

Instructions for Articles of Incorporation

GENERAL

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

The Registrar of Cooperatives
Manitoba Finance
Financial Institutions Regulation Branch
207 - 400 St. Mary Avenue
WINNIPEG MB R3C 4K5

The filing fee for the Articles of Incorporation are:

| | |
|--------------------------------|----------|
| Community Service Cooperatives | \$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 **Limited** or **Ltd., Incorporated** or **Inc.** as the last word in the name.
- (ii) The name must also describe the type of cooperative e.g. "Housing", "Worker", "Retail" and etc. Refer to section 17(2).
- (iii) The name can be in either English or French or a combination of both.
- (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.

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(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 of an individual used alone.

(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 bodies corporate, 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 to 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 describe the type of cooperative. The types of cooperatives are categorized as follows: Agriculture, Cattle Feeders, Community Service, Communications & Transportation, Consumers (retail), Daycare, Employment, Farmers Markets, Fishing, Housing, Marketing, Recreational and Utility.

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 worker 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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“ 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 for membership share(s).

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.

7. FIRST DIRECTORS

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

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If any of the first directors are not incorporators a consent form must be included with the Articles. (Form 3)

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. MEMBERSHIP SHARE CAPITAL

If there is membership capital, the following information is required:

The number of shares that can be issued. This can be unlimited or any number that the cooperative decides.

The par value of the membership shares. The par value can be any amount but there has to be a stated par value. Selecting a low par value such as one dollar will simplify the allocation of patronage returns as these are generally used to purchase additional shares on behalf of the members.

Note: Where the aggregate par value of membership shares or other required contribution exceeds \$1000.00 per member an Offering Statement is required. Refer to sections 88 and 89 of the Act and section 30 of the Regulations.

9. MEMBERSHIP INTEREST

If there is no membership share capital, the following statement is required:

"The cooperative has no membership share capital and the interest of each member is the same as that of every other member."

10. 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 membership shares or member loans, if any, shall not exceed the maximum rates prescribed by the regulations to The Cooperatives Act.

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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.

11. INVESTMENT SHARE CAPITAL

In addition to membership shares the Act permits a cooperative to issue investment shares. There are two categories of investment shares:

- Investment Shares - these are issued to raise capital and can be issued to both members and/or the public.
- Special Investment Shares - these are issued to members only and they carry an entitlement or obligation to conduct a specific amount or percentage of business with the cooperative that is dependant on the number or percentage of shares owned by the member.

If the cooperative is to issue investment shares a separate schedule will be necessary in order to disclose all the required information and sections 42, 88 and 89 of the Act should be consulted.

This schedule should be identified as follows :

- Cooperative name
- Articles of Incorporation
- Appendix 1 – Investment Share Capital

For the information that is required in this schedule go to appendix 1.

12. RESTRICTIONS, IF ANY, ON THE ISSUE, TRANSFER OR OWNERSHIP OF MEMBERSHIP, MEMBER LOANS, PATRONAGE LOANS OR A MEMBERSHIP SHARE

Section 102 of the Act discloses the circumstances where the cooperative has to permit transfers. The cooperative must also disclose the maximum percentage, or the maximum number, of the issued and outstanding shares that any one member may own. The following statement would generally cover most cases and can be used as a sample.

a) No transfer of a membership or membership share in the Cooperative is valid for any purpose:

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- (i) unless a written application for a membership by the transferee has been approved and the transfer has been authorised by a resolution of the board of directors of the Cooperative or by a person authorised by resolution of the board to approve applications and transfers of that kind;
 - (ii) unless the transferee has otherwise complied with the articles and by-laws of the Cooperative; and
 - (iii) until notification of the approval given under (a)(i) has been sent to the transferee and the transferee's name has been entered in the member's register.
- (b) No transfer of a membership or a membership share may be registered in the members' register unless:
- (i) the Cooperative has received:
 - A. a transfer, signed by the registered holder or the registered holder's attorney or successor, duly appointed;
 - B. reasonable assurance or evidence of the signature, identification, and authority to transfer the membership shares; and
 - C. reasonable assurance or evidence that any applicable taxes and fees have been paid;
 - (ii) all restrictions on the transfer of shares, as set out in these Articles have been complied with; and
 - (iii) any lien that the Cooperative has on the membership shares has been satisfied.
- (c) No member may own more than of the issued and outstanding membership shares of the Cooperative.

