

Domestic Stock Corporations - Filing Tips

Additional Article Provisions

- **Directors:** While not required to name initial directors in Articles of Incorporation, if initial directors are named, all initial directors must sign and acknowledge the articles. (California Corporations Code section [200\(b\)](#).)
- **Acknowledgment:** When an acknowledgment is required, the articles may be formally acknowledged or acknowledged by written declaration as prescribed by California Corporations Code section [149](#). A sample of an acceptable acknowledgment by written declaration is: "I declare that I am the person who executed the document, which execution is my act and deed."
- **Incorporator's Signature:** If initial directors are not named in the Articles of Incorporation, the articles must be signed by one or more persons who thereupon are the incorporators of the corporation. (California Corporations Code section [200\(b\)](#).)
- **Purpose Clause:** The articles cannot include any additional statement of purpose except by way of limitation or except as expressly required by any law of this state or any federal or other statute or regulation. (California Corporations Code section [202\(b\)](#).)
- **Number of Directors:** The Articles of Incorporation may set forth the number of directors of the corporation in compliance with California Corporations Code section [212\(a\)](#). If the number of directors is set forth, the number must be either a specified number or a range identifying an acceptable minimum and maximum number of directors -- but not both. The minimum number in a range cannot be less than three and the maximum number cannot exceed the minimum by more than two times the minimum minus one (e.g., not less than three nor more than five).
- **Director Liability:** Indemnification and elimination of director liability provisions must match the requirements of California Corporations Code sections [204\(a\)\(10\)](#), [204\(a\)\(11\)](#) and [317](#). Therefore, rather than attempting to paraphrase the applicable statutes, a statement authorizing indemnification "to the fullest extent permissible under California law," and the statement that "The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law," are all that are necessary to provide the maximum indemnification for corporate agents and elimination of director liability to the fullest extent allowed. (California Corporations Code sections [204.5](#) and [317\(g\)](#).)
- **Removal of Directors:** California Corporations Code section [303](#) places restrictions on the removal of directors that have been elected by cumulative voting. A director elected by cumulative voting only can be removed without cause by the same cumulative voting standards, so that a majority vote is inapplicable.
- **Bylaws:** The Board of Directors cannot be given unlimited authority to make, alter, amend or repeal bylaws of the corporation. California Corporations Code section [212\(a\)](#) requires shareholder approval for bylaw changes in the number or maximum and minimum number of directors.

- **Authority and Powers of Directors:** There is no legal authority for the Articles of Incorporation to grant greater authority or special powers over Board decisions to one or more specific directors. As an alternative to a majority vote or special powers delegated to certain directors, approval of a supermajority (up to 100%) of directors may be inserted as a provision in the articles for most corporate actions under California Corporations Code section [204\(a\)\(5\)](#). Also, to ensure that a particular class or series of shareholders are represented, a requirement can be added for approval of the particular class or series of shareholders as provided in California Corporations Code section [204\(a\)\(9\)](#).
- **Shares:** If a corporation is authorized to issue more than one class of shares, or if any class of shares has two or more series, California Corporations Code section [202\(e\)](#) requires the articles to designate: (a) the total number of shares of each class; (b) the total number of shares for each series; (c) the designation of each class or series; and (d) the rights, preferences, privileges, and restrictions of the respective classes or series. The articles also may delegate to the board of directors the power to designate: (a) the number of shares in a series; (b) the designation of a series; and (c) the rights, preferences, privileges, and restrictions of any unissued class or series of shares.

Note: All shares of a series of stock must have exactly the same rights, preferences, privileges and restrictions. (California Corporations Code section [400\(b\)](#).) Particular holders of a series of stock cannot be granted special or separate corporate rights not granted to holders of other shares of the same series.

- **Redeeming Shares:** A corporation may provide in the Articles of Incorporation for one or more classes or series of shares to be redeemable in whole or in part upon the vote of at least a majority of the outstanding shares of the class or series to be redeemed. (California Corporations Code section [402\(a\)](#).)
- **Partial Redemption of Shares:** If a corporation does not redeem all the shares of a class or series at the same time, the articles must state for the partial redemption "the method of selecting the shares to be redeemed, which may be pro rata, by lot, at the discretion of, or in a manner approved by, the board or upon such terms as are specified in the articles." (California Corporations Code section [402\(b\)](#).)
- **Fractional Shares:** California Corporations Code section [407](#) generally provides three options for dealing with fractional shares when a corporation chooses not to issue them: (a) pay the fair value in cash; (b) issue scrip or warrants; or (c) arrange for the disposition of the fractional shares through a broker or agent to allow holders of fractional shares to buy or sell their fractional shares to bring their holdings to a whole number. If the corporation chooses to pay in cash for the fractions of a share, the reference in the articles should be to "fair value," rather than "conversion price" or some other stated price since the stated price of the preferred share may not be "fair value" for the fractional share of common stock to which the shareholder is entitled at the time of conversion.
- **Professional corporations only:** The provisions of the General Corporation Law apply to professional corporations absent a conflict with the Moscone-Knox Professional Corporation Act commencing with California Corporations Code section [13400](#). Also, a professional medical corporation may establish in its articles or bylaws the manner in which its directors are selected and removed, their powers, duties, and compensation. (California Corporations Code section [13403](#).)