

Appendix B: Sample Articles of Incorporation

SAMPLE ARTICLES OF INCORPORATION

California Consumer Cooperative Corporation

About This Form: The East Bay Community Law Center – Green Collar Communities Clinic (GC3) and Sustainable Economies Law Center have designed the following form Articles of Incorporation document for a California Consumer Cooperative Corporation to serve as a drafting tool for the individuals organizing their entity under the laws of California and the attorneys who represent them.

This form Articles of Incorporation document has been tailored to more closely embody the values emblematic of the worker cooperative: worker ownership, democratic governance, and equitable profit distribution. This tailoring reflects the work of the GC3 Clinic, which works with low-income individuals and community groups to help them form sustainable and equitable business entities that will empower the communities in which they are located. It is not appropriate for all business ventures.

Important Notes: The Sample Articles of Incorporation are annotated with explanatory endnotes, including citations to applicable laws. It is important to consider the explanations in the endnotes, as particular drafting choices will better serve one's business entity, depending on the entity's activities and the concerns of its membership.

It is crucial that all drafting choices made in the organization of a California Consumer Cooperative Corporation are fully understood by all involved because once the Articles of Incorporation are filed, the cooperative's officers and directors will be *required* to follow the procedures described within them. Please see the first endnote for additional information.⁶¹

⁶¹ HOW TO USE THIS FORM: For each section of the form Articles of Incorporation, the endnote discusses the applicable law and indicates if the provision is required to be included in the bylaws. If the provision recites a default rule in the law that may be changed by putting a different rule into the bylaws, the endnote explains the

DISCLAIMER: *This form should not be construed as legal advice.* This form’s endnotes discuss relevant provisions of the law as of March 13th, 2013 and have not been updated to reflect changes in the law. Please contact an attorney for legal advice about your organization’s specific situation. This form should not be used “as is” but should be modified after careful consideration of the explanations and alternative wording choices in the text of the bylaws and endnotes. Some corporations may need to include additional provisions not discussed in this document to effectuate particular business objectives.

Introductory note:

The California Consumer Cooperative is one of an incredibly small number of business entities that California allows to use the term “cooperative” – or terms similar to or derived from the word “cooperative” – in its name. [Cal. Corp. Code § 12311(b).] This means that if you have formed a different kind of business entity (i.e., an LLC, partnership or other kind of Corporation) and adopted rules that embody cooperative values, you will likely have to use another term to publicize your adoption of those values. For this reason, many such unincorporated associations refer to themselves as “collectives.”

parameters within which the bylaws may vary from the default rule.

ARTICLES OF INCORPORATION OF [NAME OF COOPERATIVE]

Article 1. The name of this Corporation is [Name of Cooperative], Inc.⁶²

Article 2. This Corporation is a cooperative corporation organized under the California Consumer Cooperative Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.⁶³

Article 3. The name and address in the state of California of this Corporation's initial agent for service of process is: [Address of the Agent for Service].⁶⁴

Article 4. The Corporation's initial street address is [Location of Business]. The Corporation's initial mailing address is [Mailing Address].⁶⁵

Article 5. The voting rights of each member of the Corporation are equal, and each member is entitled to one vote. The proprietary interests of each member of the Corporation are unequal⁶⁶

⁶² **Law:** The name of the Corporation *must* be recited in the Articles of Incorporation. [Cal. Corp. Code § 12310(a).] The names of all California Consumer Cooperative Corporations *must* include the word “cooperative” **and** some word or abbreviation indicating that the co-op is a corporation. Acceptable abbreviations include: “inc.” and “corp.” [Cal. Corp. Code § 12311(a).]

Law: The State of California will not approve the Articles of Incorporation of a company with a name that is identical or overly similar to that of a Corporation authorized to operate in California. [Cal. Corp. Code § 12302(b).] As a result, one should consider: 1) checking the California Secretary of State's website to ensure that their desired name has not already been taken; or 2) filing a Name Availability Inquiry Letter with the Secretary of State's office.

⁶³ **Law:** All California Cooperative Corporations' Articles of Incorporation *must* contain the statement: “This corporation is a cooperative corporation organized under the Consumer Cooperative Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.”

⁶⁴ **Law:** The corporation's Agent for Service of Process is the individual designated to be served potential lawsuits and legal paperwork on behalf of the corporation. The Articles of Incorporation *must* contain a name and street address for the corporation's initial Agent for service of process. The legal requirements for this designee are that: their address, if required, is within the State of California; they are either a person or corporate entity; that an address be provided for them only if they are a natural person; that no address be provided if they are a corporate entity. [See Cal. Corp. Code 12310(c) and 12570(b).]

⁶⁵ **Law:** The Articles of Incorporation *must* contain the initial street address of the corporation and the initial mailing address of the corporation, *only if* different from the initial street address. [Cal. Corp. Code § 12310(d)-(e).]

⁶⁶ **Note:** California Cooperative Corporations may elect to make member voting power or member proprietary interests unequal. Equal voting power means voting power apportioned on the basis of one vote for each member. Equal proprietary rights means property rights apportioned on the basis of one proprietary unit for each member. While it is generally impermissible for cooperatives to make voting power unequal (unless you are a federated

and the rules by which the proprietary interests are determined shall be prescribed in the Bylaws of the Corporation.⁶⁷

[Name], Incorporator⁶⁸

cooperative), many cooperatives place a provision in their Articles of Incorporation that allows for unequal proprietary interests. Such a provision gives cooperatives greater flexibility in financing their operations, and allows them to garner additional (and unequal) investments from members interested in investing greater amounts than other members.

⁶⁷ **Law:** The Articles of Incorporation *must* indicate whether the voting power and proprietary interests of the cooperative are equal or unequal. If the voting power or proprietary interests of the company are unequal, the Articles must state either: the rules by which the voting power or proprietary interests is unequally apportioned; or that the rules governing the apportionment of the unequal item(s) can be found in the company's Bylaws. [Cal Corp Code 12310(f)]

⁶⁸ **Law:** The Articles of Incorporation must either be signed by **either: each** of the company's "Incorporator(s)," meaning the individual(s) undertaking the cooperative's business until its initial Board of Directors is appointed; **or** by each of members of the cooperative's Board of Directors, if they have been appointed, **but not both Incorporators and Directors**. If the Directors are filing and signing the Articles, they need to be named within them. [Cal. Corp. Code § 12300(a)-(b).]

If the company's Articles of Incorporation is being filed and signed by its initial Board of Directors, in addition to signing the Articles, they must also attach a signed, written "Declaration." This Declaration must state that they are the individuals who are named in the Articles of Incorporation and have executed them. It must also state that the Articles are their "act and deed". [Cal. Corp. Code § 12221(b).]

Note: The board of directors **must** have **at least three directors**. [Cal. Corp. Code. § 12331(a)].