

## LEGISLATIVE BILL 848

Approved by the Governor April 16, 2008

Introduced by Erdman, 47.

FOR AN ACT relating to cooperatives; to amend sections 21-2901, 21-2903, 21-2910, 21-2922, 21-2929, 21-2930, 21-2935, 21-2939, 21-2945, 21-2949, 21-2950, 21-2951, 21-2952, 21-2953, 21-2955, 21-2956, 21-2959, 21-2960, 21-2978, 21-2980, 21-2982, 21-2992, 21-29,110, 21-29,117, 21-29,122, 21-29,123, 29-21,124, 21-29,125, 21-29,126, and 21-29,127, Revised Statutes Supplement, 2007; to change and eliminate provisions relating to the Nebraska Limited Cooperative Association Act; to harmonize provisions; to repeal the original sections; and to outright repeal sections 21-29,118, 21-29,119, 21-29,120, 21-29,121, and 21-29,128, Revised Statutes Supplement, 2007.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 21-2901, Revised Statutes Supplement, 2007, is amended to read:

21-2901 Sections 21-2901 to 21-29,134 and sections 21 to 23 of this act shall be known and may be cited as the Nebraska Limited Cooperative Association Act.

Sec. 2. Section 21-2903, Revised Statutes Supplement, 2007, is amended to read:

21-2903 For purposes of the Nebraska Limited Cooperative Association Act, unless the context otherwise requires:

(1) Articles of organization includes initial, amended, and restated articles of organization. In the case of a foreign limited cooperative association, the term includes all records that:

(a) Have a function similar to articles of organization; and

(b) Are required to be filed in the office of the Secretary of State or other official having custody of articles of organization in this state or the country under whose law it is organized;

(2) Bylaws includes initial, amended, and restated bylaws;

(3) Contribution means a benefit that a person provides to a limited cooperative association in order to become a member or in the person's capacity as a member;

(4) Debtor in bankruptcy means a person that is the subject of:

(a) An order for relief under 11 U.S.C. 101 et seq., as the sections existed on January 1, 2008; or

(b) An order comparable to an order described in subdivision (4)(a) of this section under federal, state, or foreign law governing insolvency;

(5) Designated office means the office designated under section 21-2913;

(6) Distribution means a transfer of money or other property from a limited cooperative association to a member ~~in the member's capacity as a member or to a transferee because of a right owned by the transferee, because of the member's financial rights or to a transferee of a member's financial rights. The term does not include the amounts described in section 21-2983;~~

(7) Domestic entity means an entity organized under the laws of this state;

(8) Entity means an association, a business trust, a company, a corporation, a cooperative, a limited cooperative association, a general partnership, a limited liability company, a limited liability partnership, or a limited partnership, domestic or foreign;

(9) Financial rights means the right to participate in allocation and distribution under sections 21-2980 and 21-2981 but does not include rights or obligations under a marketing contract governed by sections 21-2949 to 21-2952;

(10) Foreign limited cooperative association means a foreign entity organized under a law similar to the Nebraska Limited Cooperative Association Act in another jurisdiction;

(11) Foreign entity means an entity that is not a domestic entity;

(12) Governance rights means the right to participate in governance of the limited cooperative association under section 21-2928;

(13) Investor member means ~~a person admitted as a member that is not required~~ member that has made a contribution to a limited cooperative association and is not permitted or required by the articles of association or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(14) Limited cooperative association means an association organized under the Nebraska Limited Cooperative Association Act;

(15) Member means a person that is a patron member or investor member or both in a limited cooperative association. The term does not include a person that has dissociated as a member;

(16) Members' interest means the interest of a patron member or investor member;

(17) Members' meeting means an annual or a special members' meeting;

(18) Patron means a person or entity that conducts economic activity with a limited cooperative association which entitles the person to receive financial rights based upon patronage;

(19) Patronage means business transactions between a limited cooperative association and a person which entitles the person to receive financial rights based on the value or quantity of business done between the person and the limited cooperative association;

