

Instructions for Articles of Incorporation (Without Share Capital)

GENERAL

The Articles of Incorporation are to be completed in duplicate and forwarded to:

The Registrar of Cooperatives
Financial Institutions Regulation Branch
1115 – 405 Broadway
WINNIPEG MB R2C 3L6

The filing fees for Articles of Incorporation are:

Community Service Cooperative	\$70.00
All other Cooperatives	\$250.00

The following information is numbered to correspond with the numbers on the Articles of Incorporation form.

1. NAME OF COOPERATIVE

The Registrar must be satisfied that a proposed name complies with the Act and Regulations. The approval of the Registrar should be obtained prior to reserving the proposed name with the Companies Office.

The Act and Regulations have specific requirements in regards to the name of a cooperative. (Act sections 17,18,19 and 20: Regulation sections 2,3 and 4)

- (i) The name must include the word **Cooperative, Co-operative, Co-op** or **Pool**, and it must also include **Incorporated** or **Inc.** as the last word of the name.
- (ii) The name must also describe the type of cooperative e.g. "Housing", "Worker", "Retail" and etc.
- (iii) The name can be in either English or French or a combination of both.

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1. NAME OF COOPERATIVE (continued)

(iv) It can also be in any other language. If that language is in characters other than the Roman alphabet the English or French equivalent of the name must also be included the Articles.

(v) The name can be a number assigned by the registrar plus one or more words to suggest what type of cooperative the cooperative is.

(vi) The name must not be too general. It must also not be only descriptive of the quality, function or other characteristic of the goods or services in which the cooperative deals or intends to deal.

(vii) It must not be primarily or only a single name or surname used alone of an individual.

(viii) It must not be primarily or only a geographic name used alone.

Housing Cooperative

The name of a not for profit housing cooperative must also contain the words “non profit” or “not for profit” or “not-for-profit”.

Prohibited Names

The use of certain names are prohibited, in general these are:

(i) Names of existing or dissolved body corporates, or of a business or association cannot be used.

(ii) Any name that implies a connection with the Crown or any member of the Royal Family or the Government of Canada or the government of any province or territory cannot be used without the consent in writing of the appropriate authority.

(iii) A name that includes the word “Loan” or “Trust”.

(iv) Names that are similar to the name of any other body corporate if the use of the name would be likely confuse or mislead.

The Registrar can prohibit the use of a name for any good and valid reason.

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2. LOCATION OF OFFICE

This is the city, town or municipality where the registered office is to be located. By indicating only the location the office can be moved within that city, town or municipality without amending the Articles of Incorporation.

The complete address must be submitted on a separate Notice of Registered Office (Form 25) at the time of incorporation or as soon as a site has been acquired. The complete address means the street address or lot location as well as the postal address if the cooperative uses a Post Office Box for mail.

3. TYPE OF COOPERATIVE

The Articles must contain a statement that clearly describes the main service that the cooperative will provide to its members.

**4. RESTRICTIONS, IF ANY, ON THE BUSINESS THE COOPERATIVE
MAY CARRY ON**

If any restriction is to be placed on the business the cooperative will carry out it must be included in the Articles

Housing Cooperatives

In addition to any other restrictions a housing cooperative must include the following

“The business of the cooperative is restricted to that of primarily providing housing to its members”

Worker Cooperatives

In addition to any other restrictions a workers cooperative must include the following:

“The business of the cooperative is restricted to that of primarily providing employment to its members”

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Worker Cooperatives (continued)

“Not more than 20% of its members may be persons who are not employees of the cooperative”

“The maximum membership investment payable by a person to be a member of the cooperative may not be more than 50% of the member’s expected annual salary during the first year of the member’s membership, unless any amount in excess of that amount is also paid equally by all persons who are members”.

5. RESTRICTIONS, IF ANY, OR QUALIFICATIONS FOR MEMBERSHIP IN THE COOPERATIVE.

A cooperative may restrict its membership to persons engaged in a particular field or endeavor. If there are to be such restrictions or qualifications these must be stated in the Articles ”

The following are the normal restrictions and qualifications that apply to memberships and it can be used as a sample for completing this section.

No person may become a member of the Cooperative unless that person:

- (a) in the case of an individual, is at least years of age;
- (b) has submitted a written application for membership that has been approved by the board of directors of the Cooperative or by a person authorised by the board to approve membership applications; and
- (c) the person has paid the membership fee set out in section 6.01 of the cooperative's by-laws.

