

The University of Georgia

Center for Agribusiness and Economic Development

College of Agricultural and Environmental Sciences

Filing Procedures for Georgia Profit and Nonprofit Corporations (Including Agricultural Cooperatives)

A Step by Step Guide to Meeting Legal
Requirements of the Georgia Secretary of State

Prepared by: Bill Thomas
Center Report No. 03-11
November, 2003



All corporations are formed by filing articles of incorporation with the Office of the Secretary of State of Georgia. The minimum requirements of for-profit, non-profit, and cooperative organizations are given in this publication based on the Georgia law and the requirements of the Secretary of State.

The article of incorporation may, and perhaps should, included many additional details or items. Filers may obtain professional legal, tax and/or business advice to assure their goals and intentions are met, and that requirements of the law are satisfied.

Name Reservation

A name should be reserved prior to filing. The first step is to determine if the desired name is already being used. This can be done on line at the Secretary of State, Corporations Division web site:

~~<http://www.ganet.org/services/corp/individual.html>~~

If the name is available it can be reserved. The reservation may be made at the Secretary of State, Corporations Division web site:

<http://www.sos.state.ga.us/corporations>

Only one request should be submitted. A number that remains in effect for 30 days or until the filing is submitted, whichever is sooner. The reservation fee is \$25. A reservation number, or rejection notice, will be sent to the e-mail address provided with the application. Up to three preferences may be submitted. If the first choice is available, the second and third are not reviewed. If none of the requested names is available for filing, another request may be made without payment of an additional fee. If the requested name is not available, the rejection notice will include instructions on resubmission.

Customers who prefer not to make an online request may mail the information requested below, and a check for \$25 payable to Secretary of State, to: Corporations Division, 315 West Tower, #2 Martin Luther King, Jr. Drive, Atlanta, GA 30334. A reservation number or rejection notice will be e-mailed within 24 hours of receipt of the request and payment.

A group should not take any official action (such as the opening of a bank account, purchase of literature and/or signs, recording of legal documents, obtaining a tax i.d. number, etc.) be taken in the entity name based only on a name reservation. Such

action should not commence until the filing has been completed.

The selected name and the reservation number provide by the Secretary of State should be placed on the Transmittal Form 227 that is filed with the articles of incorporation. A reservation number may also be obtained by calling their Customer Service Group at (404) 656-2817. A copy of the on line registration form is at the end of this document.

The Articles of Incorporation

Articles of incorporation must include the information described in O.C.G.A. 14-2-202 (profit), O.C.G.A. 14-3-202 (nonprofit) or O.C.G.A. 2-10-80 (cooperatives). Articles must be submitted on white 8½x11 paper. An incorporator named in the articles or the filing attorney should sign articles of incorporation. If the Chairman of the Board of Directors or corporate officer of a profit corporation has been elected, he or she may sign the articles. The signer should indicate in what capacity he or she is signing. The original and one copy of the articles of incorporation, a \$100.00 filing fee, and Transmittal Form 227, must be sent to the Secretary of State. Articles of incorporation are effective on the date received by the Corporations Division unless a post-effective date is specified therein. A certificate of incorporation will be mailed to the applicant usually within seven business days. Filings that are not complete will be returned to the applicant along with a notice that describes the deficiency. If corrected within 60 days, the initial date of receipt will be the date of incorporation.

Filing of Articles of Incorporation and Data Transmittal Form 227

The articles of incorporation, completed transmittal form and \$100.00 filing fee should be mailed to the Corporations Division at the address below. Checks should be made payable to "Secretary of State."

Corporations Division
Warren H. Rary, Director
315 West Tower
2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334

Phone: (404) 656-2817 FAX: (404) 657-2248

Corporate Officers and Annual Registration

Each corporation must file an annual registration with the Secretary of State within 90 days of incorporation. The fee is \$30. A form will be sent with the certificate of incorporation, except for filings made between October 1 and December 31. Then,

registration forms will be mailed each January to the principal office address of each active corporation. Corporate officers are provided to the Secretary of State on the annual registration. Changes to the corporate address and officers may be made on the annual registration. Changes to the corporate address and/or officers throughout the year are made by filing another registration and paying the \$30 fee. A corporation that does not submit its annual registration is subject to administrative dissolution. An administratively dissolved corporation may be reinstated by paying past due registration fees and a \$100 reinstatement fee.

