

Disclaimer

SmartGrowth and the greater law firm of the North Caroling Association of Black Lawyers' Land Loss Prevention Project (LLPP) of which SmartGrowth is a part provide the information on this website and these pages as a service to the public. Information contained herein is not intended as and should not be construed as legal advice. The accessing of the provided information should not be taken as establishing any contractual or attorney-client relationship between SmartGrowth and/or the LLPP and the reader or user of the information. No recipients of content from this site, clients or otherwise, should act or refrain from acting on the basis of any content included in the site without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from an attorney licensed in the recipient's state.

Cooperative Options under North Carolina Law

The North Carolina Statutes recognizes two types of cooperatives, a cooperative association and a marketing association.

North Carolina General Statutes Chapter 54, Subchapter IV is the controlling legislation for cooperative associations.

North Carolina General Statutes Chapter 54, Subchapter V relates to Marketing Associations, also known as the "Cooperative Marketing Act".

REQUIREMENTS FOR A COOPERATIVE ASSOCIATION (Chapter 54, Subchapter IV):

- Minimum of 5 persons – No upward limit.
- Purposes: conducting any agricultural, housing, horticultural, forestry, dairy, mercantile, mining, manufacturing, telephone, electric light, power, storage, refrigeration, flume, irrigation, water, sewerage, or mechanical business.
- Shareholders in any corporation formed under this subchapter are not personally liable for the debts of the corporation.
- Agricultural organizations formed under subchapter IV are required to have its members be producers or agricultural products, handled by such organizations, or by organizations owned and controlled by such producers.
- Can be for profit or non-profit.
- If non-profit, cannot have the term "mutual" in its name.

HOW TO FORM A COOPERATIVE ASSOCIATION

File Articles of Incorporation with NC Secretary of State

Articles of Incorporation must contain:

- Name of the association
- Statement of purpose of the organization
- Names and addresses of the persons forming the association
- Designation of the city or town where the principal place of business will be located

- Amount of authorized capital stock
- Number of authorized shares
- Par value of each share

These Articles of Incorporation are then filed with the NC Secretary of State or in the alternative, submit a true copy, verified as such by affidavit of two of the signers of the articles of incorporation.

Next Step: Obtain a verified copy of the articles of incorporation and a certificate of the Secretary of State within 30 days of such filing and acceptance and file these documents with the Register of Deeds in the county of the cooperative association's principal place of business. Additional Requirement: Prepare bylaws at the time of making the articles of incorporation.

Bylaws must contain:

- The name of the corporation
- The purpose for which it is formed
- Qualifications for membership
- Date of annual meeting
- The manner of conducting the meetings
- The number of members which will constitute a quorum at the meetings
- Regulations as to voting
- The number of members of the board of directors
- Powers and duties of the board of directors
- The par value of the capital stock
- The manner in which dividends shall be determined and paid to members

Note: All cooperative associations formed under Subchapter IV are subject to the general corporation law or general non-profit corporation law of North Carolina unless otherwise provided by Subchapter IV.

Example: Any corporation or association formed under Subchapter IV that is doing business in North Carolina cannot deal in the products of nonmembers in an amount greater in value than the amount of product that it handles for its members.

Note: Organizations previously organized and doing business under other incorporation statutes can convert to a Subchapter IV cooperative association by having the president and secretary execute and file with the Secretary of State, a written declaration to the effect that their organization has, by a majority of its shareholders, decided to accept the benefits of and be bound by the provisions of Subchapter IV.

Certificates of stock for cooperative associations formed under Subchapter IV cannot be issued until fully paid for, but if the bylaws so provide, a subscriber can be allowed to vote as a shareholder of any portion of the stock subscribed for has been paid in cash.

An individual shareholder is prohibited from owning more than 20% of the capital stock.

Each shareholder is limited to one vote.

Subchapter IV cooperative associations are managed by a board of directors that must have a minimum of 5 members (same minimum number of members required).

A majority vote of shareholders at any regular shareholder's meeting may amend its articles of incorporation. Also, a majority of shareholders at a special shareholder's meeting called for the purpose of amending the articles of incorporation have the ability to amend the articles of incorporation.

The net earnings or losses of a cooperative association under Subchapter IV are apportioned among its members in accordance with the ratio of each member's patronage during the specified period to the total patronage by all members during the same specified period.

All cooperative associations subject to Subchapter IV are required to file an annual report on or before March 1 of each year.

