



Forming A Benefit Or Flexible Purpose Corporation? Some Pitfalls To Avoid

By Keith Paul Bishop on February 13, 2012

In previous blogs, I've noted the appearance of two new types of California corporations – the flexible purpose corporation and the benefit corporation. Because the laws creating both of these forms took effect on January 1, organizers have been forced to draft on a *tabula rasa*. Here are a few drafting pitfalls that have come to my attention.

Benefit Corporations

Section 14602 of the Corporations Code requires that the articles of incorporation must state that “the corporation is a benefit corporation” and must identify “any specific public benefit adopted pursuant to Section 14610”. Some incorporators may conclude that this is all that is required. However, the articles must also include the general purpose statement required of all corporations pursuant to Section 202(b).

Confusingly, the articles should not include a statement that the corporation has the purpose of “creating general public benefit” even though Section 14610(a) requires that all benefit corporations have that purpose. The reason is that Section 202(b) provides that the articles of incorporation may not set forth any further or additional statement with respect to the purposes or powers of a corporation except by way of limitation or as expressly required by California law (other than the General Corporation Law) or any other statute or regulation.

Flexible Purpose Corporations

The name of a flexible purpose corporation must include the words “flexible purpose corporation” or an abbreviation of those words (such as “FCP”). The articles must include a statement that the corporation “is organized as a flexible purpose corporation under the Corporate Flexibility Act of 2011”.

These aren't all of the rules pertaining to either entity. If you happen to run into other issues or problems incorporating under either law, please let me know.

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