

CO-OPERATIVES IN ONTARIO

INCORPORATING A CO-OPERATIVE IN ONTARIO WITHOUT SHARE CAPITAL

**Financial Services Commission of Ontario
Licensing and Market Conduct Division
5160 Yonge Street, 4th floor
P.O. Box 85
Toronto, ON M2N 6L9**

Tel: (416) 226-7776

Fax: (416) 226-7838

This package **Incorporating a co-operative in Ontario without share capital** contains the information and forms you need to incorporate a co-operative without share capital

(Ce document est disponible en français)
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INCORPORATING A CO-OPERATIVE IN ONTARIO WITHOUT SHARE CAPITAL

This package includes all the information required to complete the form.

You should also refer to the *Co-operative Corporations Act* and the *Regulations*. You can also view the *Co-operative Corporations Act* on the internet at www.e-laws.gov.on.ca.

The forms are available on line on our home website under the tab “forms”.

GLOSSARY

Articles of incorporation:

These are the basic legal framework for your co-operative. They set out such things as its name, capital structure, and head office address. Articles of incorporation can be seen as your co-op's "constitution".

Assets:

Anything a co-op owns which has commercial or exchange value: property, accounts receivable, etc.

By-laws:

Rules set by a co-op on how it will manage its business, elect its board of **directors**, and hold meetings.

Debenture:

Paper issued by a co-op stating the terms of a loan, including when it's due and the rate of interest. The loan is usually long term and not guaranteed by the co-op's **assets**.

Deponent:

Someone who gives evidence under oath. Evidence given under oath is called a deposition.

Director:

A person elected by the **members** to represent them on the board of directors. Directors set broad guidelines on how the co-op will run, and hire and supervise managers or co-ordinators.

Dissolution:

The process of closing down a legally incorporated co-operative. Voluntary dissolution must be agreed upon by a majority vote at a general meeting with a majority of the **members** present.

Incorporation:

The process people follow to form a co-operative. Incorporating allows you to use the word "co-operative" in your name and gives legal status to your co-op. Usually the members of an incorporated co-op are not personally liable for the co-op's debts or actions.

Incorporators:

The people who create a new co-operative. They legally incorporate the co-op, recruit its first **members**, and appoint its first **directors**.

Initial Notice/Notice of Change:

Form a co-op must send to the Ministry of Government Services within 60 days of incorporation or within 15 days of any changes to information previously sent (e.g. change of the co-op's address) which is obtained directly from the Ministry of Government Services. The form number is 007-07200.

Member loans:

Loans to a co-op which are a condition of joining the co-op.

Member:

Anyone who meets a co-op's membership requirements; has been approved by its Board of **Directors**; and has made a member loan or paid a membership fee.

Multi-stakeholder co-operative:

A type of co-op in which control is shared among various stakeholder groups. Members who share a common interest or live in a defined area may form stakeholder groups in this kind of co-op.

Offering Statement:

Gives people interested in investing in a co-op the information they need to make an informed decision. The offering statement informs prospective investors about the risks involved in purchasing the co-op's **securities**. It also includes, for example, a description of its business, the names and positions of its directors and officers, how the co-op will finance its operations, and its current financial statements.

Officer:

The main officers of a co-op are the Chair of the Board, President, Vice-President, Treasurer, Secretary, and General Manager.

Securities:

Paper which proves a debt of a co-op (member loans, debentures, bonds) or part ownership of a co-op (shares). Co-ops incorporated without share capital cannot issue shares.

With share capital:

A co-op *with share capital* raises money by issuing and selling **shares** to its **members** and other people who may want to invest in the co-op. Co-ops incorporated with share capital may also borrow money and issue other forms of debt, such as **debentures**, to members and non-members.

Without share capital:

A co-op *without share capital* raises money by accepting **loans** from, or issuing other forms of debt (**debentures**) to, **members** and non-members.

How do you incorporate a Co-operative without share capital?

