

TITLE 6. ASSOCIATIONS

CHAPTER 251. COOPERATIVE ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law:

Sec. 251.001. DEFINITIONS. In this chapter:

(1) "Cooperative basis" means that net savings, after payment of any investment dividends or after provision for separate funds has been made as required or authorized by law, the certificate of formation, or bylaws, are:

(A) allocated or distributed to a member patron or to each patron in proportion to patronage; or

(B) retained by the entity for:

(i) actual or potential expansion of the entity's services;

(ii) the reduction of charges to patrons; or

(iii) any other purpose consistent with the entity's nonprofit character.

(2) "Invested capital" means funds invested in a cooperative association by an investor with the expectation of receiving an investment dividend.

(3) "Investment dividend" means the return on invested capital or on membership capital derived from the net savings of the cooperative association.

(4) "Membership capital" means the funds of a cooperative association derived from members of the cooperative association generally as a requirement of membership or in lieu of patronage dividends. The term does not include deposits or loans from members.

(5) "Net savings" means the total income of a cooperative association less the costs of operation.

(6) "Patronage dividend" means a share of the net savings distributed among members of the cooperative association on the basis of patronage, as provided by the certificate of formation.

(7) "Savings returns" means the amount returned by a cooperative association to patrons of a cooperative association in proportion to patronage or otherwise.

Source Law:

CAA 2(3)-(9)

(3) "Net savings" means the total income of an association less the costs of operation.

(4) "Savings returns" means the amount returned to patrons in proportion to their patronage or otherwise.

(5) "Cooperative basis" means that the net savings after payment, if any, of investment dividends and after making

provisions for separate funds required or specifically permitted by statute, articles, or by-laws is allocated or distributed to member patrons, or to all patrons, in proportion to their patronage or retained by the enterprise for the actual or potential expansion of its services, the reduction of its charges to the patrons, or for other purposes not inconsistent with its non-profit character.

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans from members shall not be construed as "membership capital."

(7) "Invested Capital" means those funds invested in the association by an investor with the expectation of receiving investment dividends.

(8) "Investment Dividends" means the return on invested capital or on membership capital derived from the net savings of the association.

(9) "Patronage Dividends" means a share of net savings distributed among members on a basis of extent of patronage, as provided for in the articles of incorporation.

Revisor's Note:

No substantive change is intended. Section 251.001 sets forth definitions applicable to Title 6 but does not include definitions for "association" and "member" which are defined in Title 1. The other definitions contained in this Section have not been materially changed.

Revised Law:

Sec. 251.002. APPLICABILITY OF NONPROFIT CORPORATION PROVISIONS. (a) A provision of Title 1 and Chapters 20 and 22 governing nonprofit corporations applies to a cooperative association.

(b) Notwithstanding Subsection (a), this chapter controls over any conflicting provision of Title 1 and Chapters 20 and 22 governing nonprofit corporations.

Source Law:

CAA 3

Sec. 3. An association incorporated under this Act is subject to the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), to the extent that the provisions of the Texas Non-Profit Corporation Act do not conflict with the provisions of the Act. An association incorporated under this Act may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as non-profit corporations except to the extent that these are limited or enlarged by this Act.

Revisor's Note:

No substantive change is intended. The former limitation on powers is now included in Subchapter A of Chapter 2.

Revised Law:

Sec. 251.003. EXEMPTION. This chapter does not apply to a corporation or association organized on a cooperative basis under another statute of this state other than this chapter unless that other statute specifically states that this chapter does apply.

Source Law:

CAA 45

Sec. 45. This Act does not apply to any corporation or association organized and now existing or in the future organized under the Cooperative Marketing Act, as amended (Articles 5737-5764, Revised Civil Statutes Texas, 1925) [repealed; now see Texas Agriculture Code § 52.001 et seq.].

TNPCA 10.04.A & C

Art. 1396-10.04. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporation

A. . . . If any domestic corporation is organized under or is governed by a statute that does not contain a provision regarding a matter provided for in this Act, or any foreign corporation is granted authority to conduct affairs within this State under a statute that does not contain a provision regarding a matter provided for in this Act in respect of foreign corporations, or if a statute specifically provides that the general laws for incorporation or for the granting of a certificate of authority to conduct affairs in this State supplement the provisions of that statute, the provisions of this Act apply only to the extent not inconsistent with the provisions of the other statute.

* * *

C. This Act shall not apply to those corporations excepted under Article 2.01 B, Subsections (3), (4), and (5) of this Act; provided however, that if any of said excepted domestic corporations were heretofore or are hereafter organized not for profit under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or if such special statutes specifically applicable provide that the general laws for incorporation shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

TMCLA 1.03

Art. 1302-1.03. Applicability of Business Corporation Act, Texas Non-Profit Corporation Act, and this Act.

A. All corporations shall, to the extent not inconsistent with any special statute pertaining to a particular corporation, be governed

(1) by the Texas Business Corporation Act, as amended, if organized for profit, and

(2) by the Texas Non-Profit Corporation Act, as amended, if organized not for profit.

B. Except to the extent that any provisions of this Act are expressly made inapplicable by any provision of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act,

or any special Statute of this State pertaining to a particular type of corporation, this Act shall govern (1) all domestic corporations, including without limitation those corporations heretofore or hereafter organized under any Statute of the State, and (2) only to the extent expressly provided in this Act, all foreign corporations, including without limitation those corporations heretofore or hereafter granted a permit to do business under any Statute of the State.

Revisor's Note:

No substantive change is intended. This section clarifies that the applicability of this chapter is limited to the cooperatives created under this chapter and does not extend to corporations or associations created under other law. Consistent with existing provisions in the TNPCA and the TMCLA, the general law that may be applicable to other cooperatives is usually the TNPCA, although for some of such cooperatives the TBCA may be applicable. Examples of cooperative corporations or associations that may be formed under other Texas statutes are:

- (1) Texas Agriculture Code § 52.001 et seq. (Cooperative Marketing Act);
- (2) Texas Agriculture Code §51.001 et seq. (Farmers Cooperative Society);
- (3) Texas Agriculture Code §55.001 et seq. (Cooperative Credit Association);
- (4) Texas Health & Safety Code § 301.002 (Hospital Laundry Cooperative Association);
- (5) Texas Health & Safety Code § 301.032 (Health Related Institutions Cooperative Association);
- (6) Texas Insurance Code, Article 26.13 (Texas Health Benefits Purchasing Cooperative);
- (7) Texas Insurance Code, Article 26.14 (Private Purchasing Cooperative);
- (8) Texas Utilities Code, Chapter 161 (Electric Cooperative Corporation Act); and
- (9) Texas Utilities Code, Chapter 162 (Telephone Cooperative Act).

