

Montana Cooperative Associations

This research has been provided by Janice Brown, executive director, Montana Cooperative Development Center, P.O. Box 3027, 12 Third St. N.W. Suite 110, Great Falls, MT 59404, (406) 727-1517, jan@mcadc.coop .

This research is intended to provide detailed information on specific provisions of the Montana Cooperative Associations law. The table of contents provides a list of provision topics addressed. The descriptions of the statute provisions include legal citations to the specific part of the statute where the topic is addressed so users can easily look at the statute language. A URL for the statute is also provided when it is available.

The research is presented only to provide summary information to persons interested in the state statutory treatment of Montana cooperatives. Individuals considering organizing a cooperative are advised to seek professional advice from an expert on cooperative law on their particular situation. This research was conducted by a private individual and does not represent official policy of the U.S. Department of Agriculture or any other government agency.

Table of Contents

Montana Cooperative Associations.....	1
1. State Cooperative Statute Purpose and Powers.....	5
1.1. State, Statute Name, and Statute Abbreviation.	5
1.2. Statute Legal Citation and URL.	5
1.3. Application of General Corporate or Limited Liability Company Law	5
1.4. Conflict of Laws.....	5
1.5. Construction of Law.	5
1.6. Declaration of Statutory Policy.....	5
1.7. Statutory Qualification as a Cooperative.....	6
1.8. Cooperative Operational Description.....	6
1.9. "Nonprofit" Nature of Cooperative.	6
1.10. Cooperative Purpose.	6
1.11. Perpetual Duration and Succession.....	6
1.12. General Powers.....	6
1.13. Specific Powers.	7
1.14. Inter-Association Agreements.	7
1.15. Prohibited Powers.....	7
1.16. Prohibited Lines of Business.	7
1.17. Emergency Powers.....	7
1.18. Exceeding Legal Purpose (Ultra Vires).	7
1.19. Inquiries Into Cooperative’s Legitimacy (Quo Warranto Proceeding).	8
1.20. Miscellaneous	8
2. Cooperative Association Formation	8
2.1. Specific Cooperative Forms.	8
2.2. Number of Organizers.....	8
2.3. Requirements for Organizers.....	8
2.4. Promoter Activities, Expenses.	9
2.5. State Filing Requirements.....	9
2.6. State Fees.....	9
2.7. Start of Legal Existence.	9

2.8. Cooperative Name.	9
2.9. Additional Name Requirements.	9
2.10. Permitted Businesses.	10
2.11. Nonstock Cooperatives.	10
2.12. Stock Cooperatives.	10
2.13. Prerequisites to Formation.	10
2.14. Annual Renewal.	10
2.15. Annual Report.	10
2.16. Annual Report Content.	11
2.17. Failure to File.	11
2.18. State Assistance.	11
2.19. Foreign Cooperatives.	11
2.20. Domestic Cooperatives.	11
2.21. Miscellaneous	12
3. Cooperative Articles of Association	12
3.1. Signatures and Acknowledgment.	12
3.2. Cooperative Name.	12
3.3. Cooperative Purpose.	12
3.4. Place of Business.	12
3.5. Term of Existence.	13
3.6. Incorporators, Subscribers.	13
3.7. Number of Directors.	13
3.8. Director Term.	13
3.9. Registered Agent.	13
3.10. Limitations of Power.	13
3.11. Limitations of Liability.	14
3.12. Membership Definition.	14
3.13. Member Classes.	14
3.14. Member Property Rights.	14
3.15. Member Voting Rights.	15
3.16. Membership Certificates.	15

