

INCORPORATION OF A NONPROFIT CORPORATION

The Texas Nonprofit Corporation Act governs the formation of nonprofit corporations. A nonprofit corporation is one in which no part of the income is distributable to its members, directors or officers. The secretary of state does not provide forms for articles of incorporation and, in view of the legal complexities involved, recommends that you consult the attorney of your choice before incorporation.

To incorporate, you must file articles of incorporation pursuant to article 1396–3.02 of the Texas Nonprofit Corporation Act (Volume 3, Vernon's Texas Civil Statutes). The articles of incorporation must set forth:

1. The name of the corporation.
2. The period of duration, which may be perpetual.
3. A statement that the corporation is a nonprofit corporation.
4. A specific statement of a lawful purpose. A lawful purpose may be a charitable, benevolent, religious, patriotic, educational, scientific, social, fraternal, athletic, or agricultural purpose, or the conduct of a trade association, or a similar purpose as set forth in article 1396–2.01 of the Texas Nonprofit Corporation Act. (The secretary of state will accept the statement of purposes suggested by the Internal Revenue Service.)
5. The street address of the registered office and the name of the registered agent located at such address. (The phrases "registered agent" and "registered office" must be used when setting forth this information in the articles.)
6. If the corporation is to have no members, a statement to that effect must be included in the articles.
7. If the management of the affairs of the corporation will be vested in its members, a statement to that effect must be included in the articles.
8. The number of directors, not less than three, constituting the initial board of directors, and the names and addresses of the persons serving on the initial board of directors, unless the management of the corporation is vested in its members.
9. The name and street or post office address of each incorporator. Any natural person of the age of 18 years or older, without regard to place of residence or domicile, may serve as an incorporator.
10. If the corporation is to be authorized upon its dissolution to distribute its assets in a manner other than described in article 6.02(3) of the Texas Nonprofit Corporation Act (which refers in part to the distribution of assets for tax-exempt purposes to organizations exempt under section 501(c)(3) of the Internal Revenue Code of 1954 or related statutes), a statement describing the manner of distribution of the corporation's assets.

The incorporator must sign the articles of incorporation and deliver two copies of the articles to the secretary of state. Submit the \$ filing fee with the articles of incorporation. We will place one document on record and return a file stamped copy for your files. Prior to signing, please review carefully the statements set forth in the document. A person commits an offense under the Texas Business Corporation Act, the Texas Limited Liability Company Act or the Texas Nonprofit Corporation Act if the person signs a document the person knows is false in any material respect with the intent that the document be delivered to the secretary of state for filing. The offense is a Class A misdemeanor.

The mailing address for the secretary of state is:

Secretary of State
Statutory Filings Division
Corporations Section
P.O. Box 13697
Austin, Texas 78711-3697

(512) 463-5555
TDD: (800) 735-2989
FAX: (512) 463-5709

If a document is to be delivered to the office in a manner other than through the U.S. Post Office, the envelope may be addressed or delivered to the following address: Secretary of State, Statutory Filings Division, Corporations Section, James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701.

Name availability may be checked prior to submission of the articles by calling (512) 463-5555. This is only a preliminary clearance, and does not guarantee that the name will still be available upon filing. The final decision on the name will be made when the document is submitted for filing.

Corporations organized under the Texas Nonprofit Corporation Act DO NOT automatically qualify for exemption from federal and state taxes. Before granting a tax exemption, the IRS requires that the articles of incorporation contain certain provisions that relate to the purposes and powers of a corporation and the disposition of its assets upon dissolution. If your corporation plans to seek federal tax exempt status under the Internal Revenue Code, you may wish to obtain and review the sample language for these provisions contained in a publication called Tax Exempt Status for Your Organization, IRS Publication 557. You may call the IRS at (800) 829-3676 for a copy of the publication. Additional questions concerning exemption from federal income taxes should be directed to the IRS.

Application for exemption from state franchises taxes must be made to the Exempt Organizations Section, Comptroller of Public Accounts, Austin, Texas 78774-0100, (512) 463-4600 or (800) 252-1381. TDD: (800) 248-4099 or (512) 463-4621.

Under article 10.07 of the Texas Nonprofit Corporation Act, a corporation may choose to make the filing of certain documents effective as of a date within 90 days of the date of submission. This can be accomplished by stating either a future date or describing a future event within the document submitted for filing. Please refer to article 10.07 of the Texas Nonprofit Corporation Act for the specific requirements necessary for filing documents with a future effective date.

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NOTE: A form suitable for filing is provided with the main document generator.