(20) Patron member means a person admitted as a patron member pursuant to the articles of organization or bylaws and who is permitted or required by the articles of organization or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(21) Person means an individual; an entity; a trust; a governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(22) Principal office means the office, whether or not in this state, where the principal executive office of a limited cooperative association or a foreign limited cooperative association is located;

(23) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(24) Required information means the information a limited cooperative association is required to maintain under section 21-2910;

(25) Sign means, with the present intent to authenticate a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record;

(26) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(27) Transfer includes assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law; and

(28) Voting member means a member that, under the articles of organization or bylaws, has a right to vote on matters subject to vote by members.

Sec. 3. Section 21-2910, Revised Statutes Supplement, 2007, is amended to read:

21-2910 A limited cooperative association shall maintain in a record at its principal office the following information:

(1) A current list showing the full name and last-known street address, mailing address, and term of office of each director and officer;

(2) A copy of the initial articles of organization and all amendments to and restatement of the articles, together with signed copies of any powers of attorney under which any articles, amendments, or restatement has been signed;

(3) A copy of the initial bylaws and all amendments to or restatement of the bylaws;

(4) A copy of any filed articles of merger or consolidation;

(5) A copy of any audited financial statements;

(6) A copy of the minutes of meetings of members and records of all actions taken by members without a meeting for the three most recent years;

(7) A current list showing the full name and last-known street and mailing addresses, separately identifying the patron members, in alphabetical order, and the investor members, in alphabetical order;

(8) A copy of the minutes of directors' meetings and records of all actions taken by directors without a meeting for the three most recent years;

(9) A record stating:

(a) The amount of cash contributed and agreed to be contributed by each member;

(b) A description and statement of the agreed value of other benefits contributed and agreed to be contributed by each member;

(c) The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made; and

(d) For a person that is both a patron member and an investor member, a specification of the interest the person owns in each capacity; and  
 (10) A copy of all communications in a record to members as a group or to any class of members as a group for the three most recent years.

Sec. 4. Section 21-2922, Revised Statutes Supplement, 2007, is amended to read:

21-2922 (1) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of ~~existence~~ good standing for a limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed articles of organization, the limited cooperative association is in good standing, and there has not been filed articles of dissolution.

(2) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of authorization for a foreign limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation pursuant to section 21-29,108.

(3) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited cooperative association or foreign limited cooperative association is in good standing or is authorized to transact business in this state.

Sec. 5. Section 21-2929, Revised Statutes Supplement, 2007, is amended to read:

21-2929 In order to commence business, a limited cooperative association shall have two or more patron members, except that a limited cooperative association may have only one member if the member is an entity organized under the Nebraska Limited Cooperative Association Act, the Nonstock Cooperative Marketing Act, or sections 21-1301 to 21-1339.

Sec. 6. Section 21-2930, Revised Statutes Supplement, 2007, is amended to read:

21-2930 A person becomes a member:

- (1) As provided in the articles of organization and bylaws;
- (2) As the result of merger or consolidation under section 21-29,122; ~~or~~ ~~or~~ ~~21-29,128;~~ ~~or~~
- (3) With the consent of all the members.

Sec. 7. Section 21-2935, Revised Statutes Supplement, 2007, is amended to read:

21-2935 (1) Special members' meetings shall be called:

- (a) As provided in the articles of organization or bylaws;
- (b) By a majority vote of the board of directors;
- (c) By demand in a record signed by members holding at least ~~ten~~ twenty percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting; or
- (d) By demand in a record signed by members holding at least ~~ten~~ twenty percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

(2) Any voting member may withdraw its demand under this section before the receipt by the limited cooperative association of demands sufficient to require a special members' meeting.

(3) A special members' meeting may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(4) Only affairs within the purpose or purposes stated pursuant to subsection (2) of section 21-2965 may be conducted at a special members' meeting.

(5) Unless otherwise provided by the articles of organization or bylaws, the presiding officer of the meeting shall be designated by the board of directors.