(Sections 251.004-251.050 reserved for expansion)

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Revised Law:

Sec. 251.051. ORGANIZATION MEETING. After a cooperative association's certificate of formation is filed, the cooperative association shall hold an organization meeting in accordance with Section 22.104.

Source Law:

CAA 9(c)

(c) After the issuance of the certificate of incorporation, an organization meeting shall be held in accordance with Article 3.05, Texas Non-Profit Corporation Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.052. AMENDMENT OF CERTIFICATE OF FORMATION. (a) The board of directors of a cooperative association may propose an amendment to the cooperative association's certificate of formation by a two-thirds vote of the board members. The members of a cooperative association may petition to amend the certificate of formation as provided by the bylaws.

(b) Not later than the 31st day before the date of the meeting, the secretary shall:

(1) send notice of a meeting to consider a proposed amendment to each member of the cooperative association at the member's last known address; or

(2) post notice of a meeting to consider a proposed amendment in a conspicuous place in all principal places of activity of the cooperative association.

(c) The notice required by Subsection (b) must include the full text of the proposed amendment and the text of the part of the certificate of formation to be amended.

(d) To be approved, an amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment.

(e) Not later than the 30th day after the date an amendment is adopted by the members of a cooperative association, the cooperative association shall file a certificate of amendment with the secretary of state in accordance with Chapter 4. The certificate of amendment must be:

(1) signed by an authorized officer of the cooperative association; and

(2) in the form required by Section 3.052.

Source Law:

CAA 10

Sec. 10. (a) An amendment to the articles may be proposed by a two-thirds vote of the board of directors or by petition of the association's members as provided in the by-laws. The secretary shall send notice of a meeting to consider an amendment to each member at the member's last known address, or shall post a written notice of the meeting in a conspicuous place in all principal places of activity of the association. Either type of notice shall be accompanied by the full text of the proposal and by the text of the part of the articles to be amended, at least 30 days before the meeting.

(b) Two-thirds of the members voting may adopt an amendment. When adoption of an amendment is verified by the president and secretary, it shall be filed and recorded with the secretary of

state within 30 days after its adoption in accordance with Article 4.04, Texas Non-Profit Corporation Act.

Revisor's Note:

No substantive change is intended, except that the requirement that the amendment be verified by the president and secretary has been deleted as antiquated. All of the other primary organizational statutes have been modernized to require only the signature of an authorized officer.

Revised Law:

Sec. 251.053. BYLAWS. (a) Unless the certificate of formation or bylaws of a cooperative association require a greater majority, the bylaws may be adopted, amended, or repealed by a majority vote of the cooperative association's members voting on the matter.

(b) Except as provided by this code, the bylaws may contain:

- (1) requirements for admission to membership;
- (2) requirements for disposal of a member's interest on cessation of membership;
- (3) the time, place, and manner of calling and conducting meetings;
- (4) the number or percentage of the members constituting a quorum;
- (5) the number, qualifications, powers, duties, and term of directors and officers;
- (6) the method of electing, removing, and filling a vacancy of directors and officers;
- (7) the division or classification, if any, of directors to provide for staggered terms;
- (8) the compensation, if any, of the directors;
- (9) the number of directors necessary to constitute a quorum;
- (10) the method for distributing the net savings;
- (11) a requirement that each officer or employee of the cooperative association who handles funds or securities be bonded;
- (12) other discretionary provisions of this chapter, Title 1, and Chapters 20 and 22; and
- (13) any other provision incident to a purpose or activity of the cooperative association.

Source Law:

CAA 11 and 12

Sec. 11. By-laws may be adopted, amended, or repealed by a simple majority vote of the members voting, unless the articles or by-laws require a greater majority.

Sec. 12. Subject to the limitations of this Act, the by-laws may provide for:

- (1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;
- (2) the time, place and manner of calling and conducting meetings;
- (3) the number or percentage of the members constituting a quorum;
- (4) the number, qualifications, powers, duties, method of election, and terms of directors and officers, and the division or classification, if any, of directors to provide for rotating or overlapping terms;
- (5) the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;
- (6) the method of distributing the net savings;
- (7) the bonding of every individual acting as officer or employee of an association handling funds or securities; and
- (8) the various discretionary provisions of this Act as well as other provisions incident to the purposes and activities of the association.

Revisor's Note:

No substantive change is intended. Section (b)(12) is included to take into account the fact that certain provisions relating to cooperative associations are now derived from Title 1 and Chapters 20 and 22.

(Sections 251.054-251.100 reserved for expansion)

SUBCHAPTER C. MANAGEMENT

Revised Law:

Sec. 251.101. BOARD OF DIRECTORS. (a) Except as provided by Subsections (b) and (c), a cooperative association is managed by a board of directors in accordance with Chapter 22.

(b) The board shall contain at least five directors elected by and from the cooperative association's members. A director:

(1) serves a term not to exceed three years as provided by the bylaws; and

(2) holds office until the director is removed or the director's successor is elected.

(c) The bylaws of a cooperative association may:

(1) apportion the number of directors among the units into which the cooperative association may be divided; and

(2) provide for the election of the directors by the respective units to which the directors are apportioned.

(d) An executive committee of the board of directors may be elected in the manner and with the powers and duties specified by the certificate of formation or bylaws.

Source Law:

CAA 21(a), (b) and (c)

Sec. 21. (a) An association shall be managed by a board of not less than five directors, who are elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association, and who hold office until their successors are elected or until removed. Vacancies which occur in the board of directors, other than by removal or expiration of term, are filled in the manner the by-laws provide.

(b) The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned

(c) An executive committee of the board of directors may be elected in the manner and with the powers and duties as prescribed by the articles or by-laws.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.102. OFFICERS. (a) The directors of a cooperative association shall annually elect, unless otherwise provided by the bylaws, the following officers for the cooperative association:

- (1) a president;
- (2) one or more vice presidents; and
- (3) a secretary and treasurer or a secretary-treasurer.

(b) Any two or more offices, other than the offices of president and secretary, may be held by the same person.

(c) The officers of a cooperative association may be designated by other titles as provided by the certificate of formation or the bylaws of the cooperative association.

