

## COOPERATIVE ASSOCIATIONS

### Footnotes

Applicable to associations formed from and after July 4, 1935; §499.1

Applicable to associations electing to be under this chapter pursuant to § 499.43A, 499.43B

Option to come under chapter 501; §501.601

Option to come under chapter 501A; §501A.1104

### 499.1 Applicable.

This chapter applies only to cooperative associations as defined in section 499.2. All such associations formed from and after July 4, 1935, must be organized under this chapter.

[C35, § 8512-g1; C39, § **8512.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.1]

### 499.2 Definitions.

*"Agricultural associations"* are those formed to produce, grade, blend, preserve, process, store, warehouse, market, sell, or handle an agricultural product, or a by-product of an agricultural product; to produce ethanol; to purchase, produce, sell, or supply machinery, petroleum products, equipment, fertilizer, supplies, business services, or educational service to or for those engaged as bona fide producers of agricultural products; to finance any such activities; or to engage in any cooperative activity connected with or for any number of these purposes.

*"Agricultural products"* include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any other farm products.

*"Association"* means a corporation formed under this chapter.

A *"cooperative association"* is one which deals with or functions for its members at least to the extent required by section 499.3; and which distributes its net earnings among its members in proportion to their dealings with it, except for limited dividends or other items permitted in this chapter; and in which each voting member has one vote and no more.

*"Local deferred patronage dividends"* of an association means that portion of each member's deferred patronage dividends described in section 499.30 which the board of directors of the association has determined arise from earnings of the association other than earnings which have been allocated to the association but which have not been paid in cash to the association by other cooperative organizations of which the association is a member. However, if the board of directors fails to make a determination with respect to a deceased member's deferred patronage dividends prior to the member's death, then *"local deferred patronage dividends"* means that portion of the member's deferred patronage dividends which is proportional to the deferred patronage dividends described in section 499.30 less the amount of undistributed net earnings which have been allocated to the association by other cooperative organizations of which the association is a member, compared to all deferred patronage dividends of the association.

*"Local deferred patronage preferred stock"* of an association means preferred stock, if any, of an association which has been issued in exchange for local deferred patronage dividends. If preferred stock has been issued in exchange for deferred patronage dividends prior to the time the board of directors of the association has determined the portion of each member's deferred patronage dividend which represents local deferred

patronage dividends, then the board of directors may reasonably determine what portion of the preferred stock was issued in exchange for local deferred patronage dividends and the portion which was issued for other deferred patronage dividends.

*"Member"* refers not only to members of nonstock associations but also to common stockholders of stock associations, unless the context of a particular provision otherwise indicates.

[C35, § 8512-g2; C39, § **8512.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.2]

86 Acts, ch 1196, § 1; 88 Acts, ch 1026, § 1; 92 Acts, ch 1099, § 9

### **499.3 Dealing with nonmembers.**

A nonstock livestock shipping association shall not handle livestock of any nonmembers.

Any association may restrict the amount of business done with nonmembers and may limit its dealings or any class thereof to members only.

[C35, § 8512-g3; C39, § **8512.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.3]

2001 Acts, ch 12, §1, 6

### **499.4 Use of term "cooperative" restricted.**

A person including a corporation hereafter organized, which is not an association as defined in this chapter or a cooperative as defined in chapter 501 or 501A, shall not use the word "cooperative" or any abbreviation thereof in its name or advertising or in any connection with its business, except foreign associations admitted under section 499.54. The attorney general or any association or any member thereof may sue and enjoin such use.

This chapter does not control the use of fictitious names; however, if a cooperative association or a foreign cooperative association uses a fictitious name in this state, it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

[C35, § 8512-g4; C39, § **8512.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.4]

97 Acts, ch 23, §56; 2001 Acts, ch 12, §2, 6; 2005 Acts, ch 135, §114

### **499.5 Permissible organizers.**

1. Five or more individuals, or two or more associations, may organize an association.
2. All individual incorporators of agricultural associations must be engaged in producing agricultural products, which phrase includes landlords and tenants as specified in section 499.13.
3. A nonprofit water utility organized under chapter 357A or 504 may elect to become an association under this chapter upon majority vote of its members by filing with the secretary of state a statement confirming the election and appropriate articles of incorporation. However, the association is subject to the service limitation provisions contained in sections 357.1A and 357A.2.
4. A telephone company organized as a corporation under chapter 491 and qualifying pursuant to an internal revenue service letter ruling under Internal Revenue Code § 501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to an association under this chapter may reorganize as an association

under this chapter upon the affirmative vote of two-thirds of the votes cast by the shares entitled to vote in an election at a meeting at which a majority of all shares entitled to vote cast a vote.

[C35, § 8512-g5; C39, § **8512.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.5]

88 Acts, ch 1172, § 3; 90 Acts, ch 1164, §1; 96 Acts, ch 1044, § 1; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393

#### **499.5A Water utilities members of federated associations.**

Notwithstanding section 499.13, a water utility organized under this chapter, a municipal water utility, or a water district organized under chapter 357, 357A, or 504 may be a member of a federated association.

88 Acts, ch 1172, §4; 94 Acts, ch 1137, §2; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393

#### **499.6 Purposes.**

A cooperative association may be organized under this chapter for any lawful purpose or purposes.

[C35, § 8512-g6; C39, § **8512.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.6]

88 Acts, ch 1026, § 2; 88 Acts, ch 1172, § 5

#### **499.7 Powers.**

Except as expressly limited in its articles, each association has the following powers:

1. To conduct business, carry on operations, establish and operate offices, and exercise all powers granted by this chapter in or outside this state.
2. To borrow any amounts of money, and give any form of obligation or security therefor.
3. To make advances to patrons or members, or members of member-associations, and take any form of obligation or security therefor.
4. To acquire, hold, transfer or pledge any obligation or security representing funds actually advanced or used for any cooperative activity; or stock, memberships, bonds or obligations of any cooperative organization dealing in any product handled by the association, or any by-product thereof.
5. To make any contract, endorsement or guaranty it deems desirable incident to its transfer or pledge of any obligation or security.
6. To acquire, own or dispose of any real or personal property deemed convenient for its business, including patents, trademarks and copyrights.
7. To exercise any power, right or privilege suitable or necessary for, or incident to, promoting or accomplishing any of its powers, purposes or activities, or granted to ordinary corporations, save such as are inconsistent with this chapter.
8. To exercise any of its powers anywhere. No association organized under this chapter shall engage in the business of banking.

[C35, § 8512-g7; C39, § **8512.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.7]

#### **499.8 Contracts authorized.**

An agricultural association may contract with any member for the member's exclusive sale to or through it, of all or any part of the member's agricultural products or other designated commodities. Such contracts may permit the association to take and sell the property without acquiring title thereto, and pay the member the sale price less costs and expenses of selling, which may include the member's pro rata portion of the association's annual outlay for overhead, interest, preferred dividends, reserves or other specified charges. Such contracts must be for a specified time, not less than one year. Each contract shall fix a period of at least ten days during each year after the first, within which either party may terminate it without affecting any liability previously accrued.

[C35, § 8512-g8; C39, § **8512.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.8]

#### **499.9 Penalties performance injunction arbitration.**

Contracts permitted by section 499.8 may provide that the member pay the association any sum, fixed in amount or by a specified method of computation, for each violation thereof; also all the association's expenses of any suit thereon, including bond premiums and attorney's fees. All such provisions shall be enforced as written, whether at law or in equity, and shall be deemed proper measurement of actual damages, and not penalties or forfeitures.

The association may obtain specific performance of any such contract, or enjoin its threatened or continued breach, despite the adequacy of any legal or other remedy.

If the association files a verified petition, showing an actual or threatened breach of any such contract and seeking any remedy therefor, the court shall, without notice or delay but on such bond as it deems proper, issue a temporary injunction against such breach or its continuance.

The parties to such contracts may agree to arbitrate any controversy subsequently arising thereunder, and fix the number of arbitrators and method of their appointment. Such agreements shall be valid and irrevocable, except on such grounds as invalidate contracts generally. If they specify no method for appointing arbitrators, or if either party fails to follow such method, or if for any reason arbitrators are not named or vacancies filled, either party may apply to the district court to designate the necessary arbitrator, who shall then act under the agreement with the same authority as if named in it. Unless otherwise agreed, there shall be but one arbitrator.

[C35, § 8512-g9; C39, § **8512.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.9]

#### **499.10 Cooperative agreements.**

Any association may make any agreement or arrangement with any other association or cooperative organization for the cooperative or more economical carrying on of any of its business. Any number of such associations or organizations may unite to employ or use, or may separately employ or use, the same methods, means or agencies for conducting their respective businesses.

[C35, § 8512-g10; C39, § **8512.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.10]

#### **499.11 Legality declared.**

No association, contract, method or act which complies with this chapter shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen business or fix prices

arbitrarily, or to accomplish any improper or illegal purpose.

