least 10 percent of the
13 patron members or at least 10 percent of the investor members.

14 (b) The board of directors shall call a members meeting to consider an
15 amendment proposed pursuant to subsection (a). The meeting must be held not
16 later than 90 days following the proposal of the amendment by the board or
17 receipt of a petition. The board must mail or otherwise transmit or deliver
18 in a record to each member:

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

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

26 (3) a statement of any condition of the board's submission of
27 the amendment to the members; and

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

31
32 4-36-403. Method of voting on amendment of organic rules.

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

36 (b) A nonsubstantive change to a proposed amendment of the organic

1 rules may be made at the members meeting at which the vote on the amendment
2 occurs and need not be separately voted upon by the board of directors.

3 (c) A vote to adopt a nonsubstantive change to a proposed amendment to
4 the organic rules must be by the same percentage of votes required to pass a
5 proposed amendment.

6
7 4-36-404. Voting by district, class, or voting group.

8 (a) This section applies if the organic rules provide for voting by
9 district or class, or if there is one or more identifiable voting groups that
10 a proposed amendment to the organic rules would affect differently from other
11 members with respect to matters identified in § 4-36-405(e)(1)-(5). Approval
12 of the amendment requires the same percentage of votes of the members of that
13 district, class, or voting group required in §§ 4-36-405 and 4-36-514.

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

19
20 4-36-405. Approval of amendment.

21 (a) Subject to § 4-36-404 and subsections (c) and (d), an amendment to
22 the articles of organization must be approved by:

23 (1) at least two-thirds of the voting power of members present
24 at a members meeting called under § 4-36-402; and

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

28 (b) Subject to § 4-36-404 and subsections (c), (d), (e) and (f), an
29 amendment to the bylaws must be approved by:

30 (1) at least a majority vote of the voting power of all members
31 present at a members meeting called under § 4-36-402, unless the organic
32 rules require a greater percentage; and

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

36 (c) The organic rules may require that the percentage of votes under

1 subsection (a)(1) or (b)(1) be:

2 (1) a different percentage that is not less than a majority of
3 members voting at the meeting;

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

5 (3) a combination of paragraphs (1) and (2).

6 (d) Consent in a record by a member must be delivered to a limited
7 cooperative association before delivery of an amendment to the articles of
8 organization or restated articles of organization for filing pursuant to § 4-
9 36-407, if as a result of the amendment the member will have:

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

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

12 (e) The vote required to amend bylaws must satisfy the requirements of
13 subsection (a) if the proposed amendment modifies:

14 (1) the equity capital structure of the limited cooperative
15 association, including the rights of the association's members to share in
16 profits or distributions, or the relative rights, preferences, and
17 restrictions granted to or imposed upon one or more districts, classes, or
18 voting groups of similarly situated members;

19 (2) the transferability of a member's interest;

20 (3) the manner or method of allocation of profits or losses
21 among members;

22 (4) the quorum for a meeting and the rights of voting and
23 governance; or

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

26 (f) Except for the matters described in subsection (e), the articles
27 of organization may delegate amendment of all or a part of the bylaws to the
28 board of directors without requiring member approval.

29 (g) If the articles of organization delegate amendment of bylaws to
30 the board of directors, the board shall provide a description of any
31 amendment of the bylaws made by the board to the members in a record not
32 later than 30 days after the amendment, but the description may be provided
33 at the next annual members meeting if the meeting is held within the 30-day
34 period.

35
36 4-36-406. Restated articles of organization.

1 A limited cooperative association, by the affirmative vote of a
2 majority of the board of directors taken at a meeting for which the purpose
3 is stated in the notice of the meeting, may adopt restated articles of
4 organization that contain the original articles as previously amended.
5 Restated articles may contain amendments if the restated articles are adopted
6 in the same manner and with the same vote as required for amendments to the
7 articles under § 4-36-405(a). Upon filing, restated articles supersede the
8 existing articles and all amendments.

9
10 4-36-407. Amendment or restatement of articles of organization –
11 Filing.

12 (a) To amend its articles of organization, a limited cooperative
13 association must deliver to the Secretary of State for filing an amendment of
14 the articles, or restated articles of organization or articles of conversion
15 or merger pursuant to § 4-36-1601 et seq., which contain one or more
16 amendments of the articles of organization, stating:

17 (1) the name of the association;

18 (2) the date of filing of the association's initial articles;

19 and

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

22 (b) Before the beginning of the initial meeting of the board of
23 directors, an organizer who knows that information in the filed articles of
24 organization was inaccurate when the articles were filed or has become
25 inaccurate due to changed circumstances shall promptly:

26 (1) cause the articles to be amended; or

27 (2) if appropriate, deliver an amendment to the Secretary of
28 State for filing pursuant to § 4-36-203.

29 (c) If restated articles of organization are adopted, the restated
30 articles may be delivered to the Secretary of State for filing in the same
31 manner as an amendment.

32 (d) Upon filing, an amendment of the articles of organization or other
33 record containing an amendment of the articles which has been properly
34 adopted by the members is effective as provided in § 4-36-203(c).

35
36 SUBCHAPTER 5 – MEMBERS

1 4-36-501. Members.

2 To begin business, a limited cooperative association must have at least
3 two patron members unless the sole member is a cooperative.

4
5 4-36-502. Becoming a member.

6 A person becomes a member:

7 (1) as provided in the organic rules;

8 (2) as the result of a merger or conversion under § 4-36-1601 et
9 seq.; or

10 (3) with the consent of all the members.

11
12 4-36-503. No power as member to bind association.

13 A member, solely by reason of being a member, may not act for or bind
14 the limited cooperative association.

15
16 4-36-504. No liability as member for association's obligations.

17 Unless the articles of organization otherwise provide, a debt,
18 obligation, or other liability of a limited cooperative association is solely
19 that of the association and is not the debt, obligation, or liability of a
20 member solely by reason of being a member.

21
22 4-36-505. Right of member and former member to information.

23 (a) Not later than 10 business days after receipt of a demand made in
24 a record, a limited cooperative association shall permit a member to obtain,
25 inspect, and copy in the association's principal office required information
26 listed in § 4-36-114(a)(1)-(8) during regular business hours. A member need
27 not have any particular purpose for seeking the information. The association
28 is not required to provide the same information listed in § 4-36-114(a)(2)-
29 (8) to the same member more than once during a six-month period.

30 (b) On demand made in a record received by the limited cooperative
31 association, a member may obtain, inspect, and copy in the association's
32 principal office required information listed in § 4-36-114(a)(9), (10), (12),
33 (13), (16) and (18) during regular business hours, if:

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

36 (2) the demand includes a description with reasonable

1 particularity of the information sought and the purpose for seeking the
2 information;

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

5 (4) the demand is reasonable.

6 (c) Not later than 10 business days after receipt of a demand pursuant
7 to subsection (b), a limited cooperative association shall provide, in a
8 record, the following information to the member that made the demand:

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

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

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

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

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

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

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

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

27 (f) Not later than 10 business days after receipt by a limited
28 cooperative association of a demand made by a member in a record, but not
29 more often than once in a six-month period, the association shall deliver to
30 the member a record stating the information with respect to the member
31 required by § 4-36-114(a)(17).

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

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

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

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

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

13
14 4-36-506. Annual meeting of members.

15 (a) Members shall meet annually at a time provided in the organic
16 rules or set by the board of directors not inconsistent with the organic
17 rules.

