

Florida Agricultural Cooperative Marketing Associations

This research has been provided by Roland Hall, partner, Autry, Hanrahan, Hall & Cook, 3330 Cumberland Boulevard, Suite 325, Atlanta, GA 30339 (770)270-6974; 2100 East Exchange Place, Suite 210, Tucker, GA 30084 (770)270-6974; hall@ahclaw.com . Roland is also on the Advisory Committee for the USDA State Cooperative Statute website publication.

This research is intended to provide detailed information on specific provisions of the Florida Agricultural Cooperative Marketing Associations Act. 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.

This research has been provided by a private individual and does not represent official policy of the U.S. Department of Agriculture or any other government agency. The research is presented only to provide summary information to persons interested in the state statutory treatment of Florida cooperatives. Individuals considering organizing a cooperative are advised to seek professional advice from an expert on cooperative law who is familiar with the specifics of the individual's situation.

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1. Cooperative Statute: Policy, Purposes, Powers

1.1. State and Statute Title. Please name the state and the title of the cooperative organization law. Provide a nickname for the cooperative law using the state abbreviation hyphenated with a brief statute descriptor (e.g., Virginia's general cooperative statute, "Cooperative Associations Generally," could be called "VA-Gen," and Virginia's agricultural cooperative statute, "Agricultural Cooperative Associations," could be called "VA-Ag." You will lead each answer with this nickname and the specific statute or article citation.

- Florida; Agricultural Cooperative Marketing Associations; FL-AG.

1.2. Statute Nickname, Legal Citation, and URL. Please provide a full legal citation to the statute and, if available, a uniform resource locator (URL) address where the statute may be accessed for free.

- FL-AG: Fla. State. Ann. §§ 618.01 to 618.28 (2016); http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0600-0699/0618/0618ContentsIndex.html .

1.3. Application of General Law. Briefly describe whether general corporate law or general limited liability company law applies to cooperatives organized under the statute.

- FL-AG § 618.24: General corporate law.

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

- FL-AG § 618.24: General corporate law applies except where in conflict with the statute.

1.5. Construction of Law. Briefly describe any reference to how the statute should be construed.

- FL-AG § 618.28: The statute should not be construed to limit the rights or powers of corporations organized under F.S.A. Chapters 617 and 619.

1.6. Declaration of Statutory Policy. Briefly state any broad declaration of statutory policy (i.e., description of conditions in agriculture or in the economy prompting the enactment of the cooperative statute).

- FL-AG: NA.

1.7. Statutory Qualification as a Cooperative. Briefly describe any statement indicating that a cooperative is an entity that qualifies under this particular statute.

- FL-AG: NA.

1.8. Cooperative Operational Description. Briefly describe any provision that gives a general, operational description of a cooperative.

- FL-AG: NA.

1.9. "Nonprofit" Nature of Cooperative. Briefly describe any 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.

- FL-AG § 618.01(4): Associations organized under the statute are deemed nonprofit associations as they are not organized to make profits.

1.10. Cooperative Purpose. List any specific purpose(s) of the cooperative.

- FL-AG § 618.06: Associations may be organized for the purpose of engaging in any cooperative activity in connection with (1) the producing, marketing or selling of agricultural products (2) the growing, harvesting, preserving, drying, processing, canning, packing, grading, storing, warehousing, handling, shipping or utilizing such products; (3) the manufacturing or marketing of the byproducts thereof; (4) in connection with any of such activities, the manufacturing, selling or supplying of machinery, equipment or supplies; (5) the financing of any of such activities; (6) performing or furnishing business or educational services on a cooperative basis for those engaged in agriculture as producers of agricultural products or in any of the listed activities.

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

- FL-AG § 618.04(4): The articles state whether the cooperative shall have perpetual duration.

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

- FL-AG § 618.07(10): The power to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the cooperative is organized or the activities in which the cooperative is engaged.