Annual report must contain:

- Name of company
- Principal place of business in NC
- A general statement as to its business including: total amount of business transacted; amount of capital stock subscribed for and paid in; number of shareholders; total expenses of operation; amount of indebtedness or liabilities; profits and losses.

REQUIREMENTS FOR A MARKETING ASSOCIATION (Subchapter V)

- Three or more persons engaged in the production of agricultural products.
- "*Agricultural products*" includes horticultural, viticultural (grape growing), forestry, dairy, livestock, poultry, bee and any farm product.
- It has nonprofit status.
- It is deemed nonprofit inasmuch as they are not organized to make profits for themselves, as such, or their members, as such, but only for their members as producers.
- With or without capital stock
- A "*person*" under this subchapter includes: an individual, firm, partnership, corporation or association.
- Every group of persons contemplating the organization of an association under Subchapter V is *urged* but not required to communicate with the Chief of the Division of Markets, who will then inform them whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding possible success.

HOW TO FORM A MARKETING ASSOCIATION

File Articles of Incorporation with the Secretary of State.

Articles of Incorporation must contain:

- The name of the association.
- The purpose for which it is formed.
- The place where its principal place of business will be transacted.
- The period of duration (may be perpetual). Failure to state a term will result in the association to be considered. Amendment to Articles of Incorporation can extend time.
- The names and addresses of those who are to serve as directors for the first term or until their successors are named.
- If organized without capital stock, whether the property rights and interests of each member shall be equal or unequal; and if unequal, the articles of incorporation must include the rules applicable to all members by which the property rights of each member are determined and fixed.
- If organized with capital stock, the amount of such stock and the number of such shares into which it is divided and the par value.

Unlike the requirement for cooperative associations formed under Subchapter IV that a copy of the Articles of Incorporation be filed with the Register of Deeds, marketing associations formed under Subchapter V are required to file a certified copy with the Chief of the Division of Markets.

A marketing association formed under Subchapter V can amend its articles of incorporation together with all amendments and articles of merger or consolidation as long as the amendments are in compliance with the provisions of Subchapter V. In order to do so, the board of directors, by at least a 2/3 vote, have to adopt a resolution approving the proposed amendment(s) and directing that the proposed amendment(s) be submitted to a vote at either an annual or special meeting of the members. A majority vote of the members is required to adopt the amendment.

Unlike the provisions related to the formation of cooperative associations under Subchapter IV that require the bylaws to be made at the time of the making of the articles of incorporation, the provisions under Subchapter V for marketing associations allows the bylaws to be adopted within 30 days of its incorporation.

Bylaws must contain:

- The time, place and manner of calling and conducting its meetings.
- The number of stockholders or members constituting a quorum at the meetings.
- The right of members or stockholders to vote by proxy or by mail, or by both, and the conditions, manner, form and effects of such votes.
- The number of directors constituting a forum.
- The qualifications, compensations, and duties and terms of office of directors and officers; time of their election, and mode and manner of giving notice thereof.
- Penalties for violations of bylaws.
- The amount of entrance, organization, and membership fees, if and the manner and method of collection of the same, and the purposes for which they may be used.
- The amount which each member or stockholder shall be required to pay annually,

or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association. The number and qualification of members or stockholders of the association and the conditions required for membership or ownership of common stock.

Upon the death, withdrawal, or expulsion of a member, the board of directors of the association shall within one year, cause to be paid to such member or his estate, 100% of all amounts due him for any and all raw products that have been delivered by him to the association and all other amounts which might be due for capital stock, certificates of interest, reserves or on account of any other equity credits

In the bylaws, each association shall provide for one or more regular annual meetings.

Any provisions on law in conflict with Subchapter V do not apply to a Subchapter V association.

The provisions of the North Carolina Business Corporation Act (Chapter 55 of the General Statutes) shall apply, so far as appropriate, to every cooperative association with capital stock except where such provisions are in conflict or inconsistent with the express provisions of Subchapter V.

The provisions of the Nonprofit Corporation Act (Chapter 55A of the General Statutes) shall apply, so far as appropriate, to every cooperative association without capital stock, except where such provisions are in conflict or inconsistent with the express provisions of Subchapter V.

Members – Under the terms prescribed in its bylaws, an association may admit as members, or issue common stock, only to persons engaged in the production of agricultural products, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.