18 (b) An annual members meeting may be held inside or outside this state
19 at the place stated in the organic rules or selected by the board of
20 directors not inconsistent with the organic rules.

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

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

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

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

33
34 4-36-507. Special meeting of members.

35 (a) A special meeting of members may be called only:

36 (1) as provided in the organic rules;

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

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

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

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

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

16 (d) A special meeting of members may be held inside or outside this
17 state at the place stated in the organic rules or selected by the board of
18 directors not inconsistent with the organic rules.

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

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

25 (g) Unless the organic rules otherwise provide, the presiding officer
26 of a special meeting of members shall be designated by the board of
27 directors.

28
29 4-36-508. Notice of members meeting.

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

33 (b) Unless the articles of organization otherwise provide, notice of
34 an annual members meeting need not include any purpose of the meeting.

35 (c) Notice of a special meeting of members must include each purpose
36 of the meeting as contained in the demand under § 4-36-507(a)(3) or (4) or as

1 voted upon by the board of directors under § 4-36-507(a)(2).

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

4
5 4-36-509. Waiver of members meeting notice.

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

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

12
13 4-36-510. Quorum of members.

14 Unless the organic rules otherwise require a greater number of members
15 or percentage of the voting power, the voting member or members present at a
16 members meeting constitute a quorum.

17
18 4-36-511. Voting by patron members.

19 Except as provided by § 4-36-512(a), each patron member has one vote.
20 The organic rules may allocate voting power among patron members as provided
21 in § 4-36-512(a).

22
23 4-36-512. Determination of voting power of patron member.

24 (a) The organic rules may allocate voting power among patron members
25 on the basis of one or a combination of the following:

26 (1) one member, one vote;

27 (2) use or patronage;

28 (3) equity; or

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

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

33
34 4-36-513. Voting by investor members.

35 If the organic rules provide for investor members, each investor member
36 has one vote, unless the organic rules otherwise provide. The organic rules

1 may provide for the allocation of investor member voting power by class,
2 classes, or any combination of classes.

3
4 4-36-514. Voting requirements for members.

5 If a limited cooperative association has both patron and investor
6 members, the following rules apply:

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

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

11 (A) all members voting at the meeting unless more than a
12 majority is required by § 4-36-401 et seq., § 4-36-1201 et seq., § 4-36-1501
13 et seq., and § 4-36-1601 et seq. or the organic rules; and

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

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

19
20 4-36-515. Manner of voting.

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

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

27 (c) The organic rules may provide for the manner of and provisions
28 governing the appointment of a proxy.

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

32
33 4-36-516. Action without a meeting.

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

1 record to the action.

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

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

7
8 4-36-517. Districts and delegates – Classes of members.

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

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

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

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

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

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

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

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

25
26
27 SUBCHAPTER 6 – MEMBER’S INTEREST IN LIMITED COOPERATIVE ASSOCIATION

28 4-36-601. Member’s interest.

29 A member’s interest:

30 (1) is personal property;

31 (2) consists of:

32 (A) governance rights;

33 (B) financial rights; and

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

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

1
2 4-36-602. Patron and investor members' interests.

3 (a) Unless the organic rules establish investor members' interests, a
4 member's interest is a patron member's interest.

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

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

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

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

13
14 4-36-603. Transferability of member's interest.

15 (a) The provisions of this chapter relating to the transferability of
16 a member's interest are subject to the Uniform Commercial Code, § 4-1-101 et
17 seq.

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

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

23 (d) The terms of any restriction on transferability of financial
24 rights must be:

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

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

29 (e) A transferee of a member's financial rights, to the extent the
30 rights are transferred, has the right to share in the allocation of profits
31 or losses and to receive the distributions to the member transferring the
32 interest to the same extent as the transferring member.

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

36 (g) A limited cooperative association need not give effect to a

1 transfer under this section until the association has notice of the transfer.

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

5
6 4-36-604. Security interest and set-off.

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

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

12 (c) The organic rules may provide that a limited cooperative
13 association has a security interest in the financial rights of a member to
14 secure payment of any indebtedness or other obligation of the member to the
15 association. A security interest provided for in the organic rules is
16 enforceable under, and governed by, Article 9 of the Uniform Commercial Code,
17 § 4-9-101 et seq.

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

21
22 4-36-605. Charging orders for judgment creditor of member or
23 transferee.

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

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

34 (1) appoint a receiver of the share of the distributions due or
35 to become due to the judgment debtor under the judgment debtor's financial
36 rights, with the power to make all inquiries the judgment debtor might have

1 made; and

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

4 (c) Upon a showing that distributions under a charging order will not
5 pay the judgment debt within a reasonable time, the court may foreclose the
6 lien and order the sale of the financial rights. The purchaser at the
7 foreclosure sale obtains only the financial rights that are subject to the
8 charging order, does not thereby become a member, and is subject to § 4-36-
9 603.

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

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

22 (f) This chapter does not deprive any member or transferee of the
23 benefit of any exemption laws applicable to the member's or transferee's
24 financial rights.

25 (g) This section provides the exclusive remedy by which a judgment
26 creditor of a member or transferee may satisfy the judgment from the member's
27 or transferee's financial rights.

28
29 SUBCHAPTER 7 – MARKETING CONTRACTS

30 4-36-701. Authority.

31 In this subchapter, “marketing contract” means a contract between a
32 limited cooperative association and another person, that need not be a patron
33 member:

34 (1) requiring the other person to sell, or deliver for sale or
35 marketing on the person's behalf, a specified part of the person's products,
36 commodities, or goods exclusively to or through the association or any

1 facilities furnished by the association; or

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

4
5 4-36-702. Marketing contracts.

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

10 (b) A marketing contract may:

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

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

18 (c) Some or all of the provisions of a marketing contract between a
19 patron member and a limited cooperative association may be contained in the
20 organic rules.

21
22 4-36-703. Duration of marketing contract.

23 The initial duration of a marketing contract may not exceed 10 years,
24 but the contract may be self-renewing for additional periods not exceeding
25 five years each. Unless the contract provides for another manner or time for
26 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
29 4-36-704. Remedies for breach of contract.

30 (a) Damages to be paid to a limited cooperative association for breach
31 or anticipatory repudiation of a marketing contract may be liquidated, but
32 only at an amount or under a formula that is reasonable in light of the
33 actual or anticipated harm caused by the breach or repudiation. A provision
34 that so provides is not a penalty.

35 (b) Upon a breach of a marketing contract, whether by anticipatory
36 repudiation or otherwise, a limited cooperative association may seek:

1 (1) an injunction to prevent further breach; and

2 (2) specific performance.

3 (c) The remedies in this section are in addition to any other remedies
4 available to an association under law other than this chapter.

5
6 SUBCHAPTER 8 – DIRECTORS AND OFFICERS

7 4-36-801. Board of directors.

8 (a) A limited cooperative association must have a board of directors
9 of at least three individuals, unless the association has fewer than three
10 members. If the association has fewer than three members, the number of
11 directors may not be fewer than the number of members.

12 (b) The affairs of a limited cooperative association must be managed
13 by, or under the direction of, the board of directors. The board may adopt
14 policies and procedures that do not conflict with the organic rules or this
15 chapter.

16 (c) An individual is not an agent for a limited cooperative
17 association solely by being a director.

18
19 4-36-802. No liability as director for limited cooperative
20 association's obligations.

