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User-Friendly or User-Fraught? California Secretary of State's New Form Articles for Nonprofit Corporations

If you deal with the California Secretary of State's office with any frequency, you're probably already familiar with the [new requirements for nonprofit articles of incorporation](#) that kicked in at the start of this year.

While it's simple to provide the new information requested (i.e., the corporation's initial street and mailing addresses), there's another new development that, while not a requirement, deserves a closer look.

The [new pre-printed form Articles of Incorporation](#) for public benefit corporations may, at first glance, look appealing. After all, what's not to like about a one-page, check-the-box, no-fuss-no-mess format?

As it turns out, users should approach the form with care. First, somewhat confusingly, Item 2, Corporate Purpose, provides that, "if you intend to apply for tax-exempt status in California," you need to state a "specific purpose" even if your stated purposes are "charitable" rather than "public." (Note that nonprofits intending to apply for 501(c)(3) exemption should choose charitable, not public purposes.) There is no further information on what type of specific purpose clause is required. While we haven't yet received confirmation from the Secretary of State on this point, we assume that this requirement is intended to ensure that the nonprofit corporation will meet the organizational test necessary to qualify for exemption as a charity or other tax-exempt entity. For charities, this test would be satisfied by the following generic statement:

The specific purpose of this corporation is to engage in charitable activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States internal revenue law.

An overly specific purpose clause is not generally recommended, as it can create problems down the road if a charity expands its operations beyond those covered in the clause.

Another thing to watch out for is the dissolution clause – at least if you think your nonprofit may at some point own real property and might like to apply for exemption from property tax. The most typical exemption for charities is the "welfare exemption." For this exemption the State Board of Equalization has some very particular ideas (spelled out in [Property Tax Rule 143](#)) about the kind of language it wants to see in the dissolution clause of articles of incorporation. The dissolution clause on the form Articles (which can't be modified) states that assets must be distributed to an organization(s) operated exclusively for "charitable, educational and/or religious

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purposes.” Rule 143, which provides examples of how to correctly include a reference to “educational” purposes, requires a reference to Section 214 of the Revenue and Tax Code – which is not provided in the form Articles. This problem can of course be fixed by amending the Articles, then sending a certified copy of the amended document to the BOE. But if the nonprofit anticipates applying for the welfare exemption, why not get the Articles right the first time?

Luckily the new form Articles are optional, at least for now, and the Office of the Secretary of State has said that using the form won’t speed up processing time. Thus a fledgling nonprofit can consider whether – given its plans – the form is the best fit.