Sec. 8. Section 21-2939, Revised Statutes Supplement, 2007, is amended to read:

21-2939 (1) Each patron member has one vote, but the articles of organization or bylaws may provide additional voting power to members on the basis of patronage under section 21-2941 and may provide for voting by district, group, or class under section 21-2956.

(2) If the articles of organization provide for investor members, each investor member has one vote, unless the articles of organization or bylaws otherwise provide. The articles of organization or bylaws may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

~~(2)~~ (3) If a limited cooperative association has both patron and

investor members:

(a) The aggregate voting power of all patron members shall not be less than fifty-one percent of the entire voting power entitled to vote, but the articles of organization or bylaws may reduce the collective voting power of patron members to not less than fifteen percent of the entire voting power entitled to vote; and

(b) The entire aggregate voting power of patron members shall be voted as determined by the majority vote of patron members voting at the members' meeting.

Sec. 9. Section 21-2945, Revised Statutes Supplement, 2007, is amended to read:

21-2945 A member's interest:

(1) Consists of: (a) Governance rights; ~~under allocation and distributions;~~ (b) financial rights; and (c) the right or obligation, if any, to do business with the limited cooperative association;

(2) Is personal property; and

(3) May be in certificated or uncertificated form.

Sec. 10. Section 21-2949, Revised Statutes Supplement, 2007, is amended to read:

21-2949 In this section and sections 21-2950 to 21-2952, marketing contract means a contract between a limited cooperative association and another person that need not be a patron member.~~Unless otherwise provided by the articles of organization or bylaws, a limited cooperative association may contract with another party, who need not be a patron member, requiring the other party to:~~

(1) Requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the limited cooperative association or any facilities furnished by the association;~~(1) Sell or deliver for sale or marketing on the person's behalf a specified portion of the other party's agricultural product or specified commodity exclusively to or through the limited cooperative association or any facilities furnished by the limited cooperative association or authorize the limited cooperative association to act for the party in any manner with respect to the product; and~~

(2) Authorizing the limited cooperative association to act for the person in any manner with respect to the products, commodities, or goods.~~(2) Buy or procure from or through the limited cooperative association or any facilities furnished by the limited cooperative association all or a specified part of the goods or services to be bought or procured by the party or authorize the limited cooperative association to act for the party in any manner in the procurement of goods or the performance of services.~~

Sec. 11. Section 21-2950, Revised Statutes Supplement, 2007, is amended to read:

21-2950 (1) If a marketing contract provides for the sale of products, commodities, or goods to a limited cooperative association, the sale transfers title absolutely, except for security interests properly perfected, to the association upon delivery or at any other specific time expressly provided by the contract.~~(1) The contract may provide for sale of the product or commodity to the limited cooperative association, and, if so, the sale transfers title absolutely to the limited cooperative association except for security interests properly perfected under other law, upon delivery, or at any other specific time expressly provided by the contract.~~

(2) A marketing contract may:~~(2) The contract may authorize the limited cooperative association to grant a security interest in the product or commodity delivered and may provide that the limited cooperative association may sell the product or commodity delivered and pay or distribute the sales price on a pooled or other basis to the other party after deducting the following:~~

(a) Authorize a limited cooperative association to create an enforceable security interest in the products, commodities, or goods delivered;~~(a) Selling, processing, overhead, and other costs and expenses; and~~

(b) Allow the limited cooperative association to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.~~(b) Reserves for the purposes set forth in subdivision (3)(b) of section 21-2980.~~

Sec. 12. Section 21-2951, Revised Statutes Supplement, 2007, is amended to read:

21-2951 The initial duration of a marketing contract may not exceed ten years, but the contract may be made self-renewing for additional periods

not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least ninety days before the end of the current term. A single term of a contract shall not exceed ten years, but may be renewable for additional periods not exceeding five years each, subject to the right of either party not to renew by giving record notice during a period of the current term as specified in the contract.