21 A debt, obligation, or other liability of a limited cooperative
22 association is solely that of the association and is not a debt, obligation,
23 or liability of a director solely by reason of being a director. An
24 individual is not personally liable, directly or indirectly, for an
25 obligation of an association solely by reason of being a director.

26
27 4-36-803. Qualifications of directors.

28 (a) Unless the organic rules otherwise provide, and subject to
29 subsection (c), each director of a limited cooperative association must be an
30 individual who is a member of the association or an individual who is
31 designated by a member that is not an individual for purposes of qualifying
32 and serving as a director. Initial directors need not be members.

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

35 (c) If the organic rules provide for nonmember directors, the number
36 of nonmember directors may not exceed:

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

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

3 (3) one-third of the total number of directors if there are at
4 least nine directors.

5 (d) The organic rules may provide qualifications for directors in
6 addition to those in this section.

7
8 4-36-804. Election of directors and composition of board.

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

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

12 (A) one, if there are two or three directors;

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

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

15 (D) one-third of the directors if there are at least nine
16 directors; and

17 (2) a majority of the board of directors must be elected
18 exclusively by patron members.

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

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

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

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

30 (f) Unless the organic rules otherwise provide, cumulative voting for
31 directors is prohibited.

32 (g) Except as otherwise provided by the organic rules, subsection (e),
33 or §§ 4-36-303, 4-36-516, 4-36-517, and 4-36-809, member directors must be
34 elected at an annual members meeting.

35
36 4-36-805. Term of director.

1 (a) Unless the organic rules otherwise provide, and subject to
2 subsections (c) and (d) and § 4-36-303(c), the term of a director expires at
3 the annual members meeting following the director's election or appointment.
4 The term of a director may not exceed three years.

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

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

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

14
15 4-36-806. Resignation of director.

16 A director may resign at any time by giving notice in a record to the
17 limited cooperative association. Unless the notice states a later effective
18 date, a resignation is effective when the notice is received by the
19 association.

20
21 4-36-807. Removal of director.

22 Unless the organic rules otherwise provide, the following rules apply:

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

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

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

31 (A) call a special meeting of members to be held not later
32 than 90 days after receipt of the petition by the association; and

33 (B) mail or otherwise transmit or deliver in a record to
34 the members entitled to vote on the removal, and to the director to be
35 removed, notice of the meeting which complies with § 4-36-508.

36 (4) A director is removed if the votes in favor of removal are

1 equal to or greater than the votes required to elect the director.

2
3 4-36-808. Suspension of director by board.

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

8 (1) fraudulent conduct with respect to the association or its
9 members;

10 (2) gross abuse of the position of director;

11 (3) intentional or reckless infliction of harm on the
12 association; or

13 (4) any other behavior, act, or omission as provided by the
14 organic rules.

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

20
21 4-36-809. Vacancy on board.

22 (a) Unless the organic rules otherwise provide, a vacancy on the board
23 of directors must be filled:

24 (1) within a reasonable time by majority vote of the remaining
25 directors until the next annual members meeting or a special meeting of
26 members called to fill the vacancy; and

27 (2) for the unexpired term by members at the next annual members
28 meeting or a special meeting of members called to fill the vacancy.

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

31 (1) the new director must be of that class or district; and

32 (2) the selection of the director for the unexpired term must be
33 conducted in the same manner as would the selection for that position without
34 a vacancy.

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

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4-36-810. Remuneration of directors.

Unless the organic rules otherwise provide, the board of directors may set the remuneration of directors and of nondirector committee members appointed under § 4-36-817(a).

4-36-811. Meetings.

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

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

4-36-812. Action without meeting.

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

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

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

4-36-813. Meetings and notice.

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

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

4-36-814. Waiver of notice of meeting.

(a) Unless the organic rules otherwise provide, a director may waive

1 any required notice of a meeting of the board of directors in a record
2 before, during, or after the meeting.

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

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

9 (2) the director promptly objects upon the introduction of any
10 matter for which notice under § 4-36-813 has not been given and does not
11 thereafter vote in favor of or otherwise assent to the action taken on the
12 matter.

13
14 4-36-815. Quorum.

15 (a) Unless the articles of organization provide for a greater number,
16 a majority of the total number of directors specified by the organic rules
17 constitutes a quorum for a meeting of the directors.

18 (b) If a quorum of the board of directors is present at the beginning
19 of a meeting, any action taken by the directors present is valid even if
20 withdrawal of directors originally present results in the number of directors
21 being fewer than the number required for a quorum.

22 (c) A director present at a meeting but objecting to notice under § 4-
23 36-814(b)(1) or (2) does not count toward a quorum.

24
25 4-36-816. Voting.

26 (a) Each director shall have one vote for purposes of decisions made
27 by the board of directors.

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

31
32 4-36-817. Committees.

33 (a) Unless the organic rules otherwise provide, a board of directors
34 may create one or more committees and appoint one or more individuals to
35 serve on a committee.

36 (b) Unless the organic rules otherwise provide, an individual

1 appointed to serve on a committee of a limited cooperative association need
2 not be a director or member.

3 (c) An individual who is not a director and is serving on a committee
4 has the same rights, duties, and obligations as a director serving on the
5 committee.

6 (d) Unless the organic rules otherwise provide each committee of a
7 limited cooperative association may exercise the powers delegated to it by
8 the board of directors, but a committee may not:

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

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

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

15
16 4-36-818. Standards of conduct and liability.

17 Except as otherwise provided in § 4-36-820:

18 (1) the discharge of the duties of a director or member of a
19 committee of the board of directors is governed by the law applicable to
20 directors of entities organized under the Arkansas Business Corporation Act
21 (1987), § 4-27-101 et seq.; and

22 (2) the liability of a director or member of a committee of the
23 board of directors is governed by the law applicable to directors of entities
24 organized under the Arkansas Business Corporation Act (1987), § 4-27-101 et
25 seq.

26
27 4-36-819. Conflict of interest.

28 (a) The law applicable to conflicts of interest between a director of
29 an entity organized under the Arkansas Business Corporation Act (1987), § 4-
30 27-101 et seq., governs conflicts of interest between a limited cooperative
31 association and a director or member of a committee of the board of
32 directors.

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

36

1 4-36-820. Other considerations of directors.

2 Unless the articles of organization otherwise provide, in considering
3 the best interests of a limited cooperative association, a director of the
4 association in discharging the duties of director, in conjunction with
5 considering the long and short term interest of the association and its
6 patron members, may consider:

7 (1) the interest of employees, customers, and suppliers of the
8 association;

9 (2) the interest of the community in which the association
10 operates; and

11 (3) other cooperative principles and values that may be applied
12 in the context of the decision.

13
14 4-36-821. Right of director or committee member to information.

15 A director or a member of a committee appointed under § 4-36-817 may
16 obtain, inspect, and copy all information regarding the state of activities
17 and financial condition of the limited cooperative association and other
18 information regarding the activities of the association if the information is
19 reasonably related to the performance of the director's duties as director or
20 the committee member's duties as a member of the committee. Information
21 obtained in accordance with this section may not be used in any manner that
22 would violate any duty of or to the association.

23
24 4-36-822. Appointment and authority of officers.

25 (a) A limited cooperative association has the officers:

26 (1) provided in the organic rules; or

27 (2) established by the board of directors in a manner not
28 inconsistent with the organic rules.

29 (b) The organic rules may designate or, if the rules do not designate,
30 the board of directors shall designate, one of the association's officers for
31 preparing all records required by § 4-36-114 and for the authentication of
32 records.

