

# Title 23

## CORPORATIONS AND ASSOCIATIONS (PROFIT)

### (Business Corporation Act: See Title 23B RCW)

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## Chapter 23.78 RCW

## EMPLOYEE COOPERATIVE CORPORATIONS

## Sections

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*Employee ownership programs through the department of community, trade, and economic development: RCW 43.63A.230.*

**23.78.010 Definitions.** For the purposes of this chapter, the terms defined in this section have the meanings given:

(1) "Employee cooperative" means a corporation that has elected to be governed by the provisions of this chapter.

(2) "Member" means a natural person who has been accepted for membership in, and owns a membership share issued by an employee cooperative.

(3) "Patronage" means the amount of work performed as a member of an employee cooperative, measured in accordance with the articles of incorporation and bylaws.

(4) "Written notice of allocation" means a written instrument which discloses to a member the stated dollar amount of the member's patronage allocation, and the terms for payment of that amount by the employee cooperative. [1987 c 457 § 2.]

**23.78.020 Election by corporation to be governed as an employee cooperative—Laws governing.** Any corporation organized under the laws of this state may elect to be governed as an employee cooperative under the provisions of this chapter, by so stating in its articles of incorporation, or articles of amendment filed in accordance with Title 23B RCW and Article 2 of chapter 23.95 RCW.

A corporation so electing shall be governed by all provisions of Title 23B RCW, except RCW 23B.07.050, 23B.13.020, and chapter 23B.11 RCW, and except as otherwise provided in this chapter. [2015 c 176 § 9101; 1991 c 72 § 9; 1987 c 457 § 3.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.78.030 Revocation of election.** An employee cooperative may revoke its election under this chapter by a vote of two-thirds of the members and through articles of amendment delivered to the secretary of state for filing in accordance with RCW 23B.01.200, 23B.10.060, and Article 2 of chapter 23.95 RCW. [2015 c 176 § 9102; 1991 c 72 § 10; 1987 c 457 § 4.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.78.040 Corporate name.** An employee cooperative may include the word "cooperative" or "co-op" in its corporate name. [1987 c 457 § 5.]

**23.78.050 Members—Membership shares.** (1) The articles of incorporation or the bylaws shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis.

(2) An employee cooperative shall issue a class of voting stock designated as "membership shares." Each member shall own only one membership share, and only members may own these shares.

(3) Membership shares shall be issued for a fee as determined from time to time by the directors. RCW 23B.06.040 and 23B.06.200 do not apply to such membership shares.

Members of an employee cooperative shall have all the rights and responsibilities of stockholders of a corporation organized under Title 23B RCW, except as otherwise provided in this chapter. [1991 c 72 § 11; 1987 c 457 § 6.]

**23.78.060 Right to vote—Power to amend or repeal bylaws—Right to amend articles of incorporation.** (1) No capital stock other than membership shares shall be given voting power in an employee cooperative, except as otherwise provided in this chapter, or in the articles of incorporation.

(2) The power to amend or repeal bylaws of an employee cooperative shall be in the members only.

(3) Except as otherwise permitted by RCW 23B.10.040, no capital stock other than membership shares shall be permitted to vote on any amendment to the articles of incorporation. [1991 c 72 § 12; 1987 c 457 § 7.]

**23.78.070 Net earnings or losses—Apportionment, distribution, and payment.** (1) The net earnings or losses of an employee cooperative shall be apportioned and distributed at the times and in the manner as the articles of incorporation or bylaws shall specify. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period.

(2) The apportionment, distribution, and payment of net earnings required by subsection (1) of this section may be in cash, credits, written notices of allocation, or capital stock issued by the employee cooperative. [1987 c 457 § 8.]

**23.78.080 Internal capital accounts authorized—Redemptions—Assignment of portion of retained net earnings and net losses to collective reserve account authorized.** (1) Any employee cooperative may establish through its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock, and written notices of allocation.

(2) The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must pro-

vide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption shall be made if redemption would result in a violation of RCW 23B.06.400.

(3) The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

(4) The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors. [1991 c 72 § 13; 1987 c 457 § 9.]

**23.78.090 Internal capital account cooperatives.** (1)

An internal capital account cooperative is an employee cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account, and in which no persons other than members own capital stock. In an internal capital account cooperative, each member shall have one and only one vote in any matter requiring voting by stockholders.

(2) An internal capital account cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account, and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses, and retained net earnings not allocated to individual members.

(3) In an internal capital account cooperative, the balances in all the individual internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the employee cooperative. [1987 c 457 § 10.]

**23.78.100 Provision for conversion of shares and accounts—Limitations upon merger.** (1)

When any employee cooperative revokes its election in accordance with RCW 23.78.030, the articles of amendment shall provide for conversion of membership shares and internal capital accounts or their conversion to securities or other property in a manner consistent with Title 23B RCW.

(2) An employee cooperative that has not revoked its election under this chapter may not merge with another corporation other than an employee cooperative. Two or more employee cooperatives may merge in accordance with RCW 23B.01.200, 23B.07.050, and chapter 23B.11 RCW. [1991 c 72 § 14; 1987 c 457 § 11.]

**23.78.900 Short title.** This chapter may be cited as the employee cooperative corporations act. [1987 c 457 § 1.]

**Chapter 23.86 RCW  
COOPERATIVE ASSOCIATIONS**

Sections

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(2019 Ed.)

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*Exemptions to commission merchant's act: RCW 20.01.030.*

*Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.*

**23.86.007 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Association" means any corporation subject to this chapter.

(2) "Member" or "members" includes a member or members of an association subject to this chapter without capital stock and a shareholder or shareholders of voting common stock in an association subject to this chapter with capital stock.

(3) "Articles of incorporation" means the original or restated articles of incorporation, articles of consolidation, or articles of association and all amendments including articles of merger. Corporations incorporated under this chapter with articles of association shall not be required to amend the title or references to the term "articles of association."

(4) "Director," "directors," or "board of directors" includes "trustee," "trustees," or "board of trustees" respectively. Corporations incorporated under this chapter with references in their articles of association or bylaws to "trustee," "trustees," or "board of trustees" shall not be required to amend the references.

(5) "Agricultural association" means an association that engages in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies, or in the financing of these activities. In the application of the definition of agricultural association, "agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm products. [1994 c 206 § 1; 1989 c 307 § 3.]

**Legislative finding—1989 c 307:** "The legislature finds that since 1921 there have existed in the laws of this state two separate incorporation statutes expressly designed for corporations intending to operate as nonprofit cooperatives. The existence of two cooperative incorporation statutes has been the source of confusion, disparity of treatment, and legal and administrative ambiguities, and the rationale for having two cooperative incorporation statutes is no longer valid. These cooperative incorporation statutes have not been updated with the regularity of this state's business incorporation statutes and, as a result, are deficient in certain respects." [1989 c 307 § 1.]

**23.86.010 Cooperative associations—Who may organize.** Any number of persons may associate themselves together as a cooperative association, society, company or exchange, with or without capital stock, for the transaction of any lawful business on the cooperative plan. For the purposes of this chapter the words "association," "company," "exchange," "society" or "union" shall be construed the same. [1989 c 307 § 4; 1913 c 19 § 1; RRS § 3904. Formerly RCW 23.56.010.] [1954 SLC-RO-7]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.  
Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.020 Business authorized.** An association created under this chapter, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the cooperative plan. [1913 c 19 § 7; RRS § 3910. Formerly RCW 23.56.020.]

**23.86.022 Certificate of authority as insurance company—Filing of documents.** For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state. [1998 c 23 § 4.]

**23.86.030 Association name—Immunity from liability of association board members and officers.** (1) The name of any association subject to this chapter must comply with Article 3 of chapter 23.95 RCW.

(2) No corporation or association organized or doing business in this state shall be entitled to use the term "cooperative" as a part of its corporate or other business name or title, unless it: (a) Is subject to the provisions of this chapter or chapter 23.78, 23.100, or 31.12 RCW; (b) is subject to the provisions of chapter 24.06 RCW and operating on a cooper-

ative basis; (c) is, on July 23, 1989, an organization lawfully using the term "cooperative" as part of its corporate or other business name or title; or (d) is a nonprofit corporation or association the voting members of which are corporations or associations operating on a cooperative basis. Any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any member or any association subject to this chapter.

(3) A member of the board of directors or an officer of any association subject to this chapter shall have the same immunity from liability as is granted in RCW 4.24.264. [2019 c 37 § 1403; 2015 c 176 § 9103; 1989 c 307 § 5; 1987 c 212 § 706; 1913 c 19 § 17; RRS § 3920. Formerly RCW 23.56.030.]

**Uniformity of application and construction—Savings—2019 c 37:** See RCW 23.100.1501 and 23.100.1503.

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.035 Powers.** Each association subject to this chapter shall have the following powers:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in the articles of incorporation.

(2) To sue and be sued, complain, and defend in its corporate name.

(3) To have and use a corporate seal.

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and deal in and with real or personal property or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, use, and deal in and with shares or other interest in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental district or municipality, or any instrumentality thereof.

(7) To make contracts and incur liabilities, borrow money at rates of interest the association may determine, issue notes, bonds, certificates of indebtedness, and other obligations, receive funds from members and pay interest thereon, issue capital stock and certificates representing equity interests in assets, allocate earnings and losses at the times and in the manner the articles of incorporation or bylaws or other contract specify, create book credits, capital funds, and reserves, and secure obligations by mortgage or pledge of any of its property, franchises, and income.

(8) To lend money for corporate purposes, invest and reinvest funds, and take and hold real and personal property as security for the payment of funds loaned or invested.

(9) To conduct business, carry on operations, have offices, and exercise the powers granted by this chapter, within or without this state.

(10) To elect or appoint officers and agents of the corporation, define their duties, and fix their compensation.

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the association.

(12) To make donations for the public welfare or for charitable, scientific, or educational purposes, and in time of war to make donations in aid of war activities.

(13) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees.

(14) To be a partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise.

(15) To cease corporate activities and surrender its corporate franchise.

(16) To have and exercise all powers necessary or convenient to effect its purposes. [1989 c 307 § 6.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.050 Articles—Contents.** Every association formed under this chapter after July 23, 1989, shall prepare articles of incorporation in writing, which shall set forth:

(1) The name of the association.

(2) The purpose for which it was formed which may include the transaction of any lawful business for which associations may be incorporated under this chapter. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Its principal place of business.

(4) The term for which it is to exist which may be perpetual or for a stated number of years.

(5) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules by which the property rights and interests of all members shall be determined and fixed. The association may admit new members who shall be entitled to share in the property of the association with old members in accordance with the general rules.

(6) If the association is to have capital stock:

(a) The aggregate number of shares which the association shall have authority to issue; if shares are to consist of one class only, the par value of each share, or a statement that all shares are without par value; or, if shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that shares are to be without par value;

(b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect to the shares of each class;

(c) If the association is to issue the shares of any preferred or special class in series, the designation of each series and a statement of the variations in the relative rights and preferences between series fixed in the articles of incorporation, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences between series; and

(d) Any provision limiting or denying to members the preemptive right to acquire additional shares of the association.

(2019 Ed.)

(7) Provisions for distribution of assets on dissolution or final liquidation.

(8) Whether a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association. A dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(9) The address of its initial registered office, including street and number, and the name of its initial registered agent at the address.

(10) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors.

(11) The name and address of each incorporator.

(12) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this chapter is required or permitted to be set forth in the bylaws.

Associations organized under this chapter before July 23, 1989, or under \*chapter 24.32 RCW shall not be required to amend their articles of association or articles of incorporation to conform to this section unless the association is otherwise amending the articles of association or articles of incorporation.

The information specified in subsections (9) through (11) of this section may be deleted when filing amendments. [1989 c 307 § 7; 1987 c 212 § 704; 1982 c 35 § 171; 1961 c 34 § 1; 1913 c 19 § 2; RRS § 3905. Formerly RCW 23.56.050.]

**\*Reviser's note:** Chapter 24.32 RCW was repealed by 1989 c 307.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

**23.86.055 Articles—Filing.** (1) The articles of incorporation shall be signed by the incorporators and delivered to the secretary of state for filing in accordance with Article 2 of chapter 23.95 RCW.

(2) Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall, except as against the state in a proceeding to cancel or revoke the certificate of incorporation, be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and

that the corporation has been incorporated under this chapter. [2015 c 176 § 9104; 1989 c 307 § 8.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

### **23.86.070 Applicable fees, charges, and penalties.**

Associations organized under or subject to this chapter are subject to the applicable fees, charges, and penalties established by the secretary of state under RCW 23.95.260 and 43.07.120. [2015 c 176 § 9105; 2010 1st sp.s. c 29 § 10; 1993 c 269 § 1; 1991 c 72 § 15; 1989 c 307 § 9; 1982 c 35 § 173; 1959 c 263 § 2; 1953 c 214 § 1; 1925 ex.s. c 99 § 1; 1913 c 19 § 4; RRS § 3907. Formerly RCW 23.56.070.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Intent—2010 1st sp.s. c 29:** See note following RCW 24.03.405.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.075 Fees for services by secretary of state.** See RCW 43.07.120.

### **23.86.080 Directors—Election and appointment.** (1)

Associations shall be managed by a board of not less than three directors (which may be referred to as "trustees"). The directors shall be elected by the members of the association at such time, in such manner, and for such term of office as the bylaws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified.

(2) Except as provided in RCW 23.86.087, any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office. [2003 c 252 § 1; 1989 c 307 § 10; 1913 c 19 § 5; RRS § 3908. Formerly RCW 23.56.080.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.085 Election of officers.** The directors shall elect a president and one or more vice presidents, who need not be directors. If the president and vice presidents are not members of the board of directors, the directors shall elect from their number a chair of the board of directors and one or more vice chairs. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered an officer but a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as authorized by the board of directors. [2011 c 336 § 654; 1989 c 307 § 11.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.087 Removal of officers or directors.** Any member may bring charges against an officer or director by filing charges in writing with the secretary of the association, together with a petition signed by ten percent of the members requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members voting, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges prior to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses. The person or persons bringing the charges shall have the same opportunity. If the bylaws provide for election of directors by districts, the petition for removal of a director must be signed by the number of members residing in the district from which the officer or director was elected as the articles of incorporation or bylaws specify and, in the absence of such specification, the petition must be signed by ten percent of the members residing in the district. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of the district voting, the association may remove the officer or director and fill the vacancy. [1989 c 307 § 12.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.090 Amendments to articles.** The articles of incorporation may be amended by a majority vote of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, after notice of the proposed amendment has been given to all members entitled to vote thereon, in the manner provided by the bylaws: PROVIDED, That if the total vote upon the proposed amendment shall be less than twenty-five percent of the total membership of the association, the amendment shall not be approved. At the meeting, members may vote upon the proposed amendment in person, or by written proxy, or by mailed ballot. The power to amend shall include the power to extend the period of its duration for a further definite time or perpetually, and also include the power to increase or diminish the amount of capital stock and the number of shares: PROVIDED, The amount of the capital stock shall not be diminished below the amount of the paid-up capital stock at the time such amendment is adopted. After the adoption of an amendment to its articles of incorporation, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state as provided in RCW 24.06.195. [1989 c 307 § 23; 1982 c 35 § 174; 1981 c 297 § 32; 1961 c 34 § 2; 1913 c 19 § 6; RRS § 3909. Formerly RCW 23.56.090.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.095 Registered agent.** Effective January 1, 1990, every association subject to this chapter shall have and maintain a registered agent in this state in accordance with the requirements set forth in Article 4 of chapter 23.95 RCW. [2015 c 176 § 9106; 1989 c 307 § 13.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.100 Bylaws.** Any association subject to this chapter may pass bylaws to govern itself in the carrying out of the provisions of this chapter which are not inconsistent with the provisions of this chapter. [1989 c 307 § 24; 1913 c 19 § 19; RRS § 3922. Formerly RCW 23.56.100.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.105 Member liability—Termination.** (1) Except for debts lawfully contracted between a member and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or subscription to capital stock.

(2) Membership may be terminated under provisions, rules, or regulations prescribed in the articles of incorporation or bylaws. In the absence thereof, the board of directors may prescribe such provisions, rules, and regulations. [1989 c 307 § 19.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.115 Voting.** (1) The right of a member to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged, or denied, each member shall be entitled to one vote on each matter submitted to a vote of members. The bylaws may allow subscribers to vote as members if one-fifth of the subscription for the membership fee or capital stock has been paid.

(2) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by mail or by proxy executed in writing by the member or by a duly authorized attorney-in-fact. No proxy shall be valid for more than eleven months from the date of its execution unless otherwise specified in the proxy. Votes by mail or by proxy shall be made by mail ballot or proxy form prepared and distributed by the association in accordance with procedures set forth in the articles of incorporation or bylaws. Persons voting by mail shall be deemed present for all purposes of quorum, count of votes, and percentage voting of total voting power.

(3) If the articles of incorporation or bylaws provide for more or less than one vote per member on any matter, every reference in this chapter to a majority or other proportion of members shall refer to such a majority or other proportion of votes entitled to be cast by members. [1989 c 307 § 21.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.125 Voting—Quorum.** Except as otherwise provided in this chapter, the articles of incorporation or the bylaws may provide the number or percentage of votes that members are entitled to cast in person, by mail, or by proxy that shall constitute a quorum at meetings of members. In the absence of any provision in the articles of incorporation or bylaws, twenty-five percent of the total membership of the association shall constitute a quorum. [1989 c 307 § 22.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

(2019 Ed.)

**23.86.135 Members right to dissent—Exception for members of a rural electric association.** (1) Except as provided in subsection (2) of this section, a member of an association shall have the right to dissent from any of the following association actions:

(a) Any plan of merger or consolidation to which the association is a party;

(b) Any plan of conversion of the association to an ordinary business corporation; or

(c) Any sale or exchange of all or substantially all of the property and assets of the association not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of the sale be distributed to the members in accordance with their respective interests within one year from the date of sale.

(2) A member of a rural electric association is not entitled to dissent from a merger to which the association is a party if all members of the association have the right to continue their membership status in the surviving association on substantially similar terms. [2016 c 228 § 1; 1989 c 307 § 30.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.145 Rights of dissenting members.** (1) Except as provided otherwise under this chapter, the rights and procedures set forth in chapter 23B.13 RCW shall apply to a member who elects to exercise the right of dissent.

(2) The articles of incorporation of an association subject to this chapter may provide that a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association, but a dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(3) Any member of an agricultural association who exercises the right to dissent from an association action described in RCW 23.86.135 shall be entitled to payment of the member's equity interest on the same time schedule that would have applied if membership in the association had been terminated.

(4) Subsection (3) of this section does not apply to agricultural associations that are involved in an action under subsection (3) of this section before June 9, 1994: (a) As to the associations that were involved in the particular action; (b) for three years after June 9, 1994. [1994 c 206 § 2; 1991 c 72 § 16; 1989 c 307 § 31.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.160 Apportionment of earnings.** The directors may apportion the net earnings by paying dividends upon the paid-up capital stock at a rate not exceeding eight percent per annum. They may set aside reasonable reserves out of such net earnings for any association purpose. The directors may, however, distribute all or any portion of the net earnings to members in proportion to the business of each with the association and they may include nonmembers at a rate not exceeding that paid to members. The directors may distribute, on a patronage basis, such net earnings at different rates

on different classes, kinds, or varieties of products handled. All dividends declared or other distributions made under this section may, in the discretion of the directors, be in the form of capital stock, capital or equity certificates, book credits, or capital funds of the association. All unclaimed dividends or distributions authorized under this chapter or funds payable on redeemed stock, equity certificates, book credits, or capital funds shall revert to the association at the discretion of the directors at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared. [1989 c 307 § 25; 1947 c 37 § 1; 1943 c 99 § 3; 1913 c 19 § 13; Rem. Supp. 1947 § 3916. Formerly RCW 23.56.160.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.170 Distribution of dividends.** The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this chapter as its bylaws shall prescribe, which shall be as often as once a year. [1913 c 19 § 14; RRS § 3917. Formerly RCW 23.56.170.]

**23.86.191 Indemnification of agents of any corporation authorized.** See RCW 23B.17.030.

**23.86.195 Cooperative associations organized under other statutes—Reorganization under chapter.** Any cooperative association organized under any other statute may be reorganized under the provisions of this chapter by adopting and filing amendments to its articles of incorporation in accordance with the provisions of this chapter for amending articles of incorporation. The articles of incorporation as amended must conform to the requirements of this chapter, and shall state that the cooperative association accepts the benefits and will be bound by the provisions of this chapter. [1989 c 307 § 26; 1981 c 297 § 38.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.200 Definitions.** For the purposes of RCW 23.86.200 through 23.86.230 a "domestic" cooperative association or "domestic" corporation is one formed under the laws of this state, and an "ordinary business" corporation is one formed or which could be formed under Title 23B RCW. [1991 c 72 § 17; 1971 ex.s. c 221 § 1.]

**23.86.210 Conversion of cooperative association to domestic ordinary business corporation—Procedure.** (1) A cooperative association may be converted to a domestic ordinary business corporation pursuant to the following procedures:

(a) The board of directors of the association shall, by affirmative vote of not less than two-thirds of all such directors, adopt a plan for such conversion setting forth:

(i) The reasons why such conversion is desirable and in the interests of the members of the association;

(ii) The proposed contents of articles of conversion with respect to items (ii) through (ix) of subparagraph (c) below; and

(iii) Such other information and matters as the board of directors may deem to be pertinent to the proposed plan.