3.17. Capital Stock.....	15
3.18. Amount of Capital Stock	15
3.19. Par Value	15
3.20. Authorized Classes of Stock.	15
3.21. Par Value of Authorized Classes of Stock.	16
3.22. Acquire/Recall Stock.	16
3.23. Voting Rules	16
3.24. Distributions/Appportionments	16
3.25. Capital Accounts	16
3.26. Asset Distribution on Liquidation	16
3.27. Miscellaneous Provisions.....	16
3.28. Amendment Initiation.....	17
3.29. Notice of Amendment	17
3.30. When Amendments Occur.....	17
3.31. Quorum Requirements	18
3.32. Margin Required for Approval	18
3.33. Voting Members.	18
3.34. Please Board Authority	18
3.35. Filing of Amendment	18
3.36. Restrictions on Amendment.	19
3.37. Miscellaneous Rules.....	19

1. State Cooperative Statute Purpose and Powers

1.1. State, Statute Name, and Statute Abbreviation.

Montana Cooperative Associations; MT-Assn.

1.2. Statute Legal Citation and URL.

- Mont. Code Ann. (2015); §§ 35-15-101 to 35-15-507; [Montana Cooperative Associations](http://leg.mt.gov/bills/mca_toc/35_15.htm) http://leg.mt.gov/bills/mca_toc/35_15.htm .

1.3. Application of General Corporate or Limited Liability Company Law

- MT-Assn § 35-15-102: No association organized under this chapter shall be required to do anything not required herein to operate as or become a corporation;
- MT-Assn § 35-15-103(3): Cooperatives subject to all duties, restrictions, and liabilities in the general laws relating to similar corporations;
- MT-Assn § 35-15-201(2) and Mont. Code Ann. § 35-1-216: General corporate law applies with respect to provisions in the articles on director liability.

1.4. Conflict of Laws. Provisions addressing any conflict between the cooperative statute and general corporate or general limited liability company law.

- Mt-Assn: NA

1.5. Construction of Law. References to how the statute should be construed.

- MT-Assn: NA.

1.6. Declaration of Statutory Policy. Broad declarations of statutory policy (i.e., a description of conditions in agriculture or in the economy prompting the enactment of the cooperative statute).

- MT-Assn: NA.

1.7. Statutory Qualification as a Cooperative. Statements indicating that a cooperative is an entity that qualifies under this particular statute.

- MT-Assn: NA

1.8. Cooperative Operational Description. Provision that gives a general, operational description of a cooperative.

- MT-Assn: NA.

1.9. "Nonprofit" Nature of Cooperative. Reference to the "nonprofit" nature of the cooperative inasmuch as it is organized to pass margins to users rather than to make profit for itself.

- MT-Assn: NA.

1.10. Cooperative Purpose. Specific purpose(s) of the cooperative.

- MT-Assn § 35-15-201: Cooperative may be formed for trade, to carry out industry, to purchase and distribute commodities for consumption, or to borrow or lend money among members for industrial purposes.

1.11. Perpetual Duration and Succession. Does a cooperative have perpetual duration and succession?

- MT-Assn § 35-15-103: Cooperative may have perpetual duration.

1.12. General Powers. General power mentioned in the statute (e.g., the power to do all things necessary or convenient to carry out the cooperative's business).

- MT-Assn § 35-15-103(3): A cooperative formed under this chapter has all powers necessary to carry into effect the objects for which the association may be formed subject to limitations set forth by laws relating to similar corporations.

1.13. Specific Powers. Specific powers mentioned in the statute (e.g. buy/sell/produce/process products, handle byproducts, make purchases for members, manufacture, enter contracts, act as agent, own property, sue and be sued, develop and own patents, trademarks, and copyrights, borrow and lend money, invest, etc.).

- MT-Assn § 35-15-103: Cooperative may sue and be sued, maintain and alter a seal, own real and personal property necessary for the transaction of business, borrow money, secure loans with real and personal property.

1.14. Inter-Association Agreements. Provision(s) that permits activities between or among two or more cooperatives.

- MT-Assn: NA.

1.15. Prohibited Powers. Powers denied to the cooperative.

- MT-Assn § 35-15-103(3): Cooperatives subject to all duties, restrictions, and liabilities in the general laws relating to similar corporations.

1.16. Prohibited Lines of Business. Prohibited lines of business.

- MT-Assn: NA.