Sec. 13. Section 21-2952, Revised Statutes Supplement, 2007, is amended to read:

21-2952 (1) A marketing contract may liquidate damages to be paid to a limited cooperative association for a breach or anticipatory repudiation of the marketing contract but only at an amount or at a formula that is reasonable in light of the actual or then anticipated harm caused by the breach or to be caused by the anticipatory repudiation. The provision may be enforced as liquidated damages and is not to be considered a penalty.~~(1) The contract or articles of organization or bylaws may establish a specific sum of money as liquidated damages to be paid by a patron member to the limited cooperative association. The damages may be a percentage of the value of a specific amount per unit of the products, goods, or services involved by the breach or a fixed sum of money.~~

(2) If there is a breach or anticipatory repudiation of a marketing contract, the limited cooperative association may seek an injunction to prevent the further breach or an anticipatory repudiation of the contract and the specific performance of the contract.~~(2) If there is a breach or threatened breach of a contract, the limited cooperative association is entitled to an injunction to prevent the breach and continuing breach and to a judgment of specific performance. Pending adjudication of the action, and upon filing sufficient bond, the limited cooperative association is entitled to a temporary restraining order and a preliminary injunction.~~

(3) In the case of a marketing contract between a limited cooperative association and a patron member, the articles of organization or bylaws may also provide additional remedies for the remedies under subsections (1) and (2) of this section.~~(3) Nothing in this section shall restrict a limited cooperative association from seeking any other remedy at law or equity in the enforcement of a marketing contract.~~

(4) Nothing in this section shall restrict a limited cooperative association from seeking any other remedy at law or equity in the enforcement of a marketing contract.

Sec. 14. Section 21-2953, Revised Statutes Supplement, 2007, is amended to read:

21-2953 (1) A limited cooperative association shall have a board of directors consisting of three or more directors as set forth in the articles of organization or bylaws unless the number of members is less than three. If there are fewer than three members, the number of directors shall not be less than the number of members in the limited cooperative association.

(2) The affairs of the limited cooperative association shall be managed by, or under the direction of, the board of directors. The board of directors may adopt policies and procedures that are not in conflict with the articles of organization, the bylaws, and the Nebraska Limited Cooperative Association Act.

(3) A director does not have agency authority on behalf of the limited cooperative association solely by being a director.

Sec. 15. Section 21-2955, Revised Statutes Supplement, 2007, is amended to read:

21-2955 (1) A director shall be an individual or individual representative of a member that is not an individual.

(2) The articles of organization or bylaws may provide for qualification of directors subject to this section.

(3) Except as otherwise provided in the articles of organization or bylaws and subject to subsections (4) and (5) of this section, each director shall be a member of the limited cooperative association or a designee of a member that is not an individual.

(4) Unless otherwise provided in the articles of organization or bylaws, a director ~~shall~~ may be an officer or employee of the limited cooperative association.

(5) If the limited cooperative association is permitted to have nonmember directors by its articles of organization or bylaws, the number of nonmember directors shall not exceed:

(a) One director, if there are two, three, or four directors; and

(b) One-fifth of the total number of directors, if there are five or more directors.

Sec. 16. Section 21-2956, Revised Statutes Supplement, 2007, is

amended to read:

21-2956 (1) At least fifty percent of the board of directors of a limited cooperative association shall be elected exclusively by patron members.

(2) The Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members' interests.

(3) The Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the nomination or election of directors by geographic district directly or by district delegates.

(4) Cumulative voting is prohibited unless otherwise provided in the articles of organization or bylaws.

(5) Except as otherwise provided by the articles of organization, bylaws, or section 21-2961, member directors shall be elected at an annual members' meeting.

(6) Nonmember directors shall be elected in the same manner as member directors unless the articles of organization or bylaws provide for a different method of selection.