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13. DISTRIBUTION OF PROPERTY UPON DISSOLUTION

Section 338 (1) of the Act and regulation 11.1 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, including any declared and unpaid dividends, and after paying all amounts to be paid on the redemption of membership shares, 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.

DISTRIBUTION OF PROPERTY UPON DISSOLUTION

- (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) In accordance with the regulations.

Regulation 11.1 of the Act indicates five additional options:

- (a) among the persons who were members of the cooperative during the financial year of the cooperative in which the cooperative ceased to carry on active business and the five financial years of the cooperative immediately preceding that financial year, on the basis of the business done with or through the cooperative by those persons during those financial years; or

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- (b) among the persons who were members of the cooperative during the financial year in which it was resolved to liquidate and dissolve the cooperative, or who were members of the cooperative during the financial year in which the cooperative ceased to carry on active business, on the basis of the business done with or through the cooperative by those members during a period of not less than three years, as shall be specified in the articles or by-laws of the cooperative.
- (c) equally among the persons, who were members of the cooperative during the financial year in which it was resolved to liquidate and dissolve the cooperative, or who were members of the cooperative during the financial year in which the cooperative ceased to carry on active business;
- (d) among the persons who were members of the cooperative during the financial year of the cooperative in which the cooperative ceased to carry on active business and the five financial years of the cooperative immediately preceding that financial year, on the basis of the patronage returns allocated to those persons during those financial years;
- (e) among the persons, who were members of the cooperative during the financial year in which it was resolved to liquidate and dissolve the cooperative, or who were members of the cooperative during the financial year in which the cooperative ceased to carry on active business, on the basis of patronage returns allocated to those members during a period of not less than three years as shall be specified in the articles or by-laws of the cooperative;

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 cooperative that in the opinion of the Registrar is operating entirely for purposes of community service; a Canadian registered charity or amateur athletic association as defined in subsection 248(1) of the

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Income Tax Act (Canada), The Cooperative Promotion Board or any combination of the foregoing.

14. 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.

Community Service Cooperatives:

Should be added into additional provisions section:

No patronage returns shall be paid to the members, and the cooperative's surplus for any financial year shall be used for the purposes of the cooperative or donated for community welfare.

15. 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 reason; "The cooperative is organized, operates on, and carries on business on a cooperative basis".

16. 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.

APPENDIX 1 – INVESTMENT SHARES

If the cooperative is going to issue investment shares the articles must include the following information (section 42):

- (a) whether the investment shares may be issued to non-members;
- (b) the maximum number of investment shares that may be issued;
- (c) the number of classes of investment shares;
- (d) the preferences, rights, conditions, restrictions, limitations, and prohibitions attaching to the investment shares and, if there is to be more than one class, the designation of each class and the special preferences, rights, conditions, restrictions, limitations and prohibitions attaching to each class;
- (e) the amounts payable to owners of the investment shares, or of shares of any class of the investment shares, on redemption of the shares or on the dissolution of the cooperative; and
- (f) the mode of holding meetings of its shareholders, the quorum for the meetings, the rights of voting of its shareholders, the right of its shareholders to vote by ballot or mail or both and the manner, form and effect of votes at the meetings.

If the cooperative is to have a lien on investment shares (Act 47 (1)) this must be included in the articles.

Note: An Offering Statement is required for investment shares that are to be issued to members only. If the investment shares are to be issued to non members the issue will be subject to Securities Act. (Sections 88 and 89)