[C35, § 8512-g11; C39, § **8512.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.11]

#### **499.12 Exemption of private property.**

The private property of the members or stockholders shall be exempt from execution for the debts of the corporation.

[C35, § 8512-g12; C39, § **8512.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.12]

#### **499.13 Membership eligibility.**

A membership or share of common stock shall not be issued to, or held by, any person unless the person is eligible for membership in the association under its articles. A person may be eligible only if the person is engaged in producing a product marketed by the association, the person customarily consumes or uses the supplies or commodities that the association handles, or the person uses the services that the association renders. A farm tenant or landlord who receives a share of agricultural products as rent may be eligible for membership in an agricultural association as a producer. A cooperative association engaged in any directly or indirectly related activity may be eligible for membership. An association may be formed which includes among its members cooperative associations or restricts its membership to cooperative associations.

[C35, § 8512-g13; C39, § **8512.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.13]

97 Acts, ch 17, §2

#### **499.14 Membership in nonstock associations.**

Membership in associations without capital stock may be acquired by eligible parties in the manner provided in the articles, which shall specify the rights of members, the issuing price of memberships, if any, and what, if any, fixed dividends accrue thereon. If the articles so provide, membership shall be of two classes, voting and nonvoting. Voting members shall be agricultural producers, and all other members shall be nonvoting members. Nonvoting members shall have all the rights of membership except the right to vote.

[C35, § 8512-g14; C39, § **8512.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.14]

2001 Acts, ch 12, §3, 6

#### **499.14A Electric cooperative association memberships.**

An electric cooperative association may have one or more classes of members. Qualifications, requirements, methods of acceptance, terms, conditions, termination, and other incidents of membership shall be set forth in the articles of incorporation of the association.

93 Acts, ch 94, §1; 2001 Acts, ch 12, §4, 6

#### **499.15 Certificates of membership or stock.**

The association may issue certificates of membership or stock, each of which states the fixed dividend, if any, and the restrictions or limitations upon its ownership, voting, transfer, redemption, or cancellation.

[C35, § 8512-g15; C39, § **8512.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.15]

2007 Acts, ch 23, §1

**499.16 Subscriptions stock or membership.**

If permitted by the association's articles of incorporation, any eligible subscriber for common stock or membership may vote and be treated as a member after making part payment of the amount, if any, required to be paid for the common stock or membership in cash, giving the subscriber's note for the balance, and satisfying any other requirement for the subscription as set forth in the articles. A subscription may be forfeited as provided in section 499.32. Stock or membership shall not be issued until payment of the amount, if any, required to be paid for the stock or membership is fully made. A subscriber shall not hold office until the association has issued the subscriber stock or membership.

[C35, § 8512-g16; C39, § **8512.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.16]

97 Acts, ch 17, §3; 2001 Acts, ch 12, §5, 6; 2007 Acts, ch 23, §2

**499.17 Transfer of stock or membership.**

No common stock shall be transferable, unless the articles expressly provide for transfer to others eligible for membership. Such provision may require that the transfer be preceded by an offer to the association, or be otherwise restricted. No nonstock membership shall be transferable, and if the association issues certificates of membership or stock to a member, the certificates shall be surrendered to the association on the member's voluntary withdrawal.

[C35, § 8512-g17; C39, § **8512.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.17]

2007 Acts, ch 23, §3

**499.18 Expulsion of members.**

The directors may expel any member if the member has attempted to transfer that member's membership or stock in violation of its terms, or has willfully violated any article or bylaw which provides for such penalty.

[C35, § 8512-g18; C39, § **8512.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.18]

**499.19 Cancellation of membership or stock.**

If a common stockholder or member dies, or becomes ineligible, or is expelled, that person's stock or membership shall forthwith be canceled. In cases of expulsion the association shall pay the stockholder or member its value as shown by the books on the date of cancellation, but not more than its original issuing price, within sixty days thereafter. In cases of death or ineligibility, it shall pay such value to the stockholder or member or the stockholder's or member's personal representative within two years thereafter, without interest.

[C35, § 8512-g19; C39, § **8512.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.19]

**499.20 Withdrawal of members.**

The articles may permit and regulate voluntary withdrawal of members and the resulting cancellation of their common stock and memberships.

[C35, § 8512-g20; C39, § **8512.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.20]

#### **499.21 Obligations not affected.**

The death, expulsion or withdrawal of a member shall not impair the member's contracts, debts, or obligations to the association.

[C35, § 8512-g21; C39, § **8512.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.21]

#### **499.22 Capital stock.**

An association with capital stock may divide the shares into common and preferred stock. Par value stock shall not be issued for less than par. The general corporation laws shall govern the consideration for which no-par stock is issued. If the articles so provide, common stock may be issued in two classes, voting and nonvoting. Voting stock shall be issued to all agricultural producers and nonvoting stock to all other members. Voting stock or nonvoting stock may be issued to a cooperative association as provided in the articles of incorporation of the association issuing the stock. Nonvoting stock shall have all privileges of membership except the right to vote. Preferred stock held by nonmembers shall not exceed in amount that held by members.

[C35, § 8512-g22; C39, § **8512.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.22]

97 Acts, ch 17, §4; 98 Acts, ch 1100, §67

#### **499.23 Dividends on common stock.**

Unless the articles provide that common stock shall receive no dividends, the directors may declare noncumulative dividends thereon at such rate as they may fix, not exceeding eight percent per annum.

[C35, § 8512-g23; C39, § **8512.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.23]

#### **499.24 Preferred stock.**

Preferred stock shall bear cumulative or noncumulative dividends as fixed by the articles, not exceeding eight percent per annum. It shall have no vote. It shall be issued and be transferable without regard to eligibility or membership, and be redeemable on terms specified in the articles and as provided for in this chapter. The directors shall determine the time and amount of its issue.

[C35, § 8512-g24; C39, § **8512.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.24]

#### **499.25 Issuing preferred stock in purchases.**

An association may discharge all or any part of obligations incurred in purchasing any business, property or stock, or an interest therein, by issuing its authorized preferred stock in an amount not exceeding the fair market value of the thing purchased. Issuance of such stock shall be upon the fair market value of the property purchased, as determined through an appraisal made by the directors or a competent appraiser employed by the directors. Such preferred stock shall be valid as though paid for in cash.

[C35, § 8512-g25; C39, § **8512.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.25]

90 Acts, ch 1164, §2

#### **499.26 Service charges.**

Unless the articles otherwise provide, the bylaws or the directors may prescribe charges to be made to each

member for services rendered the member or upon products bought from or sold to the member, and the time and manner of their collection.

[C35, § 8512-g26; C39, § **8512.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.26]

#### **499.27 Meetings.**

Regular meetings of members shall be held at least once each year, the first of which shall be on the date specified in its articles. Unless otherwise provided in the articles or bylaws, subsequent meetings shall be on the same date in each succeeding year.

Unless otherwise provided in the articles, the directors may call special meetings of members, and must do so upon written demand of twenty percent of the members.

Unless the member waives it in writing, each member shall have ten days' written notice of the time and place of all meetings, and of the purpose of all special meetings. Such notice shall be given to the member in person or by mail directed to the member's address as shown on the books of the association, or if the articles so provide, by publication in a regular publication of general circulation among its members, or a newspaper of general circulation published at the principal place of business of the association.

[C35, § 8512-g27; C39, § **8512.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.27]

#### **Footnotes**

Articles of incorporation, § 499.40

#### **499.28 Number of votes.**

No member may own more than one membership or share of common stock. Each voting member shall be entitled to one vote and no more at all corporate meetings.

[C35, § 8512-g28; C39, § **8512.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.28]

#### **499.29 Manner of voting.**

Votes shall be cast in person, and not by proxy. The vote of a member-association shall be cast only by its representative duly authorized in writing. If the articles or bylaws permit, a member may cast that member's vote, in advance of the meeting, upon any proposition of which the member has been previously notified in writing.

[C35, § 8512-g29; C39, § **8512.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.29]

96 Acts, ch 1115, §1

#### **499.30 Distribution of earnings.**

The directors shall annually dispose of the earnings of the association in excess of its operating expenses as follows:

1. To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses.
2. *a.* To the extent that the cooperative association is operating on a pooling basis, the board of directors of

the cooperative association shall determine the portion of the remaining earnings derived from the pool that will be added to the surplus. The cooperative association is operating on a pooling basis, if the association markets, sells, or handles an agricultural product and all of the following apply:

(1) The product is a pool composed by commingling units of the same kind of product which are contributed to the cooperative association by its members.

(2) The earnings of the association are computed without deducting a charge for products delivered by members of the association who are contributing units to be commingled in the product pool.