6. NUMBER OF DIRECTORS

The Act requires that the number or the minimum and maximum number of directors be included in the Articles. e.g.” The cooperative shall have a minimum of five directors and a maximum of nine directors”. A cooperative cannot have less than three directors.

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7. FIRST DIRECTORS

Provide the names and addresses of the persons who will be the first directors of the cooperative.

If any of the first directors are not incorporators a consent form must be included with the Articles.

The address of the directors is the street address or the physical location of the director's residence. A Post Office box number is not a sufficient address for this purpose.

8. The Cooperative has no membership share capital and the interest of each member is the same as that of every other member. The Act requires that the foregoing statement be included in the articles of all cooperatives that do not have share capital.

9. MAXIMUM RATE OF RETURN ON MEMBERSHIP SHARES, MEMBER LOANS AND/OR PATRONAGE LOANS.

This can be any rate from nil up to the maximum permitted . The maximum rate set by regulation is the Bank of Canada rate, plus 4 percent per annum.

The following statement would generally cover most cases and it will negate the need to amend articles if the regulation is changed.

The maximum rate of return on member loans or patronage loans, if any, shall not exceed the maximum rates prescribed by the regulations to The Cooperatives Act.

Note: Where a member is required to make a loan or other required contribution to the Cooperative in excess of \$1,000.00 an Offering Statement is required. Refer to sections 88 and 89 of the Act and section 30 of the Regulations.

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10. DISTRIBUTION OF PROPERTY UPON DISSOLUTION

Section 338 (1) of the Act provides the alternatives. The choice of the cooperative must be included in the articles. The articles must also disclose how the property is to be apportioned amongst the alternatives if a combination choice is made. The Act does not permit the choice of the method of distribution or the apportioning of the surplus to be delegated to the board.

The following should be added before inserting the information on the distribution of property:

"On the liquidation and dissolution of the Cooperative and after paying all debts and liabilities the remaining property of the Cooperative shall be distributed or disposed of "

The following is a summary of the alternatives provided for in the Act. The Act should be consulted for the exact definition and wording.

- (a) To another cooperative.
- (b) A registered charity or registered amateur athletic association as defined in section 248 (1) of The Income Tax Act.
- (c) The Cooperative Promotion Board
- (d) Equally among the persons who were members in the financial year in which the resolution to dissolve was approved or equally among the persons who were members in the financial year the cooperative ceased to carry on active business.
- (e) On the basis of patronage dividends allocated to the persons who were members in the financial year in which the cooperative ceased to carry on active business and the immediately preceding five financial years.
- (f)) On the basis of patronage dividends allocated during a period of not less than three years (the period must be specified in the

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articles or by-laws) to the persons who were members in the financial year in which the resolution to dissolve was approved or equally among the persons who were members in the financial year the cooperative ceased to carry on active business.

(g) Any combination of the above.

(h) To such persons as the regulations may prescribe. **There are no further provisions in the regulations at this time.**

Housing Cooperatives (not for profit)

Not for profit housing cooperatives can only distribute their property to, one or more not for profit housing cooperatives, cooperatives incorporated in the province that have similar objectives and limitations, or charitable organizations with similar purposes.

Community Service Cooperatives

Section 338 (2) requires that community service cooperatives can only distribute their property to, another community service cooperative on the approval of the Registrar, a Canadian registered charity or amateur athletic association as defined in subsection 248 (1) of the Income Tax Act (Canada), The Cooperative Promotion Board, any combination of the foregoing and to such persons as the regulations may prescribe.

11. ADDITIONAL PROVISIONS, IF ANY

These can include: a restriction, in whole or in part, on the powers of the directors to manage the business of the cooperative; or set out any provisions that can be set out in the by-laws of the cooperative.

12. COOPERATIVE BASIS.

The Act requires that the articles contain a statement to the effect that the cooperative will be organized and operated and carry on business on a cooperative basis. The following statement is contained in the articles for that

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reason; “The cooperative is organized, operates on, and carries on business on a cooperative basis”.

13. INCORPORATORS

The incorporators must provide the following information :

Incorporators - The full names of all the incorporators are required. This includes their first name, any middle name(s) and surname.

Address – This is the complete legal address of the residence of the incorporators. It must disclose the lot or street number, the street name and the municipality, town or city. A farm or rural residence not identified by number, street and municipality must include the section, range and township in the address. A Post Office Box number alone is not acceptable as an address.