

Part 8 Directors and Officers

16-16-801 Board of directors.

- (1) A limited cooperative association shall have a board of directors of at least three individuals, unless the association has fewer than three members. If the association has fewer than three members, the number of directors may not be fewer than the number of members.
- (2) The affairs of a limited cooperative association shall be managed by, or under the direction of, the board of directors. The board may adopt policies and procedures that do not conflict with the organic rules or this chapter.
- (3) An individual is not an agent for a limited cooperative association solely by being a director.

Amended by Chapter 378, 2010 General Session

16-16-802 No liability as director for limited cooperative association's obligations.

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

Enacted by Chapter 363, 2008 General Session

16-16-803 Qualifications of directors.

- (1) Unless the organic rules otherwise provide, and subject to Subsection (3), each director of a limited cooperative association shall be an individual who is a member of the association or an individual who is designated by a member that is not an individual for purposes of qualifying and serving as a director. Initial directors need not be members.
- (2) Unless the organic rules otherwise provide, a director may be an officer or employee of the limited cooperative association.
- (3) If the organic rules provide for nonmember directors, the number of nonmember directors may not exceed:
 - (a) one, if there are two through four directors;
 - (b) two, if there are five through eight directors; or
 - (c) 1/3 of the total number of directors if there are at least nine directors.
- (4) The organic rules may provide qualifications for directors in addition to those in this section.

Amended by Chapter 378, 2010 General Session

16-16-804 Election of directors and composition of board.

- (1) Unless the organic rules require a greater number:
 - (a) the number of directors that shall be patron members may not be fewer than:
 - (i) one, if there are two or three directors;
 - (ii) two, if there are four or five directors;
 - (iii) three, if there are six through eight directors; or
 - (iv) 1/3 of the directors if there are at least nine directors; and
 - (b) a majority of the board of directors shall be elected exclusively by patron members.

- (2) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, the directors who are not elected exclusively by patron members are elected by the investor members.
- (3) Subject to Subsection (1), the organic rules may provide for the election of all or a specified number of directors by one or more districts or classes of members.
- (4) Subject to Subsection (1), the organic rules may provide for the nomination or election of directors by districts or classes, directly or by district delegates.
- (5) If a class of members consists of a single member, the organic rules may provide for the member to appoint a director or directors.
- (6) Unless the organic rules otherwise provide, cumulative voting for directors is prohibited.
- (7) Except as otherwise provided by the organic rules, Subsection (5), or Sections 16-16-303, 16-16-516, 16-16-517, and 16-16-809, member directors shall be elected at an annual members meeting.

Amended by Chapter 378, 2010 General Session

16-16-805 Term of director.

- (1) Unless the organic rules otherwise provide, and subject to Subsections (3) and (4) and Subsection 16-16-303(3), the term of a director expires at the annual members meeting following the director's election or appointment. The term of a director may not exceed three years.
- (2) Unless the organic rules otherwise provide, a director may be reelected.
- (3) Except as otherwise provided in Subsection (4), a director continues to serve until a successor director is elected or appointed and qualifies or the director is removed, resigns, is adjudged incompetent, or dies.
- (4) Unless the organic rules otherwise provide, a director does not serve the remainder of the director's term if the director ceases to qualify to be a director.

Enacted by Chapter 363, 2008 General Session

16-16-806 Resignation of director.

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

Enacted by Chapter 363, 2008 General Session

16-16-807 Removal of director.

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

- (1) Members may remove a director with or without cause.
- (2) A member or members holding at least 10% of the total voting power entitled to be voted in the election of a director may demand removal of the director by one or more signed petitions submitted to the officer of the limited cooperative association charged with keeping its records.
- (3) Upon receipt of a petition for removal of a director, an officer of the association or the board of directors shall:
 - (a) call a special meeting of members to be held not later than 90 days after receipt of the petition by the association; and

- (b) mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal, and to the director to be removed, notice of the meeting which complies with Section 16-16-508.
- (4) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

Enacted by Chapter 363, 2008 General Session

16-16-808 Suspension of director by board.

- (1) A board of directors may suspend a director if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the association and the director is engaging, or has engaged, in:
 - (a) fraudulent conduct with respect to the association or its members;
 - (b) gross abuse of the position of director;
 - (c) intentional or reckless infliction of harm on the association; or
 - (d) any other behavior, act, or omission as provided by the organic rules.
- (2) A suspension under Subsection (1) is effective for 30 days unless the board of directors calls and gives notice of a special meeting of members for removal of the director before the end of the 30-day period in which case the suspension is effective until adjournment of the meeting or the director is removed.

Enacted by Chapter 363, 2008 General Session

16-16-809 Vacancy on board.

- (1) Unless the organic rules otherwise provide, a vacancy on the board of directors shall be filled:
 - (a) within a reasonable time by majority vote of the remaining directors until the next annual members meeting or a special meeting of members called to fill the vacancy; and
 - (b) for the unexpired term by members at the next annual members meeting or a special meeting of members called to fill the vacancy.
- (2) Unless the organic rules otherwise provide, if a vacating director was elected or appointed by a class of members or a district:
 - (a) the new director shall be of that class or district; and
 - (b) the selection of the director for the unexpired term shall be conducted in the same manner as would the selection for that position without a vacancy.
- (3) If a member appointed a vacating director, the organic rules may provide for that member to appoint a director to fill the vacancy.