Sec. 17. Section 21-2959, Revised Statutes Supplement, 2007, is amended to read:

21-2959 Unless the articles of organization or bylaws otherwise provide, the following rules apply:~~The members may remove a director only for cause unless the articles of organization or bylaws provide for removal without cause.~~

(1) Members may remove a director with or without cause;

(2) A member or members holding at least twenty-five percent of the total voting power entitled to be voted in the election of the director may demand removal of a director by a signed petition 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 or the board of directors shall:

(a) Call a special members' meeting to be held within ninety 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 notice of the meeting which complies with section 21-2936;

(4) A director against whom a petition has been submitted shall be informed in a record of the petition within a reasonable time before the members' meeting at which the members consider the petition; and

(5) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

Sec. 18. Section 21-2960, Revised Statutes Supplement, 2007, is amended to read:

21-2960 (1) The 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 limited cooperative association and the director is engaged in:

(a) Fraudulent conduct with respect to the limited cooperative association or its members;

(b) Gross abuse of the position of the director; ~~or~~

(c) Intentional infliction of harm on the limited cooperative association; ~~or-~~

(d) Any other behavior, act, or omission as provided by the articles of organization or bylaws.

(2) A suspension under subsection (1) of this section is effective for thirty days unless the board of directors calls and gives notice of a special members' meeting for removal of the director before the end of the thirty-day period in which case the suspension is effective until adjournment of the special meeting or the director is removed.

~~(3)~~ (3) After suspension, a director may be removed pursuant to section 21-2959.

Sec. 19. Section 21-2978, Revised Statutes Supplement, 2007, is amended to read:

21-2978 (1) Unless otherwise provided in the articles of organization or bylaws, the contributions of a member may consist of tangible or intangible property or other benefit to the limited cooperative association, including money, services performed or to be performed, promissory notes, other agreements to contribute cash or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation

of contributions shall be reflected in the limited cooperative association's required records pursuant to section 21-2910.

(3) Unless otherwise provided in the articles of organization or bylaws, the board of directors shall value the contributions received or to be received. The determination by the board of directors on valuation is conclusive for purposes of determining whether the member's contribution obligation has been fully ~~paid~~ met.

Sec. 20. Section 21-2980, Revised Statutes Supplement, 2007, is amended to read:

21-2980 (1) Subject to subsection (2) of this section, the articles of organization or bylaws shall provide for the allocation of net proceeds, savings, margins, profits, and losses between classes or groups of members.

~~(2)~~ (2)(a) Unless the articles of organization or bylaws otherwise provide, patron members shall be allocated at least fifty percent of the net proceeds, savings, margins, profits, and losses in any fiscal year. The articles of organization or bylaws shall not reduce the percentage allocated to patron members to less than fifteen percent of the net proceeds.

(b) For purposes of this subsection, the following rules apply:

(i) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members; and

(ii) Amounts paid, due, or allocated to investor members as a stated, fixed return on equity are not considered amounts allocated to investor members.

(3) Unless otherwise provided in the articles of organization or bylaws, in order to determine the amount of net proceeds, savings, margins, and profits, the board of directors may set aside a portion of the revenue, whether or not allocated to members, after accounting for other expenses, for purposes of:

(a) Creating or accumulating a capital reserve; and

(b) Creating or accumulating reserves for specific purposes, including expansion and replacement of capital assets and other necessary business purposes.

(4) Subject to subsection (5) of this section and the articles of organization or bylaws, the board of directors shall allocate the amount remaining after the allocations under subsections (1) through (3) of this section:

(a) To patron members annually in accordance with the ratio of each member's patronage during the period to total patronage of all patron members during the period; and

(b) To investor members, if any, in accordance with the ratio of each investor member's limited contribution to the total initial contribution of all investor members.

(5) For purposes of allocation of net proceeds, savings, margins, profits, and losses to patron members, the articles of organization or bylaws may establish allocation units based on function, division, district, department, allocation units, pooling arrangements, members' contributions, or other methods.

Sec. 21. Property distributed under subsection (2) of section 21-2981, other than cash, may be redeemed or repurchased as provided in the articles of organization or bylaws but no redemption or repurchase may be made without full and final authorization by the board of directors, which may be withheld for any reason in the board's sole discretion. The redemption or repurchase will be treated as a distribution under section 21-2981.