(b) After adoption by the board of directors, the plan for conversion shall be submitted for approval or rejection to the members of the association at any regular meetings or at any special meetings called for that purpose, after notice of the proposed conversion has been given to all members entitled to vote thereon, in the manner provided by the bylaws. The notice of the meeting shall be accompanied by a full copy of the proposed plan for conversion or by a summary of its provisions. At the meeting members may vote upon the proposed conversion in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon shall be required for approval of the plan of conversion. If the total vote upon the proposed conversion shall be less than twenty-five percent of the total membership of the association, the conversion shall not be approved.

(c) Upon approval by the members of the association, the articles of conversion shall be executed in duplicate by the association by one of its officers and shall set forth:

(i) The dates and vote by which the plan for conversion was adopted by the board of directors and members respectively;

(ii) The corporate name of the converted organization. The name shall comply with requirements in Article 3 of chapter 23.95 RCW for names of business corporations formed under Title 23B RCW, and shall not contain the term "cooperative";

(iii) The purpose or purposes for which the converted corporation is to exist;

(iv) The duration of the converted corporation, which may be perpetual or for a stated term of years;

(v) The capitalization of the converted corporation and the class or classes of shares of stock into which divided, together with the par value, if any, of such shares, in accordance with statutory requirements applicable to ordinary business corporations, and the basis upon which outstanding shares of the association are converted into shares of the converted corporation;

(vi) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the converted corporation;

(vii) The address of the converted corporation's initial registered agent;

(viii) The names and addresses of the persons who are to serve as directors of the converted corporation until the first annual meeting of shareholders of the converted corporation or until their successors are elected and qualify;

(ix) Any additional provisions, not inconsistent with law, provided for by the plan for conversion for the regulation of the internal affairs of the converted corporation, including any provision restricting the transfer of shares or which under Title 23B RCW is required or permitted to be set forth in bylaws.

(d) The articles of conversion shall be delivered to the secretary of state for filing in accordance with Article 2 of chapter 23.95 RCW.

(e) Upon delivering the articles of conversion to the secretary of state for filing, the converted corporation shall pay, and the secretary of state shall collect, the same filing and license fees as for filing articles of incorporation of a newly formed business corporation similarly capitalized.



(2) Upon filing by the secretary of state of the articles of conversion, the conversion of the cooperative association to an ordinary business corporation shall become effective as provided in RCW 23.95.210; the articles of conversion shall thereafter constitute and be treated in like manner as articles of incorporation; and the converted corporation shall be subject to all laws applicable to corporations formed under Title 23B RCW, and shall not thereafter be subject to laws applying only to cooperative associations. The converted corporation shall constitute and be deemed to constitute a continuation of the corporate substance of the cooperative association and the conversion shall in no way derogate from the rights of creditors of the former association. [2015 c 176 § 9107; 1991 c 72 § 18; 1989 c 307 § 27; 1982 c 35 § 175; 1981 c 297 § 34; 1971 ex.s. c 221 § 2.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.220 Merger of cooperative association with one or more cooperative associations or business corporations—Procedure.** (1) A cooperative association may merge with one or more domestic cooperative associations, or with one or more domestic ordinary business corporations, in accordance with the procedures and subject to the conditions set forth or referred to in this section.

(2) If the merger is into another domestic cooperative association, the board of directors of each of the associations shall approve by vote of not less than two-thirds of all the directors, a plan of merger setting forth:

- (a) The names of the associations proposing to merge;
- (b) The name of the association which is to be the surviving association in the merger;
- (c) The terms and conditions of the proposed merger;
- (d) The manner and basis of converting the shares of each merging association into shares or other securities or obligations of the surviving association;
- (e) A statement of any changes in the articles of incorporation of the surviving association to be effected by such merger; and
- (f) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(3) Following approval by the boards of directors, the plan of merger shall be submitted to a vote of the members of each of the associations at any regular meeting or at any special meetings called for that purpose, after notice of the proposed merger has been given to all members entitled to vote thereon, in the manner provided in the bylaws. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting members may vote upon the proposed merger in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon, by each association, shall be required for approval of the plan of merger. If the total vote of either association upon the proposed merger shall be less than twenty-five percent of the total membership of such association, the merger shall not be approved.

(4) Upon approval by the members of the associations proposing to merge, articles of merger shall be executed in duplicate by each association by an officer of each association, and shall set forth:

- (a) The plan of merger;
- (b) As to each association, the number of members and, if there is capital stock, the number of shares outstanding; and
- (c) As to each association, the number of members who voted for and against such plan, respectively.

(5) The articles of merger shall be delivered to the secretary of state for filing in accordance with Article 2 of chapter 23.95 RCW.

(6) For filing articles of merger hereunder the secretary of state shall charge and collect the same fees as apply to filing of articles of merger of ordinary business corporations.

(7) If the plan of merger is for merger of the cooperative association into a domestic ordinary business corporation, the association shall follow the same procedures as hereinabove provided for merger of domestic cooperative associations and the ordinary business corporation shall follow the applicable procedures set forth in RCW 23B.07.050 and chapter 23B.11 RCW.

(8) At any time prior to filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger. [2015 c 176 § 9108; 1991 c 72 § 19; 1989 c 307 § 28; 1982 c 35 § 176; 1981 c 297 § 35; 1971 ex.s. c 221 § 3.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.230 Merger of cooperative association with one or more cooperative associations or business corporations—Rights, powers, duties and liabilities of surviving entity—Articles.** (1) Upon issuance of the certificate of merger by the secretary of state, the merger of the cooperative association into another cooperative association or ordinary business corporation, as the case may be, shall be effected.

(2) When merger has been effected:

(a) The several parties to the plan of merger shall be a single cooperative association or corporation, as the case may be, which shall be that cooperative association or corporation designated in the plan of merger as the survivor.

(b) The separate existence of all parties to the plan of merger, except that of the surviving cooperative association or corporation, shall cease.

(c) If the surviving entity is a cooperative association, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative association organized under chapter 23.86 RCW. If the surviving entity is an ordinary business corporation, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized or existing under Title 23B RCW.

(d) Such surviving cooperative association or corporation, as the case may be, shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises,

both public and private of each of the merging organizations, to the extent that such rights, privileges, immunities, and franchises are not inconsistent with the corporate nature of the surviving organization; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the organizations so merged shall be taken and deemed to be transferred to and vested in such surviving cooperative association or corporation, as the case may be, without further act or deed; and the title to any real estate, or any interest therein, vested in any such merged cooperative association shall not revert or be in any way impaired by reason of such merger.

(3) The surviving cooperative association or corporation, as the case may be, shall, after the merger is effected, be responsible and liable for all the liabilities and obligations of each of the organizations so merged; and any claim existing or action or proceeding pending by or against any of such organizations may be prosecuted as if the merger had not taken place and the surviving cooperative association or corporation may be substituted in its place. Neither the right of creditors nor any liens upon the property of any cooperative association or corporation party to the merger shall be impaired by the merger.

(4) The articles of incorporation of the surviving cooperative association or of the surviving ordinary business corporation, as the case may be, shall be deemed to be amended to the extent, if any, that changes in such articles are stated in the plan of merger. [1991 c 72 § 20; 1989 c 307 § 29; 1971 ex.s. c 221 § 4.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.250 Dissolution.** The members of any association may by the vote of two-thirds of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, vote to dissolve said association after notice of the proposed dissolution has been given to all members entitled to vote thereon, in the manner provided by the bylaws, and thereupon such proceeding shall be had for the dissolution of said association as is provided by law for the dissolution of corporations organized under chapter 24.06 RCW: PROVIDED, That if the total vote upon the proposed dissolution shall be less than twenty-five percent of the total membership of the association, the dissolution shall not be approved. At the meeting, members may vote upon the proposed dissolution in person, or by written proxy, or by mailed ballot. [1981 c 297 § 36.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.310 Annual report.** Every association subject to this chapter shall deliver an annual report to the secretary of state in accordance with RCW 23.95.255. [2015 c 176 § 9109; 1989 c 307 § 15.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.330 Administrative dissolution.** The provisions of Article 6 of chapter 23.95 RCW relating to administrative dissolution by the secretary of state shall apply to every asso-

ciation subject to this chapter formed on or after July 23, 1989. [2015 c 176 § 9110; 1991 c 72 § 21; 1989 c 307 § 17.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.350 Application of RCW 24.06.100 and 24.06.105.** The provisions of RCW 24.06.100 and 24.06.105 shall apply to every association subject to this chapter. [1989 c 307 § 20.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.360 Application of Title 23B RCW.** The provisions of Title 23B RCW shall apply to the associations subject to this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. The terms "shareholder" or "shareholders" as used in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, shall be deemed to refer to "member" or "members" as defined in this chapter. When the terms "share" or "shares" are used with reference to voting rights in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, such terms shall be deemed to refer to the vote or votes entitled to be cast by a member or members. [1991 c 72 § 23; 1989 c 307 § 32.]

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.370 Application of Article 5 of chapter 23.95 RCW.** The provisions of Article 5 of chapter 23.95 RCW and RCW 24.06.367 and 24.06.369 shall apply to every foreign corporation which desires to conduct affairs in this state under the authority of this chapter. [2015 c 176 § 9111; 1989 c 307 § 33.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**23.86.400 Locally regulated utilities—Attachments to poles.** (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means an electric service cooperative organized under this chapter and not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 1.]

**23.86.410 Tariff for irrigation pumping service—Authority for locally regulated utility to buy back electricity.** The board may approve a tariff for irrigation pumping service that allows the locally regulated utility to buy back electricity from customers to reduce electricity usage by those customers during the locally regulated utility's particular irrigation season. [2001 c 122 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.86.420 Conversion of domestic association to limited cooperative association—Procedure.** (1) Except as provided in subsection (2) of this section, a domestic association organized under this chapter may convert to a limited cooperative association pursuant to RCW 23.100.1302 through 23.100.1314.

(2) This section does not apply to a domestic association organized for the purpose of generating, purchasing, selling, marketing, transmitting, or distributing electric energy. [2019 c 37 § 1404.]

**Uniformity of application and construction—Savings—2019 c 37:** See RCW 23.100.1501 and 23.100.1503.

**23.86.900 Application—1989 c 307.** The provisions of this chapter relating to domestic cooperative associations shall apply to:

(1) All cooperative associations organized under this chapter; and

(2) All agricultural cooperative associations organized under \*chapter 24.32 RCW. All such agricultural cooperatives are deemed to have been incorporated under this chapter. [1989 c 307 § 2.]

\*Reviser's note: Chapter 24.32 RCW was repealed by 1989 c 307.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

## Chapter 23.90 RCW MASSACHUSETTS TRUSTS

### Sections

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*Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.*

**23.90.010 Short title.** This chapter may be known and cited as the "Massachusetts Trust Act of 1959". [1959 c 220 § 1.]

**23.90.020 Massachusetts trust defined.** A Massachusetts trust is an unincorporated business association created at common law by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing beneficial interests in the trust estate,

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the holders of which certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations. [1959 c 220 § 2.]

**23.90.030 Form of association authorized.** A Massachusetts trust is permitted as a recognized form of association for the conduct of business within the state of Washington. [1959 c 220 § 3.]

**23.90.040 Filing trust instrument, effect—Powers and duties of trust.** (1) Any Massachusetts trust desiring to do business in this state shall file with the secretary of state, in accordance with Article 2 of chapter 23.95 RCW, a verified copy of the trust instrument creating such a trust and any amendment thereto, the assumed business name, if any, and the names and addresses of its trustees.

(2) Any person dealing with such Massachusetts trust shall be bound by the terms and conditions of the trust instrument and any amendments thereto so filed.

(3) Any Massachusetts trust created under this chapter or entering this state pursuant thereto shall pay such taxes and fees as are imposed by the laws, ordinances, and resolutions of the state of Washington and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith. In computing such taxes and fees, the shares of beneficial interest of such a trust shall have the character for tax purposes of shares of stock in private corporations.

(4) Any Massachusetts trust shall be subject to such applicable provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders, rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property, and other applicable rights and duties existing under the common law and statutes of this state in a manner similar to those applicable to domestic and foreign corporations.

(5) The secretary of state, director of licensing, and the department of revenue of the state of Washington are each authorized and directed to prescribe binding rules and regulations applicable to said Massachusetts trusts consistent with this chapter. [2015 c 176 § 9112; 1981 c 302 § 3; 1979 c 158 § 88; 1967 ex.s. c 26 § 21; 1959 c 220 § 4.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**23.90.050 Fees for services by secretary of state.** See RCW 43.07.120.

**23.90.060 Indemnification of agents of any corporation authorized.** See RCW 23B.17.030.

## Chapter 23.95 RCW

## UNIFORM BUSINESS ORGANIZATIONS CODE

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ARTICLE 1  
GENERAL PROVISIONS

**23.95.100 Short title.** This chapter may be known and cited as the uniform business organizations code—general provisions. [2015 c 176 § 1101.]

**Effective date—Contingent effective date—2015 c 176:** "(1) Parts I, II, III, IV, V, VI, VIII, and IX of this act take effect January 1, 2016.

(2) Part VII of this act takes effect upon the effective date of chapter 188, Laws of 2015." [2015 c 176 § 1803.]

**23.95.105 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or as set forth in RCW 23.95.400 or 23.95.600.

(1) "Annual report" means the report required by RCW 23.95.255.

(2) "Business corporation" means a domestic business corporation incorporated under or subject to Title 23B RCW or a foreign business corporation.

(3) "Commercial registered agent" means a person listed under RCW 23.95.420.

(4) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(5) "Electronic transmission" means an electronic communication:

(a) Not directly involving the physical transfer of a record in a tangible medium; and

(b) That may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(6) "Entity" means:

(a) A business corporation;

(b) A nonprofit corporation;

(c) A limited liability partnership;

(d) A limited partnership;

(e) A limited liability company;

(f) A general cooperative association; or

(g) A limited cooperative association.

(7) "Entity filing" means a record delivered to the secretary of state for filing pursuant to this chapter.

(8) "Execute," "executes," or "executed" means:

(a) Signed with respect to a written record;

(b) Electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission; or

(c) With respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

(9) "Filed record" means a record filed by the secretary of state pursuant to this chapter.

(10) "Foreign," with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

(11) "General cooperative association" means a domestic general cooperative association formed under or subject to chapter 23.86 RCW.

(12) "Governor" means:

- (a) A director of a business corporation;
- (b) A director of a nonprofit corporation;
- (c) A partner of a limited liability partnership;
- (d) A general partner of a limited partnership;
- (e) A manager of a manager-managed limited liability company;
- (f) A member of a member-managed limited liability company;
- (g) A director of a general cooperative association;
- (h) A director of a limited cooperative association; or
- (i) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(13) "Interest" means:

- (a) A share in a business corporation;
- (b) A membership in a nonprofit corporation;
- (c) A share in a nonprofit corporation formed under chapter 24.06 RCW;
- (d) A partnership interest in a limited liability partnership;
- (e) A partnership interest in a limited partnership;
- (f) A limited liability company interest;
- (g) A share or membership in a general cooperative association; or
- (h) A member's interest in a limited cooperative association.

(14) "Interest holder" means:

- (a) A shareholder of a business corporation;
- (b) A member of a nonprofit corporation;
- (c) A shareholder of a nonprofit corporation formed under chapter 24.06 RCW;
- (d) A partner of a limited liability partnership;
- (e) A general partner of a limited partnership;
- (f) A limited partner of a limited partnership;
- (g) A member of a limited liability company;
- (h) A shareholder or member of a general cooperative association; or
- (i) A member of a limited cooperative association.

(15) "Jurisdiction," when used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(16) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(17) "Limited cooperative association" means a domestic limited cooperative association formed under or subject to chapter 23.100 RCW or a foreign limited cooperative association.

(18) "Limited liability company" means a domestic limited liability company formed under or subject to chapter 25.15 RCW or a foreign limited liability company.

(19) "Limited liability limited partnership" means a domestic limited liability limited partnership formed under or

subject to chapter 25.10 RCW or a foreign limited liability limited partnership.

(20) "Limited liability partnership" means a domestic limited liability partnership registered under or subject to chapter 25.05 RCW or a foreign limited liability partnership.

(21) "Limited partnership" means a domestic limited partnership formed under or subject to chapter 25.10 RCW or a foreign limited partnership. "Limited partnership" includes a limited liability limited partnership.

(22) "Noncommercial registered agent" means a person that is not a commercial registered agent and is:

- (a) An individual or domestic or foreign entity that serves in this state as the registered agent of an entity;
- (b) An individual who holds the office or other position in an entity which is designated as the registered agent pursuant to RCW 23.95.415(1)(b)(ii); or
- (c) A government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, that serves as the registered agent of an entity.

(23) "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to chapter 24.03 or 24.06 RCW or a foreign nonprofit corporation.

(24) "Nonregistered foreign entity" means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the secretary of state.

(25) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(26) "Organic rules" means the public organic record and private organic rules of an entity.

(27) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(28) "Principal office" means the principal executive office of an entity, whether or not the office is located in this state.

(29) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. "Private organic rules" includes:

- (a) The bylaws of a business corporation and any agreement among shareholders pursuant to RCW 23B.07.320;
  - (b) The bylaws of a nonprofit corporation;
  - (c) The partnership agreement of a limited liability partnership;
  - (d) The partnership agreement of a limited partnership;
  - (e) The limited liability company agreement;
  - (f) The bylaws of a general cooperative association; and
  - (g) The bylaws of a limited cooperative association.
- (30) "Proceeding" means civil suit and criminal, administrative, and investigatory action.

(31) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(32) "Public organic record" means the record the filing of which by the secretary of state is required to form an entity and any amendment to or restatement of that record. The term includes:

- (a) The articles of incorporation of a business corporation;
- (b) The articles of incorporation of a nonprofit corporation;
- (c) The certificate of limited partnership of a limited partnership;
- (d) The certificate of formation of a limited liability company;
- (e) The articles of incorporation of a general cooperative association;
- (f) The articles of organization of a limited cooperative association; and
- (g) The document under the laws of another jurisdiction that is equivalent to a document listed in this subsection.

(33) "Receipt," as used in this chapter, means actual receipt. "Receive" has a corresponding meaning.

(34) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

(35) "Registered agent" means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.

(36) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a certificate of registration filed by the secretary of state.

(37) "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.

(38) "Transfer" includes:

- (a) An assignment;
- (b) A conveyance;
- (c) A sale;
- (d) A lease;
- (e) An encumbrance, including a mortgage or security interest;
- (f) A change of record owner of interest;
- (g) A gift; and
- (h) A transfer by operation of law.

(39) "Type of entity" means a generic form of entity:

- (a) Recognized at common law; or
- (b) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(40) "Writing" does not include an electronic transmission.

(41) "Written" means embodied in a tangible medium. [2019 c 37 § 1401; 2015 c 176 § 1102.]

**Uniformity of application and construction—Savings—2019 c 37:** See RCW 23.100.1501 and 23.100.1503.

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.110 Delivery of record.** (1) Except as otherwise provided in this chapter, permissible means of delivery of a

record include delivery by hand, United States mail, private courier service, and electronic transmission.

(2) Records may be delivered to the secretary of state by electronic transmission as authorized by the secretary of state pursuant to RCW 23.95.115(2). The secretary of state may deliver a record to an entity by electronic transmission if the entity has designated an address, location, or system to which the record may be electronically transmitted. [2015 c 176 § 1103.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.115 Rules and procedures.** (1) The secretary of state has the power reasonably necessary to perform the duties required by this chapter, including adoption, amendment, or repeal of rules under chapter 34.05 RCW for the efficient administration of this chapter.

(2) The secretary of state may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted. [2015 c 176 § 1104.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

## ARTICLE 2 FILING

**23.95.200 Entity filing requirements.** (1) To be filed by the secretary of state pursuant to this chapter, an entity filing must be received by the secretary of state, comply with this chapter, and satisfy the following:

(a) The entity filing must be required or permitted by Title 23, 23B, 24, or 25 RCW.

(b) The entity filing must be delivered in written form unless and to the extent the secretary of state permits electronic delivery of entity filings pursuant to RCW 23.95.115 (2).

(c) The words in the entity filing must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.

(d) The entity filing must be executed by or on behalf of a person authorized or required under this chapter or the entity's organic law to execute the filing.

(e) The entity filing must state the name and capacity, if any, of each individual who executed it, on behalf of either the individual or the person authorized or required to execute the filing, but need not contain a seal, attestation, acknowledgment, or verification.

(2) When an entity filing is delivered to the secretary of state for filing, any fee required under this chapter and any fee, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the secretary of state or by that law.

(3) The secretary of state may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.

(4) A record filed under this chapter may be executed by an individual acting in a valid representative capacity. [2015 c 176 § 1201.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.205 Forms.** (1) The secretary of state may provide forms for entity filings required or permitted to be made by Title 23, 23B, 24, or 25 RCW, but, except as otherwise provided in subsection (2) of this section, their use is not required.