1.17. Emergency Powers. State briefly any emergency powers.

- Mont. Code Ann. § 35-1-237: Corporation board may adopt bylaws to be effective in an emergency, subject to amendment or repeal by shareholders.

1.18. Exceeding Legal Purpose (Ultra Vires). Provision(s) addressing when a cooperative exceeds its legal purpose.

- Mont. Code Ann. § 35-1-117: Under general corporation statute, corporation's action may not be challenged on the ground that cooperative lacks power to act unless the proceeding is by a shareholder to enjoin the act or in a proceeding by the corporation against a director, officer, employee, or agent; in shareholder proceeding, court may enjoin or set aside the act and award damages.

1.19. Inquiries Into Cooperative's Legitimacy (Quo Warranto Proceeding). Describe briefly any provision addressing any inquiry into the legitimacy of an association's operation as a cooperative.

- Mont. Code Ann. § 27-28-101: Civil action may be brought in the name of the state against an association of persons who act as a corporation without being legally incorporated.

1.20. Miscellaneous. Any other provision(s) that address cooperative powers or their limits.

- MT-Assn: NA.

2. Cooperative Association Formation

2.1. Specific Cooperative Forms. Name any specific cooperative forms mentioned by the statute (e.g., worker cooperative, agricultural cooperative, value-added producer cooperative, etc.).

- MT-Assn: NA.

2.2. Number of Organizers. Is a minimum number of organizers required?

- MT-Assn § 35-15-201: Two.

2.3. Requirements for Organizers. Are there any other requirements for organizers (e.g. an organizer must be a "person," a "natural person," an "association," must be a state resident, must be a certain age, must produce agricultural products, etc.)?

- MT-Assn § 35-15-201: Two or more persons may organize a cooperative;
- Mont. Code Ann. § 35-1-113: "Person" includes an individual and an entity; "entity" includes a corporation, a foreign corporation, a not-for-profit corporation, a profit and a not-for-profit unincorporated association, a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and a state, the United States, or a foreign government.

2.4. Promoter Activities, Expenses. Briefly describe any provisions that address the activities and/or expenses of individuals ("promoters") engaged in assisting in the organization of the cooperative.

- MT-Assn: NA.

2.5. State Filing Requirements. Briefly state where and how to file the articles of incorporation or organization.

- MT-Assn § 35-15-201: Articles filed with secretary of state along with required filing fee.

2.6. State Fees. State the fee amount for starting a cooperative.

- MT-Assn § 35-15-210. The secretary of state shall establish by rule fees for filing; cost is \$20.00 currently.

2.7. Start of Legal Existence. When does the cooperative's legal existence begin?

- MT-Assn § 35-15-204. Cooperative's legal existence starts when the secretary of state issues a certificate of completed organization, which occurs after articles and a report of the first meeting are filed; report of first meeting includes a copy of meeting notice, subscription list, bylaws, and director names (including terms of office).

2.8. Cooperative Name. Is "cooperative" or another term of art required as part of the association's name?

- MT-Assn: NA.

2.9. Additional Name Requirements. Is the cooperative's name required to be unique?

- Mont. Code Ann. § 35-1-308: Generally corporate name must contain one of the following words or abbreviations: "corporation," "incorporated," "company," "limited," "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of similar meaning in another language; name may not contain language that indicates that the corporation is organized for a purpose other than a lawful purpose or a purpose in its articles; name must be distinguishable from other corporate names.

2.10. Permitted Businesses. Are there restrictions on types of business entities that can be called a cooperative?

- MT-Assn: Not set forth in statute.

2.11. Nonstock Cooperatives. Are nonstock cooperatives permitted?

- MT-Assn: § 35-15-201. No mention in statute of “nonstock cooperative”; when persons desire to incorporate as a cooperative association they prepare a statement that sets forth the cooperative association’s capital stock.

2.12. Stock Cooperatives. Are stock cooperatives permitted?

- MT-Assn: § 35-15-201: Yes.