(d) A committee duly designated by the board of directors may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

Source Law:

CAA 22

Sec. 22. The officers of an association are a president, one or more vice-presidents, and a secretary and a treasurer or a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. The officers of an association may be designated by such other titles as may be provided in the articles of incorporation or the by-laws. A committee duly designated may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary. The officers are elected annually by the directors unless the by-laws provide otherwise.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.103. REMOVAL OF DIRECTORS AND OFFICERS. (a) A director or officer of a cooperative association may be removed from office in the manner provided by the certificate of formation or bylaws of the cooperative association.

(b) If the certificate of formation or bylaws do not provide for the person's removal, a director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer who is to be removed is entitled to be heard at the meeting.

(c) Except as provided by the certificate of formation or bylaws, a vacancy on the board of directors caused by removal shall be filled by a director elected in the same manner provided by the bylaws for the election of directors.

Source Law:

CAA 23

Sec. 23. A director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer involved shall be given an opportunity to be heard at the meeting. A vacancy caused by removal is filled by the vote provided in the by-laws for election of directors.

Revisor's Note:

Section 251.103 states that the certificate of formation or bylaws of the cooperative association may establish how an officer or director may be removed and sets forth the same methods of removal as the CAA if the certificate of formation and the bylaws are silent. This section sets forth a default procedure, drawn from the current CAA, if the certificate of formation or bylaws contain no provisions. This section modernizes existing law for cooperative associations by permitting rules governing the removal of directors or officers to be included in the certificate of formation or the bylaws, like other business entities.

Revised Law:

Sec. 251.104. REFERENDUM. (a) The certificate of formation or bylaws of a cooperative association may provide for a referendum on any action undertaken by the cooperative association's board of directors if the referendum is:

(1) requested by petition of 10 percent or more of all of the members of the cooperative association; or

(2) requested and approved by the vote of at least a majority of the directors of the cooperative association.

(b) The proposition to be voted on in a referendum authorized under Subsection (a) must be submitted to the members of the cooperative association for consideration within the time specified in the document authorizing the referendum.

(c) A right of a third party that has vested between the time of the action and the time of the referendum is not impaired by the referendum results.

Source Law:

CAA 24

Sec. 24. The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 percent of all the members or by vote of at least a majority of the directors. Rights of third parties which have vested between the time of the action and the referendum are not impaired by the results of the referendum.

Revisor's Note:

No substantive change is intended.

(Sections 251.105-251.150 reserved for expansion)

SUBCHAPTER D. MEMBERSHIP

Revised Law:

Sec. 251.151. ELIGIBILITY AND ADMISSION. A person, an unincorporated group or other person organized on a cooperative basis or a nonprofit group may be admitted to membership in a cooperative association only if the person meets the qualifications for eligibility stated in the certificate of formation or bylaws of the cooperative association.

Source Law:

CAA 26(a)

Sec. 26. (a) A natural person, association, trust, incorporated or unincorporated group organized on a cooperative basis, or a nonprofit group, may be admitted to membership in an association if it meets the qualifications for eligibility stated in the articles or by-laws.

Revisor's Note:

No substantive change is intended. The use of the defined term "person" from the Code Construction Act, which is incorporated by reference in the Code, eliminates the need for certain current terms.

Revised Law:

Sec. 251.152. EXPULSION. (a) A member of a cooperative association may be expelled by the vote of a majority of the cooperative association's members voting at a regular or special meeting.

(b) Not later than the 11th day before the date of the meeting, the cooperative association shall give the member written notice of the charges. The member is entitled to be heard at the meeting in person or by counsel.

(c) If the cooperative association votes to expel a member, the cooperative association's board of directors shall cause the cooperative association to purchase the member's capital holdings at par value if the purchase does not jeopardize the cooperative association's solvency.

Source Law:

CAA 33

Sec. 33. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed of the charges in writing at least 10 days in advance of the meeting, and shall be given an opportunity to be heard in person or by counsel at the meeting. If the association votes to expel a member, the board of directors shall purchase the member's capital holdings at par value if and when such purchases may be made without jeopardizing the solvency of the association.

Revisor's Note:

No substantive change is intended, except that the revised law makes clear that the cooperative association (and not the board of directors as individuals or a body) is required to purchase the member's capital holdings and thus clarifies a potential ambiguity in the source law.

Revised Law:

Sec. 251.153. SUBSCRIBERS. (a) A person is a subscriber of a cooperative association only if the person is:

(1) eligible for membership in the cooperative association under Section 251.151; and

(2) legally obligated to purchase a share or membership in the cooperative association.

(b) The certificate of formation or bylaws of a cooperative association may state whether and the conditions under which voting rights or other membership rights are granted to a subscriber of the cooperative association.

Source Law:

CAA 27

Sec. 27. A natural person, trust, or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.154. LIABILITY. (a) Except as provided by Subsection (b), a member or subscriber of a cooperative association is not jointly or severally liable for a debt of the cooperative association. A subscriber is liable for any unpaid amount on the subscriber's membership certificates or invested capital certificates.

(b) A subscriber who assigns the subscriber's interest in membership certificates or invested capital certificates is jointly and severally liable with the assignee until the appropriate certificates are fully paid.

Source Law:

CAA 32

Sec. 32. Members are not jointly or severally liable for debts of the association, nor is a subscriber liable, except to the extent of the unpaid amount on the membership certificates or on the invested capital certificates subscribed by him. No subscriber may be released from liability by assignment of his interest in the membership capital certificates or the invested capital certificates, but he is jointly and severally liable with the assignee until the membership certificates or investor certificates are fully paid up.

Revisor's Note:

No substantive change is intended.

(Sections 251.155-251.200 reserved for expansion)

SUBCHAPTER E. SHARES

Revised Law:

Sec. 251.201. SHARE AND MEMBERSHIP CERTIFICATES: ISSUANCE AND CONTENTS. (a) A cooperative association may not issue a certificate for membership capital or for invested capital until any par value of the certificate has been paid in full.

(b) Each certificate for membership capital issued by a cooperative association must contain a statement of the requirements of Sections 251.202(a)-(b), 251.254, and 251.255.

(c) Each certificate for invested capital issued by a cooperative association must contain a statement of the restrictions on transferability as provided by the cooperative association's bylaws.

Source Law:

CAA 28

Sec. 28. (a) No certificates for membership capital may be issued until its par value, if any, has been paid in full. Each certificate issued by an association shall bear a full or condensed statement of the requirements of Sections 16, 17, and 29(a) of this Act.

(b) No certificate for invested capital may be issued until its par value, if any, has been paid in full. Each certificate for invested capital issued by an association shall bear a full or condensed statement of restrictions on transferability if specifically provided for in the by-laws of the association.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.202. TRANSFER OF SHARES AND MEMBERSHIP; WITHDRAWAL. (a) A member who decides to withdraw from a cooperative association shall make a written offer to sell the member's membership certificates to the cooperative association's board of directors.

