

LEGAL

ARTICLES OF ASSOCIATION of the *Sample Koi Society*

I.

On or about [fill in date] the undersigned individuals along with several others [list actual number persons] met at [fill in location] and agreed on that date to freely associate together for the following purposes:

- A. To create, promote and enlarge the hobby of keeping, breeding, appreciating and exhibiting carp, a fresh water fish also known as Koi, Nishikigoi or Japanese fancy colored carp;
- B. To disseminate information about the hobby to the membership of this association and to the public;
- C. To engage in educational social activities related to the hobby and to acquire and own such property as may be necessary for any or all of the foregoing purposes;
- D. To pursue any other purposes which are not in violation of the United States Constitution or state law that, from time to time, shall be agreed to by the membership.

II.

The name chosen for this association was the *Sample Koi Society*.

III.

The governing document of this association is the Bylaws of the *Sample Koi Society*

IV.

Membership in this association shall be open to any individual without regard to race, creed, national origin or sex who shall agree to so associate and who shall tender membership dues as specified in the governing document.

V.

This association has continued from [fill in date] and shall continue to exist until dissolved in accordance with the dissolution procedures specified in the governing document at the time of such dissolution.

Bylaws
of the
Sample Koi Society

Article I - Name and Purpose of the Society

Section A - The name of the Society shall be the *Sample Koi Society*.

Section B - The purpose of the Society will be to promote, create and enlarge the hobby of Koi keeping, breeding, appreciating and exhibiting Koi; to disseminate information about the above to the membership; to engage in educational and social activities related to our purposes; and to acquire and own such property as may be necessary for any or all of the foregoing purposes.

Article II - Membership

Section A - Any person who has an interest in Koi culture shall be eligible for membership. Upon application and payment of dues as outlined in Article IV the application will be presented to the membership present at any regular or special meeting to which the membership of the Society has been given proper notice and upon majority vote the applicant will become a member of the Society in good standing. Any member may voluntarily withdraw or may be suspended or expelled by majority vote of the membership for violation of the bylaws, non-payment of dues or for conduct deemed detrimental to the Society.

Section B - Membership shall not be transferable and both membership and rights in the property of the Society shall cease and terminate upon death, withdrawal, expulsion or other termination of membership in the Society.

Section C - All voting shall be done personally by members in good standing; no proxies shall be allowed.

Article III - Fiscal Year

Section A - The fiscal year and the year for the payment and collection of annual dues and the election and installation of officers shall be the calendar year.

Article IV - Dues and Initiation Fee

Section A - The initiation fee for members shall be \$ _____ per person (family) payable in advance with the application for membership.

Section B - The annual dues for members shall be \$ _____ per person (or per family) and are payable on January 1st of each year except in the case of new members whose initial dues are payable with their application for membership and may be prorated according to the time left in the calendar year.

Article V - Meetings

Section A - The annual meeting for the membership for the installation of officers and directors and for receiving annual reports from the Secretary and Treasurer shall be held at the regular meeting time in January of each year. Notice of the annual meeting must be submitted to the membership in writing, at least five (5) days prior to said meeting. The society bulletin shall be deemed a satisfactory method of written notification.

Section B - The regular meetings of the membership shall be held monthly at a time and place to be determined by a majority vote of all those members present at any regular meeting of the Society. (A date, time and place may be specified if you desire but then a change would require amendments to the bylaws.) A change in the established date, time and location of these regular meetings may be made by majority vote of the members present at any regular meeting and upon written notice to the membership of such change in the form of the Society bulletin or other notice.

Section C - Special meetings may be called by the President of the Society, a majority of the Board of Directors or by special request to the President of at least five (5) duly qualified members. The President will set the date, time and location of such meeting subject to the approval of the majority of the members of the Board of Directors and written notice to the membership at least three (3) days in advance of such meeting. If a majority of the membership is present at such special meetings, any business normally done only at regular meetings may be transacted. Notice of special meetings must also include a summary of the business items to be acted upon.