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

35 (d) Officers of a limited cooperative association shall perform the
36 duties the organic rules prescribe or as authorized by the board of directors

1 not in a manner inconsistent with the organic rules.

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

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

8
9 4-36-823. Resignation and removal of officers.

10 (a) The board of directors may remove an officer at any time with or
11 without cause.

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

16
17 SUBCHAPTER 9 – INDEMNIFICATION

18 4-36-901. Indemnification.

19 (a) Indemnification of an individual who has incurred liability or is
20 a party, or is threatened to be made a party, to litigation because of the
21 performance of a duty to, or activity on behalf of, a limited cooperative
22 association is governed by the Arkansas Business Corporation Act (1987), § 4-
23 27-101 et seq.

24 (b) A limited cooperative association may purchase and maintain
25 insurance on behalf of any individual against liability asserted against or
26 incurred by the individual to the same extent and subject to the same
27 conditions as provided by the Arkansas Business Corporation Act (1987), § 4-
28 27-101 et seq.

29
30 SUBCHAPTER 10 – CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

31 4-36-1001. Members' contributions.

32 The organic rules must establish the amount, manner, or method of
33 determining any contribution requirements for members or must authorize the
34 board of directors to establish the amount, manner, or other method of
35 determining any contribution requirements for members.

36

1 4-36-1002. Contribution and valuation.

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

7 (b) The receipt and acceptance of contributions and the valuation of
8 contributions must be reflected in a limited cooperative association's
9 records.

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

15
16 4-36-1003. Contribution agreements.

17 (a) Except as otherwise provided in the agreement, the following rules
18 apply to an agreement made by a person before formation of a limited
19 cooperative association to make a contribution to the association:

20 (1) The agreement is irrevocable for six months after the
21 agreement is signed by the person unless all parties to the agreement consent
22 to the revocation.

23 (2) If a person does not make a required contribution:

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

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

32 (b) Unless the organic rules or an agreement to make a contribution to
33 a limited cooperative association otherwise provide, if a person does not
34 make a required contribution to an association, the person or the person's
35 estate is obligated, at the option of the association, to contribute money
36 equal to the value of the part of the contribution which has not been made.

1
2 4-36-1004. Allocations of profits and losses.

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

8 (b) Unless the organic rules otherwise provide, all profits and losses
9 of a limited cooperative association must be allocated to patron members.

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

14 (1) amounts paid or due on contracts for the delivery to the
15 association by patron members of products, goods, or services are not
16 considered amounts allocated to patron members.

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

20 (d) Unless prohibited by the organic rules, in determining the profits
21 for allocation under subsections (a), (b), and (c), the board of directors
22 may first deduct and set aside a part of the profits to create or accumulate:

23 (1) an unallocated capital reserve; and

24 (2) reasonable unallocated reserves for specific purposes,
25 including expansion and replacement of capital assets; education, training,
26 cooperative development; creation and distribution of information concerning
27 principles of cooperation; and community responsibility.

28 (e) Subject to subsections (b) and (f) and the organic rules, the
29 board of directors shall allocate the amount remaining after any deduction or
30 setting aside of profits for unallocated reserves under subsection (d):

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

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

36 (f) For purposes of allocation of profits and losses or specific items

1 of profits or losses of a limited cooperative association to members, the
2 organic rules may establish allocation units or methods based on separate
3 classes of members or, for patron members, on class, function, division,
4 district, department, allocation units, pooling arrangements, members'
5 contributions, or other equitable methods.

6
7 4-36-1005. Distributions.

8 (a) Unless the organic rules otherwise provide and subject to § 4-36-
9 1007, the board of directors may authorize, and the limited cooperative
10 association may make, distributions to members.

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

15
16 4-36-1006. Redemption or repurchase.

17 Property distributed to a member by a limited cooperative association,
18 other than money, may be redeemed or repurchased as provided in the organic
19 rules but a redemption or repurchase may not be made without authorization by
20 the board of directors. The board may withhold authorization for any reason
21 in its sole discretion. A redemption or repurchase is treated as a
22 distribution for purposes of § 4-36-1007.

23
24 4-36-1007. Limitations on distributions.

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

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

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

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

36 (c) Except as otherwise provided in subsection (d), the effect of a

1 distribution allowed under subsection (b) is measured:

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

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

7 (A) the distribution is authorized, if the payment occurs
8 not later than 120 days after that date; or

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

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

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

19
20 4-36-1008. Liability for improper distributions – Limitation of
21 action.

22 (a) A director who consents to a distribution that violates § 4-36-
23 1007 is personally liable to the limited cooperative association for the
24 amount of the distribution which exceeds the amount that could have been
25 distributed without the violation if it is established that in consenting to
26 the distribution the director failed to comply with § 4-36-818 or § 4-36-819.

27 (b) A member or transferee of financial rights which received a
28 distribution knowing that the distribution was made in violation of § 4-36-
29 1007 is personally liable to the limited cooperative association to the
30 extent the distribution exceeded the amount that could have been properly
31 paid.

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

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

36 (2) implead in the action any person that is liable under

1 subsection (b) and compel contribution from the person in the amount the
2 person received as described in subsection (b).

3 (d) An action under this section is barred if it is commenced later
4 than two years after the distribution.

5
6 4-36-1009. Relation to state securities law.

7 Patron members' interest in a limited cooperative association has the
8 same exemption as provided for substantially similar interests in
9 cooperatives under the Arkansas Securities Act, § 23-42-101 et seq.

10
11 4-36-1010. [Reserved.]

12
13 SUBCHAPTER 11 – DISSOCIATION

14 4-36-1101. Member's dissociation.

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

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

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

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

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

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

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

34 (d) A member is dissociated from the limited cooperative association
35 as a member when:

36 (1) the association receives notice in a record of the member's

1 express will to dissociate as a member, or if the member specifies in the
2 notice an effective date later than the date the association received notice,
3 on that later date;

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

6 (3) the member is expelled as a member under the organic rules;

7 (4) the member is expelled as a member by the board of directors
8 because:

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

11 (B) there has been a transfer of all the member's
12 financial rights in the association, other than:

13 (i) a creation or perfection of a security interest;
14 or

15 (ii) a charging order in effect under § 4-36-605
16 which has not been foreclosed;

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

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

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

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

27 (iii) not later than 90 days after the notice was
28 sent under clause (ii), the member did not revoke its certificate of
29 dissolution or the equivalent, or the jurisdiction of formation did not
30 reinstate the association's charter or right to conduct business; or

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

33 (5) in the case of a member who is an individual, the individual
34 dies;

35 (6) in the case of a member that is a trust or is acting as a
36 member by virtue of being a trustee of a trust, all the trust's financial

1 rights in the association are distributed;

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

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

7 (9) the association's participation in a merger if, under the
8 plan of merger as approved under § 4-36-1601 et seq., the member ceases to be
9 a member.

10
11 4-36-1102. Effect of dissociation as member.

12 (a) Upon a member's dissociation:

13 (1) subject to § 4-36-1103, the person has no further rights as
14 a member; and

15 (2) subject to § 4-36-1103 and § 4-36-1601 et seq., any
16 financial rights owned by the person in the person's capacity as a member
17 immediately before dissociation are owned by the person as a transferee.

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

22
23 4-36-1103. Power of estate of member.