(2) The secretary of state may require that a cover sheet for an entity filing and an annual report be on forms prescribed by the secretary of state. [2015 c 176 § 1202.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.210 Effective date and time.** Except as otherwise provided in this chapter and subject to RCW 23.95.220(4), an entity filing is effective:

(1) On the date of filing and at the time specified in the entity filing as its effective time;

(2) Unless prohibited by the entity's organic law, at a specified delayed effective date and time, which may not be more than ninety days after the date of filing;

(3) If a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified; or

(4) If subsection (1), (2), or (3) of this section does not apply, on the date and at the time of its filing by the secretary of state as provided in RCW 23.95.225. [2015 c 176 § 1203.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.215 Withdrawal of filed record before effectiveness.** (1) Except as otherwise provided in this chapter, a filed record may be withdrawn before it takes effect by delivering to the secretary of state for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) Be executed by an individual acting in a valid representative capacity; and

(b) Identify the filed record to be withdrawn.

(3) On filing by the secretary of state of a statement of withdrawal, the action or transaction evidenced by the original filed record shall not take effect. [2015 c 176 § 1204.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.220 Correcting filed record.** (1) An entity may correct a filed record if:

(a) The filed record at the time of filing contained an inaccurate statement;

(b) The filed record was defectively executed; or

(c) The electronic transmission of the filed record to the secretary of state was defective.

(2) To correct a filed record, the entity must deliver to the secretary of state for filing a statement of correction.

(3) A statement of correction:

(a) May not state a delayed effective date;

(b) Must be executed by the individual correcting the filed record;

(c) Must identify the filed record to be corrected;

(d) Must specify the inaccuracy or defect to be corrected; and

(e) Must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction is effective when filed. [2015 c 176 § 1205.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.225 Duty of secretary of state to file—Review of refusal to file.** (1) The secretary of state shall file an entity filing that satisfies this chapter. The duty of the secretary of state under this section is ministerial.

(2) The secretary of state shall record an entity filing on the date and at the time of its receipt. After filing an entity filing, the secretary of state shall deliver to the person that submitted the filing a copy of the filed record with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file an entity filing, the secretary of state not later than fifteen business days after the filing is received, shall:

(a) Return the entity filing or notify the person that submitted the filing of the refusal; and

(b) Provide a brief explanation in a record of the reason for the refusal.

(4) If the secretary of state refuses to file an entity filing, the person that submitted the entity filing may petition the superior court to compel its filing. The entity filing and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file an entity filing does not:

(a) Affect the validity or invalidity of the entity filing in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the entity filing; or

(c) Create a presumption that the information contained in the filing is correct or incorrect. [2015 c 176 § 1206.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.230 Evidentiary effect of copy of filed record.** A certification from the secretary of state accompanying a copy of a filed record is conclusive evidence that the copy is an accurate representation of the original record on file with the secretary of state. [2015 c 176 § 1207.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.235 Certificate of existence or registration—Definitions.** (1) On request of any person, the secretary of state shall issue a certificate of existence for a domestic entity or a certificate of registration for a registered foreign entity.

(2) A certificate under subsection (1) of this section must state:

(a) The domestic entity's name or the registered foreign entity's name used in this state;

(b) In the case of a domestic entity:

(i) That its public organic record has been filed and has taken effect;

(ii) The date the public organic record became effective;

(iii) The period of the entity's duration if the records of the secretary of state reflect that the entity's period of duration is less than perpetual; and

(iv) That the records of the secretary of state do not reflect that the entity has been dissolved;

(c) In the case of a registered foreign entity:

(i) That it is registered to do business in this state;

(ii) The date the foreign entity registered to do business in this state; and

(iii) That the records of the secretary of state do not reflect that the foreign entity's registration to do business in the state has been terminated;

(d) That all fees, interest, and penalties owed to this state by the domestic or foreign entity and collected through the secretary of state have been paid, if:

(i) Payment is reflected in the records of the secretary of state; and

(ii) Nonpayment affects the existence or registration of the domestic or foreign entity;

(e) That the most recent annual report required by RCW 23.95.255 has been delivered to the secretary of state for filing;

(f) That a proceeding is not pending under RCW 23.95.610 as to a domestic entity or under RCW 23.95.550 as to a registered foreign entity; and

(g) Other facts reflected in the records of the secretary of state pertaining to the domestic or foreign entity which the person requesting the certificate reasonably requests.

(3) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (1) of this section may be relied upon as conclusive evidence of the facts stated in the certificate, and that as of the date of its issuance: (a) In the case of a domestic entity, it is in existence and duly formed or incorporated, as applicable; and (b) in the case of a foreign entity, it is registered and authorized to do business in this state.

(4) The terms "doing business" and "transacting business," and their variants such as "do business" and "transact business," are used interchangeably, and each has the same meaning as the other when used in this title and in Titles 23B, 24, and 25 RCW. [2017 c 31 § 1; 2015 c 176 § 1208.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.240 Execution of entity filing.** (1) Any person who executes a record the person knows is false in any material respect with the intent the record be an entity filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) A person that executes an entity filing as an agent or legal representative thereby affirms as a fact that the person is authorized to execute the entity filing. [2015 c 176 § 1209.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.245 Execution and filing pursuant to judicial order.** (1) If a person required by the entity's organic law to execute a record that is to be an entity filing or to make an entity filing does not do so, any other person that is aggrieved may petition the superior court to order:

(a) The person to execute the record;

(b) The person to make the entity filing; or

(c) The secretary of state to file the entity filing unexecuted.

(2) If the petitioner under subsection (1) of this section is not the entity to which the entity filing pertains, the petitioner shall make the entity a party to the action.

(3) A filed record created under subsection (1)(c) of this section is effective without being executed. [2015 c 176 § 1210.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.250 Delivery by secretary of state.** Except as otherwise provided by RCW 23.95.450 or by law of this state other than this chapter, the secretary of state may deliver a record to a person by delivering it:

(1) In person to the person that submitted it for filing;

(2) To the address of the person's registered agent;

(3) To the principal office address of the person; or

(4) To another address the person provides to the secretary of state for delivery. [2015 c 176 § 1211.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.255 Initial or annual report for secretary of state.** (1) A domestic entity other than a limited liability partnership or nonprofit corporation shall, within one hundred twenty days of the date on which its public organic record became effective, deliver to the secretary of state for filing an initial report that states the information required under subsection (2) of this section.

(2) A domestic entity or registered foreign entity shall deliver to the secretary of state for filing an annual report that states:

(a) The name of the entity and its jurisdiction of formation;

(b) The name and street and mailing addresses of the entity's registered agent in this state;

(c) The street and mailing addresses of the entity's principal office;

(d) In the case of a registered foreign entity, the street and mailing address of the entity's principal office in the state or country under the laws of which it is incorporated;

(e) The names of the entity's governors;

(f) A brief description of the nature of the entity's business; and

(g) The entity's unified business identifier number.

(3) Information in an initial or annual report must be current as of the date the report is executed by the entity.

(4) Annual reports must be delivered to the secretary of state on a date determined by the secretary of state and at such additional times as the entity elects.



(5) If an initial or annual report does not contain the information required by this section, the secretary of state promptly shall notify the reporting entity in a record and return the report for correction.

(6) If an initial or annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the annual report becomes effective, the differing information in the initial or annual report is considered a statement of change under RCW 23.95.430.

(7) The secretary of state shall send to each domestic entity and registered foreign entity, not less than thirty or more than ninety days prior to the expiration date of the entity's annual renewal, a notice that the entity's annual report must be filed as required by this chapter and that any applicable annual renewal fee must be paid, and stating that if the entity fails to file its annual report or pay the annual renewal fee it will be administratively dissolved. The notice may be sent by postal or email as elected by the entity, addressed to its registered agent within the state, or to an electronic address designated by the entity in a record retained by the secretary of state. Failure of the secretary of state to provide any such notice does not relieve a domestic entity or registered foreign entity from its obligations to file the annual report required by this chapter or to pay any applicable annual renewal fee. The option to receive the notice provided under this section by email may be selected only when the secretary of state makes the option available. [2017 c 31 § 2; 2015 c 176 § 1212.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.260 Fees.** (1) Except as provided in subsection (2) of this section, the secretary of state shall adopt rules in accordance with chapter 34.05 RCW setting:

- (a) Fees for:
  - (i) Filing entity filings;
  - (ii) Furnishing copies or certified copies of any filed record under this chapter; and
  - (iii) Furnishing a certificate of existence or registration of an entity, or any other certificate;
- (b) License or renewal fees authorized under Title 23, 23B, 24, or 25 RCW;
- (c) Penalty fees; and
- (d) Other miscellaneous charges.
- (2) There is no fee for:
  - (a) A registered agent's consent to act as agent or statement of resignation;
  - (b) Filing articles of dissolution;
  - (c) Filing certificates of judicial dissolution;
  - (d) Filing statements of withdrawal; and
  - (e) Filing annual reports when submitted concurrently with the payment of annual license fees.

(3) The withdrawal under RCW 23.95.215 of a filed record before it is effective or the correction of a filed record under RCW 23.95.220 does not entitle the person on whose behalf the record was filed to a refund of the filing fee.

(4) The secretary of state shall establish the fee schedule authorized under this section in a manner that is consistent with the fee schedule applicable to the various entities that is in effect on January 1, 2016. The amounts of fees, charges,

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and penalties established under this section may be no greater than the amounts applicable to entity filings, penalties, and other charges in effect on January 1, 2016. Fees may be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This must be determined in a biennial cost study performed by the secretary of state.

(5) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law or deposited in the secretary of state's revolving fund as provided in RCW 43.07.130. [2015 c 176 § 1213.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.265 Waiver of penalty fees.** The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees due from any entity previously in good standing which would otherwise be penalized or lose its active status. An entity desiring to seek relief under this section must, within fifteen days of discovery of the missed filing or lapse, notify the secretary of state in writing. The notification must include the name and mailing address of the entity, the governor or other entity official to whom correspondence should be sent, and a statement under oath by a governor or other entity official, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the entity has demonstrated good faith and a reasonable attempt to comply with the applicable statutes of this state, the secretary of state may issue an order allowing relief from the penalty. If the secretary of state determines the request does not comply with the requirements for relief, the secretary of state shall deny the relief and state the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW. [2015 c 176 § 1214.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

## ARTICLE 3 NAME OF ENTITY

**23.95.300 Permitted names.** (1) The name of a domestic entity and the name under which a foreign entity may register to do business in this state, must be distinguishable on the records of the secretary of state from any:

- (a) Name of an existing domestic entity which at the time is not administratively dissolved;
- (b) Name of a foreign entity registered to do business in this state under Article 5 of this chapter;
- (c) Name reserved under RCW 23.95.310; or
- (d) Name registered under RCW 23.95.315.

(2) If an entity consents in a record to the use of its name and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable on the records of the secretary of state from any name in any category of names in subsection (1) of this section, the name of the consenting entity may be used by the person to which the consent was given.

(3) A name may not be considered distinguishable on the records of the secretary of state from the name of another entity by virtue of:

(a) A variation in the words, phrases, or abbreviations indicating the type of entity, such as "corporation," "corp.," "incorporated," "Inc.," "company," "co.," "social purpose corporation," "SPC," "S.P.C.," "professional corporation," "PC," "P.C.," "professional service," "PS," "P.S.," "limited," "Ltd.," "limited partnership," "LP," "L.P.," "limited liability partnership," "LLP," "L.L.P.," "registered limited liability partnership," "RLLP," "R.L.L.P.," "limited liability limited partnership," "LLLLP," "L.L.L.P.," "registered limited liability limited partnership," "RLLLLP," "R.L.L.L.P.," "limited liability company," "LLC," "L.L.C.," "professional limited liability company," "PLLC," or "P.L.L.C.";

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(4) An entity name may not contain language stating or implying that the entity is organized for a purpose other than those permitted by the entity's public organic record.

(5) This chapter does not control the use of assumed business names or "trade names."

(6) An entity may use a name that is not distinguishable from a name described in subsection (1) of this section if the entity delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the entity to use the name in this state.

(7) An entity may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed or authorized to transact business in this state and the proposed user entity:

(a) Has merged with the other entity; or

(b) Has been formed by reorganization of the other entity. [2015 c 176 § 1301.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

### **23.95.305 Name requirements for certain types of entities.** (1)(a) The name of a business corporation:

(i)(A) Except in the case of a social purpose corporation, must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd.," or words or abbreviations of similar import in another language; or

(B) In the case of a social purpose corporation, must contain the words "social purpose corporation" or the abbreviation "SPC" or "S.P.C."; and

(ii) Must not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state.

(b) The name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviation "P.S." or "P.C." The

name may also contain either the words "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." The name of a professional service corporation organized to render dental services must contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C."

(2) The name of a nonprofit corporation:

(a) May include "club," "league," "association," "services," "committee," "fund," "society," "foundation," "guild," ". . . . .," a nonprofit corporation, ". . . . .," a nonprofit mutual corporation, or any name of like import;

(b) Except for nonprofit corporations formed prior to January 1, 1969, must not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof; and

(c) May only include the term "public benefit" or names of like import if the nonprofit corporation has been designated as a public benefit nonprofit corporation by the secretary of state in accordance with chapter 24.03 RCW.

(3) The name of a limited partnership may contain the name of any partner. The name of a partnership that is not a limited liability limited partnership must contain the words "limited partnership" or the abbreviation "LP" or "L.P." and may not contain the words "limited liability limited partnership" or the abbreviation "LLLLP" or "L.L.L.P." If the limited partnership is a limited liability limited partnership, the name must contain the words "limited liability limited partnership" or the abbreviation "LLLLP" or "L.L.L.P." and may not contain the abbreviation "LP" or "L.P."

(4) The name of a limited liability partnership must contain the words "limited liability partnership" or the abbreviation "LLP" or "L.L.P." If the name of a foreign limited liability partnership contains the words "registered limited liability partnership" or the abbreviation "R.L.L.P." or "RLLP," it may include those words or abbreviations in its foreign registration statement.

(5)(a) The name of a limited liability company:

(i) Must contain the words "limited liability company," the words "limited liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC"; and

(ii) May not contain any of the following words or phrases: "Cooperative," "partnership," "corporation," "incorporated," or the abbreviations "Corp.," "Ltd.," or "Inc.," or "LP," "L.P.," "LLP," "L.L.P.," "LLLLP," "L.L.L.P.," or any words or phrases prohibited by any statute of this state.

(b) The name of a professional limited liability company must contain either the words "professional limited liability company," or the words "professional limited liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC," provided that the name of a professional limited liability company organized to render dental services must contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."

(6) The name of a cooperative association organized under chapter 23.86 RCW may contain the words "corporation," "incorporated," or "limited," or the abbreviation "Corp.," "Inc.," or "Ltd."

(7) The name of a limited cooperative association must contain the phrase "limited cooperative association" or "lim-

ited cooperative" or the abbreviation "L.C.A." or "LCA." "Limited" may be abbreviated as "Ltd." "Cooperative" may be abbreviated as "Co-op." or "Coop." "Association" may be abbreviated as "Assoc." or "Assn." [2019 c 37 § 1402; 2015 c 176 § 1302.]

**Uniformity of application and construction—Savings—2019 c 37:** See RCW 23.100.1501 and 23.100.1503.

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.310 Reservation of name.** (1) A person may reserve the exclusive use of an entity name including the alternate name adopted pursuant to RCW 23.95.525 by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved. If the secretary of state finds that the entity name is available, the secretary of state shall reserve the name for the applicant's exclusive use for one hundred eighty days.

(2) The owner of a reserved entity name may transfer the reservation to another person that is not an individual by delivering to the secretary of state an executed notice in a record of the transfer which states the name and address of the transferee. [2015 c 176 § 1303.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.315 Registration of name.** (1) A foreign entity not registered to do business in this state under Article 5 of this chapter may register its name, or an alternate name adopted pursuant to RCW 23.95.525, if the name is distinguishable on the records of the secretary of state from the names that are not available under RCW 23.95.300.

(2) To register its name or an alternate name adopted pursuant to RCW 23.95.525, a foreign entity must deliver to the secretary of state for filing an application stating the entity's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to RCW 23.95.525. The application must be accompanied by a certificate of existence, or a document of similar import, from the entity's jurisdiction of formation. If the secretary of state finds that the name applied for is available, the secretary of state shall register the name for the applicant's exclusive use.

(3) The registration of a name under this section is effective upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(4) A foreign entity whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the secretary of state for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for the following calendar year.

(5) A foreign entity whose name registration is effective may register as a foreign entity under the registered name or consent in an executed record to the use of that name by another entity. [2015 c 176 § 1304.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

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## ARTICLE 4 REGISTERED AGENT OF ENTITY

**23.95.400 Definitions.** The definitions in this section apply throughout this section and RCW 23.95.405 through 23.95.460 unless the context clearly requires otherwise.

- (1) "Registered agent filing" means:
- (a) The public organic record of a domestic entity;
  - (b) An application of a domestic limited liability partnership; or
  - (c) A registration statement filed pursuant to RCW 23.95.510.
- (3) [(2)] "Represented entity" means:
- (a) A domestic entity; or
  - (b) A registered foreign entity. [2015 c 176 § 1401.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.405 Entities required to designate and maintain registered agent.** The following shall designate and maintain a registered agent in this state:

- (1) A domestic entity; and
- (2) A registered foreign entity. [2015 c 176 § 1402.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.410 Addresses in filing.** If a provision of this chapter other than RCW 23.95.445(1)(d) requires that a record state an address, the record must state:

- (1) A street address in this state; and
- (2) A mailing address in this state, if different from the address described in subsection (1) of this section. [2015 c 176 § 1403.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.415 Designation of registered agent.** (1) A registered agent filing must be executed by the represented entity and state:

- (a) The name of the entity's commercial registered agent; or
- (b) If the entity does not have a commercial registered agent:
  - (i) The name and address of the entity's noncommercial registered agent; or
  - (ii) The title of an office or other position with the entity, if service of process, notices, and demands are to be sent to whichever individual is holding that office or position, and the address to which process, notices, or demands are to be sent.

(2) A registered agent shall not be appointed without having given prior consent in a record to the appointment. The consent shall be delivered to the secretary of state in such form as the secretary of state may prescribe. The consent shall be filed with or as a part of the record first appointing a registered agent. In the event any individual or entity has been appointed registered agent without consent, that individual or entity may deliver to the secretary of state a notarized statement attesting to that fact, and the name shall immediately be removed from the records of the secretary of state. [2015 c 176 § 1404.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.420 Listing of commercial registered agent.** (1) A person may become listed as a commercial registered agent by delivering to the secretary of state for filing a commercial-registered-agent listing statement executed by the person which states:

(a) The name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;

(b) That the person is in the business of serving as a commercial registered agent in this state; and

(c) The address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.

(2) A commercial-registered-agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in RCW 23.95.450(5).

(3) If the name of a person delivering to the secretary of state for filing a commercial-registered-agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(4) The secretary of state shall note the filing of a commercial-registered-agent listing statement in the records maintained by the secretary of state for each entity represented by the agent at the time of the filing. The statement has the effect of amending the registered agent filing for each of those entities to:

(a) Designate the person becoming listed as a commercial registered agent as the commercial registered agent of each of those entities; and

(b) Delete the name and address of the former agent from the registered agent filing of each of those entities. [2015 c 176 § 1405.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.425 Termination of listing of commercial registered agent.** (1) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the secretary of state for filing a commercial-registered-agent termination statement executed by the agent which states:

(a) The name of the agent as listed under RCW 23.95.420; and

(b) That the agent is no longer in the business of serving as a commercial registered agent in this state.

(2) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the 31st day after the day on which it is delivered to the secretary of state for filing.

(3) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial-registered-agent termination statement.

(4) When a commercial-registered-agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity pursuant to RCW 23.95.450. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity. [2015 c 176 § 1406.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.430 Change of registered agent by entity.** (1) A represented entity may change its registered agent or other information on file under RCW 23.95.415(1) by delivering to the secretary of state for filing a statement of change executed by the entity which states:

(a) The name of the entity; and

(b) The information required under RCW 23.95.415(1).

(2) The interest holders or governors of a domestic entity need not approve the filing of:

(a) A statement of change under this section; or

(b) A similar filing changing the registered agent or registered office, if any, of the entity in any other jurisdiction.

(3) A statement of change under this section designating a new registered agent must be accompanied by the new registered agent's consent in a record, either on the statement or attached to it in a manner and form as the secretary of state may prescribe, to the appointment. [2015 c 176 § 1407.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.435 Change of name, address, type of entity, or jurisdiction of formation by noncommercial registered agent.** (1) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under RCW 23.95.415(1), the agent shall deliver to the secretary of state for filing, with respect to each entity represented by the agent, a statement of change executed by the agent which states:

(a) The name of the entity;

(b) The name and address of the agent in effect with respect to the entity;

(c) If the name of the agent has changed, the new name; and

(d) If the address of the agent has changed, the new address.

(2) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the secretary of state for filing of a statement of change and the changes made in the statement. [2015 c 176 § 1408.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.440 Change of name, address, type of entity, or jurisdiction of formation by commercial registered agent.** (1) If a commercial registered agent changes its name, its address as listed under RCW 23.95.420(1), its type of entity,

or its jurisdiction of formation, the agent shall deliver to the secretary of state for filing a statement of change executed by the agent which states:

(a) The name of the agent as listed under RCW 23.95.420(1);

(b) If the name of the agent has changed, the new name;

(c) If the address of the agent has changed, the new address; and

(d) If the agent is an entity:

(i) If the type of entity of the agent has changed, the new type of entity; and

(ii) If the jurisdiction of formation of the agent has changed, the new jurisdiction of formation.