Section D - One-third (1/3) of the members shall constitute a quorum at any meeting of the membership.

Article VI - The Board of Directors

Section A - The Board of Directors shall consist of _____ members. The President of the Society shall be a member of the Board of Directors and shall act as Chairperson. In the event of a vacancy on the Board, the remaining Directors, even if less than a quorum, shall fill the vacancy or vacancies for the unexpired term or terms by appointment. (You may not wish to have a Board of Directors at all, leaving the operation of the Society to the officers and members or you may wish to have an Executive Committee which is normally composed of the officers of the Society and can handle specified business of the club in the absence of a membership meeting.)

Section B - The term of the members of the Board of Directors shall be _____ years (sometimes the term is 2 years with half the Board being elected each year giving continuity).

Section C - There shall be no established regular meetings of the Board of Directors required by the bylaws other than the requirement that at least one (1) such meeting will be held each calendar year. Special meetings of the Board of Directors may be called by the President or by notice signed by a majority of the Board of Directors and notice thereof given to all Directors not less than one (1) day prior to such meetings. These meetings may be held at any time or place agreed upon by the majority of the Board.

Article VII - Officers of the Society

Section A - The officers of the Society shall be

President
Vice-President
Secretary
Treasurer

These officers are elected by the membership for a one (1) year term (sometimes when a Board of Directors is used, they are authorized to elect officers - this allows the membership to retain control through their election of the Board members. The President should be an elected member of the Board - other officers may come from the Board or from the membership). Note: It is up to the individual club to determine if a Koi Dealer may be an Officer.

Section B - Vacancy in any office shall be filled by _____. (Appointment by the Board of Directors for the unexpired term, appointment by the President, or election by the membership, as appropriate).

Article VIII - Election of the Officers & Board

Section A - At the regular meeting in the month of October, the President will appoint a nominating committee composed of not less than _____ members including a chairperson for that committee. The committee will meet prior to the November meeting and choose a slate of candidates for officers (and/or Board of Directors) to be presented to the membership at the November meeting. At that time the chairperson of the nominating committee shall present the slate of candidates to the membership. The President will call for nominations from the floor. Upon close of nominations the President will call for a vote. This vote may be verbal, by hand or by secret ballot. However, if two or more candidates are nominated for a particular office then the vote shall be by secret ballot. Those candidates with the highest number of votes shall be declared elected by the President. In the event of a tie, the President will call for another vote (run-off).

Section B - Prior to the January meeting, the President will appoint committees and chairpersons thereof. All elections or appointments are subject to the approval of those elected or appointed. The installation of officers and announcements of appointments will be held at the January meeting.

Article IX - Duties of Officers

Section A - The duties of the President shall be

1. To preside at all meetings at which he or she is present.
2. To appoint all committees, with or without the assistance of the other officers.
3. To install the newly elected officers at the end of his or her term (or appoint someone to do so).
4. To call special meetings of the Society, committees, Board of Directors or any other meeting which may be requested as outlined in the bylaws.
5. In case of any question or demeanor, while in office, the President is further governed by Roberts Rules of Order.

Section B - The duties of the Vice-President shall be

1. To assume all duties of the President during his or her absence or upon request by the President, plus other duties which may be assigned.

Section C - The duties of the Secretary shall be

1. To keep all records of the meetings including meetings of the Board of Directors.
2. To send out all notices of regular or special meetings as deemed necessary by the President or Board of Directors. Meeting notices in the Society bulletin are deemed to comply with the bylaws.

Section D - The duties of the Treasurer shall be

1. To collect and record all dues, initiation fees, special fees, etc. paid to the Society as a result of its activities plus all other moneys due the Society.
2. To send out membership cards at the appropriate times. Note: Such cards are not valid unless signed by the President and/or Secretary.
3. To see that each member receives a copy of the bylaws.
4. To prepare and present at each regular meeting a report of the receipts and expenditures during the previous month.
5. To pay pre-determined accounts as may be authorized by the membership of the Society and to pay those bills presented and approved at each regular or annual meeting.
6. To prepare and submit all reports required by any governmental agency.