FOR - PROFIT CORPORATIONS AND COOPERATIVES

Articles of incorporation for profit corporations must contain the following information:

1. The exact name of the corporation.
2. The number of shares the corporation is authorized to issue. This will be the maximum number of shares the corporation can issue without later amending its articles to provide for a greater number. Cooperatives may organize as non-stock corporations and this should be specified in this article.
3. The street address and county of the initial registered office and the name of the initial registered agent at that office. The registered office address must be a street address; *a post office box is not sufficient*. The registered agent may be an individual or a corporation. This is the party designated by the corporation to accept notices on its behalf, and to alert the appropriate corporate personnel.
4. The name and address of each incorporator. The incorporator(s) is the person who signs the articles of incorporation, delivers them to the Secretary of State for filing, and then organizes the corporation. Five incorporators are required for cooperatives.
5. The corporation's initial principal mailing address. Unlike the registered office address, the principal office address may be a post office box. The principal mailing address is the address to which the Corporations Division will mail the corporation's annual registration form each January.

An incorporator named in the articles or the filing attorney may sign the articles of incorporation. If the Chairman of the Board of Directors or corporate officer has been elected, he or she may sign. The signer should state the capacity in which he or she is signing.

Thus, articles of incorporation for a profit corporation might appear as follows:

Articles of Incorporation
of

ABC and Associates, Inc.

Article 1.

The name of the corporation is ABC and Associates, Inc.

Article 2.

The corporation is authorized to issue (fill in the number) shares.

Article 3.

The street address of the registered office is 12345 Magnolia Lane, Atlanta, Georgia 12345, in Fulton County. The registered agent at the address is John/Jane Doe. (The registered office address must be a street address.)

Article 4.

The name and address of each incorporator is:

John Doe	12345 Magnolia Lane, Atlanta, GA 12345
Jane Doe	12345 Magnolia Lane, Atlanta, GA 12345
Jack Doe	12345 Magnolia Lane, Atlanta, GA 12345

Article 5.

The principal mailing address of the corporation is 12345 Magnolia Lane, Atlanta, GA 12345.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation.

This _____ day of _____, 2003.

John Doe
(Capacity in which person is signing)

When the corporate charter is received from the Secretary of State, the organizing directors have **30 days** to hold the first meeting of the new corporation. During this meeting, permanent directors should be elected and code of bylaws adopted. The bylaws **do not** have to be filed with the Secretary of State. For more detail on the contents of set of bylaws see **A Guide to the Legal Steps in Organizing a Cooperative in Georgia** (AgEcon 93-029).

NONPROFIT CORPORATIONS

Articles of incorporation for nonprofit corporations include the same information required of profit corporations, except:

- 1) Articles of incorporation for nonprofit corporations do not include a statement

regarding the number of shares the corporation is authorized to issue, as set out in the example of "Article 2" above. Rather, an article must be included which states:

"The corporation is organized pursuant to the Georgia Nonprofit Corporation Code."

2) Articles of incorporation for a nonprofit corporation must include a statement indicating whether or not the corporation will have members. For example:

"The corporation will have members." or, "The corporation will not have members."

An incorporator named in the articles, or the filing attorney, must sign nonprofit articles of incorporation.

Nonprofit corporations are not automatically tax-exempt under 501(c)(3) or other sections of the Internal Revenue Code by filing articles of incorporation with the Secretary of State. Generally, nonprofit corporations must make an Application for Recognition of Exemption to the IRS for exempt status. Additional information to that required by the Secretary of State will be required in the articles of incorporation. Examples of such information are provided in IRS Publication 557. Said Publication, necessary applications, and other exemption information can be viewed at:

<http://www.irs.ustreas.gov>

or by calling the IRS. A nonprofit corporation that wishes to be tax exempt and that does not include this information initially will be required by the IRS to file an amendment to the Articles of Incorporation. Amending articles of Incorporation will cost \$20.00. Make check payable to the Secretary of State.