24 Unless the organic rules provide for greater rights, if a member is
25 dissociated because of death, dies or is expelled by reason of being adjudged
26 incompetent, the member's personal representative or other legal
27 representative may exercise the rights of a transferee of the member's
28 financial rights and, for purposes of settling the estate of a deceased
29 member, may exercise the informational rights of a current member to obtain
30 information under § 4-36-505.

31
32 SUBCHAPTER 12 – DISSOLUTION

33 4-36-1201. Dissolution and winding up.

34 A limited cooperative association is dissolved only as provided in this
35 subchapter and upon dissolution winds up in accordance with this subchapter.

36

1 4-36-1202. Nonjudicial dissolution.

2 Except as otherwise provided in §§ 4-36-1203 and 4-36-1211, a limited
3 cooperative association is dissolved and its activities must be wound up:

4 (1) upon the occurrence of an event or at a time specified in
5 the articles of organization;

6 (2) upon the action of the association's organizers, board of
7 directors, or members under § 4-36-1204 or § 4-36-1205; or

8 (3) 90 days after the dissociation of a member, which results in
9 the association having one patron member and no other members, unless the
10 association:

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

12 (B) not later than the end of the 90-day period, admits at
13 least one member in accordance with the organic rules and has at least two
14 members, at least one of which is a patron member.

15
16 4-36-1203. Judicial dissolution.

17 The circuit court may dissolve a limited cooperative association or
18 order any action that under the circumstances is appropriate and equitable:

19 (1) in a proceeding initiated by the Attorney General, if:

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

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

24 (2) in a proceeding initiated by a member, if:

25 (A) the directors are deadlocked in the management of the
26 association's affairs, the members are unable to break the deadlock, and
27 irreparable injury to the association is occurring or is threatened because
28 of the deadlock;

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

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

36 (D) the assets of the association are being misapplied or

1 wasted.

2
3 4-36-1204. Voluntary dissolution before commencement of activity.
4 A majority of the organizers or initial directors of a
5 limited cooperative association that has not yet begun business activity or
6 the conduct of its affairs may dissolve the association.

7
8 4-36-1205. Voluntary dissolution by the board and members.

9 (a) Except as otherwise provided in § 4-36-1204, for a limited
10 cooperative association to voluntarily dissolve:

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

14 (2) the board of directors must call a members meeting to
15 consider the resolution, to be held not later than 90 days after adoption of
16 the resolution; and

17 (3) the board of directors must mail or otherwise transmit or
18 deliver to each member in a record that complies with § 4-36-508:

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

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

24 (C) notice of the members meeting, which must be given in
25 the same manner as notice of a special meeting of members.

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

28 (1) at least two-thirds of the voting power of members present
29 at a members meeting called under subsection (a)(2); and

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

33 (c) The organic rules may require that the percentage of votes under
34 subsection (b)(1) is:

35 (1) a different percentage that is not less than a majority of
36 members voting at the meeting; or

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

2 (3) a combination of paragraphs (1) and (2).

3
4 4-36-1206. Winding up.

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

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

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

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

13 (3) prosecute and defend actions and proceedings;

14 (4) transfer association property; and

15 (5) perform other necessary acts.

16 (c) After dissolution and upon application of a limited cooperative
17 association, a member, or a holder of financial rights, the circuit court may
18 order judicial supervision of the winding up of the association, including
19 the appointment of a person to wind up the association's activities, if:

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

22 (2) the applicant establishes other good cause.

23 (d) If a person is appointed pursuant to subsection (c) to wind up the
24 activities of a limited cooperative association, the association shall
25 promptly deliver to the Secretary of State for filing an amendment to the
26 articles of organization to reflect the appointment.

27
28 4-36-1207. Distribution of assets in winding up limited cooperative
29 association.

30 (a) In winding up a limited cooperative association's business, the
31 association shall apply its assets to discharge its obligations to creditors,
32 including members that are creditors. The association shall apply any
33 remaining assets to pay in money the net amount distributable to members in
34 accordance with their right to distributions under subsection (b).

35 (b) Unless the organic rules otherwise provide, in this subsection
36 "financial interests" means the amounts recorded in the names of members in

1 the records of a limited cooperative association at the time a distribution
2 is made, including amounts paid to become a member, amounts allocated but not
3 distributed to members, and amounts of distributions authorized but not yet
4 paid to members. Unless the organic rules otherwise provide, each member is
5 entitled to a distribution from the association of any remaining assets in
6 the proportion of the member's financial interests to the total financial
7 interests of the members after all other obligations are satisfied.

8
9 4-36-1208. Known claims against dissolved limited cooperative
10 association.

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

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

16 (1) specify that a claim be in a record;

17 (2) specify the information required to be included in the
18 claim;

19 (3) provide an address to which the claim must be sent;

20 (4) state the deadline for receipt of the claim, which may not
21 be less than 120 days after the date the notice is received by the claimant;
22 and

23 (5) state that the claim will be barred if not received by the
24 deadline.

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

27 (1) the association is not notified of the claimant's claim, in
28 a record, by the deadline specified in the notice under subsection (b)(4);

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

33 (3) if a claim is timely received but is neither accepted nor
34 rejected by the association within 120 days after the deadline for receipt of
35 claims, the claimant does not commence an action to enforce the claim against
36 the association:

1 (A) after the 120-day period; and

2 (B) within 90 days after the 120-day period.

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

5
6 4-36-1209. Other claims against dissolved limited cooperative
7 association.

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

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

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

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

19 (3) state that a claim against the association is barred unless
20 an action to enforce the claim is commenced not later than three years after
21 publication of the notice.

22 (c) If a dissolved limited cooperative association publishes a notice
23 in accordance with subsection (b), the claim of each of the following
24 claimants is barred unless the claimant commences an action to enforce the
25 claim not later than three years after the first publication date of the
26 notice:

27 (1) a claimant that is entitled to but did not receive notice in
28 a record under § 4-36-1208; and

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

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

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

34 (2) if the association's assets have been distributed in
35 connection with winding up the association's activities against a member or
36 holder of financial rights to the extent of that person's proportionate share

1 of the claim or the association's assets distributed to the person in
2 connection with the winding up, whichever is less. The person's total
3 liability for all claims under this subdivision (d)(2) shall not exceed the
4 total amount of assets distributed to the person as part of the winding up of
5 the association.

6
7 4-36-1210. Court proceeding.

8 (a) Upon application by a dissolved limited cooperative association
9 that has published a notice under § 4-36-1209, the circuit court in the
10 county where the association's principal office is located or, if the
11 association does not have a principal office in this state where its
12 designated office in this state is located, may determine the amount and form
13 of security to be provided for payment of claims against the association that
14 are contingent, have not been made known to the association, or are based on
15 an event occurring after the effective date of dissolution but that, based on
16 the facts known to the association, are reasonably anticipated to arise after
17 the effective date of dissolution.

18 (b) Not later than 10 days after filing an application under
19 subsection (a), a dissolved limited cooperative association shall give notice
20 of the proceeding to each known claimant holding a contingent claim.

21 (c) The court may appoint a representative in a proceeding brought
22 under this section to represent all claimants whose identities are unknown.
23 The dissolved limited cooperative association shall pay reasonable fees and
24 expenses of the representative, including all reasonable attorney's and
25 expert witness fees.

26 (d) Provision by the dissolved limited cooperative association for
27 security in the amount and the form ordered by the court satisfies the
28 association's obligations with respect to claims that are contingent, have
29 not been made known to the association, or are based on an event occurring
30 after the effective date of dissolution, and the claims may not be enforced
31 against a member that received a distribution.