Section E - The duties of the club AKCA Director shall be per description on page 28.

Article X - Committees

Section A - There shall be standing committees and select committees. All committees other than standing shall be created by the President as the need arises. All committee chairpersons shall keep a record of the proceedings and actions of their respective committees as a history and to assist successive committee persons.

Article XI - Approval & Amendments to the Bylaws

Section A - These bylaws may be approved or amended by a vote of two-thirds (2/3) of the membership present at any meeting of the membership provided proper notice of said meeting is given, in writing, as specified in these bylaws. The full text of the bylaws, or amendments thereto, which are proposed must be served upon each member at least five (5) days prior to the meeting at which such bylaws or amendments are to be voted upon. Proposals for amendments to the bylaws shall be instituted only by the Board of Directors or at least _____ or more members.

Article XII Property rights of members

Section A - The property of this Society is irrevocable; dedicated to the objects and purposes of the Society as outlined in Article 1, Section B of these bylaws. (For non-profit corporations, you should refer here to the appropriate section of the Articles of Incorporation.) In the event of the dissolution of the Society, its properties and moneys shall not revert to the possession of the membership but shall be

given to another non-profit society or educational organization within (your area) which is to be chosen by the membership of the *Sample Koi Society*, and whose aims and purposes are similar to those of the *Sample Koi Society*. No part of any net earning or assets of the Society shall inure to the benefit of any member or individual . (This last sentence is needed for non-profit organizations.)

Article XIII - Parliamentary Authority

Section A - Robert's Rules of Order (revised) shall govern all proceedings of this Society providing they are not in conflict with these bylaws.

NOTE: AKCA does not involve itself with club politics or issues between club members but cautions clubs to follow their club By-Laws when changing the club name or purpose, merge with another club, dissolving the club or any other club activity. Not following the procedures in the club By-Laws can result in lawsuit from club members against the Officers of the club.

The Importance of Obtaining Non-Profit Organization Status

A club takes in income and generates expenses. Any excess income over expenses in a one year period is profit. As such, a club is considered to be a business by the federal internal revenue service and is subject to federal (and probably state) taxes on this net income.

However, as a non-profit organization under IRS § 501(c), any net income may or may not be subject to federal (and state) taxation to the extent that this income may be unrelated to the tax exempt purposes of the organization. **Any income that is generated that is “substantially related” to the organization’s exempt purposes is not subject to federal taxation.**

There are different sub-sections of § 501(c) for different types of organizations. A Koi club probably fits most readily into § 501 (c)(7) which generally applies to social or fraternal organizations, although it can be argued that a Koi club is an “educational” organization under § 501 (c)(3). (Section 501(c)(3) also applies to religious, charitable or scientific organizations.) Opinions vary widely, but I think that the more conservative approach, § 501 (c)(7), is more appropriate.

Up to 35% of your gross receipts can be from sources outside the membership, i.e., advertising revenue, and still maintain non-profit status.

Applying for § 501(c) status is not a big deal. Forms are available from the IRS. You are required to submit 1) a copy of your articles of association or incorporation (note: the IRS does not require that a club incorporate); 2) a copy of your bylaws; and 3) copies of your last three annual financial statements along with the IRS form requesting non-profit status. There is a filing fee based upon your gross receipts.

I strongly recommend that when you adopt your bylaws (and articles of association or incorporation), you apply for § 501(c) status. Koi clubs tend to be loosely run organizations. If you apply for status when the club is formed, you will only have one or possibly two years of financial records to put in order for the IRS.