(2) The filing by the secretary of state of a statement of change under subsection (1) of this section is effective to change the information regarding the agent with respect to each entity represented by the agent.

(3) A commercial registered agent promptly shall furnish to each entity represented by it a notice in a record of the filing by the secretary of state of a statement of change relating to the name or address of the agent and the changes made in the statement.

(4) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under RCW 23.95.420. A cancellation under this subsection has the same effect as a termination under RCW 23.95.425. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in RCW 23.95.450 (2) or (3) on:

(a) Each entity represented by the agent, stating that the agent has ceased to be the registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in RCW 23.95.450; and

(b) The agent, stating that the listing of the agent has been canceled under this section. [2015 c 176 § 1409.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.445 Resignation of registered agent.** (1) A registered agent may resign as agent for a represented entity by delivering to the secretary of state for filing a statement of resignation executed by the agent which states:

(a) The name of the entity;

(b) The name of the agent;

(c) That the agent resigns from serving as registered agent for the entity; and

(d) The address of the entity to which the agent will send the notice required by subsection (3) of this section.

(2) A statement of resignation takes effect on the earlier of:

(a) The 31st day after the day on which it is filed by the secretary of state; or

(b) The designation of a new registered agent for the represented entity.

(3) A registered agent promptly shall furnish to the represented entity notice in a record of the date on which a statement of resignation was filed. [2015 c 176 § 1410.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

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**23.95.450 Service of process, notice, or demand on entity.** (1) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(2) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office must be as shown in the entity's most recent annual report filed by the secretary of state. Service is effected under this subsection on the earliest of:

(a) The date the entity receives the mail or delivery by the commercial delivery service;

(b) The date shown on the return receipt, if executed by the entity; or

(c) Five days after its deposit with the United States postal service or commercial delivery service, if correctly addressed and with sufficient postage or payment.

(3) If process, notice, or demand cannot be served on an entity pursuant to subsection (1) or (2) of this section, service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.

(4) The secretary of state shall be an agent of the entity for service of process if process, notice, or demand cannot be served on an entity pursuant to subsection (1), (2), or (3) of this section.

(5) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under RCW 23.95.420 that it will accept.

(6) Service of process, notice, or demand may be made by other means under law other than this chapter. [2015 c 176 § 1411.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.455 Duties of registered agent.** The only duties under this chapter of a registered agent that has complied with this chapter are:

(1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;

(2) To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;

(3) If the agent is a noncommercial registered agent, to keep current the information required by RCW 23.95.415(1) in the most recent registered agent filing for the entity; and

(4) If the agent is a commercial registered agent, to keep current the information listed for it under RCW 23.95.420(1). [2015 c 176 § 1412.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.460 Jurisdiction and venue.** The designation or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or a proceeding involving the entity. [2015 c 176 § 1413.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

## ARTICLE 5 FOREIGN ENTITIES

**23.95.500 Governing law.** (1) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign entity registered to do business in this state, or govern the liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the foreign entity.

(2) A foreign entity is not precluded from registering to do business in this state because of any difference between the law of the entity's jurisdiction of formation and the law of this state.

(3) Registration of a foreign entity to do business in this state does not authorize the foreign entity to engage in any activity or exercise any power that a domestic entity of the same type may not engage in or exercise in this state. Except as otherwise provided in this chapter or other applicable law of this state, a foreign entity is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic entity of the same type. [2015 c 176 § 1501.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.505 Registration to do business in this state.** (1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.

(2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.

(3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.

(4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.

(5) A foreign entity that transacts business in this state without a certificate of registration is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of registration, in an amount equal to all fees which would have been imposed by this chapter upon the entity had it applied for and received a certificate of registration to transact business in this state and

thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.

(6) The failure of a foreign entity to register to do business in this state does not: (a) Impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.

(7) A limitation on the liability of an interest holder or governor of a foreign entity is not waived solely because the foreign entity does business in this state without registering.

(8) RCW 23.95.500 (1) and (2) applies even if a foreign entity fails to register under this Article 5. [2015 c 176 § 1502.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.510 Foreign registration statement.** (1) To register to do business in this state, a foreign entity must deliver a foreign registration statement to the secretary of state for filing. The statement must be executed by the entity and state:

(a) The name of the foreign entity and, if the name does not comply with RCW 23.95.300, an alternate name adopted pursuant to RCW 23.95.525;

(b) The type of entity and, if it is a foreign limited partnership, whether it is a foreign limited liability limited partnership;

(c) The entity's jurisdiction of formation;

(d) The street and mailing addresses of the entity's principal office and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of the office;

(e) The information required by RCW 23.95.415(1);

(f) The names and addresses of the entity's governors and, if the entity is a business corporation or nonprofit corporation, the names and addresses of its officers;

(g) The date of the entity's formation and period of duration;

(h) The nature of the entity's business or purposes to be conducted or promoted in this state; and

(i) The date on which the entity first did, or intends to do, business in this state.

(2) The foreign entity shall deliver with the registration statement a certificate of existence, or a document of similar import, issued no more than sixty days before the date of submission of the registration statement and duly authenticated by the secretary of state or other official having custody of the entity's records in the entity's jurisdiction of formation. [2015 c 176 § 1503.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.515 Amendment of foreign registration statement.** A registered foreign entity shall promptly deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) The name of the entity;

(2) The type of entity, including, if it is a foreign limited partnership, whether the entity became or ceased to be a foreign limited liability limited partnership;

(3) The entity's jurisdiction of formation;

(4) An address required by RCW 23.95.510(1)(d); or

(5) The information required by RCW 23.95.415(1). [2015 c 176 § 1504.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.520 Activities not constituting doing business.**

(1) Activities of a foreign entity that do not constitute doing business in this state under this chapter include, but are not limited to:

(a) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding, or settling claims or disputes;

(b) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;

(c) Maintaining accounts in financial institutions;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Creating or acquiring indebtedness, mortgages, or security interests in property;

(h) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts;

(i) Conducting an isolated transaction that is completed within thirty days and that is not in the course of repeated transactions of a like nature;

(j) Owning, without more, property;

(k) Doing business in interstate commerce; and

(l) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with subsection (2) of this section.

(2) In addition to those acts that are specified in subsection (1) of this section, a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.90 RCW shall not be deemed to transact business in the state solely because it:

(a) Owns and controls an incorporated branch campus in this state;

(b) Pays the expenses of tuition or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof; or

(c) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution.

(3) A person does not do business in this state solely by being an interest holder or governor of a domestic entity or foreign entity that does business in this state.

(4) This section does not apply in determining the contacts or activities that may subject a foreign entity to service

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of process, taxation, or regulation under law of this state other than this chapter. [2015 c 176 § 1505.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.525 Noncomplying name of foreign entity.** (1)

A foreign entity whose name does not comply with RCW 23.95.300 for an entity of its type may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with RCW 23.95.300. A registered foreign entity that registers under an alternate name under this subsection need not comply with chapter 19.80 RCW. After registering to do business in this state with an alternate name, a registered foreign entity shall do business in this state under:

(a) The alternate name;

(b) Its entity name, with the addition of its jurisdiction of formation clearly identified; or

(c) An assumed or fictitious name the entity is authorized to use under chapter 19.80 RCW.

(2) If a registered foreign entity changes its name to one that does not comply with RCW 23.95.300, it may not do business in this state until it complies with subsection (1) of this section by amending its foreign registration statement to adopt an alternate name that complies with RCW 23.95.300. [2015 c 176 § 1506.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.530 Withdrawal of registration of registered foreign entity.** (1) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be executed by the entity and state:

(a) The name of the entity and its jurisdiction of formation;

(b) That the entity is not doing business in this state and that it withdraws its registration to do business in this state;

(c) That the entity revokes the authority of its registered agent to accept service on its behalf in this state; and

(d) An address to which service of process may be made under subsection (3) of this section.

(2) For foreign corporations, the statement of withdrawal must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260.

(3) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made pursuant to RCW 23.95.450. [2017 c 31 § 3; 2015 c 176 § 1507.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.535 Withdrawal deemed on conversion to domestic entity.** A registered foreign entity that converts to any type of domestic entity is deemed to have withdrawn its registration on the effective date of the conversion. [2015 c 176 § 1508.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.540 Withdrawal on dissolution or conversion.**

(1) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign person not subject to this chapter shall deliver a statement of withdrawal to the secretary of state for filing. The statement must be executed by the dissolved or converted entity and state:

(a) In the case of a foreign entity that has completed winding up:

(i) Its name and jurisdiction of formation; and

(ii) That the foreign entity surrenders its registration to do business in this state; and

(b) In the case of a foreign entity that has converted to a domestic or foreign person not subject to chapter 176, Laws of 2015:

(i) The name of the converting foreign entity and its jurisdiction of formation;

(ii) The type of person to which it has converted and its jurisdiction of formation;

(iii) That it surrenders its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf; and

(iv) A mailing address to which service of process may be made under subsection (2) of this section.

(2) After a withdrawal is effective under this section, service of process in any action or proceeding based on a cause of action arising during the time the foreign entity was registered to do business in this state may be made pursuant to RCW 23.95.450. [2015 c 176 § 1509.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.545 Transfer of registration.** (1) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the secretary of state to do business in this state, the foreign entity shall deliver to the secretary of state for filing an application for transfer of registration. The application must be executed by the surviving or converted entity and state:

(a) The name of the registered foreign entity before the merger or conversion;

(b) The type of entity it was before the merger or conversion;

(c) The name of the applicant entity and, if the name does not comply with RCW 23.95.300, an alternate name adopted pursuant to RCW 23.95.525(1);

(d) The type of entity of the applicant entity and its jurisdiction of formation; and

(e) The following information regarding the applicant entity, if different than the information for the foreign entity before the merger or conversion:

(i) The street and mailing addresses of the principal office of the entity and, if the law of the entity's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) The information required pursuant to RCW 23.95.415(1).

(2) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in this state is transferred without interruption to the

entity into which it has merged or to which it has been converted. [2015 c 176 § 1510.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.550 Termination of registration.** (1) The secretary of state may terminate the registration of a registered foreign entity in the manner provided in subsections (2) and (3) of this section if:

(a) The entity does not pay any fee, interest, or penalty required to be paid to the secretary of state under this chapter or law of this state other than this chapter;

(b) The entity does not deliver to the secretary of state for filing an annual report when it is due;

(c) The entity does not have a registered agent as required by RCW 23.95.405;

(d) The entity does not deliver to the secretary of state for filing a statement of change under RCW 23.95.430 if change occurs in the name or address of the entity's registered agent;

(e) A governor, officer, or agent of the entity executed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(f) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the entity's records in the entity's jurisdiction of formation stating that it has been dissolved or disappeared as the result of a merger.

(2) If the secretary of state determines that one or more grounds for termination exist under subsection (1) of this section, the secretary of state shall deliver a notice of the determination to the registered foreign entity's registered agent or, if the entity does not have a registered agent, to the entity's principal office. The notice must state the grounds for termination under subsection (1) of this section.

(3) If the entity does not cure each ground for termination stated in the notice within sixty days after the notice is effective, the secretary of state shall terminate the registration of the foreign entity by filing a statement of termination that recites the ground or grounds for termination and the effective date of termination and delivering a copy of the statement of termination to the foreign entity.

(4) The authority of a registered foreign entity to do business in this state ceases on the effective date of termination shown on the statement of termination.

(5) The termination of a foreign entity's registration does not terminate the authority of the registered agent of the foreign entity. [2015 c 176 § 1511.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.555 Action by attorney general.** The attorney general may maintain an action to enjoin a foreign entity from doing business in this state in violation of this chapter. [2015 c 176 § 1512.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.



ARTICLE 6  
ADMINISTRATIVE DISSOLUTION

**23.95.600 Domestic entity—Definition.** For the purposes of this Article 6, the term "domestic entity" does not include a domestic limited liability partnership. [2015 c 176 § 1601.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.605 Grounds.** The secretary of state may commence a proceeding under RCW 23.95.610 to dissolve a domestic entity administratively if:

(1) The entity does not pay any fee, interest, or penalty required to be paid to the secretary of state when due;

(2) The entity does not deliver an annual report to the secretary of state not later than one hundred twenty days after it is due;

(3) The entity does not have a registered agent in this state for thirty consecutive days; or

(4) The entity's period of duration stated in its public organic record expired. [2015 c 176 § 1602.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.610 Procedure and effect.** (1) If the secretary of state determines that one or more grounds exist under RCW 23.95.605 for administratively dissolving a domestic entity, the secretary of state shall serve the entity pursuant to RCW 23.95.250 with notice in a record of the secretary of state's determination.

(2) If a domestic entity, not later than sixty days after service of the notice required by subsection (1) of this section, does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state shall administratively dissolve the entity by executing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the statement and serve a copy on the entity pursuant to RCW 23.95.250.

(3) A domestic entity that is dissolved administratively continues its existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under RCW 23.95.615.

(4) The administrative dissolution of a domestic entity does not terminate the authority of its registered agent. [2015 c 176 § 1603.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.615 Reinstatement.** (1) A domestic entity that is dissolved administratively under RCW 23.95.610 may apply to the secretary of state for reinstatement not later than five years after the effective date of dissolution. The application must be executed by the entity and state:

(a) The name of the entity and a statement that the name satisfies RCW 23.95.300; if the name does not satisfy RCW (2019 Ed.)

23.95.300, the entity must deliver with its application an amendment to its public organic record changing its name;

(b) The address of the principal office of the entity and the name and address of its registered agent;

(c) The effective date of the entity's administrative dissolution; and

(d) That the grounds for dissolution did not exist or have been cured.

(2) To be reinstated, an entity must pay the full amount of all annual license or renewal fees which would have been assessed during the period of administrative dissolution had the entity been in active status, plus a penalty fee established by the secretary of state by rule, and the license or renewal fee for the year of reinstatement.

(3) If the secretary of state determines that an application under subsection (1) of this section contains the information required by subsection (1) of this section, is satisfied that the information is correct, and determines that all payments required to be made to the secretary of state by subsection (2) of this section have been made, the secretary of state shall:

(a) Cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the secretary of state's determination and the effective date of reinstatement;

(b) File the statement; and

(c) Serve a copy of the statement on the entity.

(4) When reinstatement under this section is effective as provided in RCW 23.95.210:

(a) It relates back to and takes effect as of the effective date of the administrative dissolution; and

(b) The domestic entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement. [2015 c 176 § 1604.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.620 Judicial review of denial of reinstatement.**

(1) If the secretary of state denies a domestic entity's application for reinstatement following administrative dissolution, the secretary of state shall serve the entity with a notice in a record that explains the reasons for denial.

(2) An entity may seek judicial review of denial of reinstatement in the superior court not later than thirty days after service of the notice of denial. [2015 c 176 § 1605.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.625 Entity name not distinguishable from name of governmental entity.**

(1) Any county, city, town, district, or other political subdivision of the state, or the state of Washington or any department or agency of the state, may apply to the secretary of state for the administrative dissolution, or the termination of registration, of any entity using a name that is not distinguishable from the name of the applicant for dissolution. The application must state the precise legal name of the governmental entity and its date of formation and the applicant shall mail a copy to the entity's registered agent. If the name of the entity is not distinguishable

from the name of the applicant, then, except as provided in subsection (4) of this section, the secretary of state shall commence proceedings for administrative dissolution under RCW 23.95.610 or termination of registration under RCW 23.95.550.

(2) A name may not be considered distinguishable by virtue of the items specified in RCW 23.95.300(3).

(3)(a) The following are not distinguishable for purposes of this section:

- (i) "City of Anytown" and "City of Anytown, Inc."; and
- (ii) "City of Anytown" and "Anytown City."

(b) The following are distinguishable for purposes of this section:

- (i) "City of Anytown" and "Anytown, Inc."; and
- (ii) "City of Anytown" and "The Anytown Company";

and

- (iii) "City of Anytown" and "Anytown Cafe, Inc."

(4) If the entity that is the subject of the application was formed or registered before the formation of the applicant as a governmental entity, then this section applies only if the applicant for dissolution provides a certified copy of a final judgment of a court of competent jurisdiction determining that the applicant holds a superior property right to the name than does the entity.

(5) The duties of the secretary of state under this section are ministerial. [2015 c 176 § 1606.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

ARTICLE 7  
MISCELLANEOUS PROVISIONS

**23.95.700 Reservation of power to amend or repeal.**

The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign entities subject to this chapter are governed by the amendment or repeal. [2015 c 176 § 1701.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.705 Supplemental principles of law.** Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter. [2015 c 176 § 1702.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.710 Relation to electronic signatures in global and national commerce act.** This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Sec. 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2015 c 176 § 1703.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

**23.95.715 Savings.** The repeal of a statute by chapter 176, Laws of 2015 does not affect:

(1) The operation of the statute or any action taken under it before its repeal;

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or

(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed. [2015 c 176 § 1704.]

**Effective date—Contingent effective date—2015 c 176:** See note following RCW 23.95.100.

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LIMITED COOPERATIVE ASSOCIATIONS**

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GENERAL PROVISIONS

**23.100.0101 Short title.** This chapter may be cited as the Washington limited cooperative association act. [2019 c 37 § 101.]

**23.100.0102 Definitions.** (1) In this chapter, except for RCW 23.100.1301 through 23.100.1320:

(a) "Articles of organization" means the articles of organization of a limited cooperative association required by RCW 23.100.0201. The term includes the articles as amended or restated.

(b) "Board of directors" means the board of directors of a limited cooperative association.

(c) "Bylaws" means the bylaws of a limited cooperative association. The term includes the bylaws as amended or restated.

(d) "Consumer cooperative" means a cooperative engaged in the retail sale, to its members and other consumers, of goods or services of a type that are generally for personal, living, or family use.

(e) "Contribution," except as used in RCW 23.100.0807(3), means a benefit that a person provides to a limited cooperative association to become or remain a member or in the person's capacity as a member.

(f) "Cooperative" means a limited cooperative association or an entity organized under any cooperative law of any jurisdiction.

(g) "Director" means a director of a limited cooperative association.

(h) "Distribution," except as used in RCW 23.100.0806(1), means a transfer of money or other property from a limited cooperative association to a member because of the member's financial rights or to a transferee of a member's financial rights.

(i) "Financial rights" means the right to participate in allocations and distributions as provided in RCW 23.100.0801 through 23.100.0809 and 23.100.1001 through 23.100.1013 but does not include rights or obligations under a marketing contract.

(j) "Governance rights" means the right to participate in governance of a limited cooperative association.

(k) "Investor member" means a member that has made a contribution to a limited cooperative association and:

(i) Is not required by the organic rules to conduct patronage with the association in the member's capacity as an investor member in order to receive the member's interest; or

(ii) Is not permitted by the organic rules to conduct patronage with the association in the member's capacity as an investor member in order to receive the member's interest.

(l) "Limited cooperative association" means an association formed under this chapter or that becomes subject to this chapter under RCW 23.100.1301 through 23.100.1320.

(m) "Member" means a person that is admitted as 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.

(n) "Member's interest" means the interest of a patron member or investor member under RCW 23.100.0501.

(o) "Members meeting" means an annual members meeting or special meeting of members.

(p) "Organic rules" means the articles of organization and bylaws of a limited cooperative association.

(q) "Organizer" means an individual who executes the initial articles of organization.

(r) "Patron member" means a member that has made a contribution to a limited cooperative association and:

(i) Is required by the organic rules to conduct patronage with the association in the member's capacity as a patron member in order to receive the member's interest; or

(ii) Is permitted by the organic rules to conduct patronage with the association in the member's capacity as a patron member in order to receive the member's interest.

(s) "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 association and the person.

(t) "Required information" means the information a limited cooperative association is required to maintain under RCW 23.100.0110.

(u) "Voting group" means any combination of one or more voting members in one or more districts or classes that under the organic rules or chapter 23.95 RCW or this chapter are entitled to vote and can be counted together collectively on a matter at a members meeting.

(v) "Voting member" means a member that, under the organic law or organic rules, has a right to vote on matters subject to vote by members under the organic law or organic rules.

(w) "Voting power" means the total current power of members to vote on a particular matter for which a vote may or is to be taken.

(2) The following definitions from RCW 23.95.105 apply to this chapter: "Entity," "execute," "executes," and "executed," "foreign," "jurisdiction," "jurisdiction of formation," "organic law," "organic rules," "person," "principal office," "property," "receipt," "record," "registered agent," "state," and "transfer." [2019 c 37 § 102.]

**23.100.0103 Nature of limited cooperative association.** (1) A limited cooperative association organized under this chapter is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons, which permits combining:

(a) Ownership, financing, and receipt of benefits by the members for whose interests the association is formed; and

(b) Separate investments in the association by members who may receive returns on their investments and a share of control.

(2) The fact that a limited cooperative association does not have one or more of the characteristics described in subsection (1) of this section does not alone prevent the association from being formed under and governed by this chapter nor does it alone provide a basis for an action against the association. [2019 c 37 § 103.]

**23.100.0104 Purpose and duration of limited cooperative association.** (1) A limited cooperative association is an entity distinct from its members.

(2) A limited cooperative association may be organized for any lawful purpose, regardless of whether for profit, except that a limited cooperative association may not be organized for the purpose of generating, purchasing, selling, marketing, transmitting, or distributing electric energy.

