

Montana Code Annotated 2023

TITLE 35. CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

CHAPTER 15. COOPERATIVE ASSOCIATIONS

Part 1. General

Powers

35-15-103. Powers. (1) Associations formed under this chapter are bodies corporate and politic for the period for which they are organized, which may be of perpetual duration.

(2) An association formed under this chapter may:

(a) sue and be sued;

(b) have a common seal that the association may alter or renew at pleasure;

(c) own, possess, and enjoy real and personal property necessary for the transaction of business and sell and dispose of the property; and

(d) borrow money and pledge property, both real and personal, to secure the payment of any borrowed money.

(3) Associations formed under this chapter have all powers necessary to carry into effect the objects for which the associations may be formed, including those powers usually exercised by cooperative associations, 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.

First Meeting

35-15-203. First meeting. As soon as the initial shares of the capital stock have been subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting other business properly before them. Notice of the meeting must be given to each subscriber by mailing the notice or sending the notice by electronic means, properly addressed, at least 10 days before the meeting. The notice must contain the object, time, and place of the meeting

Issuance Of Certificate Of Organization -- Effect

35-15-204. Issuance of certificate of organization -- effect. (1) The commissioners shall make a full report of the first meeting, including a copy of the notice provided for in **35-15-203**, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office. The report must be executed by at least a majority of the commissioners and must be filed in the office of the secretary of state along with any required filing fee. The secretary of state shall, upon filing the report, issue a certificate of the completed organization of the association.

(2) Upon the filing of the report of the first meeting and the statement of incorporation with the secretary of state and the issuance of the certificate provided for in subsection (1), the association is considered to be fully organized and may engage in business

Amendment Of Articles Of Incorporation -- Fee

35-15-205. Amendment of articles of incorporation -- fee. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation must be first approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting on the issue at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. 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 that is set and deposited in accordance with **2-15-405**

Bylaws

35-15-206. Bylaws. All bylaws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon or as otherwise provided in the bylaws. Amendments of the bylaws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

Fees For Filing, Copying, And Services

35-15-210. Fees for filing, copying, and services. (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section

Filing Of Facsimile Copy

35-15-211. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document

Increase Of Membership

35-15-301. Increase of membership. An association licensed to operate under this chapter may, by a majority of its stockholders, increase its membership in such manner as may be provided in its bylaws, not inconsistent with any of the provisions of this chapter.

Stockholders' Meetings -- Place -- Time -- Call -- Notice -- Quorum

35-15-302. Stockholders' meetings -- place -- time -- call -- notice -- quorum. (1) Unless the bylaws provide otherwise, stockholders' meetings must be held at the principal office or another place as the board may determine.

(2) An annual stockholders' meeting must be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, the meeting must be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at the meeting.

(4) Written or electronic notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, must be given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to the stockholders may be given by notifying the delegates and their alternates. Notice may consist of a notice to all stockholders or may be in the form of an announcement at the meeting at which the delegates or alternates are elected.

(6) A quorum at a regular or special meeting must 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 must 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.

Stockholder Voting By Mail

35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by the stockholder may be read in the meeting and must be equivalent to a vote of each of the signing stockholders, provided the stockholder has been previously notified in writing of the exact motion or resolution upon which the vote is taken and a copy of the motion or resolution is forwarded with and attached to the mailed vote.

Directors And Officers

35-15-304. Directors and officers. (1) Directors of associations organized under this chapter shall be elected by the stockholders and hold their office for such period of time as shall be provided in the bylaws.

(2) The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three as fixed by the bylaws of the association.

(3) The officers of the association shall be a president, vice-president, secretary, and treasurer, and such others as may be designated by the bylaws to be elected by the stockholders or by the board of directors, as provided by the bylaws.

(4) Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer.

(5) The bylaws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the bylaws may specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections be held in each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association.

Filing Required To Have Benefit Of Certain Provisions

35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of **35-15-303**, **35-15-411**, and **35-15-412** and be bound thereby on filing with the secretary of state a written declaration, executed by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions

Classes Of Stock

35-15-401. Classes of stock. (1) The purchase price of the shares of stock must be set by the cooperative association and may be made payable in installments.

(2) A cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock may not have voting power and may not participate in the management and affairs of the association. The owners of preferred stock shall share in the profits of the association to the extent determined by the cooperative association. The common stock may be divided into classes of different values, and the owners of the common stock shall share in the profits of the association as determined by the cooperative association. However, the owners of common stock in the different classes have the same power and voting rights in the association.