Amended by Chapter 378, 2010 General Session

16-16-810 Remuneration of directors.

Unless the organic rules otherwise provide, the board of directors may set the remuneration of directors and of nondirector committee members appointed under Subsection 16-16-817(1).

Enacted by Chapter 363, 2008 General Session

16-16-811 Meetings.

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

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

Enacted by Chapter 363, 2008 General Session

16-16-812 Action without meeting.

- (1) Unless prohibited by the organic rules, any action that may be taken by a board of directors may be taken without a meeting if each director consents in a record to the action.
- (2) Consent under Subsection (1) may be withdrawn by a director in a record at any time before the limited cooperative association receives consent from all directors.
- (3) A record of consent for any action under Subsection (1) may specify the effective date or time of the action.

Enacted by Chapter 363, 2008 General Session

16-16-813 Meetings and notice.

- (1) Unless the organic rules otherwise provide, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.
- (2) Unless the organic rules otherwise provide, notice of the time, date, and place of a special meeting of a board of directors shall be given to all directors at least three days before the meeting, the notice shall contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.

Amended by Chapter 378, 2010 General Session

16-16-814 Waiver of notice of meeting.

- (1) Unless the organic rules otherwise provide, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.
- (2) Unless the organic rules otherwise provide, a director's participation in a meeting is a waiver of notice of that meeting unless:
 - (a) the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to the action taken at the meeting; or
 - (b) the director promptly objects upon the introduction of any matter for which notice under Section 16-16-813 has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

Enacted by Chapter 363, 2008 General Session

16-16-815 Quorum.

- (1) Unless the articles of organization provide for a greater number, a majority of the total number of directors specified by the organic rules constitutes a quorum for a meeting of the directors.
- (2) If a quorum of the board of directors is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of directors originally present results in the number of directors being fewer than the number required for a quorum.

- (3) A director present at a meeting but objecting to notice under Subsection 16-16-814(2)(a) or (b) does not count toward a quorum.

Enacted by Chapter 363, 2008 General Session

16-16-816 Voting.

- (1) Each director shall have one vote for purposes of decisions made by the board of directors.
- (2) Unless the organic rules otherwise provide, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.

Enacted by Chapter 363, 2008 General Session

16-16-817 Committees.

- (1) Unless the organic rules otherwise provide, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.
- (2) Unless the organic rules otherwise provide, an individual appointed to serve on a committee of a limited cooperative association need not be a director or member.
- (3) An individual who is not a director and is serving on a committee has the same rights, duties, and obligations as a director serving on the committee.
- (4) Unless the organic rules otherwise provide, each committee of a limited cooperative association may exercise the powers delegated to it by the board of directors, but a committee may not:
 - (a) approve allocations or distributions except according to a formula or method prescribed by the board of directors;
 - (b) approve or propose to members action requiring approval of members; or
 - (c) fill vacancies on the board of directors or any of its committees.

Enacted by Chapter 363, 2008 General Session

16-16-818 Standards of conduct and liability.

Except as otherwise provided in Section 16-16-820:

- (1) the discharge of the duties of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under Title 3, Uniform Agricultural Cooperative Association Act; and
- (2) the liability of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under Title 3, Uniform Agricultural Cooperative Association Act.

Enacted by Chapter 363, 2008 General Session

16-16-819 Conflict of interest.

- (1) The law applicable to conflicts of interest between a director of an entity organized under Title 3, Uniform Agricultural Cooperative Association Act, governs conflicts of interest between a limited cooperative association and a director or member of a committee of the board of directors.
- (2) A director does not have a conflict of interest under this chapter or the organic rules solely because the director's conduct relating to the duties of the director may further the director's own interest.

Enacted by Chapter 363, 2008 General Session

16-16-820 Other considerations of directors.

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

- (1) the interest of employees, customers, and suppliers of the association;
- (2) the interest of the community in which the association operates; and
- (3) other cooperative principles and values that may be applied in the context of the decision.

Enacted by Chapter 363, 2008 General Session

16-16-821 Right of director or committee member to information.

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

Enacted by Chapter 363, 2008 General Session

16-16-822 Appointment and authority of officers.

- (1) A limited cooperative association has the officers:
 - (a) provided in the organic rules; or
 - (b) established by the board of directors in a manner not inconsistent with the organic rules.
- (2) The organic rules may designate or, if the rules do not designate, the board of directors shall designate, one of the association's officers for preparing all records required by Section 16-16-114 and for the authentication of records.
- (3) Unless the organic rules otherwise provide, the board of directors shall appoint the officers of the limited cooperative association.
- (4) Officers of a limited cooperative association shall perform the duties the organic rules prescribe or as authorized by the board of directors not in a manner inconsistent with the organic rules.
- (5) The election or appointment of an officer of a limited cooperative association does not of itself create a contract between the association and the officer.
- (6) Unless the organic rules otherwise provide, an individual may simultaneously hold more than one office in a limited cooperative association.

Enacted by Chapter 363, 2008 General Session

16-16-823 Resignation and removal of officers.

- (1) The board of directors may remove an officer at any time with or without cause.
- (2) An officer of a limited cooperative association may resign at any time by giving notice in a record to the association. Unless the notice specifies a later time, the resignation is effective when the notice is given.

Enacted by Chapter 363, 2008 General Session