Lastly, there has been some talk about whether the AKCA’s non-profit status extends to AKCA member clubs. It is my opinion that it does not, because AKCA does not exert control (financial or otherwise) over the member clubs. For example, AKCA does not audit club financial reports, and, I’m not sure that AKCA wants to accept the responsibility to insure that no AKCA club does anything that would place its non-profit status in jeopardy.

Non-Profit (Tax-Exempt) Organizations - An Operator's Manual*

This outline focuses on how to maintain non-profit organization status (IRS § 501(c) status). With this status, any income which is substantially related to a tax-exempt purpose is exempt from federal taxation. Since most state tax law follows federal law, this income would also be exempt from state taxes.

I. There are two basic types of organizational entities for tax-exempt organizations:

A. Non-stock corporation which is governed by the state law where the organization has its principal place of business; this type is strictly controlled by state law,

B. Unincorporated association tends to be used for smaller and informal organization. Although state laws vary, most states do not have statute specifically addressing the operations of an unincorporated association. Structure and rules of operation of an unincorporated association are set forth in Articles of Association (or Constitution) and Bylaws of each organization.

—Advantages: Simplicity. No need to file anything with the state.

—Major disadvantage: Members are generally liable for the association's liabilities or debts. (But, if the organization has § 501(c) status, then officers are only liable to the extent of their compensation and insurance coverage. This should insulate any members and/or the treasury from direct liability.)

In order to obtain federal income tax exemption under IRS § 501(c) it will be necessary to insert a general purposes clause in the articles of association which sets forth the tax-exempt purposes of the association, and in the case of many IRS § 501(c) organizations, prohibits certain activities such as inurement of benefit to individual members. Furthermore, in the case of IRS § 501(c)(3) organizations there should be a specific dissolution clause requiring distribution of assets to another § 501(c)(3) entity upon dissolution and a clause prohibiting intervention in political campaigns or substantial lobbying. Specific purposes and dissolution provisions are set forth in IRS Publication 557.

Local requirements:

- Need to establish the club as an association in one state. If more than one state is involved, then the club would then be a "foreign" association in other states.
- Need to investigate whether the club is required to file for a business license in your local jurisdiction or if it is exempt.
- Register with the state department of taxation and determine if the club is subject to retail sales/use tax. (sales tax regulations vary widely from state to state).
- Obtain a federal employer ID number, if necessary. [Generally not necessary because there is no need to withhold federal taxes for an employee or pay unemployment tax because most clubs do not have any employees. A Club must have a federal ID number for bank accounts.
- Clubs may be required to file an assumed name certificate. (Hint: When you check on a business license with the county, they can tell you where to file an assumed name certificate.

For example, in Virginia, it is filed in the Circuit Court of the county where the primary place of business is located. A court supplied form and nominal filing fee may be necessary.

II. Record Keeping

The following Permanent Records should be kept by the Secretary of the Association:

- Minutes of all executive committee meetings.
- Records of all actions taken by executive board or members without a meeting.
- Records of committee actions on behalf of board of directors
- Membership list
- Articles of Association
- Bylaws
- All correspondence to members within the past 3 years.
- List of names and addresses of current board members
- Most recent annual report

A member has a right to inspect and copy the above records. In order to inspect executive committee minutes, accounting records and membership lists, the member must have been a member for at least 6 months.

III. Liabilities of Directors and/or Officers

Generally, duties of an executive committee member must be discharged in accordance with his or her good faith judgment of the best interests of the association. This is an unusually lenient standard, i.e., good heart, dumb mind is sufficient— unless you have specialized knowledge or have inside information. If you don't object, vote against or abstain from voting at an executive committee meeting, you are deemed to assent to any action taken.

In the case of a § 501(c) unincorporated association, in any lawsuit against an officer, damages arising out of a single transaction may not exceed amount of compensation received by an officer during the preceding 12 months. (If no compensation is paid to officers, no monetary liability exists)

Note: A liability insurance policy is recommended to shield the club's treasury. You should consider the question of insurance carefully, especially if you meet in public places (many require insurance) or you sponsor a show or seminar.