Sec. 22. (1) A limited cooperative association shall not make a distribution if, after the distribution:

(a) The limited cooperative association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or

(b) The limited cooperative association's assets would be less than the sum of its total liabilities.

(2) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (1) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other methods that are reasonable in the circumstances.

(3) Except as otherwise provided in subsection (4) of this section, the effect of a distribution allowed under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the

association; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one-hundred-twenty days after that date; or

(ii) The payment is made, if payment occurs more than one-hundred-twenty days after the distribution is authorized.

(4) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(5) For purposes of this section, distribution does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

Sec. 23. (1) A director who consents to a distribution made in violation of section 21-2981 is personally liable to the limited cooperative association for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the director failed to comply with section 21-2970 or 21-2971.

(2) A member or holder of financial rights which received a distribution knowing that the distribution to the member or holder was made in violation of section 22 of this act is personally liable to the limited cooperative association but only to the extent that the distribution received by the member or holder exceeded the amount that could have been properly paid under section 22 of this act.

(3) A director against whom an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other director that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that is liable under subsection (2) of this section and compel contribution from the person in the amount the person received as described in such subsection.

(4) An action under this section is barred if it is not commenced within two years after the distribution.

Sec. 24. Section 21-2982, Revised Statutes Supplement, 2007, is amended to read:

21-2982 (1) A member does not have a right to withdraw as a member of a limited cooperative association but has the power to withdraw.

(2) Unless otherwise provided by the articles of organization or bylaws, a member is dissociated from a limited cooperative association upon the occurrence of any of the following events:

(a) The limited cooperative association's having notice in a record of the person's express will to withdraw as a member or to withdraw on a later date specified by the person;

(b) An event provided in the articles of organization or bylaws as causing the person's dissociation as a member;

(c) The person's expulsion as a member pursuant to the articles of organization or bylaws;

(d) The person's expulsion as a member by the board of directors if:

(i) It is unlawful to carry on the limited cooperative association's activities with the person as a member;

(ii) Subject to section 21-2947, there has been a transfer of all of the person's financial rights in the limited cooperative association;

(iii) The person is a corporation or association whether or not organized under the Nebraska Limited Cooperative Association Act; and:

(A) The limited cooperative association notifies the person that it will be expelled as a member because it has filed a statement of intent to dissolve or articles of dissolution, it has been administratively or judicially dissolved, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its organization; and

(B) Within ninety days after the person receives the notification described in subdivision (2)(d)(iii)(A) of this section, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company, association, whether or not organized under the act, or partnership that has been dissolved and whose business is being wound up;

(e) In the case of a person who is an individual, the person's death;

(f) In the case of a person that is a trust, distribution of the trust's entire financial rights in the limited cooperative association, but



not merely by the substitution of a successor trustee;

(g) In the case of a person that is an estate, distribution of the estate's entire financial interest in the limited cooperative association, but not merely by the substitution of a successor personal representative;

(h) Termination of a member that is not an individual, partnership, limited liability company, limited cooperative association, whether or not organized under the act, corporation, trust, or estate; or

(i) The limited cooperative association's participation in a merger or consolidation, if, under the plan of merger or consolidation as approved under section 21-29,122, the person ceases to be a member.

Sec. 25. Section 21-2992, Revised Statutes Supplement, 2007, is amended to read:

21-2992 (1) A dissolved limited cooperative association shall publish notice of its dissolution and may request persons having claims against the limited cooperative association to present them in accordance with the notice.

(2) The notice shall:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if it has none in this state, in the county in which the limited cooperative association's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited cooperative association is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

(3) If a dissolved limited cooperative association publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, unless the claimant commences an action to enforce the claim against the dissolved limited cooperative association within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 21-2991;

(b) A claimant whose claim was timely sent to the dissolved limited cooperative association but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited cooperative association, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member or transferee of financial rights to the extent of that person's proportionate share of the claim or the limited cooperative association's assets distributed to the member or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited cooperative association.