(b) Not later than the 90th day after the date the directors receive an offer under Subsection (a), the directors may cause the cooperative

association to purchase the holdings by paying the member the par value of the certificates and the directors shall cause the cooperative association to reissue or cancel the shares after purchasing the holdings. The directors shall cause the cooperative association to purchase the shares if a majority of the cooperative association's members voting at a regular or special meeting vote to require the purchase.

(c) An investor owning investor certificates must sell, assign, or convey the certificates in accordance with the cooperative association's bylaws. If an investor fails to sell, assign, or convey investor certificates in accordance with the bylaws, the cooperative association on written notice to its directors shall repurchase the certificates by paying the investor the par value of the certificate plus all accrued investment dividends. The certificates must be repurchased not later than the 90th day after the date the cooperative association receives notice of the failure.

Source Law:

CAA 29

Sec. 29. (a) If a member decides to withdraw from the association, the member shall offer his membership certificates to the directors in writing and the directors may purchase such holdings within a 90-day period following receipt of notice by paying the member the par value. The directors shall then reissue or cancel those shares. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If an investor owning investor certificates desires to sell, assign, or convey his certificates, he must do so in accordance with the by-laws of the association; otherwise such investment certificates shall be repurchased by the association upon written notice to the directors within a 90-day period following receipt of notice by paying the investor the par value of the certificate, together with any investment dividend accrued.

Revisor's Note:

No substantive change is intended, except that the revised law makes clear that the cooperative association (and not the board of directors as individuals or a body) is required to purchase the member's capital holdings and thus clarifies a potential ambiguity in the source law.

Revised Law:

Sec. 251.203. SHARE AND MEMBERSHIP CERTIFICATES; RECALL. (a) The bylaws of a cooperative association may authorize the cooperative association's board of directors to recall during a specified time and in accordance with the bylaws the membership certificates of a member who fails to patronize the cooperative association. The board may use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount required for membership.

(b) After the board of directors of a cooperative association recalls a membership certificate under Subsection (a), membership in the cooperative association is terminated and the board shall cause the cooperative association to reissue or cancel the certificate. The board of directors may not recall membership certificates if recalling the certificates would jeopardize the cooperative association's solvency.

(c) The board of directors may use the reserve funds to recall and repurchase the investment certificates of an investor at par value plus any investment dividends due.

(d) The bylaws of a cooperative association may establish specific procedures, terms, and conditions for recalls and repurchases of investment certificates.

Source Law:

CAA 30

Sec. 30. (a) The by-laws may give the directors the power to use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount requisite for membership, and may also provide that if any member has failed to patronize the association during a time specified and in accordance with the by-laws, the directors may recall the member's membership certificates, thereby terminating his membership in the association. When membership certificates are recalled, they shall be either reissued or cancelled. No recall may be made if the solvency of the association would be jeopardized.

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value, together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Revisor's Note:

No substantive change is intended, except that the language in (b) is clarified to indicate that the cooperative association reissues or cancels the certificate and not the board as such.

Revised Law:

Sec. 251.204. CERTIFICATES; ATTACHMENT. The minimum amount necessary for membership in a cooperative association, not to exceed \$50, is exempt from attachment, execution, or garnishment for the debts of a member of a cooperative association. If a member's holdings are subject to attachment, execution, or garnishment, the directors of the cooperative association may admit the purchaser to membership or may purchase the holdings at par value.

Source Law:

CAA 31

Sec. 31. The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, are exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to attachment, execution, or garnishment, the directors of the association may either admit the purchaser to membership, or may purchase the holdings at par value.

Revisor's Note:

No substantive change is intended.

(Sections 251.205-251.250 reserved for expansion)

SUBCHAPTER F. MEETINGS AND VOTING

Revised Law:

Sec. 251.251. MEETINGS. (a) Regular meetings of members of a cooperative association shall be held at least once a year as prescribed by the cooperative association's bylaws.

(b) A special meeting of the members of a cooperative association may be requested by a majority vote of the directors or by written petition of at least one-tenth of the membership of the cooperative association. The secretary shall call a special meeting to be held 30 days after receipt of the request for a special meeting.

Source Law:

CAA 13(a)

Sec. 13. (a) Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership. When a meeting is demanded, it is the duty of the secretary to call the meeting for a date 30 days after the demand.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.252. NOTICE OF SPECIAL MEETING. The notice of a special meeting of the members of a cooperative association shall state the purpose of the meeting.

Source Law:

CAA 14

Sec. 14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. In the case of a special meeting the notice shall specify the purpose for which the meeting is called.

Revisor's Note:

No substantive change is intended. The provisions of the first sentence of Section 14 are now contained in Section 6.051.

Revised Law:

Sec. 251.253. MEETINGS BY UNITS OF MEMBERSHIP. (a) The certificate of formation or bylaws of a cooperative association may provide for the holding of meetings by units of the membership of the cooperative association and may provide for:

- (1) a method of transmitting the votes cast at unit meetings to the central meeting;
- (2) a method of representation of units of the membership by the election of delegates to the central meeting; or
- (3) a combination of both methods.

(b) Except as otherwise provided by the certificate of formation or bylaws, a meeting by a unit of the membership shall be called and held in the same manner as a regular meeting of the members.

Source Law:

CAA 15

Sec. 15. The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes cast at unit meetings to the central meeting, or for a method of representation of units by the election of delegates to the central meeting, or for a combination of both methods.

Revisor's Note:

No substantive change is intended. Section 251.253(b) clarifies that a meeting by a unit of the membership must be called and held in the same manner as a regular meeting of the members unless the certificate of formation or bylaws provide otherwise.

Revised Law:

Sec. 251.254. ONE MEMBER--ONE VOTE. (a) Except as provided by Subsection (b), a member of a cooperative association has one vote.

(b) If a cooperative association includes among its membership another cooperative association or a group that is organized on a cooperative basis, the voting rights of the cooperative association member or group member may be prescribed by the certificate of formation or bylaws of the cooperative association.

(c) Any voting agreement or other device that is made to evade the one-member-one-vote rule is not enforceable.

Source Law:

CAA 16

Sec. 16. (a) Each member of an association has one vote, except that if an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of the member associations or groups may be as prescribed in the articles or by-laws.

(b) No voting agreement or other device to evade the one-member-one-vote rule is enforceable.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.255. NO PROXY. A member is not entitled to vote by proxy.