To incorporate a co-operative without share capital, you need to send to the Financial Services Commission of Ontario, Licensing and Market Conduct Division:

- Proof of a Newly Updated Automated Name Search, or NUANS report
- A cheque or money order for \$15 to reserve the name you have chosen (this is in addition to the incorporation fee noted below)
- Articles of incorporation for Co-operatives **without** share capital (2 signed original copies)
- Consent to act as a first director (if your co-operative has directors who are not incorporators)
- A cheque for \$155 to incorporate a non-profit co-operative, or \$335 for other co-operatives
- Cheques or money orders are to be made payable to the Minister of Finance.

You need to forward 2 completed signed original copies of the articles of incorporation along with a covering page explaining the type of co-op as well as how the members will be served and what will they get in returned.

When reviewing your articles of incorporation, we will contact you with any questions or concerns that may arise. A certificate of incorporation will be issued once FSCO's review has been completed.

Once you receive your certificate of incorporation, you have 60 days to register your co-op with the Ministry of Government Services by filing an "Initial Notice" form. This form includes basic information about your co-op, including its name, date of incorporation, address of its head office, and the names and addresses of its **directors** and **officers**. The form is available from the Ministry of Government Services; form number 007-07200

STEP 1. The NUANS (Name Search) Report

Before you incorporate, you have to do a name search (NUANS) to be sure your co-operative does not use a name the same as, or similar to, that of another business operating in Canada. You should not send in articles of incorporation until the Commission has accepted your name. This means you won't have to send new articles of incorporation if your name is refused.

A name search must be done by a professional search house. Prices charged for this service may vary, so we suggest you contact several search houses before choosing one.

You should send the Financial Services Commission of Ontario the original **NUANS report as proof of your name search**, along with a **cheque or money order for \$15**, to reserve the name you have chosen. Once the Commission has approved your name, you have 90 days to send in your incorporation documents. It's a good idea to submit your completed articles of incorporation as soon as your name is approved.

STEP 2. Articles of Incorporation

To incorporate a co-op, you must fill out **Articles of Incorporation** and send them to the Financial Services Commission of Ontario. You will find detailed instructions on how to complete the form at the end of this guide.

Together with the *Co-operative Corporations Act*, the articles of incorporation provide the basic legal framework for your co-op. They set out its purpose and how it will finance itself. Articles of incorporation can be seen as the "constitution" of your co-op.

The legal procedure for changing your articles of incorporation requires you to file Articles of Amendment with the Financial Services Commission of Ontario. Each time you file these documents, you must pay \$100.

In comparison, changing the **by-laws** of your co-op is simpler and does not require you to file documents with the Commission or pay a fee. In order to avoid filing Articles of Amendment with the Financial Services Commission of Ontario, most of the basic rules of your co-op should be in its by-laws, rather than in its articles. By-laws would include, for example, membership conditions and how elections work.

It's a good idea to contact an association of co-operatives for advice on what should be included in your by-laws. You will find a list of co-op associations on page 6.

Articles of incorporation include:

- the name and location of the co-operative, as well as the names, addresses, and signatures of the incorporators;

Note: Worker co-operatives may be incorporated by three or more individuals who are at least 18 years of age. All other co-operatives must have at least five incorporators. These incorporators may be individuals who are at least 18 years of age or corporations, including other co-ops;

- the number of directors of the co-operative;
- how the co-op finances itself: by accepting loans, selling debentures, or charging membership fees;
- any special restrictions or provisions which apply to your co-op.

Since your co-operative will not be selling shares, you should fill out **Articles of Incorporation for a Co-operative Without Share Capital**.

You must send the Commission two copies (8 1/2" by 11" paper) of your articles of incorporation which must be typed. Both copies must have original signatures. Photocopies of signatures will not be accepted.

STEP 3. Consent to Act as a First Director

The incorporators are the people who set up a new co-operative. They do not have to be the first directors of the co-op. If your co-op has directors who are not incorporators, each of them must complete **Consent to Act as a First Director**. This form must also be signed by a notary public

or commissioner of oaths.

The consent form confirms that a person who is not an incorporator has agreed to assume the legal obligations of a director.

You will find a copy of the **Consent form** at the end of this guide.