2.13. Prerequisites to Formation. State briefly any special prerequisites to forming a cooperative (e.g. requirement of certain percentage of capital paid prior to organization/incorporation or requirement that a permit be obtained).

- MT-Assn § 35-15-204: Association not considered to be in business until secretary of state issues a certificate. Certificate issued after filing fees are paid and report of first meeting is filed with the secretary of state which includes notice described in § 35-15-203, the subscription list, the bylaws, the names and terms of office of the directors elected and their respective terms of office.

2.14. Annual Renewal. Is an annual renewal of the organization/incorporation required?

- MT-Assn: NA.

2.15. Annual Report. Is an annual report required?

- Mont. Code Ann. § 35-1-1104: Yes.

2.16. Annual Report Content. Briefly describe any provisions stating the required content in the annual report.

- Mont. Code Ann. § 35-1-1104: Yes. Each corporation doing business in Montana must file with the secretary of state an annual report which in general includes the corporation's name, the jurisdiction of incorporation, the principal office's mailing address, the principal officer's mailing addresses, the name of the registered agent and the name and address of any noncommercial registered agent.

2.17. Failure to File. Briefly describe any provision that addresses consequences for failure to file an annual report.

- Mont. Code Ann. § 35-1-1104: Annual reports generally must be delivered to the secretary of state between January 1 and April 15; if it does not contain the required information, secretary of state shall return the report for correction; corrected reports returned to secretary within 30 days of effective date of notice are considered timely filed.
- Mont. Code Ann. § 35-6-102: A corporation may be dissolved if it fails to pay required fees or timely file its annual report.

2.18. State Assistance. Briefly describe any provision that allows for state assistance to individuals contemplating forming a cooperative.

- MT-Assn: NA.

2.19. Foreign Cooperatives. Briefly describe any provisions on permission for an out-of-state cooperative to do business in the state.

- MT-Assn: Must follow corporate provisions laid out in Title 35, Chapter 1, Part 10, Foreign Corporations.

2.20. Domestic Cooperatives. Briefly describe any provision allowing a domestic cooperative to do business in another state.

- Mont. Code Ann § 35-1-115(10): Corporation may conduct its business, locate offices, and exercise the powers granted by this chapter in the state or out of the state.

2.21. Miscellaneous. Briefly describe any other provision addressing the start of a cooperative that was not addressed by the previous questions.

- MT-Assn § 35-15-102. No association organized under this chapter shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.
- MT-Assn § 35-15-102: Associations formed under this chapter are corporate and are subject to all duties, restrictions, and liabilities set forth in the general laws relating to similar corporations that are not limited or enlarged by this chapter.

3. Cooperative Articles of Association

3.1. Signatures and Acknowledgment. Briefly describe any provision that requires that the articles be signed, subscribed, acknowledged, or notarized.

- MT-Assn § 35-15-201: Articles must be filed in the office of the secretary of state;
- MT-Assn § 35-15-204: A report on the first meeting of the cooperative must be executed by at least a majority of the individuals forming the cooperative (called “commissioners”) before certificate of organization is issued.

3.2. Cooperative Name. Do the organizing documents/articles of incorporation require the cooperative's name?

- MT-Assn § 35-15-201: Yes.

3.3. Cooperative Purpose. Are the organizing documents/articles required to state a purpose for the cooperative?

- MT-Assn § 35-15-201: Articles must state the particular branch or branches of industry that the association intends to carry out.

3.4. Place of Business. Is the place of business required?

- MT-Assn § 35-15-201: Yes.

3.5. Term of Existence. Briefly describe any provision requiring that the term of existence of the organization be required in the articles.

- MT-Assn § 35-15-201: Provision requires term of existence to be stated in articles.

3.6. Incorporators, Subscribers. Briefly describe any provision that requires that the names and addresses of incorporators and/or subscribers be identified in the articles.

- Mont. Code Ann § 35-1-216: General corporate law requires that the articles set forth the name and business mailing address of each incorporator (called a “commissioner” by the cooperative statute).