32
33 4-36-1211. Administrative dissolution.

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

36 (1) pay, not later than 60 days after the due date, any fee,

1 tax, or penalty due to the Secretary of State under this chapter or other
2 law; or

3 (2) deliver not later than 60 days after the due date its annual
4 report to the Secretary of State.

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

9 (c) If, not later than 60 days after service of a copy of the
10 Secretary of State's determination under subsection (b), the association does
11 not correct each ground for dissolution or demonstrate to the satisfaction of
12 the Secretary of State that each uncorrected ground determined by the
13 Secretary of State does not exist, the Secretary of State shall dissolve the
14 association administratively by preparing and filing a declaration of
15 dissolution which states the grounds for dissolution. The Secretary of State
16 shall serve the association with a copy of the declaration.

17 (d) A limited cooperative association that has been dissolved
18 administratively continues its existence only for purposes of winding up its
19 activities.

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

23
24 4-36-1212. Reinstatement following administrative dissolution.

25 (a) A limited cooperative association that has been dissolved
26 administratively may apply to the Secretary of State for reinstatement not
27 later than two years after the effective date of dissolution. The
28 application must be delivered to the Secretary of State for filing and state:

29 (1) the name of the association and the effective date of its
30 administrative dissolution;

31 (2) that the grounds for dissolution either did not exist or
32 have been eliminated; and

33 (3) that the association's name satisfies the requirements of §
34 4-36-111.

35 (b) If the Secretary of State determines that an application contains
36 the information required by subsection (a) and that the information is

1 correct, the Secretary of State shall:

2 (1) prepare a declaration of reinstatement;

3 (2) file the original of the declaration; and

4 (3) serve a copy of the declaration on the association.

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

10
11 4-36-1213. Denial of reinstatement – Appeal.

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

17 (b) Not later than 30 days after service of a notice of denial of
18 reinstatement by the Secretary of State, a limited cooperative association
19 may appeal the denial under the Arkansas Administrative Procedure Act, § 25-
20 15-201 et seq.

21
22 4-36-1214. Statement of dissolution.

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

26 (1) the name of the association;

27 (2) the date the association dissolved or will dissolve; and

28 (3) any other information the association considers relevant.

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

31 (1) 90 days after a statement of dissolution is filed; or

32 (2) the effective date stated in the statement of dissolution.

33
34 4-36-1215. Statement of termination.

35 (a) A dissolved limited cooperative association that has completed
36 winding up may deliver to the Secretary of State for filing a statement of

1 termination that states:

2 (1) the name of the association;

3 (2) the date of filing of its initial articles of organization;

4 and

5 (3) that the association is terminated.

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

8
9 SUBCHAPTER 13 – [RESERVED.]

10
11 SUBCHAPTER 14 – FOREIGN COOPERATIVES

12 4-36-1401. Governing law.

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

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

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

22
23 4-36-1402. Application for certificate of authority.

24 (a) Before transacting business in this state, a foreign cooperative
25 shall apply for a certificate of authority by delivering an application to
26 the Secretary of State for filing. The application must state:

27 (1) the name of the foreign cooperative and, if the name does
28 not comply with § 4-36-111, an alternative name adopted pursuant to § 4-36-
29 1405;

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

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

1 (4) the street address and, if different, mailing address of the
2 foreign cooperative's designated office and the information concerning its
3 agent for service of process required by § 4-20-105(a);and

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

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

11
12 4-36-1403. Activities not constituting transacting business.

13 (a) Activities of a foreign cooperative which do not constitute
14 transacting business in this state under this subchapter include:

15 (1) maintaining, defending, and settling an action or
16 proceeding;

17 (2) holding meetings of the foreign cooperative's members or
18 directors or carrying on any other activity concerning the foreign
19 cooperative's internal affairs;

20 (3) maintaining accounts in financial institutions;

21 (4) maintaining offices or agencies for the transfer, exchange,
22 and registration of the foreign cooperative's own securities or maintaining
23 trustees or depositories with respect to those securities;

24 (5) selling through independent contractors;

25 (6) soliciting or obtaining orders, whether by mail or
26 electronic means, through employees, agents, or otherwise, if the orders
27 require acceptance outside this state before they become contracts;

28 (7) creating or acquiring indebtedness, mortgages, or security
29 interests in real or personal property;

30 (8) securing or collecting debts or enforcing mortgages or other
31 security interests in property securing the debts, and holding, protecting,
32 and maintaining property so acquired;

33 (9) conducting an isolated transaction that is completed within
34 30 days and is not one in the course of similar transactions; and

35 (10) transacting business in interstate commerce.

36 (b) For purposes of this subchapter, the ownership in this state of

1 income-producing real property or tangible personal property, other than
2 property excluded under subsection (a), constitutes transacting business in
3 this state.

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

7
8 4-36-1404. Issuance of certificate of authority.

9 Unless the Secretary of State determines that an application for a
10 certificate of authority does not comply with the filing requirements of this
11 chapter, the Secretary of State, upon payment by the foreign cooperative of
12 all filing fees, shall file the application, issue a certificate of
13 authority, and send a copy of the filed certificate, together with a receipt
14 for the fees, to the foreign cooperative or its representative.

15
16 4-36-1405. Noncomplying name of foreign cooperative.

17 (a) A foreign cooperative whose name does not comply with § 4-36-111
18 may not obtain a certificate of authority until it adopts, for the purpose of
19 transacting business in this state, an alternative name that complies with §
20 4-36-111. A foreign cooperative that adopts an alternative name under this
21 subsection and then obtains a certificate of authority with that name need
22 not also comply with any other fictitious or assumed name statute of this
23 state. After obtaining a certificate of authority with an alternative name,
24 a foreign cooperative's business in this state must be transacted under that
25 name unless the foreign cooperative is authorized to transact business in
26 this state under another name.

27 (b) If a foreign cooperative authorized to transact business in this
28 state changes its name to one that does not comply with § 4-36-111, it may
29 not thereafter transact business in this state until it complies with
30 subsection (a) and obtains an amended certificate of authority.

31
32 4-36-1406. Revocation of certificate of authority.

33 (a) A certificate of authority may be revoked by the Secretary of
34 State in the manner provided in subsection (b) if the foreign cooperative
35 does not:

36 (1) pay, not later than 60 days after the due date, any fee,

1 tax, or penalty due to the Secretary of State under this chapter or another
2 law of this state other than this chapter;

3 (2) deliver, not later than 60 days after the due date, its
4 annual report;

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

6 (4) deliver for filing a statement of change not later than 30
7 days after a change has occurred in the name of the agent or the address of
8 the foreign cooperative's designated office.

9 (b) To revoke a certificate of authority, the Secretary of State must
10 file a notice of revocation and send a copy to the foreign cooperative's
11 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
13 this state, to the foreign cooperative's principal office. The notice must
14 state:

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

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

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

24
25 4-36-1407. Cancellation of certificate of authority – Effect of
26 failure to have certificate.

27 (a) To cancel its certificate of authority, a foreign cooperative must
28 deliver to the Secretary of State for filing a notice of cancellation. The
29 certificate is canceled when the notice becomes effective under § 4-36-203.

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

33 (c) The failure of a foreign cooperative to have a certificate of
34 authority does not impair the validity of a contract or act of the foreign
35 cooperative or prevent the foreign cooperative from defending an action or
36 proceeding in this state.