IV. The pitfall... other sources of revenue

Before 1950, exempt organizations were allowed to escape tax on all income used for exempt purposes, regardless of the source of income. To close this loophole, Congress enacted § 502 which 1) denies exemption to “feeder organizations” that engage in commercial activities and channel profits to tax-exempt affiliates; and 2) imposes a tax on the net income that an exempt organization derives from certain investment activities and trades or businesses that are not substantially related to its exempt purposes. So, exempt organizations are taxable entities to the extent of their unrelated business taxable income and pay federal income tax on their net income at regular corporate (IRC § 11) rates.

A. Threshold consideration.

Is the exempt organization engaged in an activity that constitutes a **trade or business**, i.e. any activity conducted to produce income and possessing the characteristics of a “trade or business?” (An activity which would qualify for expense deduction purposes under IRS § 162, will be considered a trade or business.) (See Treas. Reg. § 1.513-1(b)). Primary purpose is to prevent the exempt organization from competing unfairly with non-exempt businesses.

The “business” must be “**regularly carried**” on, i.e., not a one-time fund raising event not subject to tax.

Activities that bear a “**substantial relationship**” to an exempt organization’s purposes or “contribute importantly” to achieving them, do not generate unrelated business taxable income.

B. Three types of activities are specifically excluded from the definition of unrelated trade or business, even if they are totally unrelated to the exempt organizations purposes:

- activities in which substantially all work is performed for the organization without compensation (volunteer projects)
- activities carried on for the **convenience of the organizations** members
- **sales of donated articles**

C. There are special rules for particular activities:

...income from advertising, trade shows, education fairs. See IRS § § 513 (b)-(h) Interest is exempt from tax. See IRS § 512 (b).

D. The Tax

Only net unrelated business income is taxed. (Gross income from an unrelated trade or business is reduced by \$ 1.00 specific deduction and all other deductions directly connected with conducting the trade or business, accordingly only net UBTA above \$1.00 is taxed.) See, IRS § 512(a)(1), 512(b)(12). But, special rules apply to income from advertising (See Treas. Reg. § 1.512 (a)(f). Losses can be offset from one trade or business against gains from another trade or business

V. Reporting Requirements

Exempt organizations must file Form 990, Schedule A and Form 990-T with the IRS annually.

Exempt organizations must have their exemption applications, IRS determination letter, and three most recent annual information returns (Form 990 and Schedule A) available for public inspection. (Not membership list or Form 990-T)

Form 990 asks the exempt organization to classify its income and asks how income-producing activities relate to its exempt purposes. IRS has written guidelines in distinguishing donations from payments for goods or services.

Of high interest to the IRS is compliance with inurement and private benefit restrictions, i.e. that no member individually profit from the exempt organization. **MUST HAVE ACCURATE RECORD KEEPING.** The IRS takes the position that even if a fringe benefit to an officer would consti-

tute reasonable compensation, it is inurement (private benefit) per se, if it is not reported as income to the IRS for that officer. If there is even \$1 of individual or private benefit, then your organization can lose its tax exempt status.

VI. Uniform Trade Secrets Act

While a copyright does not protect a membership list from unauthorized use (although it would protect the format of a club directory), the list is protected from unauthorized use by the Uniform Trade Secrets Act as a “trade secret.” Under this act, a club could seek injunction of actual or threatened misappropriation and, in certain circumstances, to obtain damages from one who misappropriates. Punitive damages in an amount up to the lesser of \$350,000 or twice the compensatory damage award may be granted in the case of willful and malicious misappropriate.

The uniform trade secrets act has been adopted in many states.

**This outline is based upon materials and lectures from the Virginia Law Foundation continuing legal education program entitled “Tax Exempt Charities and Associations: A Virginia Operator’s Manual.”*