(3) Unless the articles of organization state a term for a limited cooperative association's existence, the association has perpetual duration. [2019 c 37 § 104.]

**23.100.0105 Powers.** Unless its articles of organization provide otherwise, a limited cooperative association has the capacity to sue and be sued in its own name and has the power to do all things necessary or convenient to carry on its activities and affairs. An association may maintain an action against a member for harm caused to the association by the member's violation of a duty to the association or of the organic law or organic rules. [2019 c 37 § 105.]

**23.100.0106 Governing law.** The law of this state governs:

(1) The internal affairs of a limited cooperative association; and

(2) The liability of a member as a member and a director as a director for the debts, obligations, or other liabilities of a limited cooperative association. [2019 c 37 § 106.]

**23.100.0107 Requirements of other laws.** (1) This chapter does not alter or amend any law that governs the licensing and regulation of an individual or entity in carrying on a specific business or profession even if that law permits the business or profession to be conducted by a limited cooperative association, a foreign cooperative, or members of either.

(2) A limited cooperative association may not conduct an activity that, under law of this state other than this chapter, may be conducted only by an entity that meets specific requirements for the internal affairs of that entity unless the organic rules of the association conform to those requirements. [2019 c 37 § 107.]

**23.100.0108 Relation to restraint of trade and anti-trust laws.** To the extent a limited cooperative association or activities conducted by the association in this state meet the material requirements for other cooperatives entitled to an exemption from or immunity under any provision of RCW 19.86.030 through 19.86.050, the association and its activities are entitled to the exemption or immunity. This section does not create any new exemption or immunity for an association or affect any exemption or immunity provided to a cooperative organized under any law other than this chapter. [2019 c 37 § 108.]

**23.100.0109 Effect of organic rules.** (1) The relations between a limited cooperative association and its members are consensual. Unless required, limited, or prohibited by this chapter, the organic rules may provide for any matter concerning the relations among the members of the association and between the members and the association, the activities of the association, and the conduct of its activities.

(2) The matters referred to in (a) through (k) of this subsection may be varied only in the articles of organization. The articles may:

(a) State a term of existence for the association RCW 23.100.0104(3);

(b) Limit or eliminate the acceptance of new or additional members by the initial board of directors under RCW 23.100.0202(2);

(c) Vary the limitations on the obligations and liability of members for association obligations under RCW 23.100.0404;

(d) Require a notice of an annual members meeting to state a purpose of the meeting under RCW 23.100.0408(2);

(e) Vary the board of directors meeting quorum under RCW 23.100.0615(1);

(f) Vary the matters the board of directors may consider in making a decision under RCW 23.100.0620;

(g) Specify causes of dissolution under RCW 23.100.1002(1);

(h) Delegate amendment of the bylaws to the board of directors pursuant to RCW 23.100.0305(6);

(i) Provide for member approval of asset dispositions under RCW 23.100.1201;

(j) Subject to RCW 23.100.0620, provide for the elimination or limitation of liability of a director to the association or its members for money damages pursuant to RCW 23.100.0618;

(k) Provide for permitting or making obligatory indemnification under RCW 23.100.0701(1); and

(l) Provide for any matters that may be contained in the organic rules, including those under subsection (3) of this section.

(3) The matters referred to in (a) through (y) of this subsection may be varied only in the organic rules. The organic rules may:

(a) Require more information to be maintained under RCW 23.100.0110 or provided to members under RCW 23.100.0405(10);

(b) Provide restrictions on transactions between a member and an association under RCW 23.100.0111;

(c) Provide for the percentage and manner of voting on amendments to the organic rules by district, class, or voting group under RCW 23.100.0304(1);

(d) Provide for the percentage vote required to amend the bylaws concerning the admission of new members under RCW 23.100.0305(5)(e);

(e) Provide for terms and conditions to become a member under RCW 23.100.0402;

(f) Restrict the manner of conducting members meetings under RCW 23.100.0406(3) and 23.100.0407(5);

(g) Designate the presiding officer of members meetings under RCW 23.100.0406(5) and 23.100.0407(7);

(h) Require a statement of purposes in the annual meeting notice under RCW 23.100.0408(2);

(i) Increase quorum requirements for members meetings under RCW 23.100.0410 and board of directors meetings under RCW 23.100.0615;

(j) Allocate voting power among members, including patron members and investor members, and provide for the manner of member voting and action as permitted by RCW 23.100.0411 through 23.100.0417;

(k) Authorize investor members and expand or restrict the transferability of members' interests to the extent provided in RCW 23.100.0502 and 23.100.0503;

(l) Provide for enforcement of a marketing contract;

(m) Provide for qualification, election, terms, removal, filling vacancies, and member approval for compensation of directors in accordance with RCW 23.100.0603 through 23.100.0605, 23.100.0607, 23.100.0609, and 23.100.0610;

(n) Restrict the manner of conducting board meetings and taking action without a meeting under RCW 23.100.0611 and 23.100.0612;

(o) Provide for frequency, location, notice, and waivers of notice for board meetings under RCW 23.100.0613 and 23.100.0614;

(p) Increase the percentage of votes necessary for board action under RCW 23.100.0616(2);

(q) Provide for the creation of committees of the board of directors and matters related to the committees in accordance with RCW 23.100.0617;

(r) Provide for officers and their appointment, designation, and authority under RCW 23.100.0622;

(s) Provide for forms and values of contributions under RCW 23.100.0802;

(t) Provide for remedies for failure to make a contribution;

(u) Provide for the allocation of profits and losses of the association, distributions, and the redemption or repurchase of distributed property other than money in accordance with RCW 23.100.0803 through 23.100.0806;

(v) Specify when a member's dissociation is wrongful and the liability incurred by the dissociating member for damage to the association under RCW 23.100.0901 (2) and (3);

(w) Provide the personal representative or other legal representative of a deceased member or a member adjudged incompetent with additional rights under RCW 23.100.0903;

(x) Increase the percentage of votes required for board of director approval of:

(i) A resolution to dissolve under RCW 23.100.1005 (1)(a);

- (ii) A proposed amendment to the organic rules under RCW 23.100.0302(1)(a);
- (iii) A proposed disposition of assets under RCW 23.100.1203(1); and
- (iv) A plan of merger or plan of conversion under RCW 23.100.1301 through 23.100.1320; and
- (y) Vary the percentage of votes required for members approval of:
  - (i) A resolution to dissolve under RCW 23.100.1005;
  - (ii) An amendment to the organic rules under RCW 23.100.0305;
  - (iii) A disposition of assets under RCW 23.100.1204; and
  - (iv) A plan of merger or plan of conversion under RCW 23.100.1301 through 23.100.1320.
- (4) The organic rules must address members' contributions pursuant to RCW 23.100.0801. [2019 c 37 § 109.]

**23.100.0110 Required information.** (1) Subject to subsection (2) of this section, a limited cooperative association shall maintain in a record available at its principal office:

- (a) A list containing the name, last known street address and, if different, mailing address, and term of office of each director and officer;
- (b) The initial articles of organization and all amendments to and restatements of the articles, together with an executed copy of any power of attorney under which any article, amendment, or restatement has been executed;
- (c) The initial bylaws and all amendments to and restatements of the bylaws;
- (d) All filed articles of merger and conversion;
- (e) All financial statements of the association for the three most recent years;
- (f) The most recent annual report delivered by the association to the secretary of state;
- (g) The minutes of members meetings for the period of the association's existence;
- (h) Evidence of all actions taken by members without a meeting for the period of the association's existence;
- (i) A list containing:
  - (i) The name, in alphabetical order, and last known street address and, if different, mailing address of each patron member and each investor member; and
  - (ii) If the association has districts or classes of members, information from which each current member in a district or class may be identified;
- (j) The federal income tax returns, any state and local income tax returns, and any tax reports of the association for the three most recent years;
- (k) Accounting records maintained by the association in the ordinary course of its operations for the three most recent years;
- (l) The minutes of directors meetings for the period of the association's existence;
- (m) Evidence of all actions taken by directors without a meeting for the period of the association's existence;
- (n) The amount of money contributed and agreed to be contributed by each member;
- (o) A description and statement of the agreed value of contributions or benefits other than money made or provided and agreed to be made or provided by each member;

(p) The times at which, or events on the happening of which, any additional contribution is to be made by each member;

(q) For each member, a description and statement of the member's interest or information from which the description and statement can be derived; and

(r) All communications concerning the association made in a record to all members, or to all members in a district or class, for the three most recent years.

(2) If a limited cooperative association has existed for less than the period for which records must be maintained under subsection (1) of this section, the period records must be kept is the period of the association's existence.

(3) The organic rules may require that more information be maintained. [2019 c 37 § 110.]

**23.100.0111 Business transactions of member with limited cooperative association.** Subject to RCW 23.100.0618 and 23.100.0619 and except as otherwise provided in the organic rules or a specific contract relating to a transaction, a member may lend money to and transact other business with a limited cooperative association in the same manner as a person that is not a member. [2019 c 37 § 111.]

**23.100.0112 Dual capacity.** A person may have a patron member's interest and an investor member's interest. When such person acts as a patron member, the person is subject to this chapter and the organic rules governing patron members. When such person acts as an investor member, the person is subject to this chapter and the organic rules governing investor members. [2019 c 37 § 112.]

**23.100.0113 Use of the term "cooperative" in name.** Use of the term "cooperative" or its abbreviation under this chapter is not a violation of the provisions restricting the use of the term under RCW 23.86.030. [2019 c 37 § 113.]

**23.100.0114 Subjects covered outside chapter.** The following subjects are covered in whole or in part outside this chapter:

- (1) Delivery of record: RCW 23.95.110;
- (2) Filing with secretary of state: RCW 23.95.200 through 23.95.265;
- (3) Name of entity: RCW 23.95.300 through 23.95.315;
- (4) Registered agent of entity: RCW 23.95.400 through 23.95.460;
- (5) Foreign entities: RCW 23.95.500 through 23.95.555;
- (6) Administrative dissolution: RCW 23.95.600 through 23.95.625;
- (7) Miscellaneous provisions, including supplemental principles of law and reservation of power to amend or repeal: RCW 23.95.700 through 23.95.715. [2019 c 37 § 114.]

#### ORGANIZATION OF LIMITED COOPERATIVE ASSOCIATION

**23.100.0201 Formation of limited cooperative association—Articles of organization.** (1) One or more persons may act as organizers to form a limited cooperative associa-

tion by delivering to the secretary of state for filing articles of organization.

(2) The articles of organization must state:

(a) The name of the limited cooperative association, which must comply with RCW 23.95.300 and 23.95.305(5);

(b) The purposes for which the association is formed;

(c) The street and mailing addresses in this state of the initial registered agent;

(d) The street and mailing addresses of the initial principal office;

(e) The name and street and mailing addresses of each organizer; and

(f) The term for which the association is to exist if other than perpetual.

(3) Subject to RCW 23.100.0109, articles of organization may contain any other provisions in addition to those required by subsection (1) of this section.

(4) A limited cooperative association is formed after articles of organization that substantially comply with subsection (1) of this section are delivered to the secretary of state, are filed, and become effective under RCW 23.95.210. [2019 c 37 § 201.]

**23.100.0202 Organization of limited cooperative association.** (1) After a limited cooperative association is formed:

(a) If initial directors are named in the articles of organization, the initial directors shall hold an organizational meeting to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the association; or

(b) If initial directors are not named in the articles of organization, the organizers shall designate the initial directors and call a meeting of the initial directors to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the association.

(2) Unless the articles of organization otherwise provide, the initial directors may cause the limited cooperative association to accept members, including those necessary for the association to begin business.

(3) Initial directors need not be members.

(4) An initial director serves until a successor is elected and qualified at a members meeting or the director is removed, resigns, is adjudged incompetent, or dies. [2019 c 37 § 202.]

**23.100.0203 Bylaws.** (1) Bylaws must be in a record and, if not stated in the articles of organization, must include:

(a) A statement of the capital structure of the limited cooperative association, including:

(i) The classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and

(ii) The rights to share in profits or distributions of the association;

(b) A statement of the method for admission of members;

(c) A statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;

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(d) A statement that a member's interest is transferable if it is to be transferable and a statement of the conditions upon which it may be transferred;

(e) A statement concerning the manner in which profits and losses are allocated and distributions are made among patron members and, if investor members are authorized, the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members;

(f) A statement concerning:

(i) Whether persons that are not members but conduct business with the association may be permitted to share in allocations of profits and losses and receive distributions; and

(ii) The manner in which profits and losses are allocated and distributions are made with respect to those persons; and

(g) A statement of the number and terms of directors or the method by which the number and terms are determined.

(2) Subject to RCW 23.100.0109(3) and the articles of organization, bylaws may contain any other provision for managing and regulating the affairs of the association.

(3) In addition to amendments permitted under RCW 23.100.0301 through 23.100.0307, the initial board of directors may amend the bylaws by a majority vote of the directors at any time before the admission of members. [2019 c 37 § 203.]

**23.100.0204 Executing of records to be delivered for filing to secretary of state.** A record delivered to the secretary of state for filing pursuant to chapter 23.95 RCW and this chapter must be executed as follows:

(1) A limited cooperative association's initial articles of organization must be executed by at least one person acting as an organizer.

(2) A statement of withdrawal under RCW 23.95.215 must be executed as provided in that section.

(3) Except as otherwise provided in subsection (4) of this section, a record executed by an existing association must be executed by an officer.

(4) A record filed on behalf of a dissolved association must be executed by a person winding up activities under RCW 23.100.1006(2) or a person appointed under RCW 23.100.1006(3) to wind up those activities.

(5) Any other record delivered on behalf of a person to the secretary of state for filing must be executed by that person. [2019 c 37 § 204.]

AMENDMENT OF ORGANIC RULES OF LIMITED COOPERATIVE ASSOCIATION

**23.100.0301 Authority to amend organic rules.** (1) A limited cooperative association may amend its organic rules under this chapter for any lawful purpose. In addition, the initial board of directors may amend the bylaws of an association under RCW 23.100.0203.

(2) Unless the organic rules otherwise provide, a member does not have a vested property right resulting from any provision in the organic rules, including a provision relating to the management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association. [2019 c 37 § 301.]

**23.100.0302 Notice and action on amendment of organic rules.** (1) Except as provided in RCW 23.100.0301 (1) and 23.100.0305(6), the organic rules of a limited cooperative association may be amended only at a members meeting. An amendment may be proposed by either:

(a) A majority of the board of directors, or a greater percentage if required by the organic rules; or

(b) One or more petitions executed by at least ten percent of the patron members or at least ten percent of the investor members.

(2)(a) The board of directors shall call a members meeting to consider an amendment proposed pursuant to subsection (1) of this section.

(b) Subject to RCW 23.100.0408 and 23.100.0419, not later than thirty days following the proposal of the amendment by the board or receipt of a petition, the board must mail or otherwise transmit or deliver in a record to each member:

(i) The proposed amendment, or a summary of the proposed amendment and a statement of the manner in which a copy of the amendment in a record may be reasonably obtained by a member;

(ii) A recommendation that the members approve the amendment, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(iii) A statement of any condition of the board's submission of the amendment to the members; and

(iv) Notice of the meeting at which the proposed amendment will be considered, which must be given in the same manner as notice for a special meeting of members.

(c) The meeting must be held at least ten and not more than one hundred twenty days after providing the notice required by (b) of this subsection. [2019 c 37 § 302.]

**23.100.0303 Method of voting on amendment of organic rules.** (1) A substantive change to a proposed amendment of the organic rules may not be made at the members meeting at which a vote on the amendment occurs.

(2) A nonsubstantive change to a proposed amendment of the organic rules may be made at the members meeting at which the vote on the amendment occurs and need not be separately voted upon by the board of directors.

(3) A vote to adopt a nonsubstantive change to a proposed amendment to the organic rules must be by the same percentage of votes required to pass a proposed amendment. [2019 c 37 § 303.]

**23.100.0304 Voting by district, class, or voting group.**

(1) This section applies if the organic rules provide for voting by district or class, or if there is one or more identifiable voting groups that a proposed amendment to the organic rules would affect differently from other members with respect to matters identified in RCW 23.100.0305(5) (a) through (e). Approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required in RCW 23.100.0305 and 23.100.0414.

(2) If a proposed amendment to the organic rules would affect members in two or more districts or classes entitled to vote separately under subsection (1) of this section in the same or a substantially similar way, the districts or classes

affected must vote as a single voting group unless the organic rules otherwise provide for separate voting. [2019 c 37 § 304.]

**23.100.0305 Approval of amendment.** (1) Subject to RCW 23.100.0304 and subsections (3) and (4) of this section, an amendment to the articles of organization must be approved by:

(a) At least two-thirds of the voting power of members present at a members meeting called under RCW 23.100.0302; and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(2) Subject to RCW 23.100.0304 and subsections (3) through (6) of this section, an amendment to the bylaws must be approved by:

(a) At least a majority vote of the voting power of all members present at a members meeting called under RCW 23.100.0302, unless the organic rules require a greater percentage; and

(b) If a limited cooperative association has investor members, a majority of the votes cast by patron members, unless the organic rules require a larger affirmative vote by patron members.

(3) The organic rules may require that the percentage of votes under subsection (1)(a) or (2)(a) of this section be:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of (a) and (b) of this subsection.

(4) Consent in a record by a member must be delivered to a limited cooperative association before delivery of an amendment to the articles of organization or restated articles of organization for filing pursuant to RCW 23.100.0307, if as a result of the amendment the member will have:

(a) Personal liability for an obligation of the association;

or

(b) An obligation or liability for an additional contribution.

(5) The vote required to amend bylaws must satisfy the requirements of subsection (1) of this section if the proposed amendment modifies:

(a) The equity capital structure of the limited cooperative association, including the rights of the association's members to share in profits or distributions, or the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

(b) The transferability of a member's interest;

(c) The manner or method of allocation of profits or losses among members;

(d) The quorum for a meeting and the rights of voting and governance; or

(e) Unless otherwise provided in the organic rules, the terms for admission of new members.

(6) Except for the matters described in subsection (5) of this section, the articles of organization may delegate amend-



ment of all or a part of the bylaws to the board of directors without requiring member approval.

(7) If the articles of organization delegate amendment of bylaws to the board of directors, the board shall provide a description of any amendment of the bylaws made by the board to the members in a record not later than thirty days after the amendment, but the description may be provided at the next annual members meeting if the meeting is held within the thirty-day period. [2019 c 37 § 305.]

**23.100.0306 Restated articles of organization.** A limited cooperative association, by the affirmative vote of a majority of the board of directors taken at a meeting for which the purpose is stated in the notice of the meeting, may adopt restated articles of organization that contain the original articles as previously amended. Restated articles may contain amendments if the restated articles are adopted in the same manner and with the same vote as required for amendments to the articles under RCW 23.100.0305(1). Upon filing, restated articles supersede the existing articles and all amendments. [2019 c 37 § 306.]

**23.100.0307 Amendment or restatement of articles of organization—Filing.** (1) To amend its articles of organization, a limited cooperative association must deliver to the secretary of state for filing an amendment of the articles, or restated articles of organization, which contain one or more amendments of the articles of organization, stating:

- (a) The name of the association;
  - (b) The date of filing of the association's initial articles; and
  - (c) The text of the amendment.
- (2) Before the beginning of the initial meeting of the board of directors, an organizer who knows that information in the filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances shall promptly:
- (a) Cause the articles to be amended; or
  - (b) If appropriate, deliver an amendment to the secretary of state for filing pursuant to RCW 23.95.110(2).
- (3) To restate its articles of organization, a limited cooperative association must deliver to the secretary of state for filing a restatement designated as such in its heading.
- (4) Upon filing, an amendment of the articles of organization or other record containing an amendment of the articles which has been properly adopted by the members is effective as provided in RCW 23.95.210. [2019 c 37 § 307.]

MEMBERS

**23.100.0401 Members.** To begin business, a limited cooperative association must have at least two patron members unless the sole member is a cooperative. [2019 c 37 § 401.]

**23.100.0402 Becoming a member.** After formation of a limited cooperative association, a person becomes a member:

- (1) As provided in the organic rules;
- (2) As the result of a conversion or merger effective under RCW 23.100.1301 through 23.100.1320; or

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(3) With the affirmative vote or consent of all the members. [2019 c 37 § 402.]

**23.100.0403 No agency power of member as member.** (1) A member is not an agent of a limited cooperative association solely by reason of being a member.

(2) A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited cooperative association because of the person's conduct. [2019 c 37 § 403.]

**23.100.0404 Liability of members and directors.** (1) Unless the articles of organization provide otherwise, a debt, obligation, or other liability of a limited cooperative association is solely the debt, obligation, or other liability of the association. A member or director is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the association solely by reason of being or acting as a member or director of the association. This subsection applies regardless of the dissolution of the association.

(2) The failure of a limited cooperative association to observe formalities relating to the exercise of its powers or management of its activities and affairs is not grounds for imposing liability on any member or director for a debt, obligation, or other liability of the association. [2019 c 37 § 404.]

**23.100.0405 Right of members and dissociated members to information.** (1) On at least ten business days' demand made in a record received by a limited cooperative association, a member may inspect and copy during regular business hours, at the principal office or a reasonable location specified by the limited cooperative association, required information listed in RCW 23.100.0110(1) (a) through (h). A member need not have any particular purpose for seeking the information. The association is not required to provide the same information listed in RCW 23.100.0110(1) (a) through (h) to the same member more than once during a six-month period.