CO-OPERATIVE ORGANIZATIONS

The following co-operative organizations may be able to offer your group help in starting your co-operative:

Ontario Co-operative Association
450 Speedvale Avenue, Suite 101
Guelph ON N1H 7Y6
Phone : (519)763-8271
Fax : (519)763-7239
Toll free: 1-888-745-5521
Website: www.ontario.coop

Co-operative Housing Federation of Toronto
658 Danforth Avenue, Suite 306
Toronto ON M4J 5B9
Phone: (416)465-8688
Fax: (416)465-8337
Website: www.coophousing.coop
Email: info@coophousing.com

Organization for Parent Participation in Childcare and Education Ontario (OPPCEO)
1571 Sandhurst Circle
Box 63512
Toronto ON M1V 1V0
Toll free: 1-888-745-5521
Email: info@oppceo.org

Conseil de la Coopération de l'Ontario
435, boul St-Laurent, Suite 201
Ottawa ON K1K 2Z8
Phone: (613)745-8619
Fax: (613)745-4649
Toll free: 1-866-290-1168
Website: www.cco.coop/fr/
Email: info@cco.coop

Ontario Federation of Food Co-operative and Buying Clubs
5685 McLaughling Road
Mississauga ON L5R 3K5
Phone: (905)507-2021
Website: www.onfc.ca

**ARTICLES OF INCORPORATION FOR A CO-OPERATIVE
WITHOUT SHARE CAPITAL
INSTRUCTIONS**

These instructions will help you fill out **Articles of Incorporation for a Co-operative without Share Capital**.

The name of the co-operative is:

1. The name must include the word "Co-operative" in full and must end with "Incorporated", "Corporation", "Limited", "Inc.", "Corp." or "Ltd."

Make sure you have done a name search and the name has been approved by the Financial Services Commission of Ontario before you submit the Articles (see step 1, page 3).

Sample

<p>1. The name of the co-operative is:</p> <p style="text-align:center">ABC Co-operative Inc.</p>
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2. The head office is at the:

Show whether the co-op is located in a village, town, city, or township and name that municipality, as well as the county or district of Ontario.

Sample

<p>2. The head office is at the:</p> <p>City _____ (Status of the Municipality)</p> <p>of/ Barrie _____ (Name of Municipality)</p> <p>in the/ County _____ (County, District, or Regional Municipality)</p> <p>of/ Simcoe _____ (Name of County, District, or Regional Municipality)</p>
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3. The address of the head office is:

Give the full mailing address of the co-op's head office. You cannot use a post office box number.

Sample

3. The address of the head office is:	
<u>123 John Street</u>	
(Street & Number or R.R. Number, if Multi-Office Building give Room No.)	
<u>Barrie, Ontario</u>	<u>A1B 2C3</u>
(Name of Municipality or Post Office)	(Postal Code)

4. The number (or minimum and maximum number) of directors is:

There must be at least three directors. However, your co-operative may need more. You should decide the fewest and most directors your co-operative might need and enter this range here. You will set the actual number of directors in your by-laws.

Sample

4. The number (or minimum and maximum number) of directors is:
a minimum of three (3) and a maximum of ten (10).

5. The number (or minimum and maximum number) of directors each stakeholder group in a multi-stakeholder co-operative may elect is:

In a multi-stakeholder co-op, each stakeholder group has to elect at least one director to represent it on the board. In this section, you should give the number of directors each stakeholder group may elect. Instead of a number, you may also set a range for the number of directors each stakeholder group may elect. If your co-op is not a multi-stakeholder co-op, indicate "not applicable". For more information about multi-stakeholder co-ops, please reference the "Guide to Setting Up a Co-operative" found on FSCO's website.

Sample

5. The number (or minimum and maximum number) of directors each stakeholder group may elect is:
Stakeholder Group A: a minimum of two (2) and a maximum of five (5)
Stakeholder Group B: a minimum of two (2) and a maximum of five (5)
Stakeholder Group C: one (1)

6. The first directors are:

Fill in the full names, including middle names (**no initials**), and the complete addresses of all directors. Please do not use post office box numbers. You also have to indicate if the first directors are resident Canadians. Any directors who are not incorporators must complete **Consent to Act as a First Director**.