The board of directors may provide an advance payment to the members of the association contributing units of the product to be commingled in the product pool during the contribution period.

*b.* To the extent that the cooperative association is not operating on a pooling basis as provided in this subsection, at least ten percent of the remaining earnings must be added to surplus until surplus equals either thirty percent of the total of all capital paid in for stock or memberships, plus all unpaid patronage dividends, plus certificates of indebtedness payable upon liquidation, earnings from nonmember business, and earnings arising from the earnings of other cooperative organizations of which the association is a member, or one thousand dollars, whichever is greater. No additions shall be made to surplus when it exceeds either fifty percent of the total, or one thousand dollars, whichever is greater, without the approval of the membership by a majority of votes cast.

3. Not less than one percent nor more than five percent of earnings in excess of reserves may be placed in an educational fund, to be used as the directors deem suitable for teaching or promoting cooperation.

4. After disposing of earnings as provided in subsections 1 and 2, the cooperative association shall pay any fixed dividends on stock or memberships.

5. Notwithstanding an association's articles of incorporation, for each taxable year of the association, the association shall allocate all remaining net earnings to the account of each member, including subscribers described in section 499.16, ratably in proportion to the business the member did with the association during that year. The directors shall determine, or the articles of incorporation or bylaws of the association may specify, the percentage or the amount of the allocation to be currently paid in cash. However, for a cooperative association other than a public utility as defined in section 476.1, the amount to be currently payable in cash shall not exceed twenty percent of the allocation during any period when unpaid local deferred patronage dividends of deceased members for prior years are outstanding. Notwithstanding the twenty percent allocation limitation, the directors of a cooperative association or the articles of incorporation or bylaws of the association may specify any percentage or amount to be currently paid in cash to the estates of deceased natural persons who were members. All the remaining allocation not paid in cash shall be transferred to a revolving fund as provided in section 499.33 and credited to the members and subscribers. The credits in the revolving fund are referred to in this chapter as deferred patronage dividends.

[C35, § 8512-g30; C39, § **8512.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.30]

86 Acts, ch 1196, § 2, 3; 94 Acts, ch 1058, §1; 95 Acts, ch 106, §1; 96 Acts, ch 1115, § 2

#### **499.30A Reversion of disbursements.**

1. As used in this section, "*disbursement*" means an amount of any dividend, patronage dividend, distribution including earnings distribution, or any other increment or sum realized or accruing from a membership or stock, subscription, or other equity interest in a cooperative association.

2. Once a person's membership or stock, subscription, or other member's equity in a cooperative association

is deemed abandoned under section 556.5, the cooperative association may retain any disbursement held by the cooperative association for or owing to the person. The cooperative association may also deliver the disbursement to the treasurer of state for disposition as abandoned property pursuant to sections 556.5 and 556.11.

3. If the cooperative association elects to retain the disbursement under this section, the disbursement shall be deposited into a reversion fund established by the cooperative association.

4. A disbursement having an aggregate value of fifty dollars or more that is retained by the cooperative association shall be forfeited to the cooperative association only if the cooperative association publishes at least one notice of the abandoned property in a publication regularly distributed to its membership or in a newspaper having a general circulation in the county where the cooperative association is located. The notice shall include all of the following:

*a.* The name and address of the cooperative association.

*b.* The name of the person who has an interest in the disbursement according to the records of the cooperative association.

*c.* A brief description of the type of disbursement retained by the cooperative association.

*d.* A statement that the disbursement will be forfeited to the cooperative association unless the person files a claim for the disbursement within the period provided for in this section.

5. *a.* Subject to this subsection, a person asserting an interest in the disbursement may file a claim for it with the cooperative association in a manner and according to procedures required by the cooperative association. If a person is entitled to an abandoned membership, stock, subscription, or other interest as provided in section 556.20 or 556.21, the cooperative association shall also pay the person the disbursement deposited in the reversion fund that is realized or accrued from the membership or stock, subscription, or other interest.

*b.* If a person has not filed a claim for the disbursement within six months after the first date that the notice of abandoned property is first published as provided in this section, the disbursement shall be forfeited to the cooperative association.

6. The disbursements deposited into the reversion fund that are forfeited to the cooperative association shall be used as provided in this subsection. The cooperative association may authorize the payment of forfeited disbursements to persons claiming interests in forfeited disbursements as provided in the cooperative association's articles of incorporation or bylaws. Otherwise, forfeited disbursements shall be used as the directors deem suitable for any of the following purposes:

*a.* Teaching and promoting cooperation. The directors may deposit the amounts of disbursements into the education fund as provided in section 499.30.

*b.* Economic development including private or joint public and private investments involving the creation of economic opportunities for its members or the retention of existing sources of income that would otherwise be lost.

2001 Acts, ch 142, §3; 2004 Acts, ch 1028, §1

#### **499.31 Control of allocation by members.**

The members may at any meeting control the amount to be allocated to surplus or educational fund, within the limits specified in section 499.30, or the amount to be allocated to reserves.

[C35, § 8512-g31; C39, § **8512.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.31]

#### **499.32 Patronage dividends of subscribers.**

Patronage dividends to subscribers whose stock or membership is not fully paid in cash shall be applied toward such payment until it is completed. If the articles or bylaws so provide, subscriptions not fully paid within two years may be canceled and all payments or patronage dividends thereon forfeited.

[C35, § 8512-g32; C39, § **8512.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.32]

#### **499.33 Use of revolving fund.**

1. The directors may use a revolving fund to pay the obligations or add to the capital of the association or retire its preferred stock. In that event the deferred patronage dividends credited to members constitute a charge on the revolving fund, on future additions to the revolving fund, and on the corporate assets, subordinate to existing or future creditors and preferred stockholders. Except as otherwise provided in subsection 2, deferred patronage dividends for any year have priority over those for subsequent years.

2. *a.* Prior to other payments of deferred patronage dividends or redemption of preferred stock held by members, the directors of a cooperative association, other than a cooperative association which is a public utility as defined in section 476.1, shall pay local deferred patronage dividends and redeem local deferred patronage preferred stock of deceased natural persons who were members, and may pay deferred patronage dividends or may redeem preferred stock of deceased natural persons who were members or of members who become ineligible, without reference to the order of priority.

*b.* The directors of a cooperative association which is a public utility as defined in section 476.1 may pay deferred patronage dividends and redeem preferred stock of deceased natural persons who were members, and may pay all other deferred patronage dividends or redeem preferred stock of members without reference to priority.

3. Payment of deferred patronage dividends or the redemption of preferred stock shall be carried out to the extent and in the manner specified in the bylaws of the association.

[C35, § 8512-g33; C39, § **8512.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.33]

86 Acts, ch 1196, § 4; 95 Acts, ch 106, §2

#### **499.34 Patronage dividend certificates.**

If its articles or bylaws so provide, an association may issue transferable or nontransferable certificates for deferred patronage dividends.

[C35, § 8512-g34; C39, § **8512.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.34]

#### **499.35 Time of payment.**

Credits or certificates referred to in sections 499.33 and 499.34 shall not mature until the dissolution or liquidation of the association, but shall be callable by the association at any time in the order of priority specified in section 499.33.

[C35, § 8512-g35; C39, § **8512.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.35]

#### **499.36 Directors.**

1. The affairs of each association shall be managed by a board of directors.

2. *a.* A director must be a member of the association or an officer or a member of a member-association. A director shall be elected by the members as prescribed by the association's articles of incorporation.

*b.* At least five directors shall serve on the association's board. The number of directors shall be established in accordance with the association's articles of incorporation or bylaws. If a board has the power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the members. Only the members may increase or decrease by more than thirty percent the number of directors last approved by the members.

*c.* The articles of incorporation may establish a variable range for the size of the board by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum number, by the members or the board. After shares are issued, only the members may change the range for the size of the board, change from a fixed to a variable-range-size board, or change from a variable-size to a fixed-size board.

3. *a.* Unless the articles or bylaws otherwise provide, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by any of the following:

(1) The shareholders.

(2) The board.

(3) If the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of all the directors remaining in office.

*b.* A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. The new director shall not take office until the vacancy occurs.

4. The articles or bylaws may permit the directors to select an executive committee from their own number; and may prescribe its authority, which may be coextensive with that of the whole board.

5. Directors shall be elected by districts, if the articles specify the districts, the number of directors from each district, the manner of nomination, redistricting, or reapportionment, and whether directors are to be directly elected by the members or by delegates chosen by them. Districts shall be formed and redistricting shall be ordered, from time to time, so that the districts contain as nearly as possible an equal number of members. The bylaws shall describe the district boundaries currently in effect.

6. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting through the use of any means of communication by which all directors participating are able to simultaneously hear each other during the meeting. A director participating in a meeting pursuant to this subsection is deemed to be present in person at the meeting.