(2) Subject to subsection (3) of this section, on at least ten business days' demand made in a record received by a limited cooperative association, a member may inspect and copy during regular business hours, at the principal office or a reasonable location specified by the limited cooperative association, required information listed in RCW 23.100.0110 (1) (i), (j), (l), (m), (p), and (r), if:

- (a) The member seeks the information in good faith and for a proper purpose reasonably related to the member's interest;
- (b) The demand includes a description with reasonable particularity of the information sought and the purpose for seeking the information;
- (c) The information sought is directly connected to the member's purpose; and
- (d) The demand is reasonable.

(3) Not later than ten business days after receipt of a demand pursuant to subsection (2) of this section, a limited cooperative association shall provide, in a record, the following information to the member that made the demand:

- (a) If the association agrees to provide the demanded information:

(i) What information the association will provide in response to the demand; and

(ii) A reasonable time and place at which the association will provide the information; or

(b) If the association declines to provide some or all of the demanded information, the association's reasons for declining.

(4) On at least ten business days' demand made in a record received by a limited cooperative association, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (2) of this section. The association shall respond to a demand made pursuant to this subsection in the manner provided in subsection (3) of this section.

(5) Not later than ten business days after receipt by a limited cooperative association of a demand made by a member in a record, but not more often than once in a six-month period, the association shall deliver to the member a record stating the information with respect to the member required by RCW 23.100.0110(1)(q).

(6) In addition to any restriction or condition stated in its organic rules, a limited cooperative association, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the association has the burden of proving reasonableness.

(7) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the organic rules or under subsection (7) of this section applies both to the agent or legal representative and the member or dissociated member.

(9) The rights stated in this section do not extend to a person as transferee.

(10) The organic rules may require a limited cooperative association to provide more information than required by this section and may establish conditions and procedures for providing the information. [2019 c 37 § 405.]

**23.100.0406 Annual meeting of members.** (1) Members shall meet annually at a time provided in the organic rules or set by the board of directors not inconsistent with the organic rules.

(2) An annual members meeting may be held inside or outside this state at the place stated in the organic rules or selected by the board of directors not inconsistent with the organic rules.

(3)(a) Unless the organic rules otherwise provide:

(i) If the board of directors or another person is authorized in the bylaws to determine the place of annual meetings, the board of directors or such other person may, in the sole

discretion of the board of directors or such other person, determine that an annual meeting will not involve a physical assembly of members at a particular geographic location, but instead will be held solely by means of remote communication, in accordance with (b) of this subsection.

(ii) An association may permit any or all members to participate in an annual members meeting by means of, or conduct the meeting solely through the use of, remote communication. Subject to the provisions of (b) of this subsection, participation by remote communication is to be subject to any guidelines and procedures adopted by or pursuant to the authority of the board of directors.

(b) If an association elects to permit participation by means of, or conduct a meeting solely through the use of, remote communication:

(i) The notice of the meeting must specify how a member may participate in the meeting by means of remote communication.

(ii) The association must implement reasonable measures to (A) verify that each person participating remotely as a member is a member, and (B) provide each person participating remotely as a member a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings.

(iii) Participation in a meeting in accordance with this section constitutes presence in person at that meeting.

(iv) If the board of directors or another authorized person determines to hold an annual members meeting without a physical assembly of members in accordance with this subsection (3), all members entitled to vote at such meeting must have the opportunity to participate in the meeting by remote communication in accordance with this subsection (3).

(4) The board of directors shall report, or cause to be reported, at the association's annual members meeting the association's business and financial condition as of the close of the most recent fiscal year.

(5) Unless the organic rules otherwise provide, the board of directors shall designate the presiding officer of the association's annual members meeting.

(6) Failure to hold an annual members meeting does not affect the validity of any action by the limited cooperative association. [2019 c 37 § 406.]

**23.100.0407 Special meeting of members.** (1) A special meeting of members may be called only:

(a) As provided in the organic rules;

(b) By a majority vote of the board of directors on a proposal stating the purpose of the meeting;

(c) By demand in a record executed by members holding at least twenty percent of the voting power of the persons in any district or class entitled to vote on the matter that is the purpose of the meeting stated in the demand; or

(d) By demand in a record executed by members holding at least ten percent of the total voting power of all the persons entitled to vote on the matter that is the purpose of the meeting stated in the demand.

(2) A demand under subsection (1)(c) or (d) of this section must be submitted to the officer of the limited cooperative association charged with keeping its records.

(3) Any voting member may withdraw its demand under subsection (1)(c) or (d) of this section before receipt by the limited cooperative association of demands sufficient to require a special meeting of members.

(4) A special meeting of members may be held inside or outside this state at the place stated in the organic rules or selected by the board of directors not inconsistent with the organic rules.

(5) Unless the organic rules otherwise provide, the provisions of RCW 23.100.0406(3) apply to special meetings of members as though the special meeting of members were an annual meeting of members.

(6) Only business within the purpose or purposes stated in the notice of a special meeting of members may be conducted at the meeting.

(7) Unless the organic rules otherwise provide, the presiding officer of a special meeting of members shall be designated by the board of directors. [2019 c 37 § 407.]

**23.100.0408 Notice of members meeting.** (1) A limited cooperative association shall notify each member of the time, date, and place of a members meeting at least ten and not more than one hundred twenty days before the meeting.

(2) Unless the articles of organization otherwise provide, notice of an annual members meeting need not include any purpose of the meeting.

(3) Notice of a special meeting of members must include each purpose of the meeting as contained in the demand under RCW 23.100.0407(1) (c) or (d) or as voted upon by the board of directors under RCW 23.100.0407(1)(b).

(4) Notice of a members meeting must be given in a record unless oral notice is reasonable under the circumstances. [2019 c 37 § 408.]

**23.100.0409 Waiver of members meeting notice.** (1) A member may waive notice of a members meeting before, during, or after the meeting.

(2) A member's participation in a members meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting. [2019 c 37 § 409.]

**23.100.0410 Quorum of members.** Unless the organic rules otherwise require a greater number of members or percentage of the voting power, the voting member or members present at a members meeting constitute a quorum. [2019 c 37 § 410.]

**23.100.0411 Voting by patron members.** Except as provided by RCW 23.100.0412(1), each patron member has one vote. The organic rules may allocate voting power among patron members as provided in RCW 23.100.0412(1). [2019 c 37 § 411.]

**23.100.0412 Allocation of voting power of patron members.** (1) The organic rules may allocate voting power among patron members on the basis of one or a combination of the following:

- (a) One member, one vote;

- (b) Use or patronage; or

- (c) If a patron member is a cooperative, the number of its patron members.

(2) The organic rules may provide for the allocation of patron member voting power by districts or class, or any combination thereof. [2019 c 37 § 412.]

**23.100.0413 Voting by investor members.** If the organic rules provide for investor members, each investor member has one vote, unless the organic rules otherwise provide. The organic rules may provide for the allocation of investor member voting power by class, classes, or any combination of classes. [2019 c 37 § 413.]

**23.100.0414 Voting requirements for members.** If a limited cooperative association has both patron and investor members, the following rules apply:

(1) The total voting power of all patron members may not be less than a majority of the entire voting power entitled to vote.

(2) Action on any matter is approved only upon the affirmative vote of at least a majority of:

- (a) All members voting at the meeting unless more than a majority is required by RCW 23.100.0301 through 23.100.0307, 23.100.1001 through 23.100.1013, or 23.100.1201 through 23.100.1204 or the organic rules; and

- (b) Votes cast by patron members unless the organic rules require a larger affirmative vote by patron members.

(3) The organic rules may provide for the percentage of the affirmative votes that must be cast by investor members to approve the matter. [2019 c 37 § 414.]

**23.100.0415 Manner of voting.** (1) Unless the organic rules otherwise provide, voting by a proxy at a members meeting is prohibited. This subsection does not prohibit delegate voting based on district or class.

(2) If voting by a proxy is permitted, a patron member may appoint only another patron member as a proxy and, if investor members are permitted, an investor member may appoint only another investor member as a proxy.

(3) The organic rules may provide for the manner of and provisions governing the appointment of a proxy.

(4) The organic rules may provide for voting on any question by ballot delivered by mail or voting by other means on questions that are subject to vote by members. [2019 c 37 § 415.]

**23.100.0416 Action without a meeting.** (1) Unless the organic rules require that action be taken only at a members meeting, any action that may be taken by the members may be taken without a meeting if the action is approved by members entitled to vote on the action in the aggregate not less than the minimum number of votes that would be necessary to approve that action at a meeting of which all members entitled to vote on the action were present and voted. Action may be approved by members without a meeting or a vote by means of execution of a single consent or multiple consents in a record to the action.

(2) Consent under subsection (1) of this section may be withdrawn by a member in a record at any time before the

limited cooperative association receives a consent from each member entitled to vote.

(3) Consent to any action may specify the effective date or time of the action. [2019 c 37 § 416.]

**23.100.0417 Districts and delegates—Classes of members.** (1) The organic rules may provide for the formation of geographic districts of patron members and:

(a) For the conduct of patron member meetings by districts and the election of directors at the meetings; or

(b) That districts may elect district delegates to represent and vote for the district at members meetings.

(2) A delegate elected under subsection (1)(b) of this section has one vote unless voting power is otherwise allocated by the organic rules.

(3) The organic rules may provide for the establishment of classes of members, for the preferences, rights, and limitations of the classes, and:

(a) For the conduct of members meetings by classes and the election of directors at the meetings; or

(b) That classes may elect class delegates to represent and vote for the class in members meetings.

(4) A delegate elected under subsection (3)(b) of this section has one vote unless voting power is otherwise allocated by the organic rules. [2019 c 37 § 417.]

**23.100.0418 Approval of certain transactions.** (1) For a limited cooperative association to approve a plan for a transaction under RCW 23.100.1301 through 23.100.1320, the plan must be approved by a majority of the board of directors, or a greater vote if required by the organic rules, and the board shall call a members meeting to consider the plan, hold the meeting not later than ninety days after approval of the plan by the board, and, subject to RCW 23.100.0419, mail or otherwise transmit or deliver in a record to each member:

(a) The plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record reasonably may be obtained by a member;

(b) A recommendation that the members approve the plan, or if the board determines that because of a conflict of interest or other circumstances it should not make a favorable recommendation, the basis for that determination;

(c) A statement of any condition of the board's submission of the plan to the members; and

(d) Notice of the meeting at which the plan will be considered, which must be given in the same manner as notice of a special meeting of members.

(2) Subject to subsections (3) and (4) of this section, a plan must be approved by:

(a) At least two-thirds of the voting power of members present at a members meeting called under subsection (1) of this section; and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(3) The organic rules may provide that the required vote under subsection (2)(a) of this section be:

(a) A different fraction that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of (a) and (b) of this subsection.

(4) The vote required under subsections (2) and (3) of this section to approve a plan may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.

(5) A member's consent in a record to a plan must be delivered to the limited cooperative association before delivery to the secretary of state for filing of articles of merger or conversion if, as a result of the merger or conversion, the member will have interest holder liability for debts, obligations, or other liabilities that are incurred after the transaction becomes effective.

(6) The voting requirements for districts, classes, or voting groups under RCW 23.100.0304 apply to approval of a transaction under RCW 23.100.1301 through 23.100.1320. [2019 c 37 § 418.]

**23.100.0419 Notice to members of consumer cooperative.** (1) A consumer cooperative organized under this chapter may satisfy any provisions of this chapter requiring that certain information or materials must be set forth in a writing accompanying or contained in the notice of a meeting of its members, by:

(a) Posting the information or materials on an electronic network not less than thirty days prior to the meeting at which such information or materials will be considered by members; and

(b) Delivering to those members who are eligible to vote a notification, either in a meeting notice authorized under this chapter or in such other reasonable form as the board of directors may specify, setting forth the address of the electronic network at which and the date after which such information or materials will be posted and available for viewing by members eligible to vote, together with comprehensible instructions regarding how to obtain access to the information and materials posted on the electronic network.

(2) A consumer cooperative that elects to post information or materials required by this chapter on an electronic network shall, at its expense, provide a copy of such information or materials in a written or other tangible medium to any member who is eligible to vote and so requests. [2019 c 37 § 419.]

#### MEMBER'S INTEREST IN LIMITED COOPERATIVE ASSOCIATION

**23.100.0501 Member's interest.** A member's interest:

(1) Is personal property;

(2) Consists of:

(a) Governance rights;

(b) Financial rights; and

(c) The right or obligation, if any, to do business with the limited cooperative association; and

(3) May be in certificated or uncertificated form. [2019 c 37 § 501.]

**23.100.0502 Patron and investor members' interests.**

(1) Unless the organic rules establish investor members' interests, a member's interest is a patron member's interest.

(2) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, while a person is a member of the association, the person:

(a) If admitted as a patron member, remains a patron member;

(b) If admitted as an investor member, remains an investor member; and

(c) If admitted as a patron member and investor member remains a patron and investor member if not dissociated in one of the capacities. [2019 c 37 § 502.]

**23.100.0503 Transferability of member's interest.**

(1) The provisions of this chapter relating to the transferability of a member's interest are subject to Title 62A RCW.

(2) Unless the organic rules otherwise provide, a member's interest other than financial rights is not transferable.

(3) Unless a transfer is restricted or prohibited by the organic rules, a member may transfer its financial rights in the limited cooperative association.

(4) The terms of any restriction on transferability of financial rights must be:

(a) Set forth in the organic rules and the member records of the association; and

(b) Conspicuously noted on any certificates evidencing a member's interest.

(5) A transferee of a member's financial rights, to the extent the rights are transferred, has the right to share in the allocation of profits or losses and to receive the distributions to the member transferring the interest to the same extent as the transferring member.

(6) A transferee of a member's financial rights does not become a member upon transfer of the rights unless the transferee is admitted as a member by the limited cooperative association.

(7) A limited cooperative association need not give effect to a transfer under this section until the association has notice of the transfer.

(8) A transfer of a member's financial rights in violation of a restriction on transfer contained in the organic rules is ineffective if the intended transferee has notice of the restriction at the time of transfer. [2019 c 37 § 503.]

**DIRECTORS AND OFFICERS**

**23.100.0601 Board of directors.** (1) A limited cooperative association must have a board of directors of at least three individuals, unless the association has fewer than three members. If the association has fewer than three members, the number of directors may not be fewer than the number of members.

(2) The affairs of a limited cooperative association must be managed by, or under the direction of, the board of directors. The board may adopt policies and procedures that do not conflict with the organic rules or this chapter.

(3) An individual is not an agent for a limited cooperative association solely by being a director. [2019 c 37 § 601.]

**23.100.0602 No liability as director for limited cooperative association's obligations.** A debt, obligation, or other liability of a limited cooperative association is solely that of the association and is not a debt, obligation, or other

liability of a director solely by reason of being a director. An individual is not personally liable, directly or indirectly, for an obligation of an association solely by reason of being a director. [2019 c 37 § 602.]

**23.100.0603 Qualifications of directors.** (1) Unless the organic rules otherwise provide, and subject to subsection (3) of this section, each director of a limited cooperative association must be an individual who is a member of the association or an individual who is designated by a member that is not an individual for purposes of qualifying and serving as a director. Initial directors need not be members.

(2) Unless the organic rules otherwise provide, a director may be an officer or employee of the limited cooperative association.

(3) If the organic rules provide for nonmember directors, at least two-thirds of the directors must be members.

(4) The organic rules may provide qualifications for directors in addition to those in this section. [2019 c 37 § 603.]

**23.100.0604 Election of directors and composition of board.** (1) Unless the organic rules require a greater number:

(a) At least one-third of the directors must be patron members; and

(b) A majority of the board of directors must be elected exclusively by patron members.

(2) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, the directors who are not elected exclusively by patron members are elected by the investor members.

(3) Subject to subsection (1) of this section, the organic rules may provide for the election of all or a specified number of directors by one or more districts or classes of members.

(4) Subject to subsection (1) of this section, the organic rules may provide for the nomination or election of directors by districts or classes, directly or by district delegates.

(5) If a class of members consists of a single member, the organic rules may provide for the member to appoint a director or directors.

(6) Unless the organic rules otherwise provide, cumulative voting for directors is prohibited.

(7) Except as otherwise provided by the organic rules, subsection (5) of this section, or RCW 23.100.0202, 23.100.0416, 23.100.0417, and 23.100.0609, member directors must be elected at an annual members meeting. [2019 c 37 § 604.]

**23.100.0605 Term of director.** (1) Unless the organic rules otherwise provide, and subject to subsections (3) and (4) of this section and RCW 23.100.0202(4), the term of a director expires at the annual members meeting following the director's election or appointment. The term of a director may not exceed three years.

(2) Unless the organic rules otherwise provide, a director may be reelected.

(3) Except as otherwise provided in subsection (4) of this section, a director continues to serve until a successor director is elected or appointed and qualifies or the director is removed, resigns, is adjudged incompetent, or dies.

(4) Unless the organic rules otherwise provide, a director does not serve the remainder of the director's term if the director ceases to qualify to be a director. [2019 c 37 § 605.]

**23.100.0606 Resignation of director.** A director may resign at any time by giving notice in a record to the limited cooperative association. Unless the notice states a later effective date, a resignation is effective when the notice is received by the association. [2019 c 37 § 606.]

**23.100.0607 Removal of director.** Unless the organic rules otherwise provide, the following rules apply:

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

(2) A member or members holding at least ten percent of the total voting power entitled to be voted in the election of a director may demand removal of the director by one or more executed petitions 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 of the association or the board of directors shall:

(a) Not later than thirty days following receipt of the petition by the association, mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal, and to the director to be removed, notice of the meeting which complies with RCW 23.100.0408; and

(b) Call a special meeting of members to be held at least ten and not more than one hundred twenty days after providing the notice required by (a) of this subsection.

(4) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director. [2019 c 37 § 607.]

**23.100.0608 Suspension of director by board.** (1) A 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 association and the director is engaging, or has engaged, in:

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

(b) Abuse of the position of director;

(c) Intentional or reckless infliction of harm on the association;

(d) Failure to substantially perform the duties of a director;

(e) Actions not in the best interests of the association;

(f) Behavior that is disruptive to the proceedings of the board of directors; or

(g) Any other behavior, act, or omission as provided by the organic rules.

(2) A suspension under this section is effective until the next meeting of members at which directors are elected.

(3) A director suspended under this section is, during the period of suspension, treated as though not a director.

(4) A suspension under this section requires concurrence of two-thirds of the full membership of the board of directors, excluding the director who is the subject of the vote to suspend. [2019 c 37 § 608.]

**23.100.0609 Vacancy on board.** (1) Unless the organic rules otherwise provide, a vacancy on the board of directors must be filled within a reasonable time by majority vote of the remaining directors.

(2) Unless the organic rules otherwise provide, if a vacating director was elected or appointed by a class of members or a district:

(a) The new director must be of that class or district; and

(b) The selection of the director for the unexpired term must be conducted in the same manner as would the selection for that position without a vacancy.

(3) If a member appointed a vacating director, the organic rules may provide for that member to appoint a director to fill the vacancy. [2019 c 37 § 609.]

**23.100.0610 Remuneration of directors.** Unless the organic rules otherwise provide, the board of directors may set the remuneration of directors and of nondirector committee members appointed under RCW 23.100.0617(1). [2019 c 37 § 610.]

**23.100.0611 Meetings.** (1) A board of directors shall meet at least annually and may hold meetings inside or outside this state.

(2) Unless the organic rules otherwise provide, a board of directors may permit directors to attend or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting. [2019 c 37 § 611.]

**23.100.0612 Action without meeting.** (1) Unless prohibited by the organic rules, any action that may be taken by a board of directors may be taken without a meeting if each director consents in a record to the action.

(2) Consent under subsection (1) of this section may be withdrawn by a director in a record at any time before the limited cooperative association receives consent from all directors.

(3) A record of consent for any action under subsection (1) of this section may specify the effective date or time of the action. [2019 c 37 § 612.]

**23.100.0613 Meetings and notice.** (1) Unless the organic rules otherwise provide, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.

(2) Unless the organic rules otherwise provide, notice of the time, date, and place of a special meeting of a board of directors must be given to all directors at least two days before the meeting.

(3) The organic rules may require that the notice under subsection (2) of this section contain a statement of the purpose of the meeting, and may additionally require that the meeting be limited to the matters contained in the statement. [2019 c 37 § 613.]

**23.100.0614 Waiver of notice of meeting.** (1) Unless the organic rules otherwise provide, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.

(2) Unless the organic rules otherwise provide, a director's participation in a meeting is a waiver of notice of that meeting unless the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to the action taken at the meeting. [2019 c 37 § 614.]

**23.100.0615 Quorum.** (1) Unless the articles of organization provide for a different number, a majority of the total number of directors specified by the organic rules constitutes a quorum for a meeting of the directors. The articles of organization may not provide for a quorum that is less than one-third of the total number of directors specified by the organic rules.

(2) If a quorum of the board of directors is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of directors originally present results in the number of directors being fewer than the number required for a quorum.

(3) A director present at a meeting but objecting to notice under RCW 23.100.0614(2) does not count toward a quorum. [2019 c 37 § 615.]