Professional legal and/or tax advice should be obtained regarding what material may or should be included in the articles of a nonprofit corporation that wishes to be tax exempt.

The Articles of incorporation for a nonprofit corporation might appear as follows:

Articles of Incorporation
of
ABC and Associates, Inc.

Article 1.

The name of the corporation is ABC and Associates, Inc.

Article 2.

The corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

Article 3.

The street address of the registered office is 12345 Magnolia Lane, Atlanta, Georgia 12345, in Fulton County. The registered agent at the address is John/Jane Doe. (The registered office address must be a street address.)

Article 4.

The name and address of each incorporator are:

John Doe	12345 Magnolia Lane, Atlanta, GA 12345
Jane Doe	12345 Magnolia Lane, Atlanta, GA 12345
Jack Doe	12345 Magnolia Lane, Atlanta, GA 12345

Article 5.

The corporation (will/will not) have members.

Article 6.

The principal mailing address of the corporation is 12345 Magnolia Lane, Atlanta, GA 12345.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation.

This _____ day of _____, 2003.

 John Doe
 (Capacity in which person is signing)

Publication of Notice of Intent to Incorporate

All corporations must publish a notice of intent to incorporate in the newspaper which is the official legal organ of the county where the initial registered office of the corporation is to be located, or in a newspaper of general circulation in such a county and for which at least 60 percent of its subscriptions are paid. The Clerk of Superior Court can advise you as to the legal organ in your county. The notice of intent to incorporate and a \$40 publication fee should be forwarded directly to the newspaper no later than the next business day after filing articles of incorporation with the Secretary of State.

The notice should be in the following format:

NOTICE OF INCORPORATION

Dear Publisher:

Please publish once a week for two consecutive weeks a notice in the following form:

Notice is given that articles of incorporation that will incorporate (Name of Corporation)

have been delivered to the Secretary of State for filing in accordance with the (Georgia Business Corporation Code, Georgia Cooperative Marketing Act, or Georgia Nonprofit Corporation Code). The initial registered office of the corporation is located at (Address of Registered Office) and its initial registered agent at such address is (Name of Registered Agent).

Enclosed is (check, draft or money order) in the amount of \$40.00 in payment of the cost of publishing this notice.

Sincerely,

(Authorized signature)

Other Important Information for Corporations

1. An Employee Identification Number will be needed. It is obtained from the Internal Revenue Service by filing Form SS-4. Call 1-800-829-3676 or visit the IRS web site (<http://www.irs.ustreas.gov>).
2. The Georgia Department of Revenue should be contacted regarding compliance with state tax laws. Income and net worth tax information may be obtained by calling (404) 656-4191. Sales and withholding tax information may be obtained by calling (404) 651-8651 or at the DOR's web site:

<http://www2.state.ga.us/Departments/DOR>

3. Many corporations will be required to obtain workers compensation insurance. Workers compensation information may be obtained by calling 1-800-533-0682 or (404) 656-3818.
4. Many corporations will be subject to unemployment tax requirements of the "Georgia Employment Security Law." Information may be obtained from the Georgia Department of Labor at (404) 656-5590 or

<http://www.dol.state.ga.us>.

5. Nonprofit corporations that will be soliciting or accepting contributions in Georgia should contact the Charitable Organizations section of the Office of Secretary of State at 802 West Tower, #2 Martin Luther King, Jr. Drive, Atlanta, GA 30334 to determine if additional registration is required by law.

Summary

The Secretary of State has made it easy to incorporate in the State of Georgia. However, there are still numerous decisions that must be made to insure the best form

of business is selected for an individual situation. Competent legal or business advice is always a good investment and we encourage you to seek the best advice available.

Appendix A

Name Reservation Request

A corporation, LLC or LP name may be reserved prior to filing. The reservation is effective for 30 days or until the filing is submitted, whichever is sooner. The reservation fee is \$25.

A reservation number, or rejection notice, will be sent to the e-mail address provided below. Up to three preferences may be submitted. If the first choice is available, the second and third are not reviewed. If none of the requested names is available for filing, another request may be made without payment of an additional fee. If the requested name is not available, the rejection notice will include instructions on resubmission.