Sec. 26. Section 21-29,110, Revised Statutes Supplement, 2007, is amended to read:

21-29,110 (1) A limited cooperative association may amend its articles of organization or bylaws.

(2) Unless the articles of organization or bylaws provide otherwise, a member of a limited cooperative association does not have vested property rights in resulting from any provision in the articles of organization or bylaws, including provisions relating to management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association.

Sec. 27. Section 21-29,117, Revised Statutes Supplement, 2007, is amended to read:

21-29,117 For purposes of sections 21-29,117 to ~~21-29,128+~~ 21-29,127:

(1) Constituent limited cooperative association means a limited cooperative association that is a party to a merger or consolidation;

(2) Constituent organization means an organization, other than a limited cooperative association, that is a party to a merger or consolidation;

~~(3) Converted organization means the organization into which a converting organization converts pursuant to sections 21-29,118 to 21-29,121;~~

~~(4) Converting limited cooperative association means a converting organization that is a limited cooperative association;~~

~~(5) Converting organization means an organization that converts to another organization pursuant to section 21-29,118;~~

~~(6)~~ (3) Governing statute of an organization means the statute that governs the organization's internal affairs;

~~(7)~~ (4) Organization means a limited cooperative association, limited cooperative association governed by a law other than the Nebraska Limited Cooperative Association Act, a general partnership, a limited liability partnership, a limited partnership, a limited liability company, a business trust, a corporation, a cooperative, or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit;

~~(8)~~ (5) Personal liability means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or for specified debts, liabilities, and other obligations of the organization solely by reason of co-owning, having an interest in, or being a member of the organization; and

~~(9)~~ (6) Surviving organization means an organization into which one or more other organizations are merged or consolidated. A surviving organization may exist before the merger or consolidation or be created by the merger or consolidation.

Sec. 28. Section 21-29,122, Revised Statutes Supplement, 2007, is amended to read:

21-29,122 ~~(1)~~ A limited cooperative association may merge with one or more other constituent organizations pursuant to this section and a plan of merger, if:

~~(a)~~ The governing statute of each of the other organizations authorizes the merger;

~~(b)~~ The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

~~(c)~~ Each of the other organizations complies with its governing statute in effecting the merger.

(1) Any one or more limited cooperative associations may merge or consolidate with or into any one or more limited cooperative associations, limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations, and any one or more limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations may merge or consolidate with or into any one or more limited cooperative associations.

(2) A plan of merger or consolidation shall be in a record and shall include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization and, if the surviving organization is to be created by the merger or consolidation, a statement to that effect;

(c) The terms and conditions of the merger or consolidation, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) If the surviving organization is to be created by the merger or consolidation, the surviving organization's organizational documents;

(e) If the surviving organization is not to be created by the merger or consolidation, any amendments to be made by the merger or consolidation to the surviving organization's organizational documents; and

(f) If a member of a constituent limited cooperative association will have personal liability with respect to a surviving organization, the identity by descriptive class or other reasonable manner of the member.

Sec. 29. Section 21-29,123, Revised Statutes Supplement, 2007, is amended to read:

21-29,123 (1) Unless otherwise provided in the articles of organization or bylaws, the plan of merger or consolidation shall be approved by a majority vote of the board of directors.

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The plan of merger or consolidation;

(b) A recommendation that the members approve the plan of merger or consolidation unless the board makes a determination because of conflicts of interest or other special circumstances that it should not make such a recommendation;

(c) If the board makes no recommendation, the basis for that

decision;

(d) Any condition of its submission of the plan of merger or consolidation to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Sec. 30. Section 21-29,124, Revised Statutes Supplement, 2007, is amended to read:

21-29,124 (1) Unless the articles of organization or bylaws provide for a greater quorum and subject to section 21-2939, a plan of merger or consolidation shall be approved by at least a two-thirds vote of patron members voting under section 21-2939 and by at least a two-thirds vote of investor members, if any, voting under section 21-2942.