Source Law:

CAA 17

Sec. 17. No member may vote by proxy.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.256. VOTING BY MAIL. (a) The certificate of formation or bylaws of a cooperative association may contain the procedures in Subsection (b) or (c), or both, for voting by mail.

(b) With notice of a meeting sent to members of the cooperative association, the secretary may include a copy of a proposal to be offered at the meeting. If a mail vote is returned to the cooperative association within the specified number of days, the mail vote shall be counted with the votes cast at the meeting.

(c) The secretary may send to a member of the cooperative association who is absent from a meeting an exact copy of the proposal considered at the meeting. If the vote is returned to the cooperative association within the specified number of days, the mail vote is counted with the votes cast at the meeting.

(d) The certificate of formation or bylaws may state whether and to what extent mail votes are counted in computing a quorum.

Source Law:

CAA 18

Sec. 18. (a) The articles or by-laws may provide for either or both of the following procedures for voting by mail:

(1) the secretary may send to the members a copy of any proposal to be offered at a meeting with the notice of the meeting, and the mail votes cast by the members shall be counted together with those cast at the meeting if the mail votes are returned to the association within a specified number of days;

(2) the secretary may send to any member absent from a meeting an exact copy of the proposal acted on at the meeting, and the mail vote of the member on the proposal, if returned within a specified number of days, is counted together with the votes cast at the meeting.

(b) The articles or by-laws may also determine whether and to what extent mail votes are counted in computing a quorum.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.257. VOTING BY MAIL OR BY DELEGATES. (a) If a cooperative association has provided for voting by mail or by delegates, a provision of this chapter referring to votes cast by members of the cooperative association applies to votes cast by mail or by delegates.

(b) A delegate may not vote by mail.

Source Law:

CAA 19 and 20

Sec. 19. If an association has provided for voting by mail, any provision of this Act referring to votes cast by the members applies to votes cast by mail.

Sec. 20. If an association has provided for voting by delegates, any provision of this Act referring to votes cast by the members applies to votes cast by delegates, but this does not permit delegates to vote by mail.

Revisor's Note:

No substantive change is intended.

(Sections 251.258-251.300 reserved for expansion)

SUBCHAPTER G. CAPITAL AND NET SAVINGS

Revised Law:

Sec. 251.301. LIMITATIONS ON RETURN ON CAPITAL. (a) Except as otherwise provided by the cooperative association's bylaws, an investment dividend of a cooperative association may not be cumulative and may not exceed eight percent of investment capital.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Source Law:

CAA 25

Sec. 25. (a) Investment dividends will not exceed eight percent on investment capital unless otherwise provided for in the by-laws and the investment dividend will not be cumulative unless otherwise provided for in the by-laws.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.302. ALLOCATION AND DISTRIBUTION OF NET SAVINGS. (a) At least once each year the members or directors of a cooperative association, as provided by the certificate of formation or bylaws of the cooperative association, shall apportion the net savings of the cooperative association in the following order:

(1) subject to Section 251.301, investment dividends payable from the surplus of the total assets over total liabilities may be paid on invested capital or, if authorized by the bylaws, may be paid on the membership certificates;

(2) a portion of the remainder, as determined by the certificate of formation or bylaws, may be allocated to an educational fund to be used in teaching cooperation;

(3) a portion of the remainder may be allocated to funds for the general welfare of the members of the cooperative association;

(4) a portion of the remainder may be allocated to retained earnings; and

(5) the remainder shall be allocated at the same uniform rate to each patron of the cooperative association in proportion to individual patronage as follows:

(A) for a member patron, the proportionate amount of savings return distributed to the member may be any combination of cash, property, membership certificates, or investment certificates; and

(B) for a subscriber patron, the patron's proportionate amount of savings returns as provided by the certificate of formation or bylaws may be distributed to the subscriber patron or credited to the subscriber patron's account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent a cooperative association engaged in rendering services from disposing of the net savings from the rendering of services in a manner that lowers the fees charged for services or furthers the common benefit of the members.

(c) A cooperative association may adopt a system in which:

(1) the payment of savings returns that would otherwise be distributed are deferred for a fixed period; or

(2) the savings returns distributed are partly in cash or partly in shares, to be retired at a fixed future date, in the order of the shares' serial numbers or issuance dates.

Source Law:

CAA 34

Sec. 34. (a) At least once each year the members or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) investment dividends, within the limitations of Section 25 may be paid on invested capital, or if the by-laws so provide, on the membership certificates, but the investment dividends may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities;

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(3) a portion of the remainder may be allocated to retained earnings;

(4) the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage as follows:

(A) in the case of a member patron, the proportionate amount of savings return distributed to the member may be in the form of cash, property, membership certificates, investment certificates or in any combination of these;

(B) in the case of a subscriber patron, his proportionate amount of savings returns as the articles or by-laws provide, may be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent an association engaged in rendering services from disposing of the net savings from the rendering of services in a manner calculated to lower the fees charged for services or otherwise to further the common benefit of the members.

(c) This section does not prevent an association from adopting a system in which the payment of savings returns which would otherwise be distributed are deferred for a fixed period of time, nor from adopting a system in which the savings returns distributed are partly in cash, partly in shares, with the shares to be retired at a fixed future date, in the order of their serial number or date of issue.

Revisor's Note:

No substantive change is intended.

(Sections 251.303-251.350 reserved for expansion)

SUBCHAPTER H. REPORTS AND RECORDS

Revised Law:

Sec. 251.351. RECORDKEEPING. A cooperative association shall keep books and records relating to the cooperative association's business operation in accordance with standard accounting practices.

Source Law:

CAA 35(a)

Sec. 35. (a) To record its business operation, every association shall keep a set of books according to standard accounting practices.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.352. REPORTS TO MEMBERS. (a) A cooperative association shall submit a written report to its members at the annual meeting of the cooperative association. The annual report must contain:

- (1) a balance sheet;
- (2) an income and expense statement;
- (3) the amount and nature of the cooperative association's authorized, subscribed, and paid-in capital;
- (4) the total number of shareholders;
- (5) the number of shareholders who were admitted to or withdrew from the association during the year;
- (6) the par value of the association's shares;

(7) the rate at which any investment dividends have been paid; and

(8) if the cooperative association does not issue shares:

(A) the total number of members;

(B) the number of members who were admitted to or withdrew from the association during the year; and

(C) the amount of membership fees received.

(b) The directors shall appoint a committee composed of members who are not principal bookkeepers, accountants, or employees of the cooperative association to review the cooperative association.