3.7. Number of Directors. Briefly describe any provision requiring a statement in the articles of the number and names of directors.

- Mont. Code Ann § 35-1-216: Under general corporate law the articles may set forth the names and complete street addresses of the individuals who are to serve as the initial directors.

3.8. Director Term. Briefly describe any provision requiring that the term of the directors be specified in the articles.

- Mont. Code Ann § 35-1-216: Under general corporate law the articles may set forth provisions defining, limiting, and regulating the powers of the corporation’s board of directors.

3.9. Registered Agent. Is the name of a registered agent required?

- Mont. Code Ann § 35-1-216: Yes.

3.10. Limitations of Power. Briefly describe any required/permitted provisions in the organizing document limiting the powers of the cooperative, its board, and/or its members.

- Mont. Code Ann § 35-1-216: Under general corporate law the articles may set forth provisions defining, limiting, and regulating the powers of the corporation, the corporation’s board, and its shareholders.

3.11. Limitations of Liability. Briefly describe any required/permitted organizing document provision(s) regarding limitation of liability with respect to the organizers/incorporators, officers, members, and/or shareholders.

- MT-Assn § 35-15-201. Statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in 35-1-216 (generally limiting or eliminating director liability for money damages for actions as director, except liability for unlawful distributions, inappropriate financial benefit, intentional infliction of harm, or intentional violation of criminal law).

3.12. Membership Definition. Briefly describe any statutory reference to defining membership in the organizing document.

- MT-Assn §§ 35-15-204, 35-15-204: While members are not required to be defined in the articles, the cooperative organizers (called commissioners) must include a list of stock subscribers in the report on the first cooperative meeting that they are required to file in order to receive a certificate of organization from the secretary of state.

3.13. Member Classes. Is a description of member classes required/permitted?

- MT-Assn §§ 35-15-201, 35-15-401: Articles must set forth its capital stock; common stock may be divided into classes of different values; stockowners have the same power and voting rights but share in the profits as determined by the association.
- Mont. Code Ann § 35-1-216: The articles of incorporation may set forth provisions consistent with law regarding managing the business and regulating the affairs of the corporation and defining, limiting, and regulating the powers of the shareholders.

3.14. Member Property Rights. Is a description required/permitted regarding member property rights?

- MT-Assn §§ 35-15-201, 35-15-401: Articles must set forth its capital stock; common stock may be divided into classes of different values; stockowners have the same power and voting rights but share in the profits as determined by the association.
- Mont. Code Ann § 35-1-216: The articles of incorporation may set forth provisions consistent with law regarding managing the business and regulating the affairs of the corporation and defining, limiting, and regulating the powers of the shareholders.

3.15. Member Voting Rights. Is a description required/permitted regarding member voting rights?

- MT-Assn §§ 35-15-201, 35-15-401: Articles must set forth its capital stock; common stock may be divided into classes of different values; stockowners have the same power and voting rights but share in the profits as determined by the association.
- Mont. Code Ann § 35-1-216: The articles of incorporation may set forth provisions consistent with law regarding managing the business and regulating the affairs of the corporation and defining, limiting, and regulating the powers of the shareholders.

3.16. Membership Certificates. Is a statement required/permitted on whether the cooperative is organized with membership certificates?

- MT-Assn: § 35-15-201. No mention in statute of “nonstock cooperative.”

3.17. Capital Stock. Is a statement required/permitted that the cooperative is organized with capital stock?

- MT-Assn §§ 35-15-201, 35-15-401: Yes, required.

3.18. Amount of Capital Stock. Is a description of the amount of capital stock required/permitted?

- MT-Assn §§ 35-15-201, 35-15-401: Articles must set forth its capital stock; common stock may be divided into classes of different values.
- Mont. Code Ann § 35-1-216: The articles of incorporation may set forth provisions consistent with law regarding managing the business and regulating the affairs of the corporation and defining, limiting, and regulating the powers of the shareholders.

3.19. Par Value. Is a statement of par value required/permitted?

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.20. Authorized Classes of Stock. Is a description of other authorized classes of stock required/permitted?