(2) Subject to any contractual rights, after a merger or consolidation is approved, and at any time before a filing is made under section 21-29,126, a constituent limited cooperative association may amend the plan of merger or consolidation or abandon the planned merger or consolidation:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

Sec. 31. Section 21-29,125, Revised Statutes Supplement, 2007, is amended to read:

21-29,125 (1) Unless the articles of organization or bylaws of the limited cooperative association or ~~the organic law or~~ articles of organization or bylaws of the other organization otherwise provide, a limited cooperative association that owns at least ninety percent of each class of the voting power of a subsidiary organization may merge or consolidate the subsidiary into itself or into another subsidiary.

(2) The limited cooperative association owning at least ninety percent of the subsidiary organization before the merger or consolidation shall notify each other owner of the subsidiary, if any, of the merger within ten days after the effective date of the merger or consolidation.

Sec. 32. Section 21-29,126, Revised Statutes Supplement, 2007, is amended to read:

21-29,126 (1) After each constituent organization has approved a merger or consolidation, articles of merger or consolidation shall be signed on behalf of each other preexisting constituent organization by an authorized representative.

(2) The articles of merger or consolidation shall include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger or consolidation, a statement to that effect;

(c) The date the merger or consolidation is effective under the governing statute of the surviving organization;

(d) If the surviving organization is to be created by the merger or consolidation:

(i) If it will be a limited cooperative association, the limited cooperative association's articles of organization; or

(ii) If it will be an organization other than a limited cooperative association, the organizational document that creates the organization;

(e) If the surviving organization preexists the merger or consolidation, any amendments provided for in the plan of merger or consolidation for the organizational document that created the organization;

(f) A statement as to each constituent organization that the merger or consolidation was approved as required by the organization's governing statute;

(g) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the Secretary of State may use for the purposes of service of process; and

(h) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited cooperative association shall deliver the articles of merger or consolidation for filing in the office of the Secretary of State.

(4) A merger or consolidation becomes effective under this section:

(a) If the surviving organization is a limited cooperative association, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to section 21-2919, as specified in the articles of

merger or consolidation; or

(b) If the surviving organization is not a limited cooperative association, as provided by the governing statute of the surviving organization.

Sec. 33. Section 21-29,127, Revised Statutes Supplement, 2007, is amended to read:

21-29,127 When a merger or consolidation becomes effective:

- (1) The surviving organization continues or comes into existence;
- (2) Each constituent organization that merges or consolidates into the surviving organization ceases to exist as a separate entity;
- (3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;
- (4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;
- (5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger or consolidation had not occurred;
- (6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
- (7) Except as otherwise provided in the plan of merger or consolidation, the terms and conditions of the plan take effect;
- (8) Except as otherwise agreed, if a constituent limited cooperative association ceases to exist, the merger or consolidation does not dissolve the limited cooperative association for purposes of section 21-2987;
- (9) If the surviving organization is created by the merger or consolidation:
  - (a) If it is a limited cooperative association, the articles of organization become effective; or
  - (b) If it is an organization other than a limited cooperative association, the organizational document that creates the organization becomes effective; and
- (10) If the surviving organization exists before the merger or consolidation, any amendments provided for in the articles of merger or consolidation for the organizational document that created the organization become effective.

Sec. 34. Original sections 21-2901, 21-2903, 21-2910, 21-2922, 21-2929, 21-2930, 21-2935, 21-2939, 21-2945, 21-2949, 21-2950, 21-2951, 21-2952, 21-2953, 21-2955, 21-2956, 21-2959, 21-2960, 21-2978, 21-2980, 21-2982, 21-2992, 21-29,110, 21-29,117, 21-29,122, 21-29,123, 21-29,124, 21-29,125, 21-29,126, and 21-29,127, Revised Statutes Supplement, 2007, are repealed.

Sec. 35. The following sections are outright repealed: Sections 21-29,118, 21-29,119, 21-29,120, 21-29,121, and 21-29,128, Revised Statutes Supplement, 2007.