(c) The committee appointed under Subsection (b) shall report on the quality of the annual report required by this section and the bookkeeping system of the cooperative association at the annual meeting.

Source Law:

CAA 35(b)-(d)

(b) A written report shall be submitted to the annual meeting of the association which shall include the following:

(1) a balance sheet, and income and expense statement;

(2) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders, and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any return on capital has been paid; and

(3) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received.

(c) The director shall appoint a review committee, composed of members who are not principal bookkeepers, accountants, or employees of the association.

(d) The committee shall report on the quality of the annual report and the bookkeeping system at the annual meeting.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.353. ANNUAL REPORT OF FINANCIAL CONDITION. (a) This section applies only to a cooperative association that has at least 100 members or at least \$20,000 in annual business.

(b) Not later than the 120th day after the date on which the association closes its business each year, a cooperative association shall file in the association's registered office a report of the association's financial condition stating:

(1) the name of the association;

(2) the address of the association's principal office;

(3) the name, address, occupation, and date of expiration of the term of office of each officer and director;

(4) any compensation paid by the association to each officer or director of the association;

(5) the amount and nature of the authorized, subscribed, and paid-in capital;

(6) the total number of shareholders;

(7) the number of shareholders who were admitted to or withdrew from the association during the year;

(8) the par value of the association's shares;

(9) the rate at which any investment dividends have been paid; and

(10) if the association has no shares:

(A) the total number of members;

(B) the number of members who were admitted to or withdrew from the association during the year; and

(C) the amount of membership fees received.

(c) The report required by Subsection (b) must:

(1) include a balance sheet and income and expense statement of the cooperative association; and

(2) be signed by the president and secretary.

(d) A cooperative association that has at least 3,000 members or at least \$750,000 in annual business shall file a copy of the report required by this section with the secretary of state.

(e) A person commits an offense if the person signs a report that is required by this section and contains a materially false statement that the person knows is false. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$25 or more than \$200;

(2) confinement in county jail for a term of not less than 30 days or more than one year; or

(3) both the fine and confinement.

Source Law:

CAA 36

Sec. 36. (a) Every association having 100 or more members or an annual business amounting to \$20,000 or more shall prepare, within 120 days of the close of its operations each year, a report of its condition, sworn to by the president and secretary, which shall be filed in its registered office. The report shall state:

(1) the name and principal address of the association;

(2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;

(3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;

(4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and

(5) the receipts, expenditures, assets, and liabilities of the association.

(b) Every association having 3,000 or more members or an annual business amounting to \$750,000 or more shall file a copy of the report with the secretary of state.

(c) A person who subscribes or verifies a report containing a materially false statement, known to the person to be false, commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.354. FAILURE TO FILE REPORT. (a) If a cooperative association required by Section 251.353 to file a copy of a report with the secretary of state does not file the report within the prescribed time, the secretary of state shall send written notice of the requirement by registered mail to the cooperative association. The notice must be sent to the cooperative association's principal office not later than the 60th day after the date the report becomes due.

(b) If a cooperative association is required by Section 251.353 to file a report at its registered office but not with the secretary of state and fails to file the report within the prescribed time, the secretary of state or any member of the cooperative association may send written notice of the requirement by registered mail to the cooperative association's principal office.

(c) If the cooperative association does not file the report before the 61st day after the date notice is sent under Subsection (a) or (b), a member of the cooperative association or the attorney general may seek a writ of mandamus against the cooperative association and the appropriate officer or officers to compel the filing of the report. The court shall require the cooperative association or the officer who is determined to be at fault to pay the expenses of the proceeding, including attorney's fees.

Source Law:

CAA 37

Sec. 37. (a) If an association required by Section 36 of this Act to file a report with the secretary of state fails to do so in the prescribed time, the secretary of state shall notify the association of the delinquency by registered letter mailed to its principal office within 60 days after the report becomes delinquent. If an association required by Section 36 of this Act to file a report at its registered office but not required to file a copy with the secretary of state fails to do so in the prescribed time, the secretary of state or any member may

notify the association of the delinquency by registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Revisor's Note:

No substantive change is intended.

(Sections 251.355-251.400 reserved for expansion)

SUBCHAPTER I. WINDING UP AND TERMINATION

Revised Law:

Sec. 251.401. VOLUNTARY WINDING UP AND TERMINATION. (a) A cooperative association may wind up and terminate its affairs in accordance with Chapter 11 and Sections 22.301-22.303.

(b) If a cooperative association is directed to wind up and liquidate its affairs, three members of the cooperative association elected by a vote of at least a majority of the members voting shall be designated as trustees on behalf of the cooperative association to:

(1) pay debts;

(2) liquidate the cooperative association's assets within the time set in the trustees' designation or any extension of time; and

(3) distribute the cooperative association's assets in the manner provided by Section 251.403.

Source Law:

CAA 38(a) and (c)

Sec. 38. (a) An association may, at a regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. If it is directed to dissolve, by a vote of a majority of the members voting, three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

(c) When an association is dissolved, its assets shall be distributed in the following manner and order

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.402. EXECUTION OF CERTIFICATE OF TERMINATION. An officer of a cooperative association or one or more of the persons designated as a liquidating trustee under Section 251.401 shall execute the certificate of termination on behalf of the cooperative association.

Source Law:

CAA 38(a)

Sec. 38. (a) . . . three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

TNPCA 6.05.A

A. . . . articles of dissolution shall be signed on behalf of the corporation by an officer

Revisor's Note:

No substantive change is intended except that the authority of a liquidating trustee under Section 251.451 is clarified to extend to execution of the certificate of termination on behalf of the cooperative association. The CAA incorporates the TNPCA, which provides for execution of the articles of dissolution by officer.

Revised Law:

Sec. 251.403. DISTRIBUTION OF ASSETS. Subject to Section 11.052 and Section 11.053(a), the trustees designated under Section 251.401 shall distribute the cooperative association's assets in the following order:

(1) by returning the par value of the investors' capital to investors;

(2) by returning the amounts paid on subscriptions to subscribers for invested capital;

(3) by returning the amount of patronage dividends credited to patrons' accounts to the patrons;

(4) by returning to members their membership capital; and

(5) by distributing any surplus in the manner provided by the certificate of formation:

(A) among the patrons who have been members or subscribers of the cooperative association during the six years preceding the date of dissolution, on the basis of patronage during that period;

(B) as a gift to any cooperative association or other nonprofit enterprise designated in the certificate of formation; or

(C) a combination of both methods of distribution.