Sample

6. The first directors are:		
Name in full, including all given names	Residential Address, giving Street and Number or R.R. Number and Municipality or Post Office	Resident Canadian State Yes or No
John Richard Doe	#10 - 2nd Avenue, Barrie ON A1B 2C3	Yes

7. Restrictions, if any, on the business the co-operative may carry on or on the powers the co-operative may exercise:

Except as limited by the *Co-operative Corporations Act*, co-operatives have the powers of a natural person. This means co-ops can exercise the same legal powers as individuals. Such powers include the capacity to sue and be sued, as well as to sign contracts and other legal documents in the name of the co-op. If you choose to restrict these powers, you should list the restrictions here. If you would not like to state any restrictions, simply write "None" in this section of the articles.

Sample

7. Restrictions, if any, on the business the co-operative may carry on or on the powers the co-operative may exercise: The undertaking of the co-operative is restricted to carrying out the following purposes: (a) Primarily to provide housing to members of the co-operative. (b) To provide and operate housing, with or without any public space, recreational facilities, and commercial space or buildings appropriate thereto mainly for persons of low or modest income.
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8. The amount of the minimum member loan, if any:

Some co-ops require members to make loans to the co-op as a condition of membership (member loans). The minimum member loan is the basic amount a person must lend to the co-op to become a member. If your co-op does not require member loans, please indicate "not applicable".

Sample

8. The amount of the minimum member loan, if any: Five hundred dollars (\$500)
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9. The restrictions on transfer of member loans are:

By law, loans received by a co-operative as a condition of membership cannot be transferred without the board of directors' approval. Co-ops may want to put additional restrictions on member loans. Describe all such restrictions.

Sample

9. The restrictions on transfer of member loans are:

No member loan may be transferred without the consent of the directors, in the form of a resolution passed by the board.

10. The amount of the membership fee is:

If your co-operative does not require member loans as a condition of membership, it may want to charge a membership fee. If your co-op has membership fees, indicate how much they are and how often they must be paid. If your co-op does not charge membership fees, please indicate "not applicable".

Sample

10. The amount of the membership fee is:

example (i) **ten (\$10.00) dollars lifetime membership fee**
example (ii) **five (\$5.00) dollars annual membership fee**

11. The classes of membership, if any, are:

Under the *Co-operative Corporations Act*, every member of a co-op has the right to vote and run for election to the board of directors. However, a co-op may have different classes of membership with different types of involvement with the co-op. For example, a consumer co-op may distinguish between consumer members and employee members, or between members who buy retail and those who buy wholesale. If your co-op has more than one class of members, please list the classes here.

If your co-op has only one class of members, you should indicate "not applicable".

Sample

11. The classes of membership, if any, are:

Three classes of membership:

Consumer members

Farmer members

Corporate members

12. The terms and conditions attaching to each class of membership are:

Indicate the **general** conditions members have to satisfy to belong to a specific class of membership; detailed terms and conditions should be included in your co-op's by-laws.

Sample

12. The terms and conditions attaching to each class of membership are:

Consumer members: Members of this class purchase goods and services from the co-op for personal consumption.

Farmer members: Members of this class operate farms and supply the co-op with agricultural products.

Corporate members: Members of this class purchase the co-op's goods and services for commercial purposes.

13. The stakeholder groups, if any, are:

Under the *Co-operative Corporations Act*, every member of a co-op has the right to vote and run for election to the board of directors. However, some co-ops may require members to belong to a specific stakeholder group, depending on the kind of involvement members may have with the co-op.

For example, if your co-op processes and markets apple products, it may have two stakeholder groups: farmers and processing plant workers. In this example, members of each stakeholder group play a different role in the co-op's business: farmers supply the co-op with apples and the processing plant workers process, pack, and ship apple products.

If this were your co-op you would list the three stakeholder groups in this section. Multi-stakeholder co-ops must have at least two stakeholder groups. If your co-op is not a multi-stakeholder co-op, you should indicate "not applicable".

Sample

13. The stakeholder groups, if any, are:

The co-operative has two stakeholder groups:

Apple farmers' stakeholder group

Processing plant workers' stakeholder group

14. The terms and conditions for membership in each stakeholder group are:

Indicate the **general** conditions for membership in each stakeholder group; detailed terms and conditions should be included in your co-op's by-laws.

