



Keep It Simple: Writing Those Articles of Incorporation

**By
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It's time to form that all-important corporation. You've decided to go the corporate route because partnerships are not strong enough for you and limited liability companies are still too close to the person to give you comfort. Or, maybe you are an attorney, doctor, CPA or some other licensed entity, not allowed to form a limited liability company in the state of California.

Whatever the reason or goals, it's time to write up those articles of incorporation required to be filed with the Secretary of State in order to form your corporation.

This is not as daunting a task as one might think. If the corporation is not public, then the writing of the articles is fairly academic.

Following The Guidelines.

The Secretary of State publishes guidelines for writing corporate articles on their web site.

The guidelines are in the form of "this is how we want you to do it", and not as fill-in documents. The examples included, however, are just that; examples.

They want them re-typed.

Pay attention to the examples and copy them; that is what they are there for.

The first sentence of the instructions read like this: **Using the attached sample as a guide, Articles of Incorporation must be drafted to include all required provisions and may include other provisions, such as the names and addresses of the initial directors, if those provisions are permitted under California law.** This indicates that other provisions can be added to the articles if permitted by California law.

Keep It Simple

Don't misunderstand. When they say guidelines, they mean 'do it this way'.

Keep it simple. Don't, as they suggest you may, add anything extra to the articles other than names and addresses of the initial directors and try to avoid that as well if you can. Here's why.

The clerical staff and registrars do not have the authority or training to review anything other than what is required in the articles. If additions are made, that the general staff cannot resolve, the articles will then have to be reviewed by the Secretary of State staff attorneys. They will review the documents for legal language, and if it does not meet

their criteria, the documents will be rejected. These reviews can take up to two extra weeks in addition to what ever waiting time has been established according to the filing process you are using, e.g. over the counter, mail in etc.

Along with this, the Secretary of State does not file internal documents such as By Laws. These are documents meant for your company's function. That is to say, how the partners, directors and the company actually will do business as well as the stock splits and other details of the internal company workings. This holds true whether you are forming a corporation, limited liability company, partnership, association or any of the various sub-groups of these business entities.

The language in the examples is easy to follow and re-type. Make use of it and copy the language, as is. Don't add what they don't ask for.

Name Check

The most common reason for articles to be rejected is name conflict.

It's not always necessary to reserve a name, but if you intend to wait before registering, it's usually a good idea to do so. However, a simple check of the names registered with the Secretary of State can save you a lot of time and expense. Simply go to the Secretary of State web site at <http://kepler.ss.ca.gov/list.html> and type in the name you intend to use; you will get all names similar to yours, or in some cases, exactly like yours and you will know if you have to alter or completely change the chosen name. If no other names come up, you are probably safe; but try variations just to make sure. Don't make your filing process longer than it already is by being rejected.

Close Corporations

Close corporations are what many people refer to as S-Corporations. S-Corporation is a federal tax designation. The State of California refers to small corporations as Close Corporations. If the corporate entity you are planning to establish is not public and is 35 members or less, you might want to consider filing as a close corporation. The requirements are the same with the exception of the name designation and the inclusion of an Article V to the articles of incorporation.

The name of a close corporation must include the word "corporation", "incorporated" or "limited" or an abbreviation of one of the three words.

Article V must be added and states:

This corporation is a CLOSE CORPORATION. All of the corporation's issued shares of stock, of all classes, shall be held of record by not more than _____ persons.

The "not more than _____ persons" needs to be 35 or less.

Statement of Information

One last thing; after filing, send in the Statement of Information (Form SI-200C). Corporations, unlike LLCs and Partnerships, in California are required to file a Statement of Information annually. The Secretary of State will suspend a corporation for failure to file this Statement of Information. They give you 90 days from filing, to send in by mail or file electronically, a Statement of Information for your corporation and will assess a

\$250 penalty according to Corporations Code section 2204; and Revenue and Taxation Code section 19141.

Writing Articles of Incorporation is not a daunting exercise if you follow the Secretary of State's guidelines and: **Keep it simple.**

Forms and guidelines can be found at the Secretary of State web site at:
http://www.ss.ca.gov/business/bpd_forms.htm

California Codes can be found at:
<http://www.leginfo.ca.gov/calaw.html>

This article is not intended to be nor should it be interpreted as legal advice.