Proposed Name

* 1st Preference:

* 2nd Preference:

* 3rd Preference:

* All Proposed Names Must Include Entity Endings

Applicant Information

Name of Applicant:

Firm Name:

Address:

City:

State:

Zip Code:

Telephone: (including area code)

E-Mail Address:

(confirmation is sent to this address)

There is a \$25.00 charge for your name reservation. Please choose your payment method:

Credit Card

Your GANET Account

A name reservation number or rejection notice will be provided by return e-mail within two (2) business hours (provided your request was made between the hours of 7:00 a.m. and 6:00 p.m., Monday - Friday). Otherwise, your request will be processed during regular business hours. The reservation number should be placed on the transmittal form or application for certificate of authority (foreign entities). When requests for variations of a name are received, our general policy is to confirm the first available and exclude all others.

Appendix B



CATHY COX
Secretary of State

OFFICE OF SECRETARY OF STATE CORPORATIONS DIVISION

315 West Tower, #2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334-1530
(404) 656-2817

Registered agent, officer, entity status information via the Internet
<http://www.georgiacorporations.org>

WARREN RARY
Director

ENRICO M. ROBINSON
Assistant Director

TRANSMITTAL INFORMATION GEORGIA PROFIT OR NONPROFIT CORPORATIONS

DO NOT WRITE IN SHADED AREA - SOS USE ONLY

DOCKET # _____	PENDING # _____	CONTROL # _____	
DOCKET CODE _____	DATE FILED _____	AMOUNT RECEIVED _____	CHECK/ RECEIPT # _____
TYPE CODE _____	EXAMINER _____	JURISDICTION (COUNTY) CODE _____	

NOTICE TO APPLICANT: PRINT PLAINLY OR TYPE REMAINDER OF THIS FORM

1. _____
Corporate Name Reservation Number (if one has been obtained; if articles are being filed without prior reservation, leave this line blank)

Corporate Name (List *exactly* as it appears in articles)

2. _____

Name of person filing articles (certificate will be mailed to this person, at address below) Telephone Number _____

Address _____

City State Zip Code _____

3. Mail or deliver the following items to the Secretary of State, at the above address:

- 1) This transmittal form
- 2) Original and one copy of the Articles of Incorporation
- 3) Filing fee of \$100.00 payable to Secretary of State. Filing fees are NON-refundable.

I certify that a Notice of Incorporation or Notice of Intent to Incorporate with a publication fee of \$40.00 has been or will be mailed or delivered to the official organ of the county where the initial registered office of the corporation is to be located. (List of legal organs is posted at web site; or, the Clerk of Superior Court can advise you of the official organ in a particular county.)

Authorized signature of person filing documents Date

Request certificates and obtain entity information via the Internet: <http://www.georgiacorporations.org>

The Center for Agribusiness and Economic Development



The Center for Agribusiness and Economic Development is a unit of the College of Agricultural and Environmental Sciences of the University of Georgia, combining the missions of research and extension. The Center has among its objectives:

To provide feasibility and other short term studies for current or potential Georgia agribusiness firms and/or emerging food and fiber industries.

To provide agricultural, natural resource, and demographic data for private and public decision makers.

To find out more, visit our Web site at: <http://www.caed.uga.edu/>

Or contact:

John McKissick, Coordinator
Center for Agribusiness and Economic Development
Lumpkin House
The University of Georgia
Athens, Georgia 30602-7509
Phone (706) 542-0760
caed@agecon.uga.edu

The University of Georgia and Fort Valley State University, and the U.S. Department of Agriculture and counties of the state cooperating. The Cooperative Extension Service offers educational programs, assistance and materials to all people without regard to race, color, national origin, age, sex or disability.

An equal opportunity/affirmative action organization committed to a diverse work force.

Center Report No. 03-11

November, 2003

Issued in furtherance of Cooperation Extension Acts of May 8 and June 30, 1914, the University of Georgia College of Agricultural and Environmental Sciences, and the U.S. Department of Agriculture cooperating.

Gale Buchanan, Dean and Director