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

5 (e) If a foreign cooperative transacts business in this state without
6 a certificate of authority or cancels its certificate, for an action arising
7 out of the transaction of business in this state the foreign cooperative may
8 be served with process under § 4-20-113 if the foreign cooperative:

9 (1) fails to appoint an agent for service of process under § 4-
10 20-112;

11 (2) no longer has an agent for service of process; or

12 (3) has an agent for service of process that can not with
13 reasonable diligence be served.

14
15 4-36-1408. Action by Attorney General.

16 The Attorney General may maintain an action to restrain a foreign
17 cooperative from transacting business in this state in violation of this
18 subchapter.

19
20 SUBCHAPTER 15 – DISPOSITION OF ASSETS

21 4-36-1501. Disposition of assets not requiring member approval.

22 Unless the articles of organization otherwise provide, member approval
23 under § 4-36-1502 is not required for a limited cooperative association to:

24 (1) sell, lease, exchange, license, or otherwise dispose of all or any
25 part of the assets of the association in the usual and regular course of
26 business; or

27 (2) mortgage, pledge, dedicate to the repayment of indebtedness, or
28 encumber in any way all or any part of the assets of the association whether
29 or not in the usual and regular course of business.

30
31 4-36-1502. Member approval of other disposition of assets.

32 A sale, lease, exchange, license, or other disposition of assets of a
33 limited cooperative association, other than a disposition described in § 4-
34 36-1501, requires approval of the association's members under §§ 4-36-1503
35 and 4-36-1504 if the disposition leaves the association without significant
36 continuing business activity.

1
2 4-36-1503. Notice and action on disposition of assets.

3 For a limited cooperative association to dispose of assets under § 4-
4 36-1502:

5 (1) a majority of the board of directors, or a greater
6 percentage if required by the organic rules, must approve the proposed
7 disposition; and

8 (2) the board of directors must call a members meeting to
9 consider the proposed disposition, hold the meeting not later than 90 days
10 after approval of the proposed disposition by the board, and mail or
11 otherwise transmit or deliver in a record to each member:

12 (A) the terms of the proposed disposition;

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

17 (C) a statement of any condition of the board's submission
18 of the proposed disposition to the members; and

19 (D) notice of the meeting at which the proposed
20 disposition will be considered, which must be given in the same manner as
21 notice of a special meeting of members.

22
23 4-36-1504. Disposition of assets.

24 (a) Subject to subsection (b), a disposition of assets under § 4-36-
25 1502 must be approved by:

26 (1) at least two-thirds of the voting power of members present
27 at a members meeting called under § 4-36-1503(2); and

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

31 (b) The organic rules may require that the percentage of votes under
32 subsection (a)(1) is:

33 (1) a different percentage that is not less than a majority of
34 members voting at the meeting;

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

36 (3) a combination of paragraphs (1) and (2).

1 (c) Subject to any contractual obligations, after a disposition of
2 assets is approved and at any time before the consummation of the
3 disposition, a limited cooperative association may approve an amendment to
4 the contract for disposition or the resolution authorizing the disposition or
5 approve abandonment of the disposition:

6 (1) as provided in the contract or the resolution; and

7 (2) except as prohibited by the resolution, with the same
8 affirmative vote of the board of directors and of the members as was required
9 to approve the disposition.

10 (d) The voting requirements for districts, classes, or voting groups
11 under § 4-36-404 apply to approval of a disposition of assets under this
12 subchapter.

13

14 SUBCHAPTER 16 – CONVERSION AND MERGER

15 4-36-1601. Definitions.

16 In this subchapter:

17 (1) “Constituent entity” means an entity that is a party to a
18 merger.

19 (2) “Constituent limited cooperative association” means a
20 limited cooperative association that is a party to a merger.

21 (3) “Converted entity” means the organization into which a
22 converting entity converts pursuant to §§ 4-36-1602 – 4-36-1605.

23 (4) “Converting entity” means an entity that converts into
24 another entity pursuant to §§ 4-36-1602 – 4-36-1605.

25 (5) “Converting limited cooperative association” means a
26 converting entity that is a limited cooperative association.

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

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

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

36 (B) by the entity’s organizational documents under a

1 provision of the entity's organic law authorizing those documents to make one
2 or more specified persons liable for all or specified parts of the entity's
3 debts, liabilities, and other obligations solely because the person co-owns
4 or has an interest in the entity.

5 (8) "Surviving entity" means an entity into which one or more
6 other entities are merged, whether the entity existed before the merger or is
7 created by the merger.

8
9 4-36-1602. Conversion.

10 (a) An entity that is not a limited cooperative association may
11 convert to a limited cooperative association and a limited cooperative
12 association may convert to an entity that is not a limited cooperative
13 association pursuant to this section, §§ 4-36-1603 – 4-36-1605, and a plan of
14 conversion, if:

15 (1) the other entity's organic law authorizes the conversion;

16 (2) the conversion is not prohibited by the law of the
17 jurisdiction that enacted the other entity's organic law; and

18 (3) the other entity complies with its organic law in effecting
19 the conversion.

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

21 (1) the name and form of the entity before conversion;

22 (2) the name and form of the entity after conversion;

23 (3) the terms and conditions of the conversion, including the
24 manner and basis for converting interests in the converting entity into any
25 combination of money, interests in the converted entity, and other
26 consideration; and

27 (4) the organizational documents of the proposed converted
28 entity.

29
30 4-36-1603. Action on plan of conversion by converting limited
31 cooperative association.

32 (a) For a limited cooperative association to convert to another
33 entity, a plan of conversion must be approved by a majority of the board of
34 directors, or a greater percentage if required by the organic rules, and the
35 board of directors must call a members meeting to consider the plan of
36 conversion, hold the meeting not later than 90 days after approval of the

1 plan by the board, and mail or otherwise transmit or deliver in a record to
2 each member:

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

6 (2) a recommendation that the members approve the plan of
7 conversion, or if the board determines that because of a conflict of interest
8 or other circumstances it should not make a favorable recommendation, the
9 basis for that determination;

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

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

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

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

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

22 (c) The organic rules may require that the percentage of votes under
23 subsection (b)(1) is:

24 (1) a different percentage that is not less than a majority of
25 members voting at the meeting;

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

27 (3) a combination of paragraphs (1) and (2).

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

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

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

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

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

5 (1) as provided in the plan; and

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

9 (g) The voting requirements for districts, classes, or voting groups
10 under § 4-36-404 apply to approval of a conversion under this subchapter.

11
12 4-36-1604. Filings required for conversion – Effective date.

13 (a) After a plan of conversion is approved:

14 (1) a converting limited cooperative association shall deliver
15 to the Secretary of State for filing articles of conversion, which must
16 include:

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

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

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

23 (D) a statement that the conversion was approved as
24 required by this chapter;

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

27 (F) a statement confirming that the converted entity has
28 filed a statement appointing an agent for service of process under § 4-20-112
29 if the converted entity is a foreign organization not authorized to transact
30 business in this state; and

31 (2) if the converting entity is not a converting limited
32 cooperative association, the converting entity shall deliver to the Secretary
33 of State for filing articles of organization, which must include, in addition
34 to the information required by § 4-36-302:

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

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

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

5 (b) A conversion becomes effective:

6 (1) if the converted entity is a limited cooperative
7 association, when the articles of conversion take effect pursuant to § 4-36-
8 203(c); or

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

11
12 4-36-1605. Effect of conversion.

