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Cooperative Organization Overview for Ozark Natural Foods

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THE Law Group
OF NORTHWEST ARKANSAS PLLC



What Will be Covered Today

- ▶ Differences between types of co-ops formed pursuant to Arkansas law
- ▶ Arkansas law on retail co-ops
- ▶ Discussion regarding certain ONF-specific policies and practices
- ▶ Member rights and responsibilities

Types of Co-op Under Arkansas Law

- ▶ Agricultural
- ▶ Educational
- ▶ Electrical
- ▶ All Other Cooperative Associations
 - ▶ Retail Co-ops - including Ozark Natural Foods

Agricultural Co-ops

Ark. Code. Ann. § 2-2-106

- ▶ An agricultural cooperative may be established:
 - To engage in any activity in connection with:
 - Agriculture or a related activity
 - The manufacturing or marketing of the by-products of agriculture
 - The purchase, hiring, or use by it or its member or others of supplies, machinery, or equipment
 - The acquisition or improvement of land

Agricultural Co-ops

Ark. Code. Ann. § 2-2-106

- ▶ An agricultural cooperative may be established:
 - To engage in any activity in connection with:
 - The construction or maintenance of houses, barns, sheds, or facilities for its use or that of its members
 - Indemnifying or replacing damaged, lost, or destroyed livestock or other tangible personal property
 - Burial activities
 - The furnishing of medical, dental, health, hospitalization, nursing, or any related services, medicines, or medical supplies to its members and their families

Educational Co-ops

Ark. Code. Ann. § 6-13-1002

- ▶ Education service cooperatives established by this this subchapter will provide to school districts which choose to use them assistance in:
 - (1) Meeting or exceeding accreditation standards and equalizing educational opportunities;
 - (2) Using educational resources more effectively through cooperation among school districts; and
 - (3) Promoting coordination between school districts and the Department of Education in order to provide services which are consistent with the needs identified by school districts and the educational priorities of the state as established by the General Assembly or the state board

Electrical Co-ops

Ark. Code. Ann § 23-18-306

- ▶ Cooperative, nonprofit membership corporations may be organized under this subchapter for the purpose of anyone (1) or more of the following:
 - (1) The furnishing of electricity to persons;
 - (2) Assisting in the wiring of the premises of persons in rural areas or the acquisition, supply, or installation of electrical or plumbing equipment therein; and
 - (3) The furnishing of electricity, wiring facilities, or electrical or plumbing equipment or services to any other corporation organized under this subchapter or to the members thereof.

Arkansas Cooperative Associations Act

Ark. Code. Ann. § 4-30-101, et. seq.

- ▶ All other co-operatives are governed by the Arkansas Cooperative Associations Act.
 - ▶ ONF is a retail co-op. Ark. Code. Ann. § 4-30-107 (2020), such cooperative corporation may:
 - ▶ Buy, sell, or deal in products produced or owned by following the cooperative corporation; the individual members or patrons of the cooperative corporation; another cooperative corporation; the individual members or patrons of another cooperative corporation that are available on the open market
 - ▶ Purchase, hold, lease, mortgage, encumber, sell, exchange, and convey real and personal property

Arkansas Cooperative Associations Act

Ark. Code. Ann. § 4-30-101, et. seq.

- ▶ All other co-operatives are governed by the Arkansas Cooperative Associations Act.
 - ▶ ONF is a retail co-op. Ark. Code. Ann. § 4-30-107 (2020), such cooperative corporation may:
 - ▶ Enter into a contract between the cooperative corporation and the individual members and patrons of the cooperative corporation or on behalf of the cooperative corporation or the individual members and patrons of the cooperative corporation
 - ▶ Certain matters are governed by the Act, i.e. naming, number of board members, distribution of profits, member rights to book and record disclosures

Differences in Types of Co-op

- ▶ Agricultural Co-ops are designed with collaboration between different agricultural entities in mind.
- ▶ Educational Co-ops deal with children's education, and therefore may need stricter oversight.
- ▶ Electrical Co-ops are for a utility that is considered a necessity and are designed with this in mind.
- ▶ Retail Co-ops
 - ▶ While these can function similarly to a non-cooperative retailer, the members own a share of the company.