Forfeiture Of Stock For Nonpayment -- Reissuance

35-15-402. Forfeiture of stock for nonpayment -- reissuance. Forfeiture of the stock for nonpayment of installments may be provided for in the bylaws, and whenever a share of stock is forfeited, such share shall become the property of the association and may be reissued to any person already a holder of common stock; but any proceeds received by the association from such reissue, over and above the amount due on said share, shall be paid to the delinquent sharehold

Assignment Of Stock

35-15-403. Assignment of stock. An assignment of stock may not be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On a question a stockholder may not have more than one vote. Every assignment of stock on which there remains any portion unpaid must be recorded in the books of the association, and each stockholder is jointly and severally liable with the association for the debts of the association to the extent of the amount that is unpaid upon the share held by the stockholder. An assignor may not be released from the indebtedness by reason of any assignment of the assignor's share but remains jointly liable with the assignee.

Share Exempt From Attachment And Execution -- Sale Upon Death Of Member

35-15-404. Share exempt from attachment and execution -- sale upon death of member. (1) The share, not exceeding the par value of \$500, of each member is exempt from seizure on attachment or sale under execution.

(2) Upon a member's death, the share must be sold by the association and the proceeds, after deducting all liabilities to the association, must be delivered to the deceased member's heirs.

Disposal Of Earnings -- Dividends -- Reserve Fund -- Educational Fund

35-15-411. Disposal of earnings -- dividends -- reserve fund -- educational fund. The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding 8% a year; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in the reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining profits, if any, by uniform dividends on the amount of purchases of patrons and on the wages and for salaries of employees, the amount of uniform dividends on the amount of their purchases, which may be credited to the account of patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends must be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

When Distribution Of Profits And Earnings To Be Made -- Dissolution For Failure To Pay Dividend For Five Years

35-15-412. When distribution of profits and earnings to be made -- dissolution for failure to pay dividend for five years. (1) The profits or net earnings of such associations shall be distributed

to those entitled thereto at such times as the bylaws shall prescribe, which shall be as often as once in 12 months.

(2) If such associations for 5 consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state for its dissolution. If upon hearing the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

Merger Or Consolidation Authorized

35-15-501. Merger or consolidation authorized. It shall be lawful for two or more cooperative associations formed or which may be hereafter formed under the laws of the state of Montana to merge or consolidate with each other or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

Plan For Merger Or Consolidation

35-15-502. Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

Meeting To Consider Plan -- Notice

35-15-503. Meeting to consider plan -- notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles must be mailed or sent by electronic means to each stockholder of the associations to be affected by the proposed plan or the proposed new articles.

(2) The notice must advise the stockholders of each association of the time and place each association shall meet, at which time the proposal must be considered and voted on by each association. The meetings must be held not less than 30 or more than 60 days after the mailing of notice. The plan must be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

Sale Or Disposition Of Assets

35-15-506. Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those entitled to vote thereon voting at the meeting.

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Differences Between Montana C Corporations and S Corporations

There is widespread confusion as to exactly when a regular Montana corporation (C Corporation) becomes an S Corporation. It is commonly thought the S Corporation election must be made at the time the corporation is originally formed. That is not correct.

When you form a corporation in Montana, you'll want to know how and when your Montana C Corporation becomes an S Corporation as well as the differences between the two. And you should also be aware of certain restrictions that apply to S Corporations but not to C Corporations. This guide walks you through a comparison of these two types of corporations in plain language. We recommend you discuss your specific situation with your attorney, accountant or tax advisor when choosing between C Corporation and S Corporation status in Montana.

When a corporation is originally chartered by Montana, it exists as a C Corporation. If you do nothing more after forming your Montana corporation, it will remain a C Corporation. **Your Montana Corporation becomes an S Corporation only when, with the consent of all shareholders, special tax treatment (“pass-through taxation”) is sought by filing Form 2553 with the IRS in accordance with Subchapter S of the Internal Revenue Code.**

The S Corporation election can be filed anytime *after the corporation is formed* – immediately, or years later.

When you make a valid S election with the IRS for federal income tax purposes, most states will also honor that federal S election for state purposes. However, a few states require that you also file an S Corporation election with the state and some states do not extend the same S Corporation tax exemptions. Before making the S election for your Montana corporation, you will want to find out exactly how Montana treats S Corporations. Consult with your tax advisor or contact the Montana income tax agency to determine whether a separate S Corporation election form is required for Montana and what, if any, Montana taxes apply to S Corporations.

You should also know that an S Corporation can convert back to a C Corporation by filing a formal request with the IRS - but the C Corporation must keep the December 31 fiscal year (required for S Corps) and it cannot later convert back to an S Corporation for at least five years.

**You don't have to choose between a C Corp and S Corp
until *after* forming your corporation**

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Identifying the most beneficial tax treatment for your specific situation is very important - it can pay dividends for years to come. So delaying your S Corporation election decision will give you time for further consideration as well as time to consult with your attorney, accountant or tax advisor.

Your Montana corporation can continue as a C Corp for as long as you like. Preparation of Form 2553 (which you must file with the IRS) is the only additional step MaxFilings performs when you select "S Corp" as part of the online incorporation process, and **preparing Form 2553 has no effect until you complete it and then file it with the IRS.**