13 (a) An entity that has been converted pursuant to this subchapter is
14 for all purposes the same entity that existed before the conversion and is
15 not a new entity but, after conversion, is organized under the organic law of
16 the converted entity and is subject to that law and other law as it applies
17 to the converted entity.

18 (b) When a conversion takes effect under this subchapter:

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

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

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

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

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

30 (6) except as otherwise provided in the plan of conversion, the
31 conversion does not dissolve a converting limited cooperative association for
32 purposes of § 4-36-1201 et seq.

33 (c) A converted entity that is an entity organized under the laws of a
34 jurisdiction other than this state consents to the jurisdiction of the courts
35 of this state to enforce any obligation owed by the converting limited
36 cooperative association if, before the conversion, the converting limited

1 cooperative association was subject to suit in this state on the obligation.
2 A converted entity that is an entity organized under the laws of a
3 jurisdiction other than this state and not authorized to transact business in
4 this state may be served with process under § 4-20-113 if the converted
5 entity:

6 (1) fails to appoint an agent for service of process under § 4-
7 20-112;

8 (2) no longer has an agent for service of process; or

9 (3) has an agent for service of process that can not with
10 reasonable diligence be served.

11
12 4-36-1606. Merger.

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

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

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

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

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

22 (1) the name and form of each constituent entity;

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

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

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

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

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

1
2 4-36-1607. Notice and action on plan of merger by constituent limited
3 cooperative association.

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

8 (b) The board of directors shall call a members meeting to consider a
9 plan of merger approved by the board, hold the meeting not later than 90 days
10 after approval of the plan by the board, and mail or otherwise transmit or
11 deliver in a record to each member:

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

15 (2) a recommendation that the members approve the plan of
16 merger, or if the board determines that because of conflict of interest or
17 other special circumstances it should not make a favorable recommendation,
18 the basis for that determination;

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

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

24
25 4-36-1608. Approval or abandonment of merger by members.

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

28 (1) at least two-thirds of the voting power of members present
29 at a members meeting called under § 4-36-1607(b); and

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

33 (b) The organic rules may provide that the percentage of votes under
34 subsection (a)(1) is:

35 (1) a different percentage that is not less than a majority of
36 members voting at the meeting;

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

2 (3) a combination of paragraphs (1) and (2).

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

6 (d) Consent in a record to a plan of merger by a member must be
7 delivered to the limited cooperative association before delivery of articles
8 of merger for filing pursuant to § 4-36-1609 if as a result of the merger the
9 member will have:

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

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

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

17 (1) as provided in the plan; and

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

21 (f) The voting requirements for districts, classes, or voting groups
22 under § 4-36-404 apply to approval of a merger under this subchapter.

23
24 4-36-1609. Filings required for merger – Effective date.

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

28 (b) The articles of merger must include:

29 (1) the name and form of each constituent entity and the
30 jurisdiction of its governing statute;

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

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

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

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

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

5 (5) if the surviving entity is not created by the merger, any
6 amendments provided for in the plan of merger to the organizational document
7 that created the entity;

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

10 (7) a statement confirming that the surviving entity has filed a
11 statement appointing an agent for service of process under § 4-20-112 if the
12 surviving entity is a foreign organization not authorized to transact
13 business in this state; and

14 (8) any additional information required by the governing statute
15 of any constituent entity.

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

18 (d) A merger becomes effective under this subchapter:

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

21 (A) compliance with subsection (c); or

22 (B) subject to § 4-36-203(c), as specified in the articles
23 of merger; or

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

26
27 4-36-1610. Effect of merger.

28 (a) When a merger becomes effective:

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

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

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

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

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

4 (6) except as prohibited by law other than this chapter, all
5 rights, privileges, immunities, powers, and purposes of each constituent
6 entity that ceases to exist vest in the surviving entity;

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

9 (8) except as otherwise provided in the plan of merger, if a
10 merging limited cooperative association ceases to exist, the merger does not
11 dissolve the association for purposes of § 4-36-1201 et seq.;

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

13 (A) is a limited cooperative association, the articles of
14 organization become effective; or

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

18 (10) if the surviving entity is not created by the merger, any
19 amendments made by the articles of merger for the organizational documents of
20 the surviving entity become effective.

21 (b) A surviving entity that is an entity organized under the laws of a
22 jurisdiction other than this state consents to the jurisdiction of the courts
23 of this state to enforce any obligation owed by the constituent entity if,
24 before the merger, the constituent entity was subject to suit in this state
25 on the obligation. A surviving entity that is an entity organized under the
26 laws of a jurisdiction other than this state and not authorized to transact
27 business in this state may be served with process under § 4-20-113 if the
28 surviving entity:

29 (1) fails to appoint an agent for service of process under § 4-
30 20-112;

31 (2) no longer has an agent for service of process; or

32 (3) has an agent for service of process that can not with
33 reasonable diligence be served.

34
35 4-36-1611. Consolidation.

36 (a) Constituent entities that are limited cooperative associations or

1 foreign cooperatives may agree to call a merger a consolidation under this
2 subchapter.

3 (b) All provisions governing mergers or using the term merger in this
4 chapter apply equally to mergers that the constituent entities choose to call
5 consolidations under subsection (a).

6
7 4-36-1612. Subchapter not exclusive.

8 This subchapter does not prohibit a limited cooperative association
9 from being converted or merged under law other than this chapter.

10
11 SUBCHAPTER 17 – MISCELLANEOUS PROVISIONS

12 4-36-1701. Uniformity of application and construction.

13 In applying and construing this uniform act, consideration must be
14 given to the need to promote uniformity of the law with respect to its
15 subject matter among states that enact it.

16
17 4-36-1702. Relation to Electronic Signatures in Global and National
18 Commerce Act.

19 This chapter modifies, limits, or supersedes the federal Electronic
20 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but
21 does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. §
22 7001(c) or authorize electronic delivery of any of the notices described in §
23 103(b) of that act, 15 U.S.C. § 7003(b).

24
25 4-36-1703. Savings clause.

26 This chapter does not affect an action or proceeding commenced, or
27 right accrued, before the effective date of this chapter.

28
29 4-36-1704. [Reserved.]

30
31 SECTION 2. Arkansas Code § 4-27-101 is amended to read as follows:

32 4-27-101. Short title.

33 *This chapter shall be known and may be cited as the “Arkansas Business*
34 *Corporation Act (1987).”*

35
36 SECTION 3. Arkansas Code § 4-20-113(b), concerning service upon an

1 entity rather than the registered agent for the entity, is amended to read as
2 follows:

3 (b) If an entity fails to appoint an agent under this subchapter or if
4 an entity that previously filed a registered agent filing with the Secretary
5 of State no longer has a registered agent, or if its registered agent cannot
6 with reasonable diligence be served, the entity may be served by registered
7 or certified mail, return receipt requested, addressed to one or more of the
8 governors of the entity by name at its principal office in accordance with
9 any applicable judicial rules and procedures. The names of the governors and
10 the address of the principal office shall be as shown in the most recent
11 annual report filed with the Secretary of State. If the entity is not
12 required to file an annual report with the Secretary of State, the names of
13 the governors and the address of the principal office shall be as shown in
14 the entity's public organic document. Service is perfected under this
15 subsection at the earliest of:

- 16 (1) the date the entity receives the mail;
17 (2) the date shown on the return receipt, if signed on behalf of
18 the entity; or
19 (3) five days after its deposit with the United States Postal
20 Service, if correctly addressed and with sufficient postage.

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/s/ Harrelson