More about Retail Co-ops

- ▶ By-Laws and Articles of Incorporation
 - ▶ While the law speaks to various minimum standards for certain matters, the individual co-op is also responsible for setting their own standards through governing documents.
 - ▶ Ozark Natural Foods' standards are set forth in their Articles of Incorporation and their Bylaws.

Articles of Incorporation - Arkansas Code

- ▶ Articles of Incorporation - required by Arkansas Cooperative Associations Act |
- ▶ A.C.A § 4-30-108. Articles of Incorporation.
 - ▶ The members shall sign and acknowledge written articles of incorporation which shall contain:
 - ▶ The name of the cooperative corporation, the names and residences of the persons forming the cooperative corporation, the purpose of the organization, the principal place of business, the amount of capital stock, the number of shares and the par value of each share, the number of directors and the names of those selected for the first term; and the time for which the cooperative corporation is to continue if the cooperative corporation is not of perpetual duration.
 - ▶ The original articles of incorporation or a certified copy of them shall be filed with the Secretary of State, who shall return to the cooperative corporation a certified copy of them, with the date of filing and attested with the seal of his or her office.
 - ▶ For filing the articles of incorporation and amendments thereto under this subchapter, the same fees shall be paid to the Secretary of State as are not required under the general corporation law.

Articles of Incorporation - ONF

Pursuant to A.C.A. § 4-30-108. Articles of Incorporation, ONF's ORIGINAL Articles of Incorporation include:

- ▶ The Corporate Name of the cooperative association is The Ozark Food Cooperative Exchange.
- ▶ The names of the persons who formed the cooperative and the number of shares subscribed by them.
 - ▶ Steve Dunn (1); Troy Abel (1); Linda McDonald (1); Robert Tarlow (1); Paula Suslew (1); Maple Caimer (1); Nick Masulo (1); Roy Richardson (1); Steve Moore (1); Kathleen Okonski (1); Carol Thatcher (1); Danny Kelly (1); Rosemary Keefe Curb (1); Charles Friedlein (1); Margaret Friedlein (1); Coralie Cogswell (1); Marsha Morningstar (1); Arthur Proteau (1); Kathy Dunn. (1); Ginny Hughes (1)

Articles of Incorporation - ONF

Pursuant to A.C.A. § 4-30-108. Articles of Incorporation, ONF's ORIGINAL Articles of Incorporation include:

- ▶ The purposes for which Ozark Natural Foods was organized is to seek to supply wholesome foods of the highest quality. Also to collectively work for lower prices in the food and other products that they buy and sale. ONF strives to deal openly and lovingly with each other, in an environment free and congenial, in the spirit of mutual service and brotherhood. ONF was created to enhance the quality of life in the community.
- ▶ The principal place of business is at 205 West Dickson Street, Fayetteville. In Washington Country, Arkansas.

Articles of Incorporation - ONF

Pursuant to A.C.A. § 4-30-108. Articles of Incorporation, ONF's ORIGINAL Articles of Incorporation include:

- ▶ The total amount of authorized capital stock is Fifteen Thousand (15,000) shares, having a par value of One and No/100 Dollars (\$1.00) per share.
- ▶ The amount of capital with which ONF will begin is Four Hundred Dollars (\$400.00).
- ▶ The number of directors is 7
- ▶ Names of directors elected for first term.
- ▶ The period of existence is Forty-Nine (49) years.
- ▶ The Cooperative has adopted Bylaws consistent with these Articles of Incorporation. At least 4 members of the Board of Directors must be present to constitute a quorum.

Bylaws - Arkansas Code

- ▶ Bylaws - required by Arkansas Cooperative Associations Act (A.C.A. § 4-30-109).
 - ▶ (a) Each corporation shall formulate bylaws prescribing the duties of the directors and officials, the manner of distributing the profits of its business, the manner of becoming a member, and such other rules and instructions to its officials and members as will tend to make the corporation an effective business organization.
 - ▶ (b) Any association formed under 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.