**23.100.0616 Voting.** (1) Each director shall have one vote for purposes of decisions made by the board of directors.

(2) Unless the organic rules provide for a greater number, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors. [2019 c 37 § 616.]

**23.100.0617 Committees.** (1) Unless the organic rules otherwise provide, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

(2) Unless the organic rules otherwise provide, an individual appointed to serve on a committee of a limited cooperative association need not be a director or member.

(3) An individual who is not a director and is serving on a committee has the same rights, duties, and obligations as a director serving on the committee.

(4) Unless the organic rules otherwise provide, each committee of a limited cooperative association may exercise the powers delegated to it by the board of directors, but a committee may not:

- (a) Approve allocations or distributions except according to a formula or method prescribed by the board of directors;
- (b) Approve or propose to members action requiring approval of members; or
- (c) Fill vacancies on the board of directors or any of its committees. [2019 c 37 § 617.]

**23.100.0618 Standards of conduct and liability.** Except as otherwise provided in RCW 23.100.0620:

(1) The discharge of the duties of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under Title 23B RCW; and

(2) The liability of a director or member of a committee of the board of directors is governed by the law applicable to

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directors of entities organized under Title 23B RCW. [2019 c 37 § 618.]

**23.100.0619 Conflict of interest.** (1) The law applicable to conflicts of interest between a director of an entity organized under Title 23B RCW governs conflicts of interest between a limited cooperative association and a director or member of a committee of the board of directors.

(2) A director does not have a conflict of interest under chapter 23.95 RCW and this chapter or the organic rules solely because the director's conduct relating to the duties of the director may further the director's own interest. [2019 c 37 § 619.]

**23.100.0620 Other considerations of directors.** Unless the articles of organization otherwise provide, in considering the best interests of a limited cooperative association, a director of the association in discharging the duties of director, in conjunction with considering the long and short term interest of the association and its members, may consider any or all of:

- (1) The interest of employees, customers, and suppliers of the association;
- (2) The interest of the local, state, national, or world community in which the association operates;
- (3) The environment; and
- (4) Other cooperative principles and values that may be applied in the context of the decision. [2019 c 37 § 620.]

**23.100.0621 Right of director or committee member to information.** A director or a member of a committee appointed under RCW 23.100.0617 may obtain, inspect, and copy all information regarding the state of activities and financial condition of the limited cooperative association and other information regarding the activities of the association if the information is reasonably related to the performance of the director's duties as director or the committee member's duties as a member of the committee. Information obtained in accordance with this section may not be used in any manner that would violate any duty of or to the association. [2019 c 37 § 621.]

**23.100.0622 Appointment and authority of officer.** (1) A limited cooperative association has the officers:

- (a) Provided in the organic rules; or
  - (b) Established by the board of directors in a manner not inconsistent with the organic rules.
- (2) The organic rules may designate or, if the organic rules do not designate, the board of directors shall designate, one of the association's officers for preparing all records required by RCW 23.100.0110 and for the authentication of records.

(3) Unless the organic rules otherwise provide, the board of directors shall appoint the officers of the limited cooperative association.

(4) Officers of a limited cooperative association shall perform the duties the organic rules prescribe or as authorized by the board of directors in a manner consistent with the organic rules.

(5) The election or appointment of an officer of a limited cooperative association does not of itself create a contract between the association and the officer.

(6) Unless the organic rules otherwise provide, an individual may simultaneously hold more than one office in a limited cooperative association. [2019 c 37 § 622.]

**23.100.0623 Resignation and removal of officers.** (1) The board of directors may remove an officer at any time with or without cause.

(2) An officer of a limited cooperative association may resign at any time by giving notice in a record to the association. Unless the notice specifies a later time, the resignation is effective when the notice is given. [2019 c 37 § 623.]

#### INDEMNIFICATION

**23.100.0701 Indemnification and advancement of expenses—Insurance.** (1) Indemnification and advancement of expenses of an individual who has incurred liability or is a party, or is threatened to be made a party, to litigation because of the performance of a duty to, or activity on behalf of, a limited cooperative association is governed by Title 23B RCW.

(2) A limited cooperative association may purchase and maintain insurance on behalf of any individual against liability asserted against or incurred by the individual to the same extent and subject to the same conditions as provided by Title 23B RCW. [2019 c 37 § 701.]

#### CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

**23.100.0801 Members' contributions.** Unless the organic rules establish the amount, manner, or method of determining any contribution requirements for members, the board of directors may establish the amount, manner, or other method of determining any contribution requirements for members. [2019 c 37 § 801.]

**23.100.0802 Contribution and validation.** (1) Unless the organic rules otherwise provide, the contributions of a member to a limited cooperative association may consist of property transferred to, services performed for, or another benefit provided to the association or an agreement to transfer property to, perform services for, or provide another benefit to the association.

(2) The receipt and acceptance of contributions and the valuation of contributions must be reflected in a limited cooperative association's records.

(3) Unless the organic rules otherwise provide, the board of directors shall determine the value of a member's contributions received or to be received and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met. [2019 c 37 § 802.]

**23.100.0803 Allocation of profits and losses.** (1) The organic rules may provide for allocating profits of a limited cooperative association among members, among persons that are not members but conduct business with the association, to

an unallocated account, or to any combination thereof. Unless the organic rules otherwise provide, losses of the association must be allocated in the same proportion as profits.

(2) Unless the organic rules otherwise provide, all profits and losses of a limited cooperative association must be allocated to patron members.

(3) If a limited cooperative association has investor members, the organic rules may not reduce the allocation to patron members to less than fifty percent of profits. For purposes of this subsection, the following rules apply:

(a) 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.

(b) Amounts paid, due, or allocated to investor members as a stated fixed return on equity are considered amounts allocated to investor members.

(4) Unless prohibited by the organic rules, in determining the profits for allocation under subsections (1) through (3) of this section, the board of directors may first deduct and set aside a part of the profits to create or accumulate:

(a) An unallocated capital reserve; and

(b) Reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, and cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.

(5) Subject to subsections (2) and (6) of this section and the organic rules, the board of directors shall allocate the amount remaining after any deduction or setting aside of profits for unallocated reserves under subsection (4) of this section:

(a) To patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and

(b) To investor members, if any, in the ratio of each investor member's contributions to the total contributions of all investor members.

(6) For purposes of allocation of profits and losses or specific items of profits or losses of a limited cooperative association to members, the organic rules may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods. [2019 c 37 § 803.]

**23.100.0804 Distributions.** (1) Unless the organic rules otherwise provide and subject to RCW 23.100.0806, the board of directors may authorize, and the limited cooperative association may make, distributions to members.

(2) Unless the organic rules otherwise provide, distributions to members may be made in any form, including money, capital credits, allocated patronage equities, revolving fund certificates, and the limited cooperative association's own or other securities. [2019 c 37 § 804.]

**23.100.0805 Redemption or repurchase.** Property distributed to a member by a limited cooperative association, other than money, may be redeemed or repurchased as pro-



vided in the organic rules but a redemption or repurchase may not be made without authorization by the board of directors. The board may withhold authorization for any reason in its sole discretion. A redemption or repurchase is treated as a distribution for purposes of RCW 23.100.0806. [2019 c 37 § 805.]

**23.100.0806 Limitations on distributions.** (1) In this section, "distribution" does not include reasonable compensation for present or past services or other payments made in the ordinary course of business for commodities or goods or under a bona fide retirement or other bona fide benefits program.

(2) A limited cooperative association may not make a distribution, including a distribution under RCW 23.100.1008, if after the distribution:

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

(b) The association's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the association were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of persons receiving the distribution.

(3) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (2) of this section on:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) A fair valuation or other method that is reasonable under the circumstances.

(4) Except as otherwise provided in subsection (5) of this section, the effect of a distribution allowed under subsection (2) of this section is measured:

(a) In the case of a distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the earlier of:

(i) The date money or other property is transferred or debt is incurred by the association; or

(ii) The date the person entitled to the distribution ceases to own the financial rights being acquired by the association in return for the distribution;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

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

(i) The distribution is authorized, if the payment occurs not later than one hundred twenty days after that date; or

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

(5) A limited cooperative association's indebtedness incurred by reason of a distribution made in accordance with this section is at parity with the association's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(6) A limited cooperative association's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (2) of this section if the terms

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of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(7) In measuring the effect of a distribution under RCW 23.100.1008, the liabilities of a dissolved limited cooperative association do not include any claim that has been disposed of under RCW 23.100.1009 through 23.100.1011. [2019 c 37 § 806.]

**23.100.0807 Liability for improper distributions—Limitation of action.** (1) A director of a limited cooperative association who votes for or assents to a distribution made in violation of RCW 23.100.0806 or the association's articles of organization is personally liable to the association for the amount of the distribution that exceeds the amount that could have been distributed without violating RCW 23.100.0806 or the articles of organization if it is established that the director did not perform the director's duties in compliance with RCW 23.100.0618. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each member for the amount the member accepted knowing the distribution was made in violation of RCW 23.100.0806 or the articles of organization.

(3) A member who accepts a distribution made in violation of RCW 23.100.0806 or the articles of organization is personally liable to the corporation for the amount of any distribution received by the member to the extent it exceeds the amount that could have been distributed to the member without violating RCW 23.100.0806 or the articles of organization, if it is established that the member accepted the distribution knowing that it was made in violation of RCW 23.100.0806 or the articles of organization.

(4) A member held liable under subsection (3) of this section for an unlawful distribution is entitled to contribution from every other member who could be held liable under subsection (3) of this section for the unlawful distribution.

(5) A proceeding under this section is barred unless it is commenced prior to the earlier of (a) the expiration of two years after the date on which the effect of the distribution was measured under RCW 23.100.0806(4), or (b) the expiration of the period specified in RCW 23.100.1010(3). [2019 c 37 § 807.]

**23.100.0808 Relation to state securities law.** A patron member's interest in a limited cooperative association has the same exemption as provided for substantially similar interests in cooperatives under RCW 21.20.320(16). [2019 c 37 § 808.]

**23.100.0809 Alternative distribution of unclaimed property, distributions, redemptions, or payments.** A limited cooperative association may distribute unclaimed

property, distributions, redemptions, or payments under chapter 23.86 RCW. [2019 c 37 § 809.]

### DISSOCIATION

**23.100.0901 Member's dissociation.** (1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by express will.

(2) Unless the organic rules otherwise provide, a member's dissociation from a limited cooperative association is wrongful only if:

(a) It is in breach of an express provision of the organic rules; or

(b) It occurs before the termination of the limited cooperative association and:

(i) The person is expelled as a member under subsection (4)(c) or (d) of this section; or

(ii) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a member because it dissolved or terminated in bad faith.

(3) Unless the organic rules otherwise provide, a person that wrongfully dissociates as a member is liable to the limited cooperative association and to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the person to the association.

(4) A member is dissociated as a member when:

(a) The limited cooperative association receives notice in a record of the member's express will to dissociate as a member, or if the member specifies in the notice an effective date later than the date the association received notice, on that later date;

(b) An event stated in the organic rules as causing the person's dissociation occurs;

(c) The person's entire interest is transferred in a foreclosure sale;

(d) The person is expelled as a member under the organic rules;

(e) The person is expelled as a member by the board of directors if:

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

(ii) There has been a transfer of all the member's financial rights in the association, other than:

(A) A transfer for security purposes; or

(B) A charging order which has not been foreclosed;

(iii) The person is an unincorporated entity that has been dissolved and its activities and affairs are being wound up;

(iv) The person is a corporation or cooperative and:

(A) The person filed a certificate of dissolution or the equivalent, or the jurisdiction of formation revoked the person's charter or right to conduct business;

(B) The association sends a notice to the person that it will be expelled as a member for a reason described in (e)(iv)(A) of this subsection (4); and

(C) Not later than ninety days after the notice was sent under (e)(iv)(B) of this subsection (4), the person did not revoke its certificate of dissolution or the equivalent, or the jurisdiction of formation did not reinstate the person's charter or right to conduct business; or

(v) The member is an individual and is adjudged incompetent;

(f) In the case of an individual, the individual dies;

(g) In the case of a member that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire financial rights in the limited cooperative association are distributed;

(h) In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire financial interest in the association is distributed;

(i) In the case of a person that is not an individual, partnership, limited liability company, cooperative, corporation, trust, or estate, the existence of the person terminates; or

(j) The association's participation in a merger under RCW 23.100.1308 through 23.100.1313 that causes the person to cease to be a member. [2019 c 37 § 901.]

**23.100.0902 Effect of dissociation.** (1) When a person is dissociated as a member:

(a) The person's right to participate as a member in the management and conduct of the limited cooperative association's activities and affairs terminates; and

(b) Subject to RCW 23.100.0903, any financial rights owned by the person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee.

(2) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited cooperative association or the other members which the person incurred while a member. [2019 c 37 § 902.]

**23.100.0903 Power of legal representative of deceased member.** If a member dies, the deceased member's legal representative may exercise for the purposes of settling the estate, the rights the deceased member had under RCW 23.100.0405. [2019 c 37 § 903.]

### DISSOLUTION

**23.100.1001 Dissolution and winding up.** A limited cooperative association is dissolved only as provided in this section and RCW 23.100.1002 through 23.100.1013 and upon dissolution winds up in accordance with this section and RCW 23.100.1002 through 23.100.1013. [2019 c 37 § 1001.]

**23.100.1002 Nonjudicial dissolution.** Except as otherwise provided in RCW 23.100.1003 and 23.95.615, a limited cooperative association is dissolved and its activities must be wound up:

(1) Upon the occurrence of an event or at a time specified in the articles of organization;

(2) Upon the action of the association's organizers, board of directors, or members under RCW 23.100.1004 or 23.100.1005; or

(3) Ninety days after the dissociation of a member, which results in the association having one patron member and no other members, unless the association:

(a) Has a sole member that is a cooperative; or

(b) Not later than the end of the ninety-day period, admits at least one member in accordance with the organic rules and has at least two members, at least one of which is a patron member. [2019 c 37 § 1002.]

**23.100.1003 Judicial dissolution.** A superior court may dissolve a limited cooperative association or order any action that under the circumstances is appropriate and equitable:

- (1) In a proceeding initiated by the attorney general, if:
  - (a) The association obtained its articles of organization through fraud; or
  - (b) The association has continued to exceed or abuse the authority conferred upon it by law; or
- (2) In a proceeding initiated by a member, if:
  - (a) The directors are deadlocked in the management of the association's affairs, the members are unable to break the deadlock, and irreparable injury to the association is occurring or is threatened because of the deadlock;
  - (b) The directors or those in control of the association have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  - (c) The members are deadlocked in voting power and have failed to elect successors to directors whose terms have expired for two consecutive periods during which annual members meetings were held or were to be held; or
  - (d) The assets of the association are being misapplied or wasted. [2019 c 37 § 1003.]

**23.100.1004 Voluntary dissolution before commencement of activity.** A majority of the organizers or initial directors of a limited cooperative association that has not yet begun business activity or the conduct of its affairs may dissolve the association. [2019 c 37 § 1004.]

**23.100.1005 Voluntary dissolution by the board and members.** (1) Except as otherwise provided in RCW 23.100.1004, for a limited cooperative association to voluntarily dissolve:

- (a) A resolution to dissolve must be approved by a majority vote of the board of directors unless a greater percentage is required by the organic rules;
- (b) The board of directors must call a members meeting to consider the resolution, to be held not later than ninety days after adoption of the resolution; and
- (c) Subject to RCW 23.100.0419, the board of directors must mail or otherwise transmit or deliver to each member in a record that complies with RCW 23.100.0408:
  - (i) The resolution required by (a) of this subsection;
  - (ii) A recommendation that the members vote in favor of the resolution or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis of that determination; and
  - (iii) Notice of the members meeting, which must be given in the same manner as notice of a special meeting of members.
- (2) Subject to subsection (3) of this section, a resolution to dissolve must be approved by:

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(a) At least two-thirds of the voting power of members present at a members meeting called under subsection (1)(b) of this section; and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage.

(3) The organic rules may require that the percentage of votes under subsection (2)(a) of this section is:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of (a) and (b) of this subsection. [2019 c 37 § 1005.]

**23.100.1006 Winding up.** (1) A dissolved limited cooperative association shall wind up its activities and affairs, and except as provided in RCW 23.100.1007, the association continues after dissolution only for the purpose of winding up.

(2) In winding up its activities and affairs, the board of directors:

(a) Shall discharge the association's debts, obligations, or other liabilities, settle and close the association's activities, and marshal and distribute the assets of the association; and

(b) May:

(i) Deliver to the secretary of state for filing a statement of dissolution stating the name of the association and that the association is dissolved;

(ii) Preserve the association's activities, affairs, and property as a going concern for a reasonable time;

(iii) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) Transfer the association's property;

(v) Settle disputes by mediation or arbitration;

(vi) Deliver to the secretary of state for filing a statement of termination stating the name of the company and that the company is terminated; and

(vii) Perform other acts necessary or appropriate to the winding up.

(3) After dissolution and upon application of a limited cooperative association, a member, or a holder of financial rights, a superior court may order judicial supervision of the winding up of the association, including the appointment of a person to wind up the association's activities, if:

(a) After a reasonable time, the association has not wound up its activities; or

(b) The applicant establishes other good cause.

(4) If a person is appointed pursuant to subsection (3) of this section to wind up the activities of a limited cooperative association, the association shall promptly deliver to the secretary of state for filing an amendment to the articles of organization to reflect the appointment. [2019 c 37 § 1006.]

**23.100.1007 Rescinding dissolution.** (1) A limited cooperative association may rescind its dissolution, unless a statement of termination applicable to the association is effective, a superior court has entered an order under RCW 23.100.1003 dissolving the association, or the secretary of state has dissolved the association under RCW 23.95.610.

(2) Rescinding dissolution under this section requires:

(a) The affirmative vote or consent of each member;

(b) If a statement of dissolution applicable to the limited cooperative association has been filed by the secretary of state but has not become effective, the delivery to the secretary of state for filing of a statement of withdrawal applicable to the statement of dissolution; and

(c) If a statement of dissolution applicable to the limited cooperative association is effective, the delivery to the secretary of state for filing of a statement of rescission stating the name of the association and that dissolution has been rescinded under this section.

(3) If a limited cooperative association rescinds its dissolution:

(a) The association resumes carrying on its activities and affairs as if dissolution had never occurred;

(b) Subject to (c) of this subsection, any liability incurred by the association after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(c) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected. [2019 c 37 § 1007.]

**23.100.1008 Distribution of assets in winding up.** (1)

In winding up its activities and affairs, the limited cooperative association shall apply its assets to discharge its obligations to creditors, including members that are creditors. The association shall apply any remaining assets to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (2) of this section.

(2) Unless the organic rules otherwise provide, in this subsection "financial interests" means the amounts recorded in the names of members in the records of a limited cooperative association at the time a distribution is made, including amounts paid to become a member, amounts allocated but not distributed to members, and amounts of distributions authorized but not yet paid to members. Unless the organic rules otherwise provide, each member is entitled to a distribution from the association of any remaining assets in the proportion of the member's financial interests to the total financial interests of the members after all other obligations are satisfied. [2019 c 37 § 1008.]

**23.100.1009 Known claims against dissolved limited cooperative association.** (1) Except as otherwise provided in subsection (4) of this section, a dissolved limited cooperative association may give notice of a known claim under subsection (2) of this section, which has the effect provided in subsection (3) of this section.

(2) A dissolved limited cooperative association in a record may notify its known claimants of the dissolution. The notice must:

(a) Specify the information required to be included in a claim;

(b) State that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(c) State the deadline for receipt of a claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against a dissolved limited cooperative association is barred if the requirements of subsection (2) of this section are met, and:

(a) The claim is not received by the specified deadline; or

(b) If the claim is timely received but rejected by the association:

(i) The association causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the association to enforce the claim not later than ninety days after the claimant receives the notice; and

(ii) The claimant does not commence the required action not later than ninety days after the claimant receives the notice.

(4) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent. [2019 c 37 § 1009.]

**23.100.1010 Other claims against dissolved limited cooperative association.** (1) A dissolved limited cooperative association may publish notice of its dissolution and request persons having claims against the association to present them in accordance with the notice.

(2) A notice authorized under subsection (1) of this section must:

(a) Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited cooperative association's principal office is located or, if the principal office is not located in this state, in the county in which the office of the association's registered agent is or was last located;

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

(c) State that a claim against the association is barred unless an action to enforce the claim is commenced not later than 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 association not later than three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under RCW 23.100.1009;

(b) A claimant whose claim was timely sent to the company but not acted on; and

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

(4) A claim not barred under this section or RCW 23.100.1009 may be enforced:

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

(b) Except as provided in RCW 23.100.1011, if the assets of the association have been distributed after dissolution, against a member or holder of financial rights to the extent of that person's proportionate share of the claim or the assets distributed to the person after dissolution, whichever is

less, but a person's total liability for all claims under this subsection (4)(b) may not exceed the total amount of assets distributed to the person after dissolution. [2019 c 37 § 1010.]

**23.100.1011 Court proceedings.** (1) A dissolved limited cooperative association that has published a notice under RCW 23.100.1010 may file an application with the superior court in the county where the association's principal office is located or, if the principal office is not located in this state, where the office of its registered agent is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the association and:

- (a) At the time of the application:
  - (i) Are contingent; or
  - (ii) Have not been made known to the association; or
- (b) Are based on an event occurring after the date of dissolution.