Source Law:

CAA 38(c)

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

(1) by paying its debts and expenses;

(2) by returning to the investors the par value of their capital;

- (3) by returning to the subscribers to invested capital the amounts paid on their subscriptions;
- (4) by returning to patrons the amount of patronage dividends credited to their accounts;
- (5) by returning to members their membership capital; and
- (6) by distributing any surplus in either or both of the following ways, as the articles may provide: either among those patrons who have been members or subscribers at anytime during the six years preceding dissolution, on the basis of patronage during that period, or as a gift to any cooperative association or other non-profit enterprise which may be designated in the articles.

Revisor's Note:

No substantive change is intended. The reference to Sections 11.052 and 11.053 subjects cooperative associations to the same winding up procedures as other domestic entities, which include ceasing to carry on its business, selling its assets (to the extent not to be distributed in kind), performing other actions required to wind up its business and paying its debts and expenses. The provisions of Sections 11.052 and 11.053 are consistent with TNPCA Arts. 6.02 and 7.12 which are currently applicable to cooperative associations.

Revised Law:

Sec. 251.404. INVOLUNTARY TERMINATION. A suit for involuntary termination of a cooperative association organized under this chapter may be instituted for the causes and prosecuted in the manner provided by Chapter 11. The assets of a cooperative association that is involuntarily terminated shall be distributed in accordance with Section 251.403.

Source Law:

CAA 38(b)
(b) A suit for involuntary dissolution of an association organized under this Act may be instituted for the causes and prosecuted in the manner set forth in Articles 7.01 to 7.12, Texas Non-Profit Corporation Act (Articles 1396-7.01 through 1396-7.12, Vernon's Texas Civil Statutes), except that any distribution of assets shall be in the manner set forth in this section.

Revisor's Note:

No substantive change is intended.

(Sections 251.405-251.450 reserved for expansion)

SUBCHAPTER J. MISCELLANEOUS PROVISIONS

Revised Law:

Sec. 251.451. EXEMPTION FROM TAXES. A cooperative association organized under this chapter is exempt from the franchise tax and license fees imposed by the state or a political subdivision of the state, except that a cooperative association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the cooperative association is exempt under that chapter.

Source Law:

CAA 44

Sec. 44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 251.452. USE OF NAME "COOPERATIVE." (a) Only a cooperative association governed by this chapter, a group organized on a cooperative basis under another law of this state, or a foreign entity operating on a cooperative basis and authorized to do business in this state may use the term "cooperative" or any abbreviation or derivation of the term "cooperative" as part of its business name or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$25 or more than \$200 for the first month in which the violation occurs;

(2) a fine of not more than \$200 for each month during which a violation occurs after the first month;

(3) confinement in the county jail for not less than 30 days or more than one year; or

(4) a combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court renders a judgment that a person who used the term "cooperative" before September 1, 1975, is not organized on a cooperative basis but is authorized to continue to use the term, the business shall place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type and in letters not less than two-thirds the size of the letters used in the word "cooperative."

(e) Notwithstanding this section, The University Cooperative Society, a domestic nonprofit corporation related to The University of Texas, may continue to use the word "cooperative" in its name.

Source Law:

CAA 39

Sec. 39. (a) Only an association organized under this Act, a group organized on a cooperative basis under any other law of this state, or a foreign corporation operating on a cooperative basis and authorized to do business in this state under this or any other law of this state may use the term "cooperative," or any abbreviation or derivation of the term "cooperative," as part of its business name, or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person, firm, or corporation that violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by confinement in the county jail for not less than 30 days nor more than one year, or by any combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court of competent jurisdiction renders judgment that a person, firm, or corporation which employed the name "cooperative" prior to this Act, is not organized on a cooperative basis, but may nonetheless continue to use the word "cooperative," the business shall always place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type, and in letters not less than two-thirds as large, as those used in the word "cooperative."

Revisor's Note:

No substantive change is intended, except that Section 251.502 permits the University Cooperative Society, a domestic non-profit corporation related to the University of Texas, to use the word "Cooperative" in its name.

CHAPTER 252. UNINCORPORATED NONPROFIT ASSOCIATIONS

Revised Law:

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. A form of joint tenancy, tenancy in common, or tenancy by the entirety does not by itself establish a nonprofit association, regardless of whether the co-owners share use of the property for a nonprofit purpose.

Source Law:

TUUNAA 2

Sec. 2. In this Act:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

Revisor's Note:

No substantive change is intended. Section 252.001 does not define "person" or "state," each of which is defined in TUUNAA; however, these terms are defined in a similar manner in the Code Construction Act, which is incorporated by reference into the Code by Section 1.051.

Revised Law:

Sec. 252.002. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND EQUITY. Principles of law and equity supplement this chapter unless displaced by a particular provision of this chapter.

Source Law:

TUUNAA 3

Sec. 3. Principles of law and equity supplement this Act unless displaced by a particular provision of it.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.003. TERRITORIAL APPLICATION. Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, regardless of whether the nonprofit association or a member has any other relationship to this state.

Source Law:

TUUNAA 4

Sec. 4. Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.004. REAL AND PERSONAL PROPERTY; NONPROFIT ASSOCIATION AS BENEFICIARY. (a) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a beneficiary of a trust, contract, or will.

Source Law:

TUUNAA 5

Sec. 5. (a) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a beneficiary of a trust, contract, or will.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.005. STATEMENT OF AUTHORITY AS TO REAL PROPERTY. (a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the county clerk's office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must contain:

(1) the name of the nonprofit association;

(2) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) The county clerk may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law on the fifth anniversary of the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the county clerk's office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

Source Law:

TUUNAA 6

Sec. 6. (a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the county clerk's office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

(1) the name of the nonprofit association;

(2) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) The county clerk may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law on the fifth anniversary of the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the county clerk's office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.006. LIABILITY IN TORT AND CONTRACT. (a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(b) A person is not liable for a breach of a nonprofit association's contract or for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(c) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(d) A member of, or a person considered as a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered as a member by the nonprofit association.

Source Law:

TUUNAA 7

Sec. 7. (a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(b) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(c) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(e) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.007. CAPACITY TO ASSERT AND DEFEND; STANDING. (a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of members of the nonprofit association if:

(1) one or more of the nonprofit association's members have standing to assert a claim in their own right;

(2) the interests the nonprofit association seeks to protect are germane to its purposes; and

(3) neither the claim asserted nor the relief requested requires the participation of a member.

Source Law:

TUUNAA 8

Sec. 8. (a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.008. EFFECT OF JUDGMENT OR ORDER. A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered as a member by the nonprofit association.