Sample

14. The terms and conditions for membership in each stakeholder group are:

Apple farmers' stakeholder group: Members of this stakeholder group must supply the co-op with at least 25 percent of their annual apple production.

Processing plant workers' stakeholder group:	Members of this stakeholder group must be employed in the co-op's processing plant.
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15. Special provisions, if any, are:

Special provisions may include setting a quorum for the board of directors, rotating terms for directors, and procedures for disposing of assets when the co-operative dissolves.

If your co-op operates on a non-profit basis, you should show that here.

Sample

<p>15. Special provisions, if any, are:</p> <p>Upon dissolution and after the payment of all debts and liabilities, the co-operative's remaining assets shall be distributed among the members in proportion to the patronage returns accrued to members during the five years prior to dissolution.</p> <p>Non-members may use the services of the co-operative provided the co-op does not do more than 25% of its total business with non-members.</p>

Special Provisions for Non-Profit Co-ops:

Non-profit co-operatives, including non-profit child care co-ops, wanting to receive government funding may be required to include the special provisions listed below as a condition of funding.

If your non-profit co-op changes these provisions and converts to a for-profit co-operative, it may not qualify for government assistance.

If you are interested in starting a child care co-operative, you should know that non-profit child care co-ops must be licensed under the Day Nurseries Act. You should consult with your local office of the Ministry of Government Services to find out what you need to do to be licensed.

Sample (FOR NON-PROFIT CO-OPS)

<p>15. Special provisions, if any, are:</p> <p>a) The co-operative shall carry on business without the purpose of gain for its members.</p> <p>b) The co-operative shall use any profit or other accretions for the purposes of promoting its objects.</p> <p>c) Upon dissolution and after the payment of all debts and liabilities, the co-operative's remaining property shall be distributed or disposed of to charitable organizations carrying on their activities solely within Canada.</p> <p>d) The directors,</p> <ul style="list-style-type: none"> • shall serve without remuneration, and • shall not receive, directly or indirectly, any profit from their positions as directors, but may be paid reasonable expenses incurred in the performance of their duties.
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Special Provisions for Non-Profit Housing Co-operatives:

Non-profit housing co-ops receiving government funding are required to include the following special provisions in their articles of incorporation. Please contact your local Ministry of Municipal Affairs and Housing office to find out more about funding for non-profit housing co-ops.

Sample (FOR NON-PROFIT HOUSING CO-OPS)

15. Special provisions, if any, are:
a) The Co-operative's activities shall be carried on without the purpose of gain for its members, and any profit or other accretion to the Co-operative shall be used in promoting its objects.
b) The directors, and those directors who also serve as officers, shall serve as directors and officers without remuneration and no director shall directly or indirectly receive any profit or remuneration from his or her position as director, or in any other capacity, provided that a director, including those who are also officers, may be paid reasonable expenses incurred by them in the performance of his or her duties.
c) The Co-operative is a Non-Profit Housing Co-operative for the purposes of the <i>Co-operative Corporations Act</i> .
d) No membership fee shall be charged to a geared-to-income occupant if such charge will act as a financial barrier to membership in the Co-operative by the geared-to-income occupant.
e) No member loan shall be required from geared-to-income occupants.
f) On the dissolution of the Co-operative and after payment of its debts and liabilities, the remaining property of the Co-operative shall be transferred or distributed among one or more non-profit housing co-operatives or charitable organizations which carry on work solely in Ontario.

16. The names and residential addresses of the incorporators are:

Fill in the full names, including middle names (**no initials**), and complete home addresses of all the incorporators. Please do not use post office box numbers.

Sample

16. The names and residential addresses of the incorporators are:	
Full names, including all given names	Full Residential Address, giving Street and Number or R.R. Number and Municipality or Post Office
John Richard Doe	#10 - 2nd Avenue, Barrie ON A1B 2C3.

These articles are signed in duplicate.

Signatures of incorporators:
The original signatures of all incorporators must appear here. No photocopied signatures can be accepted.