7. Unless the articles of incorporation or bylaws provide otherwise, an action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and filed with the corporate records reflecting the action taken. An action taken under this subsection is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this subsection is deemed to have the same effect as a meeting vote and may be described as such in any document.

[C35, § 8512-g36; C39, § 8512.36; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.36]

86 Acts, ch 1196, § 5; 92 Acts, ch 1147, § 1; 94 Acts, ch 1023, §64; 97 Acts, ch 17, §5

#### **499.36A Standards of conduct for directors.**

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the association, and with the care that a person in a like position would reasonably believe appropriate under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the cooperative.

2. *a.* A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the association whom the director reasonably believes to be reliable and competent in the matters presented.

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

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

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

3. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless any of the following applies:

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

*b.* The director votes against the action at the meeting.

*c.* The director is prohibited by a conflict of interest from voting on the action.

4. In discharging the duties of a director, the director may, in addition to consideration of the effects of any action on the association and its members, consider any or all of the following community interest factors:

*a.* The effects of the action on the association's employees, suppliers, creditors, and customers.

*b.* The interests of and effects on communities and the cooperative system in which the association and its members operate.

*c.* The long-term as well as short-term interests of the association and its members, including the possibility that these interests may be best served by the continued independence of the association.

2008 Acts, ch 1141, §1

#### **499.37 Officers.**

1. The board of directors of the association shall select the association's officers as provided in its articles of incorporation or bylaws, and shall fill vacancies in such offices. The articles of incorporation or bylaws shall delegate to an officer the responsibility for all of the following:

- a.* Preparing minutes of meetings of the directors and the shareholders.
- b.* Authenticating the association's records.

2. Unless the association's articles of incorporation or bylaws otherwise provide, the association's officers shall serve for annual terms beginning at the close of the first regular meeting of members in each year.

[C35, § 8512-g37; C39, § **8512.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.37]

2003 Acts, ch 66, §13

#### **499.37A Standards of conduct for officers.**

1. An officer, when performing in such capacity, shall act in conformity with all of the following:

- a.* In good faith.
- b.* With the care that a person in a like position would reasonably exercise under similar circumstances.
- c.* In a manner the officer reasonably believes to be in the best interests of the association.

2. In discharging the officer's duties, an officer who does not have knowledge that makes such reliance unwarranted is entitled to rely on any of the following:

- a.* The performance of properly delegated responsibilities by one or more employees of the association whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.
- b.* Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the association whom the officer reasonably believes to be reliable and competent in the matters presented.
- c.* Legal counsel, public accountants, or other persons retained by the association as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence.

3. An officer shall not be liable as an officer to the association or its members for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section is liable depends in such instance on applicable law, including those principles of section 499.36A that have relevance.

2008 Acts, ch 1141, §2

#### **499.38 Removal of officers and directors.**

At any meeting called for that purpose, any officer or director may be removed by vote of a majority of all voting members of the association. A director chosen under section 499.36, subsection 5, may likewise be removed by vote of a majority of all members in the director's district.

[C35, § 8512-g38; C39, § **8512.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.38]

### **499.39 Referendum.**

If provided for in the articles of incorporation, any action of directors shall, on demand of one-third of the directors made and recorded at the same meeting, be referred to a regular or special meeting of members called for such purpose. Such action shall stand until and unless annulled by a majority of the votes cast at such meeting, which vote shall not impair rights of third parties previously acquired.

[C35, § 8512-g39; C39, § **8512.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.39]

### **499.40 Articles.**

Articles of incorporation must be signed and acknowledged by each incorporator. They may deal with any fiscal or internal affair of the association or any subject hereof in any manner not inconsistent with this chapter. All articles must state in the English language:

1. The name of the association, which must include the word "cooperative"; and the address of its principal office.
2. The purposes for which it is formed, and a statement that it is organized under this chapter.
3. Its duration, which may be perpetual.
4. The name, occupation and post-office address of each incorporator.
5. The following information regarding the directors:
  - a. Their number.
  - b. Whether there is a fixed number or a variable range as provided in section 499.36. If a variable range is established, the information shall include the minimum and maximum number.
  - c. Their qualifications.
  - d. Their terms of office.
  - e. How they shall be chosen and removed from office.
6. Who are eligible for membership, how members shall be admitted and membership lost, how earnings shall be distributed among members, how assets shall be distributed in liquidation, and, in addition, either:
  - a. That the association shall have capital stock; the classes, par value and authorized number of shares of each class thereof; how shares shall be issued and paid for; and what rights, limitations, conditions and restrictions pertain to the stock, which shall be alike as to all stock of the same class; or
  - b. That the association shall have no capital stock, and what limitations, conditions, restrictions and rights pertain to membership; and if the rights are unequal, the rules respecting them shall be specifically stated.
7. The date of the first regular meeting of members.
8. The name and street address of the association's initial registered agent.

[C35, § 8512-g40; C39, § **8512.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.40]

93 Acts, ch 126, § 15; 97 Acts, ch 17, §6

#### **499.41 Amendments.**

Notwithstanding the provisions of the articles of incorporation of any association pertaining to amendment thereto now in effect, any association may amend its articles of incorporation by a vote of sixty-six and two-thirds percent of the members present, or represented by mailed ballots, and having voting privileges, at any annual meeting or any special meeting called for that purpose, provided that at least ten days before said annual meeting or special meeting a copy of the proposed amendment or summary thereof be sent to all members having voting rights; or said articles of incorporation may be amended in accordance with the amendment requirements contained in the articles or bylaws of said association that are adopted subsequent to July 4, 1963, or are in effect on or after July 4, 1964, provided said amendment requirements in the articles or bylaws are not less than established in this section.

Amendments shall be executed and filed as provided in section 499.44.

[C35, § 8512-g41; C39, § **8512.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.41]

90 Acts, ch 1164, § 3

#### **499.41A Greater voting or quorum requirements.**

An amendment to the articles of incorporation of an association that adds, changes, or deletes a greater voting or quorum requirement by the members than required by this chapter must be adopted by the voting or quorum requirements then in effect or proposed to be adopted, whichever is greater.

2008 Acts, ch 1141, §3

#### **499.42 Renewal.**

An association may extend its duration perpetually, or for any definite time, by resolution adopted by a majority of all its members, or any different vote for which the articles may provide, at a meeting called for that purpose and held before its original expiration.

Unless the association has meanwhile wound up, its duration may be extended in like manner within three years after its original expiration, with the same effect as if done prior thereto, by a vote of two-thirds of all its members.

The resolution must state the name of the association, its original expiration date, and for how long thereafter its duration is extended, and must also adopt, and designate officers to execute, renewal articles of incorporation containing the things required in section 499.40.

The renewal articles shall be executed and filed as required by section 499.41. Renewal shall not relieve the association from fees, charges, or penalties which may have accrued against it.

[C35, § 8512-g42; C39, § **8512.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.42]

90 Acts, ch 1164, §4

**499.43 Existing corporations option.** Repealed by 2006 Acts, ch 1062, § 2, 3. See § 499.43A.

**499.43A Existing cooperatives organized under chapter 497 or 498 conversion option.**

1. As used in this section, *"cooperative association"* means any of the following:

a. An association organized under chapter 497, regardless of whether it is referred to as an *"association"*, *"company"*, *"corporation"*, *"exchange"*, *"society"*, or *"union"* as provided in that chapter.

b. A cooperative association organized under chapter 498, regardless of whether it is referred to as an *"association"*, *"exchange"*, *"society"*, or *"union"* as provided in that chapter.

2. A cooperative association may elect to be governed by and to comply with the provisions of this chapter. The election shall be governed by the following procedures:

a. The board of directors and members must adopt a resolution reciting that the cooperative association elects to be governed by and to comply with this chapter. The cooperative association, to the extent necessary, shall change its name to comply with the provisions of this chapter. The resolution shall be adopted according to the same procedures as provided in section 499.41. Upon the adoption of the resolution, the cooperative association shall execute an instrument on forms prescribed by the secretary of state. The instrument must be signed by the president and secretary and verified by one of the officers signing the instrument. The instrument shall include all of the following:

(1) The name of the cooperative association, before and after this election.

(2) A description of each resolution adopted by the cooperative association pursuant to this section, including the date each resolution was adopted.

b. The instrument shall be filed with the secretary of state. The cooperative association shall amend its articles of incorporation pursuant to section 499.41 to comply with the provisions of this chapter. The secretary of state shall not file the instrument unless the cooperative association organized under chapter 497 is in compliance with the provisions of chapter 497 at the time of filing. The secretary of state shall not file the instrument unless the cooperative association organized under chapter 498 is in compliance with the provisions of chapter 498 at the time of filing. A cooperative association shall file a biennial report which is due pursuant to section 499.49.