Source Law:

TUUNAA 9

Sec. 9. A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered by the nonprofit association to be a member.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.009. DISPOSITION OF PERSONAL PROPERTY OF INACTIVE NONPROFIT ASSOCIATION. (a) If a nonprofit association has been inactive for three years or longer, or a shorter period as specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer the custody of the property:

(1) if a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) if no person is specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

(b) Notwithstanding the above, if a nonprofit association is classified under the Internal Revenue Code as a 501(c)(3) organization or is or holds itself out to be established or operating for a charitable, religious, or educational purpose, as defined by Section 501(c)(3), Internal Revenue Code, then any distribution must be made to another nonprofit association or nonprofit corporation with similar charitable, religious, or educational purposes.

Source Law:

TUUNAA 10

Sec. 10. (a) If a nonprofit association has been inactive for three years or longer, or a shorter period as specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer the custody of the property:

(1) if a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) if no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

(b) Notwithstanding the above, if a nonprofit association is classified under the Internal Revenue Code of 1986 as a 501(c)(3) organization or is or holds itself out to be established or operating for a charitable, religious, or educational purpose, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, [26 U.S.C.A. § 501(c)(3)] then any distribution must be to another nonprofit association or nonprofit corporation with similar charitable, religious, or educational purposes.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.010. BOOKS AND RECORDS. (a) A nonprofit association shall keep correct and complete books and records of account for at least three years after the end of each fiscal year and shall make the books and records available on request to members of the association for inspection and copying.

(b) The attorney general may inspect, examine, and make copies of the books, records, and other documents the attorney general considers necessary and may investigate the association to determine if a violation of any law of this state has occurred.

Source Law:

TUUNAA 11

Sec. 11. (a) A nonprofit association shall keep correct and complete books and records of account for at least three years after the end of each fiscal year and shall make them available to the members of the association for inspection and copying upon request.

(b) The attorney general may inspect, examine, and make copies of the books, records, and other documents the attorney general deems necessary and investigate the association to determine if a violation of any law of this state has occurred.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.011. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS.

(a) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must contain:

- (1) the name of the nonprofit association;
- (2) the federal tax identification number of the nonprofit association, if applicable;
- (3) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and
- (4) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed by the person appointed agent, who by signing accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(f) A statement appointing an agent may be canceled by filing with the secretary of state a written notice of cancellation executed by a person authorized to manage the affairs of the nonprofit association. A notice of cancellation must contain:

- (1) the name of the nonprofit association;
- (2) the federal tax identification number of the nonprofit association, if applicable;
- (3) the date of filing of the nonprofit association's statement appointing the agent; and
- (4) a current street address, if any, of the nonprofit association in this state, or if the nonprofit association does not have an address in this state, its address out of state.

(g) The secretary of state may adopt forms and procedural rules for filing documents under this section.

Source Law:

TUUNAA 12

Sec. 12. (a) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) the name of the nonprofit association;

(2) the federal tax identification number of the nonprofit association, if applicable;

(3) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(4) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(f) A statement appointing an agent may be canceled by filing with the secretary of state a written notice of cancellation executed by a person authorized to manage the affairs of the nonprofit association. A notice of cancellation must contain the name of the nonprofit association; the federal tax identification number of the nonprofit association, if applicable; the date of filing of its statement appointing the agent; and a current street address of the nonprofit association in this state, and outside this state, if applicable.

(g) The secretary of state may promulgate forms and adopt procedural rules on filing documents under this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.012. CLAIM NOT ABATED BY CHANGE. A claim for relief against a nonprofit association does not abate merely because of a change in the members or persons authorized to manage the affairs of the nonprofit association.

Source Law:

TUUNAA 13

Sec. 13. A claim for relief against a nonprofit association does not abate merely because of a change in its members or

persons authorized to manage the affairs of the nonprofit association.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.013. SUMMONS AND COMPLAINT; SERVICE. (a) In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, a managing or general agent, or a person authorized to participate in the management of its affairs, in accordance with the Civil Practice and Remedies Code.

(b) Not later than the 10th day after the date of a request by the attorney general to an officer or board member of a nonprofit association or to the nonprofit association, the nonprofit association shall provide to the attorney general the names, current addresses, and telephone numbers of:

(1) each agent authorized to receive service of process on behalf of the nonprofit association; and

(2) each officer, managing or general agent, and other person authorized to participate in the management of the affairs of the nonprofit association.

Source Law:

TUUNAA 14

Sec. 14. In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, a managing or general agent, or a person authorized to participate in the management of its affairs, in accordance with the Civil Practice and Remedies Code. Within 10 days of a request by the attorney general to an officer or board member of a nonprofit association or to the nonprofit association, the nonprofit association shall provide to the attorney general the names, current addresses, and telephone numbers of:

(1) agents authorized to receive service of process on behalf of the nonprofit association; and

(2) the officers, managing or general agents, and other persons authorized to participate in the management of the affairs of the nonprofit association.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.014. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to make uniform the law with respect to the subject of this chapter among states enacting it.

Source Law:

TUUNAA 15

Sec. 15. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.015. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY. If, before September 1, 1995, an estate or interest in real or personal property was by the terms of the transfer purportedly transferred to a nonprofit association, but under the law the estate or interest was vested in a fiduciary such as officers of the nonprofit association to hold the estate or interest for members of the nonprofit association, on or after September 1, 1995, the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the state or interest be transferred to it in its name.

Source Law:

TUUNAA 16

Sec. 16. If, before the effective date of this Act, an estate or interest in real or personal property was by the terms of the transfer purportedly transferred to a nonprofit association, but under the law the estate or interest was vested in a fiduciary such as officers of the nonprofit association to hold the estate or interest for members of the nonprofit association, on or after the effective date of this Act the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.016. EFFECT ON OTHER LAW. This chapter replaces existing law with respect to matters covered by this chapter but does not affect other law covering unincorporated nonprofit associations.

Source Law:

TUUNAA 18

Sec. 18. This Act replaces existing law with respect to matters covered by this Act but does not affect other law covering unincorporated nonprofit associations.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 252.017. CHAPTER CONTROLLING. (a) Except as provided by Subsection (b), the only provisions of this Code that apply to or govern a nonprofit association are the provisions of this Chapter.

(b) Chapters 1 and 4 and, if a nonprofit association designates an agent for service of process, Subchapter E, Chapter 5, apply to a nonprofit association.

Source Law:

New

Revisor's Note:

This section specifies what provisions of this Code apply to or govern a nonprofit association.