Bylaws - ONF

- ▶ ONF's Bylaws govern:
 - ▶ The name and Location of the Cooperative
 - ▶ Name and primary office and other offices.
 - ▶ The Purpose of the Cooperative
 - ▶ Purposes and cooperative principles.
 - ▶ Membership
 - ▶ Eligibility, nondiscrimination, membership, rights, responsibilities, termination of membership, return of equity, unclaimed property, non-transferability, retained patronage, and consent of members.
 - ▶ The Member Meetings
 - ▶ Annual meeting, notice of meetings, special meetings, voting, extended voting, quorum, manner of acting, and dissolution.

Bylaws - ONF

- ▶ The Board of Directors
 - ▶ Powers and duties of the directors, qualification, nomination of directors, terms and elections, conflict of interest, officers, duties of the officers, removal and resignation, vacancies, compensation, indemnification and insurance.
- ▶ The Meetings of the Board of Directors
 - ▶ Regular board of director meetings, special meetings of the board of directors, quorum, annual board meeting, electronic communications, action without a meeting, and manner of acting.
- ▶ The Bylaw Amendment Process
- ▶ The Fiscal Year

Ozark Natural Foods Governance

Member elected directors

- The Board of Directors shall be composed of seven (7) directors, elected from among Active Members of the Cooperative. (Bylaws Section 5.1).

General manager to oversee the day-to-day management

- The Board of Directors shall have the power to govern the Cooperative, including, but not limited to, hiring an individual to serve as General Manager, who is not a member of the Board of Directors, to manage the day-to-day activities of the Cooperative . . . and assuring that the mission of the Cooperative is realized. (Bylaws Section 5.1)

Members

- Various rights and perks
- Duty to perform responsibilities to be considered an Active Member in good standing

Common Inquiries

- ▶ Books and Records
- ▶ Owner Equity
- ▶ Patronage
- ▶ Rights and Responsibilities of Members

Books and Records - Arkansas Code

- ▶ General Law - Ark. Code. Ann. §4-30-113(a).
 - ▶ Each cooperative must keep:
 - Correct and complete books and records of account
 - Minutes of the proceedings of its shareholder and board of directors
 - At its registered officer or principal place of business in this state a record of its shareholders with:
 - The name and addresses of all shareholders
 - The number and class of the shares held by each

Books and Records- Arkansas Code

- ▶ General Law - Ark. Code. Ann. §4-30-113(b).
 - ▶ Each cooperative must keep:
 - Any person who has been a shareholder for at least six months may, upon written demand, be provided:
 - A full itemized accounting of all expenditures of the funds of the cooperative during the preceding six-month period
 - The right to examine in person or by agent or attorney at any reasonable time **for any proper purpose**
 - Books and records of account
 - Minutes
 - Record of shareholders
 - Upon the written request of any shareholder of a cooperative, the cooperative shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations

Books and Records - ONF Bylaws

- ▶ Section 5.7(c). Secretary.
 - ▶ The Secretary shall make a good faith attempt to attend all meetings of the Board of Directors and members and maintain accurate minutes therefore; **shall have general charge and supervisions of the books and records of the Cooperative;** shall supervise the maintenance of a list of names and addresses of the Cooperative's members; and perform such other duties as may be prescribed by the Bylaws and governing polices adopted by the Board of Directors.

Books and Records - Ozark Natural Foods

- ▶ Only the documents set forth in the Arkansas Code are subject to disclosure.
 - ▶ It is important to keep some information confidential.
 - ▶ To protect ONF's confidential and business planning information from competitors.
 - ▶ To protect certain confidential information of employees and vendors.

Books and Records - ONF Policy & Procedure

- ▶ Reports on ONF's operations and finances are presented, reviewed, and discussed at the Annual Membership Meeting
- ▶ Information regarding ONF's financial condition is presented, reviewed, and discussed at the monthly Board meetings that Members are welcome to attend. This information is also documented in the meeting minutes and a zoom recording of the entire board meeting.
- ▶ The General Manager makes time to meet with Members in his office to address any observations or concerns that Members may have.
- ▶ As a Member, you have the right to make observations and ask questions to foster constructive dialogue with the Board.