3. Upon filing the instrument with the secretary as required in this section, all of the following shall apply:

a. The cooperative association shall be deemed to be organized under this chapter and the provisions of this chapter shall apply to the cooperative association.

b. The secretary of state shall issue a certificate to the cooperative association acknowledging that it is deemed to be organized under this chapter.

4. The application of this chapter to the cooperative association does not affect any of the following:

a. For a cooperative association organized under chapter 497, a right accrued or established, or liability or penalty incurred, pursuant to chapter 497 prior to the filing of the instrument with the secretary of state as required in this section.

b. For a cooperative association organized under chapter 498, a right accrued or established, or liability or penalty incurred, pursuant to chapter 498 prior to the filing of the instrument with the secretary of state as required in this section.

92 Acts, ch 1066, § 2; 94 Acts, ch 1055, §13; 2000 Acts, ch 1022, §8; 2006 Acts, ch 1062, §1, 3

**499.43B Existing cooperatives organized under chapter 490 or 491 option.**

A cooperative association organized under chapter 490 or 491 may elect to be governed by and to comply with the provisions of this chapter. The election shall be governed by the following procedures:

1. The board of directors and shareholders must adopt a resolution reciting that the cooperative association elects to be governed by and to comply with this chapter. The cooperative association, to the extent necessary, shall change its name to comply with the provisions of this chapter. The resolution shall be adopted according to the same procedures as provided in section 499.41. Upon the adoption of the resolution, the cooperative association shall execute an instrument on forms prescribed by the secretary of state. The instrument must be signed by the president and secretary and verified by one of the officers signing the instrument. The instrument shall include all of the following:

*a.* The name of the cooperative association, before and after this election.

*b.* A description of each resolution adopted by the cooperative association pursuant to this section, including the date each resolution was adopted.

2. The instrument shall be filed with the secretary of state. The cooperative association shall amend its articles of incorporation pursuant to section 499.41 to comply with the provisions of this chapter. The secretary of state shall not file the instrument unless the cooperative association is in compliance with the provisions of the chapter in which it was organized at the time of filing. A cooperative association shall file a biennial report which is due pursuant to section 499.49. Upon filing the instrument with the secretary, all of the following shall apply:

*a.* The cooperative association shall be deemed to be organized under this chapter and the provisions of this chapter shall apply to the cooperative association.

*b.* The secretary of state shall issue a certificate to the cooperative association acknowledging that it is deemed to be organized under this chapter.

3. The application of this chapter to the cooperative association does not affect a right accrued or established, or liability or penalty incurred pursuant to the chapter in which the cooperative association was formally organized, prior to the filing of the instrument with the secretary of state.

2003 Acts, ch 59, §1

#### **499.44 Execution and filing of documents.**

1. The secretary of state shall record all documents submitted to and required to be filed with the secretary under this chapter.

2. *a.* A document required to be filed with the secretary of state pursuant to this chapter must be executed. The person executing the document must be the association's presiding officer of the board of directors, or the association's president or other officer. However, if the board of directors has not been selected or the association has not been formed, the document must be signed by an incorporator of the association. If the association is under the control of a person acting as a fiduciary of the association, including a trustee or receiver, the document must be signed by the fiduciary.

*b.* A document required to be executed shall contain the printed name of the person executing the document and the capacity in which the person serves the association. The signature of the person must appear above or opposite the person's printed name and capacity. In the discretion of the secretary of state, a document containing a copy of the person's signature may be accepted for filing. The document may also contain a corporate seal, an attestation by the secretary of state or person charged by the secretary, or an acknowledgment, verification, or proof that the execution is valid.

3. Articles of incorporation, amendments to articles, or renewal of articles must be filed with the secretary of state. The association's corporate existence shall begin upon approval by the secretary of state of the articles and issuance of the certificate of incorporation.

4. A document required to be filed with the secretary of state pursuant to this chapter is effective at the later of the following times:

*a.* The time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

*b.* The delayed effective time and date specified in the document. If a delayed effective date but no time is specified in the document, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

5. *a.* A document filed under this section may be corrected if the document contains an incorrect statement or the execution of the document was defective. A document is corrected by filing with the secretary articles of correction which describe the document to be corrected, including its filing date or a copy of the document. The articles must specify the incorrect statement or defective execution, and correct the incorrect statement or defective execution.

*b.* Articles of correction are deemed to be effective on the date that the document corrected took or takes effect. However, as applied to persons relying upon the uncorrected document or adversely affected by the articles of correction, the effective date of the articles of correction is the date that the articles are filed.

[C35, § 8512-g44; C39, § **8512.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.44]

90 Acts, ch 1164, § 6; 97 Acts, ch 65, §1; 2007 Acts, ch 23, §4

## **Footnotes**

Filing and recording, § 491.5

### **499.45 Fees.**

A fee of twenty dollars shall be paid to the secretary of state upon filing articles of incorporation, amendments, or renewals.

Except as provided in this section, the association shall pay the fees prescribed by section 490.122 when the documents described in that section are delivered to the secretary of state for filing.

[C35, § 8512-g45; C39, § **8512.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.45]

93 Acts, ch 126, § 16; 94 Acts, ch 1107, §30; 97 Acts, ch 171, §30

### **499.46 Bylaws.**

The directors, by a vote of seventy-five percent of the directors, may adopt, alter, amend, or repeal bylaws for the association, which shall remain in force until altered, amended, or repealed by a vote of seventy-five percent of the members present or represented having voting privileges, at any annual meeting or special meeting of the membership, provided that at least ten days' prior written notice of the impending membership vote has been mailed to all members of the association with a copy or summary of the proposed adoption, alteration, amendment, or repeal of the bylaws. Proposals by members to adopt, alter, amend, or repeal

bylaws by vote of the membership shall be presented to the association's registered office for mailing to the membership by the association at least twenty days prior to the meeting at which the proposed change is to be considered. Bylaws shall be kept by the secretary subject to inspection by any member at any time. Bylaws may deal with the fiscal or internal affairs of the association or any subject of this chapter in any manner not inconsistent with this chapter or the articles.

[C35, § 8512-g46; C39, § **8512.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.46]

96 Acts, ch 1115, §3

#### **499.47 Dissolution.**

1. An association whose duration has expired, or which is sooner dissolved by voluntary act of its members, shall continue to exist for the purpose of winding up its affairs until its complete liquidation under subsection 3 hereof.
2. An association may be dissolved by two-thirds of all votes cast at any meeting called for that purpose at which a majority of all voting members vote.
3. Upon the expiration or voluntary dissolution of an association, the members shall designate three of their number as trustees to replace the officers and directors and wind up its affairs. The trustees shall have all the powers of the board, including the power to sell and convey real or personal property and execute conveyances. Within the time fixed in their designation, or any extension of that time, the trustees shall liquidate the association's assets, pay its debts and expenses, and distribute remaining funds among the members. Upon distribution of remaining assets the association shall stand dissolved and cease to exist. The trustees shall make and sign a report of the dissolution. The report shall be filed with the secretary of state.
4. The trustees and their successors in office shall be chosen, and the time for their action fixed and extended, by a majority of all votes cast at any meeting called for such purpose.

[C35, § 8512-g47; C39, § **8512.47**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.47]

90 Acts, ch 1164, §7; 2007 Acts, ch 23, §5; 2007 Acts, ch 215, §254

#### **499.47A Sale or other disposition of assets in regular course of business and mortgage or pledge of assets.**

The sale, lease, exchange, or other disposition of the property and assets of a cooperative association, when made in the usual and regular course of the business of the cooperative association, and the mortgage or pledge of any or all of the property and assets of the cooperative association, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation or cooperative association, domestic or foreign, as authorized by its board of directors; and in such case no authorization or consent of the members shall be required.

87 Acts, ch 88, § 1

#### **499.47B Sale or other disposition of assets other than in regular course of business.**

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a cooperative association organized under this chapter, if not made in the usual and

regular course of its business, may be made upon the terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other cooperative association organized under this chapter, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending the sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of the membership, which may either be an annual or a special meeting. The board of directors may condition its recommendation and submission of the sale, lease, exchange, or other disposition to the members for approval under this section on any basis.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, or other disposition of substantially all of the property and assets of the cooperative association.

3. At the meeting, the membership may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the cooperative association. Such authorization for the sale, lease, exchange, or other disposition shall be approved by the members as follows:

*a.* Except as provided in paragraph "*b*", the sale, lease, exchange, or other disposition must be approved by a two-thirds vote of the members on a ballot in which a majority of all voting members participate.

*b.* (1) If the cooperative association's articles of incorporation require approval by more than two-thirds of its members on a ballot in which a majority of all voting members participate, the sale, lease, exchange, or other disposition must be approved by the greater number as provided in the articles of incorporation.