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.21. Par Value of Authorized Classes of Stock. Is a statement of par value required/permitted for other authorized classes of stock?

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.22. Acquire/Recall Stock. Is a statement of a reservation of right for the cooperative to acquire/recall stock required/permitted?

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.23. Voting Rules. State briefly if a description of voting rules is required/permitted.

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.24. Distributions/Appportionments. Is a description of distribution/apportionment of dividends, earnings, and losses required/permitted?

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.25. Capital Accounts. Is a description of a cooperative's capital account(s) required/permitted?

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.26. Asset Distribution on Liquidation. Is a statement on distribution of assets on liquidation required/permitted?

- Mont. Code Ann § 35-1-216: Yes, permitted.

3.27. Miscellaneous Provisions. Briefly describe any additional important provisions.

- MT-Assn: NA.

3.28. Amendment Initiation. Briefly describe the initiation of an amendment to the organizing document.

- MT-Assn § 35-15-205: Amendment of articles must be first approved by 2/3 of directors and then adopted by a vote of 2/3 those stockholders voting on the issue at a regular or special meeting.

3.29. Notice of Amendment. Briefly describe notice requirements regarding an amendment to the organizing document.

- MT-Assn §§ 35-15-205, 35-15-302: Voting on article amendments must take place at meeting; generally annual stockholders' meeting are held at the time fixed in the bylaws or within 6 months after the close of the fiscal year; special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at such meeting, and written notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be given not less than 7 or more than 30 days before the meeting.
- Mont. Code Ann § 35-1-231: Under general corporate law, if the board submits a article restatement for shareholders' actions, shareholders must be notified of meeting when the vote on the restatement is to occur. The notice must state that a purpose of the meeting is to consider the proposed restatement and it must contain a copy of the restatement that identifies any amendment or other change the restatement would make in the articles of incorporation.

3.30. When Amendments Occur. Briefly describe any requirement regarding when the amendments must be made (e.g. during the annual membership meeting).

- MT-Assn § 35-15-205: Amendment of articles must be first approved by 2/3 of directors and then adopted by a vote of 2/3 those stockholders voting on the issue at a regular or special meeting.

3.31. Quorum Requirements. Briefly describe any quorum requirements for an amendment.

- MT-Assn § 35-15-205: Amendment of articles must be first approved by 2/3 of directors and then adopted by a vote of 2/3 those stockholders voting on the issue at a regular or special meeting.
- MT-Assn § 35-15-302: A quorum at a regular or special meeting shall be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any additional stockholders present in person shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

3.32. Margin Required for Approval. State briefly whether a majority or supermajority is required for approval of an amendment and state amount (e.g., 51 percent, 2/3 majority, etc.).

- MT-Assn § 35-15-205: 2/3 of directors and 2/3 of stockholders voting on the issue.

3.33. Voting Members. List types of members who can vote on the amendment.

- MT-Assn § 35-15-401: Owners of different classes of common stock have equal voting rights; preferred stock holders may not vote.

3.34. Please Board Authority. Describe briefly any authority of the board of directors to make amendments.

- MT-Assn § 35-15-205: Amendment of articles must be first approved by 2/3 of directors and then adopted by a vote of 2/3 those stockholders voting on the issue at a regular or special meeting.

3.35. Filing of Amendment. Describe briefly how an amendment is executed and filed.

- MT-Assn § 35-15-205. A certificate setting forth the amendment must be executed on behalf of the association by its president or vice president and attested to by its secretary. The certificate must be filed in the office of the secretary of state, who shall issue a certificate of amendment of the articles of incorporation, for which the secretary of state must receive a fee.

3.36. Restrictions on Amendment. Describe briefly any restrictions on changes to the articles of organization/incorporation other than supermajority requirements.

- MT-Assn: NA.

3.37. Miscellaneous Rules. Describe briefly any miscellaneous rules regarding amendments to the articles of organization.

- MT-Assn: NA.