Books and Records - ONF Policy & Procedure

- ▶ It is the policy of ONF that, **upon written request** of an Active Member who has been a member for at least six (6) months, the following books and records are required to be made available in the manner prescribed below:
 - ▶ The Member shall be furnished with a statement of expenditures for the six months preceding the date of request.
 - ▶ The Member shall be granted access to inspect the following:
 - ▶ Profit and Loss Statement of Operations for the most recent accounting period.
 - ▶ Balance Sheet for the most recent accounting period.
 - ▶ Statement for cash flows for the most recent accounting period.

Books and Records - ONF Policy & Procedure

- ▶ It is the policy of ONF that, **upon written request** of an Active Member who has been a member for at least six (6) months, the following books and records are required to be made available in the manner prescribed below:
 - ▶ The Member shall be mailed a copy of the Balance Sheet and Income Statement from recent fiscal year ended prior to the date of the request.
 - ▶ Minutes of the meetings of the Board of Directors.
 - ▶ The member shall be granted access to inspect a list containing names and addresses of Members of ONF.

Books and Records - ONF Policy & Procedure

- ▶ The written request must set forth the information or documents sought, and the actual purpose for each of the documents or information that is being sought.
- ▶ Written requests for document or information shall be deemed as an acknowledgement of ONF's Confidentiality and Non-Disclosure Policy.

Books and Records - ONF Policy & Procedure

- ▶ Within 14 days of receipt of the written request, the Board shall review same and determine whether the request is for a proper purpose. If the purpose for each item of information requested is deemed proper, the Member shall be permitted to inspect that specific information at a time reasonable by the determination of the Board. Should the Board deem a request improper, the requesting Member shall be notified in writing specifying why the request is deemed improper.
- ▶ It shall be deemed improper for the Member to contact directly or indirectly members of ONF whose identity is obtained from inspection of the membership records. Any purpose shall be deemed improper that would result in harm to ONF or its members in any way, including but not limited to financial or reputational harm among members or the general community served by ONF.

Owner Equity - Arkansas Code

- ▶ General Law - Ark. Code. Ann. §4-30-112(a).
 - ▶ (a) No person shall be allowed to own or have an interest in more than ten percent (10%) of the capital stock of the corporation.

Owner Equity - ONF Bylaws

- ▶ Section 3.3
- ▶ Admission
 - ▶ An individual who is eligible for membership, may be admitted upon submitting an application for membership on a form approved by the Board of Directors and investing equity in an amount and on such terms as determined by the board.
 - ▶ Pursuant to state law, no member shall be allowed to own or have interest in more than ten percent (10%) of the capital stock of the Cooperative. (Ark. Code. Ann. §4-30-112(a)).

Owner Equity - ONF Bylaws

- ▶ Section 3.8.
- ▶ Return of Equity.
 - ▶ Equity is the amount invested, pursuant to Section 3.3, and which has actually been paid by a Member towards becoming a fully vested Member of the Cooperative.
 - ▶ A Member's equity will not bear interest.
 - ▶ Equity shall be returned in cash upon termination of membership in the Cooperative only after the terminated Member has made a written request to the Owner Services Coordinator for return of the member's equity.
 - ▶ In no event shall Owner Services return equity to Member that the Board of Directors has determined would injuriously deplete the working capital of the Cooperative.

Patronage - Arkansas Code

- ▶ General Law - Ark. Code. Ann. §4-30-109(a).
 - ▶ Each corporation shall formulate bylaws prescribing the duties of the directors and officials, **the manner of distributing the profits of its business**, the manner of becoming a member, and such other rules and instructions to its officials and members as will tend to make the corporation an effective business organization.
 - ▶ No further requirements under Arkansas Law exist regarding ONF's patronage.

Patronage - ONF Bylaws

- ▶ Section 3.11(c)
- ▶ Retained Patronage - Calculation
 - ▶ The retained patronage of each Member shall be that fraction of the total amount of net operating income as determined by the sum of the purchases made by the member in proportion to the sum of all the Cooperative purchases made by Members for each fiscal year.