(2) If the board of directors adopts additional conditions for the approval of the sale, lease, exchange, or other disposition as provided in subsection 1, the additional conditions must be satisfied in order for the sale, lease, exchange, or other disposition to be approved.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the members.

87 Acts, ch 88, § 2; 2008 Acts, ch 1141, § 4

#### **499.47C Sale or other disposition of assets in exchange for common stock.**

In addition to the requirements of section 499.47B, in any case where a cooperative association issues its common stock or membership, or subscriptions for common stock or membership, or both, as a part or all of the consideration for the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of another cooperative association, the issuance of such common stock or membership, or subscriptions for common stock or membership, or both, shall be authorized by the issuing cooperative association in the following manner:

1. The board of directors shall adopt a resolution recommending the issuance of the common stock or membership, or subscriptions for common stock or membership, or both, and directing the submission thereof to a vote at a meeting of the membership, which may be either an annual or special meeting.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes of the

meeting, is to consider the proposed issuance of common stock or membership, or subscriptions for common stock or membership, or both, as consideration for all or a part of the property and assets of the other cooperative association.

3. At the meeting the membership may authorize the issuance and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the property and assets to be received as consideration. Such authorization shall be approved if a majority of the voting members present vote in the affirmative.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the issuance, without further action or approval by the members.

If a cooperative association, in connection with its acquisition of property or assets of another cooperative association, agrees to solicit common stock or membership, or subscriptions for common stock or membership to the members of the cooperative association selling such property or assets, the agreement shall not itself constitute the issuance of common stock or membership, or subscriptions for common stock or membership as described in this section. This section shall not apply to a merger as defined in section 499.61.

87 Acts, ch 88, § 3

#### **499.47D Consideration of acquisition proposals community interests.**

1. A director, in determining what is in the best interest of the association when considering a tender offer or proposal of acquisition, proposal of merger, proposal of consolidation, or similar proposal, may, in addition to consideration of the effects of any action on the association and its members, consider any or all of the community interest factors described in section 499.36A.

2. If on the basis of the community interest factors described in section 499.36A, the board of directors determines that a tender offer or proposal to acquire, merge, or consolidate the association or any similar proposal is not in the best interest of the association, it may reject the tender offer or proposal. If the board of directors rejects any such tender offer or proposal, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding the tender offer or proposal. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the members, or a group of members, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the association or a member or group of members.

2008 Acts, ch 1141, §5

#### **499.48 Distribution in liquidation.**

On dissolution or liquidation, the assets of the association shall be used to pay liquidation expenses first, next the association's obligations other than patronage dividends or patronage dividend certificates which it has issued, and the remainder shall be distributed in the following priority:

1. To pay to each person the full amount originally paid by that person in cash for stock or other equity interest in the association.

2. To pay to each person in proportion to the total of each person's revolving fund, stock, or other equity interest in the association remaining after the payment under subsection 1.

In applying subsections 1 and 2, all classes of stock, all revolving funds, and all other equity interests in the association shall be treated equally based on their stated values. However, an association may establish its

own method of distributing the assets remaining, after paying liquidation expenses and obligations other than patronage dividends or patronage dividend certificates which it has issued, in articles of incorporation adopted, amended, or restated after July 1, 1986.

[C35, § 8512-g48; C39, § **8512.48**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.48]

86 Acts, ch 1196, § 6

#### **499.49 Biennial report.**

Section 504.1613 applies to a cooperative organized under this chapter in the same manner as that section applies to a corporation organized under chapter 504. In addition to the information required to be set forth in the biennial report under section 504.1613, the cooperative shall also set forth the number of members of the cooperative, the percentage of the cooperative's business done with or for its own members during each of the fiscal or calendar years of the preceding two-year period, the percentage of the cooperative's business done with or for each class of nonmembers specified in section 499.3, and any other information deemed necessary by the secretary of state to advise the secretary whether the cooperative is actually functioning as a cooperative.

[C35, § 8512-g49; C39, § **8512.49**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.49]

93 Acts, ch 126, § 17; 97 Acts, ch 171, §31; 2004 Acts, ch 1049, §186, 191, 192

**499.50** Repealed by 97 Acts, ch 171, § 49.

**499.51 and 499.52** Repealed by 93 Acts, ch 126, § 35.

#### **499.53 Quo warranto.**

The right of an association to exist or continue under this chapter may be inquired into by the attorney general, but not otherwise. If from its biennial report or otherwise, the secretary of state is informed that it is not functioning as a cooperative, the secretary shall so notify the attorney general who, if the attorney general finds reasonable cause so to believe, shall bring action to oust it and wind up its affairs.

[C35, § 8512-g53; C39, § **8512.53**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.53]

2000 Acts, ch 1022, §9

#### **499.54 Foreign associations.**

Any foreign corporation organized under generally similar laws of any other state shall be admitted to do business in Iowa upon compliance with the general laws relating to foreign corporations and payment of the same fees as would be required under section 490.122 if the foreign cooperative corporation is a foreign corporation for profit seeking authority to transact business in Iowa under chapter 490. Upon the secretary of state being satisfied that the foreign corporation is so organized and has so complied, the secretary shall issue a certificate authorizing the foreign corporation to do business in Iowa.

Such a foreign corporation thus admitted shall be entitled to all remedies provided in this chapter, and to enforce all contracts theretofore or thereafter made by the foreign corporation which any association might make under this chapter.

If such a foreign corporation amends its articles it shall forthwith file a copy of the amendment with the secretary of state, certified by the secretary or other proper official of the state under whose laws it is formed,

and shall pay the fees prescribed for amendments by section 490.122. Foreign corporations shall also file statements and pay fees otherwise prescribed by section 490.122.

[C35, § 8512-g54; C39, § **8512.54**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.54]

93 Acts, ch 126, § 18

## **Footnotes**

Foreign public  
utility corporations, chapter 495

### **499.55 Individual exemptions applicable.**

All exemptions or privileges applying to agricultural products in the possession or control of the individual producer shall apply to such products in the possession or control of any association which have been delivered to it by its members.

[C35, § 8512-g55; C39, § **8512.55**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.55]

### **499.56 Conflicting laws.**

Any law conflicting with any part of this chapter shall be construed as not applicable to associations formed hereunder.

[C35, § 8512-g56; C39, § **8512.56**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.56]

### **499.57 State powers.**

The state reserves the right to modify, amend or repeal this chapter, or any part hereof, and to cancel, modify, repeal or extend any grant, power, permit or franchise obtained or secured under this chapter, at any future time.

[C35, § 8512-g57; C39, § **8512.57**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.57]

**499.58** Repealed by 92 Acts, ch 1147, § 5.

### **499.59 Personal liability.**

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional violation of criminal law.

87 Acts, ch 212, § 8; 88 Acts, ch 1134, § 93; 2003 Acts, ch 66, §14

### **499.59A Indemnification.**

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859, provided that where sections 490.850 through 490.859 provide for action by shareholders the

sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

88 Acts, ch 1170, § 8; 94 Acts, ch 1023, §65; 2002 Acts, ch 1154, §106, 125

#### **499.60 Chapters inapplicable.**

The provisions of chapters 497 and 498 are hereby declared inoperative as to corporations chartered from and after July 4, 1935, but said chapters shall continue in force and effect as to corporations organized or operating thereunder prior to July 4, 1935, so long as any such corporations elect to operate under or renew their charters under said chapters.

[C35, § 8512-g61; C39, § **8512.60**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 499.60]

#### **499.61 Definitions.**

When used in this division, unless the context otherwise requires:

1. "*Consolidation*" means the uniting of two or more cooperative associations into one cooperative association, in such manner that a new cooperative association is formed, and the new cooperative association absorbs the others, which cease to exist as separate entities.
2. "*Merger*" means the uniting of two or more cooperative associations into one cooperative association, in such manner that one of the merging associations retains its corporate existence and absorbs the others, which cease to exist as corporate entities. "*Merger*" does not include the acquisition, by purchase or otherwise, of the assets of one cooperative association by another, unless the acquisition only becomes effective by the filing of articles of merger by the associations and the issuance of a certificate of merger pursuant to sections 499.67 and 499.68.
3. "*New association*" is the cooperative association resulting from the consolidation of two or more cooperative associations.
4. "*Qualified corporation*" means a corporation organized and existing under chapter 490, which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a)(2) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141j(a) or 7 U.S.C. § 291.
5. "*Qualified merger*" means the uniting of one or more cooperative associations with one or more qualified corporations to form one cooperative association or qualified corporation, in such a manner that one entity participating in the merger continues to exist and absorbs the others, with the others ceasing to exist as cooperative or corporate entities.
6. "*Qualified survivor*" means the cooperative association or qualified corporation which continues to exist after a qualified merger.
7. "*Surviving association*" is the cooperative association resulting from the merger of two or more cooperative associations.