1.13. Powers. Please list any specific powers mentioned (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.).

- FL-AG § 618.07: The powers to (1) engage in any activity in connecting with the producing, marketing, selling, preserving, growing, harvesting, drying, processing manufacturing, canning, packing grading, storing, handling, or utilizing of agricultural products or in the manufacturing or marketing of byproducts, or any activities connected with the manufacturing, purchasing, hiring or using supplies, machinery, equipment, or in the financing of such activities, or in performing business or educational services on a cooperative basis for those engaged as producers of agricultural products; (2) to borrow money; (3) to act as the agent of any person regarding such activities; (4) to make loans to members and non-member patrons; (5) to purchase and sell stock, bonds and other obligations of entities engaged in any directly or indirectly related activity or in the producing of any of the products handled by the association or any byproducts thereof; (6) to establish reserves and invest funds in bonds or other property as provided in the bylaws; (7) to buy real or personal property as necessary or convenient for conducting the association's business; (8) to sell assets of the association upon obtaining the required consent from members; (9) to establish and own patents, trademarks and copyrights.

1.14. Inter-Association Agreements. Briefly describe any provision that permits activities between or among two or more cooperatives.

- FL-AG § 618.19: A cooperative may enter into agreements with other cooperatives formed in Florida or any other state for the cooperative and more economical carrying on of its business. Any two cooperatives may agree to use the same personnel, methods, means and agencies for carrying on their respective businesses.

1.15. Prohibited Powers. State briefly (list) powers denied to the cooperative.

- FL-AG § 618.07(11): A cooperative may not handle products or perform services for nonmembers in an amount greater in value than performed for its members. § 618.07(4). An association shall not engage in the business of banking.

1.16. Prohibited Lines of Business. State briefly (list) prohibited lines of business.

- FL-AG: NA.

1.17. Emergency Powers. State briefly any emergency powers.

- FL-AG: NA.

1.18. Ultra Vires. Briefly describe any provision addressing when a cooperative exceeds its legal purpose.

- FL-AG: NA.

1.19. Quo Warranto Proceeding. Describe briefly any provision addressing any inquiry into the legitimacy of an association's operation as a cooperative.

- FL-AG § 618.23: Only the Florida Department of Legal Affairs may institute a quo warranto proceeding inquiring into an association's operation as a cooperative under the statute.

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

- FL-AG § 618.07: A cooperative may utilize any rights, powers or privileges granted by Florida law to for profit corporations, except such as are inconsistent with the statute.

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.).

- FL-AG § 618.01(3): Agricultural cooperative association.

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

- FL-AG § 618.02: Yes, three.

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.)?

- FL-AG § 618.02: Organizers must be persons or organizations engaged in the production of any agricultural products.

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.

- FL-AG § 618.03: Any group of persons contemplating the organization of an association under the statute is urged to communicate with the Department of Agriculture and Consumer Services to find out whatever a survey of the marketing conditions indicate regarding the association's probable success.

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

- FL-AG § 618.04(8)(b): The articles must be filed with the Florida Department of State, and must subscribed by the incorporators and acknowledged by one of them before an

officer authorized by law to take and certify acknowledgements of deeds and conveyances.

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

- FL-AG § 618.04(8)(b): \$52.50.

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

- FL-AG § 618.04(8)(b): Upon filing of the articles.

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

- FL-AG § 618.04(1): No.

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

- FL-AG § 618.04: NA.

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

- FL-AG § 618.27: Only an entity organized under the statute can use the word "cooperative" as part of its name.

2.11. Nonstock Cooperatives. Are nonstock cooperatives permitted?

- FL-AG § 618.04(b): Yes.

2.12. Stock Cooperatives. Are stock cooperatives permitted?

- FL-AG § 618.04(7): 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).

- FL-AG § 618.04(8)(b): One of the incorporators must acknowledge the articles before an officer authorized by law to take and certify acknowledgements of deeds and conveyances.

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

- FL-AG: NA.

2.15. Annual Report. Is an annual report required?

- FL-AG: No.

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

- FL-AG: NA.

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

- FL-AG: NA.

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

- FL-AG § 618.03: A group of persons considering forming an association under the chapter is urged to communicate with the Department of Agriculture and Consumer Services which will inform such group of whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed cooperative indicates regarding the association's probable success.

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

- FL-AG § 618.26: An out-of-state cooperative can carry on operations in Florida upon filing a certified copy of its articles and paying a filing fee of \$17.50.

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

- FL-AG: NA.

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

- FL-AG: NA.