Patronage - ONF Bylaws

- ▶ Section 3.11(d)
 - ▶ Allocations of Retained Patronage to the Members.
 - ▶ The cooperative **may** allocate and distribute to Members the net operating income from business done with the Cooperative in such a manner as to qualify the allocation as retained patronage refunds consistent with cooperative principles, applicable state and federal laws, and generally accepted accounting principles.
 - ▶ The Board of Directors shall determine **when and how** such written allocations will be made. Allocation of retained patronage, whether made in cash or by notice of written allocation, shall not bear interest.

Patronage - ONF Bylaws

- ▶ Section 3.11(e)
 - ▶ Distributions of Retained Patronage to Members.
 - ▶ The Board of Directors shall, in accordance with applicable state and federal laws and regulations, determine **when and how** distributions of retained patronage will be made to Members.
 - ▶ In no event shall the Board of Directors make a distribution of retained patronage to Members that would injuriously deplete the working capital of the Cooperative.

Patronage - ONF Bylaws

- ▶ Section 3.11(f)
 - ▶ Return of Retained Patronage.
 - ▶ Retained patronage may, in accordance with applicable state and federal laws and regulations, be returned upon termination of membership in the Cooperative and only after the terminated Member or the Member's legal representative has made a written request to the Board of Directors for return of the Member's retained patronage as the Board of Directors, in its sole discretion, deems to be in the best interest of the Cooperative
 - ▶ **However, in no event shall the Board of Directors make a distribution of retained patronage to Members or their legal representative(s) that would injuriously deplete the working capital of the Cooperative**

Patronage - ONF Bylaws

- ▶ Patronage may be distributed to members, but there is no requirement that it will be.
- ▶ Sometimes patronage needs to be retained to make up for additional expenses or lower profit in each period.

Member Rights and Responsibilities

- ▶ All rights and responsibilities of Active Members are subject to the Co-Op's Bylaws, as they have been amended from time to time, and to policies and decisions of the Cooperative or the Board of Directors.

Member Rights - ONF Bylaws 3.5

- ▶ Right to elect and remove the Cooperatives Board of Directors.
- ▶ Right to attend meetings of Board of Directors.
- ▶ To receive notice of and attend membership meetings to petition the Board of directors as described in these Bylaws.
- ▶ To approve of any change in the current compensation of the Board of Directors.

Member Rights - ONF Bylaws 3.5

- ▶ To approve amendments to the Bylaws.
- ▶ To receive special membership pricing at the cooperative as may be determined by the Cooperative's management.
 - ▶ Members of the same household also get this right.
- ▶ One vote per member on all matters submitted for voting.

Member Responsibilities - ONF Bylaws

4.1

- ▶ Annual Meeting

- ▶ An Annual Membership Meeting shall be held each year at a time and place to be determined by the Board of Directors. The purpose of such meeting shall be to hear reports on operations and finances, to review issues that vitally affect the Cooperative, to elect members of the Board of Directors, as needed, and to transact such other business as may properly come before the meeting.

Member Responsibilities - ONF Bylaws

3.6

- ▶ Members shall:
 - ▶ Keep their equity investment responsibilities current with the Cooperative.
 - ▶ Keep the Cooperative informed of any changes in name or current address.
 - ▶ Abide by the Cooperative's Bylaws, Articles of Incorporation, and policies, and decisions of the Cooperative or the Board of Directors.
- ▶ A Member who upholds their membership responsibilities is considered to be an Active Member.

Sources

- <https://onf.coop/>
- Ozark Natural Foods Articles of Incorporation, as amended
- Ozark Natural Foods Bylaws, as amended
- Ark. Code Ann. § 6-13-1002
- Ark. Code Ann. § 23-18-306
- Ark. Code Ann. § 2-2-106
- Ark. Code Ann. § 4-30-101
- Ark. Code Ann. § 4-30-107
- Ark. Code Ann. § 4-30-113
- Ark. Code Ann. § 4-30-108
- Ark. Code Ann. § 4-30-109
- Ark. Code Ann. § 4-30-112(a)

Questions?