[C71, 73, 75, 77, 79, 81, § 499.61]

87 Acts, ch 88, § 4; 97 Acts, ch 17, §7

### **499.62 Merger.**

Any two or more cooperative associations may merge into one cooperative association in the following manner:

The board of directors of each cooperative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth:

1. The names of the cooperative associations proposing to merge and the name of the surviving association.
2. The terms and conditions of the proposed merger.
3. A statement of any changes in the articles of incorporation of the surviving association.
4. Other provisions deemed necessary or desirable.

[C71, 73, 75, 77, 79, 81, § 499.62]

### **Footnotes**

Merger with other business entities; §501A.1101501A.1104

### **499.63 Consolidation.**

Any two or more cooperative associations may be consolidated into a new cooperative association in the following manner:

The board of directors of each cooperative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

1. The names of the cooperative associations proposing to consolidate and the name of the new association.
2. The terms and conditions of the proposed consolidation.
3. With respect to the new association, all of the statements required to be set forth in articles of incorporation for cooperative associations.
4. Other provisions deemed necessary or desirable.

[C71, 73, 75, 77, 79, 81, § 499.63]

### **Footnotes**

Consolidation with other business entities;  
§501A.1101501A.1104

### **499.64 Vote of members.**

1. The board of directors of a cooperative association, upon recommending a plan of merger or consolidation be approved by the members, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. The board of directors may condition its recommendation and submission of a plan of merger or consolidation to the members for approval under this section on any basis. Written notice shall be given not less than twenty days prior to the meeting, either

personally or by mail to each voting member and shareholder of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

2. At the meeting, a ballot of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved as follows:

*a.* Except as provided in paragraph "b", the proposed plan of merger or consolidation must be approved by a two-thirds vote of the members on a ballot in which a majority of all voting members participate.

*b.* (1) If the cooperative association's articles of incorporation require approval by more than two-thirds of its members on a ballot in which a majority of all voting members participate, the proposed plan of merger or consolidation must be approved by the greater number as provided in the articles of incorporation.

(2) If the board of directors adopts additional conditions for the approval of the plan of merger or consolidation as provided in subsection 1, the additional conditions must be satisfied in order for the plan of merger or consolidation to be approved.

3. Voting by members may be by mail ballot notwithstanding any contrary provision in the articles of incorporation or bylaws.

[C71, 73, 75, 77, 79, 81, § 499.64]

97 Acts, ch 17, §8; 2008 Acts, ch 1141, §6

#### **499.65 Objection of members purchase of shares upon demand.**

If a voting member or voting shareholder of a cooperative association which is a party to a merger or consolidation files with the cooperative association, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and votes in opposition to the plan, and the member or shareholder, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new association for payment of the fair value of that member's or shareholder's interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new association shall pay to the member or shareholder, upon surrender of that person's certificate of membership or shares of stock, the fair value of that person's interest as provided in section 499.66. A member or shareholder who fails to make demand within the twenty-day period is conclusively presumed to have consented to the merger or consolidation and is bound by its terms.

In the event that a dissenting member or shareholder does business with the surviving or new association before payment has been made for that person's membership or stock, the dissenting member or shareholder is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member or shareholder.

[C71, 73, 75, 77, 79, 81, § 499.65]

86 Acts, ch 1196, § 7; 92 Acts, ch 1147, § 2

#### **499.66 Value determined.**

1. As used in this section:

a. "*Dissenting member*" means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 499.65.

b. "*Old association*" means the association in which the member owns or owned a membership.

c. "*New association*" means the surviving or new association after the merger or consolidation.

d. "*Issue price*" means the amount paid for an interest in the old association or the amount stated in a notice of allocation of patronage dividends.

e. "*Fair market value*" means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

2. Within twenty days after the merger or consolidation is effected, the new association shall make a written offer to each dissenting member to pay a specified sum deemed by the new association to be the fair value of that dissenting member's interest in the old association. This offer shall be accompanied by a balance sheet of the old association as of the latest available date, a profit and loss statement of the old association for the twelve-month period ending on the date of this balance sheet, and a list of the dissenting member's interests in the old association. If the dissenting member does not agree that the sum stated in this notice represents the fair value of the member's interest, then the member may file a written objection with the new association within twenty days after receiving this notice. A dissenting member who fails to file this objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

If the surviving or new association receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the new association shall file a petition in the Iowa district court asking for a finding and determination of the fair value of each type of equity. The action shall be prosecuted as an equitable action.

The fair value of a dissenting member's interest in the old association shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, common stock, deferred patronage dividends, and preferred stock, or the amount determined by subtracting the old association's debts from the fair market value of the old association's assets, dividing the remainder by the total issue price of all memberships, common stock, preferred stock, and revolving funds, and then multiplying the quotient from this division by the total issue price of a dissenting member's membership, common stock, preferred stock, and revolving fund interest.

3. The new association shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that member's interest in the old association. The new association shall pay the remainder of each dissenting member's fair value in ten annual equal payments. The final payment must be made not later than fifteen years after the merger or consolidation. The value of the deferred patronage dividends and preferred stock shall be considered a liability of the new association as reflected in the accounts of the new association until the value of the patronage dividends or preferred stock is paid in full to the dissenting member. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

[C71, 73, 75, 77, 79, 81, § 499.66]

86 Acts, ch 1196, § 8; 87 Acts, ch 16, § 1, 2; 92 Acts, ch 1147, § 3

#### **499.67 Articles of merger or consolidation.**

Upon approval, articles of merger or articles of consolidation shall be executed by each cooperative

association as provided in section 499.44. The articles must include the following:

1. The plan of merger or the plan of consolidation.
2. As to each cooperative association, the number of individuals or cooperative associations entitled to vote.
3. As to each cooperative association, the number of individuals or cooperative associations who voted for and against the plan at the meeting called for that purpose.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing.

The secretary of state, upon the filing of articles of merger or articles of consolidation, shall issue a certificate of merger or a certificate of consolidation, and send the certificate to the surviving or new association, or to its representative.

[C71, 73, 75, 77, 79, 81, § 499.67]

90 Acts, ch 1164, § 8, 9; 94 Acts, ch 1055, §14

#### **499.68 When effective effect.**

A merger or consolidation shall become effective upon the date that the certificate of merger or the certificate of consolidation is issued by the secretary of state, or the effective date specified in the articles of merger or articles of consolidation, whichever is later.

When a merger or consolidation has become effective:

1. The several cooperative associations which are parties to the plan of merger or consolidation shall be a single cooperative association, which, in the case of a merger, shall be that cooperative association designated in the plan of merger as the surviving association, and, in the case of consolidation, shall be that cooperative association designated in the plan of consolidation as the new association.
2. The separate existence of all cooperative associations which are parties to the plan of merger or consolidation, except the surviving or new association, shall cease.
3. The surviving or new association shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative association organized under the laws of this state.
4. The surviving or new association shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating cooperative associations.
5. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the cooperative associations merged or consolidated, shall be transferred to and vested in the surviving or new association without further act or deed. The title to any real estate, or any interest in real estate vested in any of the cooperative associations merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.
6. A surviving or new association shall be responsible and liable for all obligations and liabilities of each of the cooperative associations merged or consolidated.
7. Any claim existing or action or proceeding pending by or against any of the cooperative associations merged or consolidated may be prosecuted as if the merger or consolidation had not taken place, or the

surviving or new association may be substituted for the merged or consolidated association. Neither the rights of creditors nor any liens upon the property of any cooperative association shall be impaired by a merger or consolidation.

8. In the case of a merger, the articles of incorporation of the surviving association shall be deemed to be amended to the extent that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of incorporation of cooperative associations organized under the laws of the state of Iowa shall be deemed to be the original articles of incorporation of the new cooperative association.

9. The aggregate amount of the net assets of the merging or consolidating cooperative associations which was available for the payment of dividends immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by the surviving or new association.

[C71, 73, 75, 77, 79, 81, § 499.68]

97 Acts, ch 65, §2

#### **499.69 Foreign and domestic mergers or consolidations.**

One or more foreign cooperative associations and one or more domestic cooperative associations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each foreign cooperative association is organized:

1. Each domestic cooperative association shall comply with the provisions of this division with respect to the merger or consolidation of domestic cooperative associations, and each foreign cooperative association shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new association is to be governed by the laws of any state other than this state, it shall comply with the provisions of the laws of this state with respect to the qualifications of foreign cooperative associations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

*a.* An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic cooperative association which is a party to the merger or consolidation, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic cooperative association, against the surviving or new association.

*b.* An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any proceeding.

*c.* An agreement that it will promptly pay to the dissenting shareholders of any domestic cooperative association the amount to which they are entitled under the provisions of this division with respect to the rights of dissenters.