(2) Security is not required for a claim that is or is reasonably anticipated to be barred under RCW 23.100.1010.

(3) Not later than ten days after filing an application under subsection (1) of this section, the dissolved limited cooperative association shall give notice of the proceeding to each claimant holding a contingent claim known to the association.

(4) In a proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited cooperative association.

(5) A dissolved limited cooperative association that provides security in the amount and form ordered by the court under subsection (1) of this section satisfies the association's obligations with respect to claims that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution. Such claims may not be enforced against a member or holder of financial rights on account of assets received in liquidation. [2019 c 37 § 1011.]

**23.100.1012 Statement of dissolution.** (1) A limited cooperative association that has dissolved or is about to dissolve may deliver to the secretary of state for filing a statement of dissolution that states:

- (a) The name of the association;
- (b) The date the association dissolved or will dissolve; and
- (c) Any other information the association considers relevant.

(2) A person has notice of a limited cooperative association's dissolution on the later of:

- (a) Ninety days after a statement of dissolution is filed; or
- (b) The effective date stated in the statement of dissolution. [2019 c 37 § 1012.]

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**23.100.1013 Statement of termination.** (1) A dissolved limited cooperative association that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

- (a) The name of the association;
  - (b) The date of filing of its initial articles of organization; and
  - (c) That the association is terminated.
- (2) The filing of a statement of termination does not itself terminate the limited cooperative association. [2019 c 37 § 1013.]

ACTIONS BY MEMBERS

**23.100.1101 Derivative action.** A member may maintain a derivative action against a cooperative in the same manner as a shareholder may maintain a derivative action against a corporation under Title 23B RCW. [2019 c 37 § 1101.]

DISPOSITION OF ASSETS

**23.100.1201 Disposition of assets not requiring member approval.** Unless the articles of organization otherwise provide, member approval under RCW 23.100.1202 is not required for a limited cooperative association to:

- (1) Sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the association in the usual and regular course of business; or
- (2) Mortgage, pledge, dedicate to the repayment of indebtedness, or encumber in any way all or any part of the assets of the association whether or not in the usual and regular course of business. [2019 c 37 § 1201.]

**23.100.1202 Member approval of other disposition of assets.** A sale, lease, exchange, license, or other disposition of assets of a limited cooperative association, other than a disposition described in RCW 23.100.1201, requires approval of the association's members under RCW 23.100.1203 and 23.100.1204 if the disposition leaves the association without significant continuing business activity. [2019 c 37 § 1202.]

**23.100.1203 Notice and action by board on disposition of assets requiring member approval.** For a limited cooperative association to dispose of assets under RCW 23.100.1202:

- (1) A majority of the board of directors, or a greater percentage if required by the organic rules, must approve the proposed disposition; and
- (2) The board of directors must call a members meeting to consider the proposed disposition and, subject to RCW 23.100.0419, mail or otherwise transmit or deliver in a record to each member:
  - (a) The terms of the proposed disposition;
  - (b) A recommendation that the members approve the disposition, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;
  - (c) A statement of any condition of the board's submission of the proposed disposition to the members; and

(d) Notice of the meeting at which the proposed disposition will be considered, which must be given in the same manner as notice of a special meeting of members. [2019 c 37 § 1203.]

**23.100.1204 Member action on disposition of assets.**

(1) Subject to subsection (2) of this section, a disposition of assets under RCW 23.100.1202 must be approved by:

(a) At least two-thirds of the voting power of members present at a members meeting called under RCW 23.100.1203(2); and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(2) The organic rules may require that the percentage of votes under subsection (1)(a) of this section is:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of (a) and (b) of this subsection.

(3) Subject to any contractual obligations, after a disposition of assets is approved and at any time before the consummation of the disposition, a limited cooperative association may approve an amendment to the contract for disposition or the resolution authorizing the disposition or approve abandonment of the disposition:

(a) As provided in the contract or the resolution; and

(b) Except as prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition, except that approval of the members is not required to approve abandonment of the disposition.

(4) The voting requirements for districts, classes, or voting groups under RCW 23.100.0304 apply to approval of a disposition of assets under this section and RCW 23.100.1201 through 23.100.1203. [2019 c 37 § 1204.]

CONVERSION AND MERGER

**23.100.1301 Definitions.** (1) In this section and RCW 23.100.1302 through 23.100.1320:

(a) "Approve" means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under the entity's organic rules, organic law, and other law to:

(i) Propose a conversion or merger subject to this subchapter;

(ii) Adopt and approve the terms and conditions of the conversion or merger; and

(iii) Conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(b) "Conversion" means a transaction authorized by RCW 23.100.1302 through 23.100.1307.

(c) "Converted entity" means the converting entity as it continues in existence after a conversion.

(d) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to RCW 23.100.1303.

(e) "Interest holder liability" means:

(i) Personal liability for a liability of an entity which is imposed on a person:

(A) Solely by reason of the status of the person as an interest holder; or

(B) By the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(ii) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(f) "Merger" means a transaction in which two or more merging entities are combined into a surviving entity pursuant to a record filed by the secretary of state.

(g) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(h) "Plan" means a plan of merger or plan of conversion.

(i) "Plan of conversion" means a plan under RCW 23.100.1303.

(j) "Plan of merger" means a plan under section RCW 23.100.1309.

(k) "Protected agreement" means:

(i) A record evidencing indebtedness and any related agreement in effect on July 28, 2019;

(ii) An agreement that is binding on an entity on July 28, 2019;

(iii) The organic rules of an entity in effect on July 28, 2019; or

(iv) An agreement that is binding on any of the governors or interest holders of an entity on July 28, 2019.

(l)(i) "Qualifying entity" means, except as provided in (l)(ii) of this subsection, a domestic entity:

(A) Organized under chapter 23.86 RCW; or

(B) Organized under chapter 24.06 RCW and taking the election provided in RCW 24.06.032(1).

(ii) "Qualifying entity" does not include an entity that is organized for the purpose of generating, purchasing, selling, marketing, transmitting, or distributing electric energy.

(m) "Statement of conversion" means a statement under RCW 23.100.1306.

(n) "Statement of merger" means a statement under RCW 23.100.1312.

(o) "This subchapter" means this section and RCW 23.100.1302 through 23.100.1320.

(2) The following definitions from RCW 23.95.105 apply to this subchapter: "Domestic," "entity," "execute," "executes," and "executed," "foreign," "governor," "interest," "interest holder," "jurisdiction," "jurisdiction of formation," "organic law," "organic rules," "person," "private organic rules," "property," "public organic record," "receipt," "record," "state," "transfer," and "type of entity." [2019 c 37 § 1301.]

**23.100.1302 Conversion authorized.** By complying with this section and RCW 23.100.1303 through 23.100.1307, a domestic qualifying entity may become a domestic limited cooperative association. [2019 c 37 § 1302.]

**23.100.1303 Plan of conversion.** (1) A qualifying entity may convert to a limited cooperative association under this subchapter by approving a plan of conversion. The plan must be in a record and contain:

- (a) The name and type of entity of the converting entity;
- (b) The name of the converted entity;
- (c) The manner of converting the interests in the converting entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
- (d) The proposed public organic record of the converted entity if it will be a filing entity;
- (e) The full text of the private organic rules of the converted entity which are proposed to be in a record;
- (f) The other terms and conditions of the conversion; and
- (g) Any other provision required by the law of this state or the organic rules of the converting entity.

(2) In addition to the requirements of subsection (1) of this section, a plan of conversion may contain any other provision not prohibited by law. [2019 c 37 § 1303.]

**23.100.1304 Approval of conversion.** A plan of conversion is not effective unless it has been approved:

- (1) By a converting entity:
  - (a) In accordance with the requirements, if any, in its organic rules for approval of a conversion; or
  - (b) By all of the interest holders of the entity entitled to vote on or consent to any matter if neither the entity's organic law nor the entity's organic rules provide for approval of a conversion; and

(2) In a record, by each interest holder of a converting entity which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

- (a) The organic rules of the entity provide in a record for the approval of a conversion in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and
- (b) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision. [2019 c 37 § 1304.]

**23.100.1305 Amendment or abandonment of plan of conversion.** (1) A plan of conversion of a converting entity may be amended:

- (a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
- (b) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:
  - (i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

- (ii) The public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

- (iii) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of conversion has been approved and before a statement of conversion is effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a converting entity may abandon the plan in the same manner as the plan was approved.

(3) If a plan of conversion is abandoned after a statement of conversion has been delivered to the secretary of state for filing and before the statement is effective, a statement of abandonment, executed by the converting entity, must be delivered to the secretary of state for filing before the statement of conversion is effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

- (a) The name of the converting entity;
- (b) The date on which the statement of conversion was filed by the secretary of state; and
- (c) A statement that the conversion has been abandoned in accordance with this section. [2019 c 37 § 1305.]

**23.100.1306 Statement of conversion—Effective date of conversion.** (1) A statement of conversion must be executed by the converting entity and delivered to the secretary of state for filing.

- (2) A statement of conversion must contain:
  - (a) The name, jurisdiction of formation, and type of entity of the converting entity;
  - (b) The name of the converted entity;
  - (c) If the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety days after the date of filing;
  - (d) A statement that the plan of conversion was approved in accordance with this subchapter; and
  - (e) The public organic record of the converted entity, as an attachment.

(3) In addition to the requirements of subsection (2) of this section, a statement of conversion may contain any other provision not prohibited by law.

(4) The public organic record of the converted entity must satisfy the requirements of the law of this state, except that the public organic record does not need to be executed and may omit any provision that is not required to be included in a restatement of the public organic record.

(5) A plan of conversion that is executed by a converting entity and meets all the requirements of subsection (2) of this section may be delivered to the secretary of state for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this subchapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(6) A statement of conversion is effective on the date and time of filing or the later date and time specified in the statement of conversion.

(7) The conversion becomes effective when the statement of conversion is effective. [2019 c 37 § 1306.]

**23.100.1307 Effect of conversion.** (1) When a conversion becomes effective:

(a) The converted entity is:

(i) Organized under and subject to the organic law of the converted entity; and

(ii) The same entity without interruption as the converting entity;

(b) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(c) All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(d) Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(e) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) If a converted entity is a filing entity, its public organic record is effective;

(g) The private organic rules of the converted entity which are to be in a record, if any, approved as part of the plan of conversion are effective; and

(h) The interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under the converting entity's organic law.

(2) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a converting entity with respect to which the person had interest holder liability is subject to the following rules:

(a) The conversion does not discharge any interest holder liability under the organic law of the converting entity to the extent the interest holder liability was incurred before the conversion became effective.

(b) The person does not have interest holder liability under the organic law of the domestic entity for any debt, obligation, or other liability that is incurred after the conversion becomes effective.

(c) The organic law of the converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under (a) of this subsection as if the conversion had not occurred.

(d) The person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the converting entity with respect to any interest holder liability preserved under (a) of this subsection as if the conversion had not occurred.

(5) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity. [2019 c 37 § 1307.]

**23.100.1308 Merger authorized.** (1) Except as otherwise provided in this section, by complying with this section and RCW 23.100.1309 through 23.100.1313:

(a) One or more domestic limited cooperative associations may merge with one or more domestic cooperative associations organized under this chapter or chapter 23.86 or 24.06 RCW or with one or more foreign cooperative associations into a domestic surviving cooperative association or foreign surviving cooperative association; and

(b) Two or more foreign cooperative associations may merge into a domestic limited cooperative association.

(2) Except as otherwise provided in this section, by complying with the provisions of this section and RCW 23.100.1309 through 23.100.1313 applicable to foreign cooperative associations, a foreign cooperative association may be a party to a merger under this section and RCW 23.100.1309 through 23.100.1313 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation. [2019 c 37 § 1308.]

**23.100.1309 Plan of merger.** (1) A domestic limited cooperative association may become a party to a merger under this section and RCW 23.100.1308 and 23.100.1310 through 23.100.1313 by approving a plan of merger. The plan must be in a record and contain:

(a) As to each merging cooperative association, its name, jurisdiction of formation, and type of cooperative association;

(b) If the surviving cooperative association is to be created in the merger, a statement to that effect and the association's name, jurisdiction of formation, and type of association;

(c) The manner of converting the interests in each party to the merger into interests, obligations, money, other property, rights to acquire interests, or any combination of the foregoing;

(d) If the surviving cooperative association exists before the merger, any proposed amendments to:

(i) Its public organic record, if any; and

(ii) Its private organic rules that are, or are proposed to be, in a record;

(e) If the surviving cooperative association is to be created in the merger:

(i) Its proposed public organic record, if any; and

(ii) The full text of its private organic rules that are proposed to be in a record;

(f) The other terms and conditions of the merger; and



(g) Any other provision required by the law of a merging cooperative association's jurisdiction of formation or the organic rules of a merging cooperative association.

(2) In addition to the requirements of subsection (1) of this section, a plan of merger may contain any other provision not prohibited by law. [2019 c 37 § 1309.]

**23.100.1310 Approval of merger.** (1) A plan of merger is not effective unless it has been approved by a domestic merging limited cooperative association as provided in RCW 23.100.0418.

(2) A merger involving a domestic merging cooperative association that is not a limited cooperative association is not effective unless the merger is approved by that cooperative association in accordance with its organic law.

(3) A merger involving a foreign merging cooperative association is not effective unless the merger is approved by the foreign cooperative association in accordance with the law of the foreign cooperative association's jurisdiction of formation. [2019 c 37 § 1310.]

**23.100.1311 Amendment or abandonment of plan of merger.** (1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic merging limited cooperative association may approve an amendment of a plan of merger:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) By its directors or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(i) The amount or kind of interests, obligations, money, other property, rights to acquire interests, or any combination of the foregoing, to be received by the members of any party to the plan;

(ii) The public organic record, if any, or private organic rules of the surviving cooperative association that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving cooperative association under its organic law or organic rules; or

(iii) Any other terms or conditions of the plan, if the change would adversely affect the members in any material respect.

(3) After a plan of merger has been approved and before a statement of merger is effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited cooperative association may abandon the plan in the same manner as the plan was approved.

(4) If a plan of merger is abandoned after a statement of merger has been delivered to the secretary of state for filing and before the statement is effective, a statement of abandonment, signed by a party to the plan, must be delivered to the secretary of state for filing before the statement of merger is effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(a) The name of each party to the plan of merger;

(b) The date on which the statement of merger was filed by the secretary of state; and

(c) A statement that the merger has been abandoned in accordance with this section. [2019 c 37 § 1311.]

**23.100.1312 Statement of merger—Effective date of merger.** (1) A statement of merger must be signed by each merging entity and delivered to the secretary of state for filing.

(2) A statement of merger must contain:

(a) The name, jurisdiction of formation, and type of cooperative association of each merging cooperative association that is not the surviving entity;

(b) The name, jurisdiction of formation, and type of entity of the surviving cooperative association;

(c) If the statement of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety days after the date of filing;

(d) A statement that the merger was approved by each domestic merging cooperative association, if any, in accordance with this section and RCW 23.100.1308 through 23.100.1311 and 23.100.1313 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(e) If the surviving cooperative association exists before the merger and is a domestic cooperative association, any amendment to its public organic record approved as part of the plan of merger;

(f) If the surviving entity is created by the merger and is a domestic cooperative association, its public organic record, as an attachment;

(g) If the surviving entity is a foreign cooperative association that is not a registered foreign cooperative association, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to RCW 23.100.1313(5).

(3) In addition to the requirements of subsection (2) of this section, a statement of merger may contain any other provision not prohibited by law.

(4) If the surviving entity is a domestic cooperative association, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(5) A plan of merger that is signed by all the merging cooperative associations and meets all the requirements of subsection (2) of this section may be delivered to the secretary of state for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this subchapter to a statement of merger refer to the plan of merger filed under this subsection.

(6) A statement of merger is effective on the date and time of filing or the later date and time specified in the statement of merger.

(7) If the surviving entity is a domestic limited cooperative association, the merger becomes effective when the statement of merger is effective. If the surviving entity is a

foreign cooperative association, the merger becomes effective on the later of:

- (a) The date and time provided by the organic law of the surviving cooperative association; or
- (b) When the statement is effective. [2019 c 37 § 1312.]

**23.100.1313 Effect of merger.** (1) When a merger under this section and RCW 23.100.1308 through 23.100.1312 becomes effective:

(a) The surviving cooperative association continues or comes into existence;

(b) Each merging cooperative association that is not the surviving cooperative association ceases to exist;

(c) All property of each merging cooperative association vests in the surviving cooperative association without transfer, reversion, or impairment;

(d) All debts, obligations, and other liabilities of each merging cooperative association are debts, obligations, and other liabilities of the surviving cooperative association;

(e) Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging cooperative association vest in the surviving cooperative association;

(f) If the surviving cooperative association exists before the merger:

(i) All its property continues to be vested in it without transfer, reversion, or impairment;

(ii) It remains subject to all its debts, obligations, and other liabilities; and

(iii) All its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(g) The name of the surviving cooperative association may be substituted for the name of any merging cooperative association that is a party to any pending action or proceeding;

(h) If the surviving cooperative association exists before the merger:

(i) Its public organic record, if any, is amended to the extent provided in the statement of merger; and

(ii) Its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(i) If the surviving cooperative association is created by the merger, its private organic rules are effective and its public organic record is effective; and

(j) The interests in each merging cooperative association which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under the merging cooperative association's organic law.

(2) Except as otherwise provided in the organic law or organic rules of a merging cooperative association, a merger under this section and RCW 23.100.1308 through 23.100.1312 does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(3) When a merger under this section and RCW 23.100.1308 through 23.100.1312 becomes effective, a person that did not have interest holder liability with respect to any of the merging cooperative associations and becomes

subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that are incurred after the merger becomes effective.

(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging limited cooperative association with respect to which the person had interest holder liability is subject to the following rules:

(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging cooperative association to the extent the interest holder liability was incurred before the merger became effective.

(b) The person does not have interest holder liability under the organic law of the domestic merging cooperative association for any debt, obligation, or other liability that is incurred after the merger becomes effective.

(c) The organic law of the domestic merging cooperative association continues to apply to the release, collection, or discharge of any interest holder liability preserved under (a) of this subsection as if the merger had not occurred.

(d) The person has whatever rights of contribution from any other person as are provided by law other than this subchapter or the organic rules of the domestic merging limited cooperative association with respect to any interest holder liability preserved under (a) of this subsection as if the merger had not occurred.

(5) When a merger under this section and RCW 23.100.1308 through 23.100.1312 becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging limited cooperative association in accordance with applicable law.

(6) When a merger under this section and RCW 23.100.1308 through 23.100.1312 becomes effective, the registration to do business in this state of any foreign merging cooperative association that is not the surviving entity is canceled. [2019 c 37 § 1313.]

**23.100.1314 Relationship to other laws.** (1) This subchapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this subchapter.

(2) A conversion effected under this subchapter may not create or impair a right, duty, or obligation of a person under the statutory law of this state relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, or converting cooperative association unless the approval of the plan is by a vote of the members or directors which would be sufficient to create or impair the right, duty, or obligation directly under the law. [2019 c 37 § 1314.]

**23.100.1315 Charitable assets.** Property held for a charitable purpose under the law of this state by a domestic or foreign cooperative association immediately before a conversion or merger under this subchapter becomes effective may not, as a result of the conversion or merger, be diverted from the objects for which it was donated, granted, devised, or oth-

erwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the attorney general specifying the disposition of the property. [2019 c 37 § 1315.]

**23.100.1316 Status of filings.** A filing under this subchapter executed by a domestic cooperative association becomes part of the public organic record of the cooperative association if the cooperative association's organic law provides that similar filings under that law become part of the public organic record of the cooperative association. [2019 c 37 § 1316.]

**23.100.1317 Nonexclusivity.** The fact that a conversion or merger under this subchapter produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this subchapter. [2019 c 37 § 1317.]

**23.100.1318 Reference to external facts.** A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the conversion or merger. [2019 c 37 § 1318.]

**23.100.1319 Alternative means of approval of conversion or merger.** Except as otherwise provided in the organic law or organic rules of a domestic cooperative association, approval of a conversion or merger under this subchapter by the affirmative vote or consent of all its interest holders satisfies the requirements of this subchapter for approval of the conversion or merger. [2019 c 37 § 1319.]

**23.100.1320 Subjects covered.** The following subjects are covered in whole or in part in chapter 23.95 RCW:

- (1) Delivery of record;
- (2) Filing with secretary of state;
- (3) Name of entity;
- (4) Registered agent of entity; and
- (5) Miscellaneous provisions, including reservation or power to amend or repeal and supplemental principles of law. [2019 c 37 § 1320.]

#### MISCELLANEOUS PROVISIONS

**23.100.1501 Uniformity of application and construction—2019 c 37.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2019 c 37 § 1501.]

**23.100.1502 Relation to electronic signatures in global and national commerce act.** This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Section [Sec.] 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Section [Sec.] 7001(c) or authorize electronic delivery of any of the notices described in section 103(b) of (2019 Ed.)

that act, 15 U.S.C. Section [Sec.] 7003(b). [2019 c 37 § 1502.]

**23.100.1503 Savings—2019 c 37.** This act does not affect an action commenced, or proceeding brought, or right accrued before July 28, 2019. [2019 c 37 § 1503.]