The effect of such merger or consolidation shall be the same as the effect of the merger or consolidation of domestic cooperative associations, if the surviving or new association is to be governed by the laws of this state. If the surviving or new association is to be governed by the laws of any other state, the effect of merger or consolidation shall be the same as in the case of the merger or consolidation of domestic cooperative associations, except as the laws of the other state otherwise provide.

[C71, 73, 75, 77, 79, 81, § 499.69]

### **499.69A Qualified mergers.**

1. One or more cooperative associations and one or more qualified corporations may participate in a qualified merger as provided in this section.

2. Each participating cooperative association and qualified corporation must approve a written plan of qualified merger.

*a.* The plan shall set forth all of the following:

(1) The name of each cooperative association and qualified corporation participating in the qualified merger, and the name of the qualified survivor.

(2) The terms and conditions of the qualified merger.

(3) The manner and basis of converting the interests, including shares or other securities, and obligations in each nonsurviving cooperative association or qualified corporation into the interests and obligations of the qualified survivor.

(4) Any amendments to the articles of incorporation of the qualified survivor as are desired to be effected by the qualified merger, or a statement that no amendment is desired.

(5) The date that the qualified merger becomes effective, if the date is different than the date when a certificate of merger is to be issued for a cooperative association, or if the date is different than the date when the articles of merger are filed with the secretary of state for a qualified corporation.

(6) Other provisions relating to the qualified merger as are deemed necessary or desirable.

*b.* A proposed plan for a qualified merger complying with the requirements of this section shall be approved as follows:

(1) For a cooperative association which is a party to the proposed qualified merger, the cooperative association shall approve the plan as provided in this chapter.

(2) For a qualified corporation which is a party to the proposed qualified merger, the qualified corporation shall approve the plan as provided in chapter 490.

*c.* After the proposed plan for the qualified merger is approved, a cooperative association or qualified corporation may abandon the merger in the manner provided in the plan, prior to the filing of the articles of merger.

3. After a proposed plan of the qualified merger is approved, the qualified survivor shall deliver articles of merger for the qualified merger to the secretary of state for filing. The articles of merger shall be executed by each cooperative association and qualified corporation which is a party to the qualified merger. The articles of merger shall set forth all of the following:

*a.* The name of each cooperative association and qualified corporation which is a party to the qualified merger.

*b.* The plan for the qualified merger.

*c.* The effective date of the qualified merger, if later than the date of filing the articles of merger.

*d.* The name of the qualified survivor.

*e.* A statement that the plan for the qualified merger was approved by each participating cooperative association and qualified corporation in a manner required for the cooperative association and qualified corporation as provided in this section.

4. For a surviving cooperative association, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state and the issuance of a certificate of merger pursuant to section 499.68 or the date stated in the articles of merger, whichever is later. For a surviving qualified corporation, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state pursuant to section 490.1106 or the date stated in the articles, whichever is later.

5. The effect of a qualified merger for a qualified survivor which is a cooperative association shall be as provided for in this chapter. The effect of a qualified merger for a qualified survivor which is a qualified corporation shall be as provided for corporations under chapter 490.

6. The provisions governing the right of a shareholder or member of a cooperative association to object to a merger or the right of a member to dissent and obtain payment of the fair value of an interest in the cooperative association in the case of a merger as provided in this chapter shall apply to a qualified merger. The provisions governing the right of a shareholder of a corporation to dissent from and obtain payment of the fair value of the shareholder's shares in the case of a merger as provided in division XIII of chapter 490 shall apply to a qualified merger.

7. A foreign cooperative association may participate in a qualified merger as provided in this section, if the foreign cooperative association complies with the requirements for a cooperative association under this section and the requirements for a foreign cooperative association under section 499.69. A foreign corporation may participate in a qualified merger as provided in this section if it complies with the requirements of a qualified corporation under this section and the requirements for a foreign corporation under section 490.1102.

97 Acts, ch 17, §9; 2002 Acts, ch 1154, §107, 125

#### **499.70 Abandonment before filing.**

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

[C71, 73, 75, 77, 79, 81, § 499.70]

#### **499.71 Other laws applicable.**

The provisions of this division shall also apply to cooperative associations organized under chapters 497 and 498.

[C71, 73, 75, 77, 79, 81, § 499.71]

#### **499.72 Registered office and registered agent.**

Each association must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.
2. A registered agent, who may be any of the following:

- a. An individual who resides in this state and whose business office is identical with the registered office.
- b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.
- c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

93 Acts, ch 126, § 19

#### **499.73 Change of registered office or registered agent.**

1. An association may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

- a. The name of the association.
- b. The street address of its current registered office.
- c. If the current registered office is to be changed, the street address of the new registered office.
- d. The name of its current registered agent.
- e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.
- f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any association for which the person is the registered agent by notifying the association in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the association has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each association, or a single statement for all associations named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph "e", and must recite that a copy of the statement has been mailed to each association named in the notice.

4. An association may also appoint or change its registered office or registered agent in its biennial report.

93 Acts, ch 126, §20; 2000 Acts, ch 1022, §10

#### **499.73A Change of principal office.**

An association may change its principal office by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

1. The name of the association.
2. The street address of its current principal office.

3. The street address of its new principal office.

2007 Acts, ch 23, §6

**499.74 Resignation of registered agent.**

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.
2. After filing the statement the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the association at its principal office.
3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

93 Acts, ch 126, §21

**499.75 Service on association.**

1. An association's registered agent is the association's agent for service of process, notice, or demand required or permitted by law to be served on the association.
2. If an association has no registered agent, or the agent cannot with reasonable diligence be served, the association may be served by registered or certified mail, return receipt requested, addressed to the secretary of the association at its principal office. Service is perfected under this subsection at the earliest of any of the following:
  - a. The date the association receives the mail.
  - b. The date shown on the return receipt, if signed on behalf of the association.
  - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
3. This section does not prescribe the only means, or necessarily the required means, of serving an association.

93 Acts, ch 126, §22

**499.76 Grounds for administrative dissolution.**

The secretary of state may commence a proceeding under section 499.77 to administratively dissolve an association if any of the following apply:

1. The association has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 499.49, within sixty days after it is due.
2. The association is without a registered agent or registered office in this state for sixty days or more.
3. The association does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been

discontinued.

4. The association's period of duration stated in its articles of incorporation expires.

93 Acts, ch 126, §23; 97 Acts, ch 171, §32; 2000 Acts, ch 1022, §11

#### **499.77 Procedure for and effect of administrative dissolution.**

1. If the secretary of state determines that one or more grounds exist under section 499.76 for dissolving an association, the secretary of state shall serve the association by ordinary mail with written notice of the secretary of state's determination pursuant to section 499.75.

2. If the association does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected pursuant to section 499.75, the secretary of state shall administratively dissolve the association by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the association pursuant to section 499.75.

3. An association administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants.

4. The administrative dissolution of an association does not terminate the authority of its registered agent.

93 Acts, ch 126, §24

#### **499.78 Reinstatement following administrative dissolution.**

1. An association administratively dissolved under section 499.77 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must meet all of the following requirements:

*a.* Recite the name of the association at its date of dissolution and the effective date of its administrative dissolution.

*b.* State that the ground or grounds for dissolution have been eliminated.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the association pursuant to section 499.75.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

93 Acts, ch 126, §25; 97 Acts, ch 171, §33; 2006 Acts, ch 1089, §41

#### **499.78A Appeal from denial of reinstatement.**

1. If the secretary of state denies an association's application for reinstatement following administrative dissolution, the secretary of state shall serve the association pursuant to section 499.75 with a written notice that explains the reason or reasons for denial.

2. The association may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The association appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the association's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved association or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

93 Acts, ch 126, §26

#### **499.79 Statement to estate of members and stockholders.**

The board of directors, upon receiving actual notice of the death of a member or stockholder, shall provide a statement to the administrator or executor of the member's or stockholder's estate, or to the attorney representing such estate. The statement shall describe agricultural products owned by the member or stockholder which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its members or stockholders. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the member's or stockholder's death within one year after the date of death, or by the date that the member's or stockholder's estate is closed, whichever is later.

91 Acts, ch 230, §3

#### **499.80 Member information.**

If a member of a cooperative association intends to distribute information to other members of a cooperative association and the member does not have a list of the members of the cooperative association, the member may request the board of directors to distribute the information for the member.

The board of directors shall adopt a policy which permits the distribution of materials or information to members of a cooperative association by request of a member when the purpose of the request concerns directly the action of the board of directors of the cooperative association.

The board of directors shall distribute for a member such material or information requested, provided that the board of directors may charge the member for the mailing costs incurred by the cooperative association in distributing the information.

Cooperative associations subject to regulation under chapter 476 are exempt from the provisions of this section.

92 Acts, ch 1147, § 4

**499.81 through 499.84** Repealed by 77 Acts, ch 127, § 9.