

## General information starting a small business in Texas

# PREVIEW

1. It is easy to start a business in Texas. Unlike some other states, Texas has relatively few requirements to begin a new business. The first step is to choose the type of business entity that the business will be organized as.

2. There are types of business entities to choose from:

Sole proprietorship,  
Partnership,  
Limited Partnership,  
Limited Liability Partnership,  
Registered Limited Liability Partnership  
Corporation,  
Professional Corporation,  
Professional Association,  
Limited Liability Company,  
Professional Limited Liability Company,  
Joint Venture,  
Trust,  
and some other specialized business organizations.

3. Once the business organization has been selected, you must select a name for the business. You must make sure that you are not using a name that is already being used. Look in the telephone book, check the local assumed name records and call the Secretary of State's Office to find out what names are available.

4. After a name is chosen, you must ascertain if there are any licensing, permit or other governmental agency requirements that are applicable or govern your business. One of the best sources to keep up with these type of requirements is by joining a trade association.

5. After you have formed your business, you will need to make sure that you have set up your payroll and other tax processes so that taxes may be reported and paid timely.

### Sole proprietorships, assumed names and assumed name certificates

1. The following comments and forms provide basic information on how to operate a business in Texas as a sole proprietorship. An individually owned business is called a sole proprietorship. An assumed name certificate must be filed for all sole proprietorship and other businesses if the business name is conducted in a name other than the owner's full legal name.

2. An assumed name is any name other than the name stated in a corporation's Certificate of Formation. A corporation must file an assumed name certificate with the Secretary of State and with the county clerk in the county where the corporation maintains its registered office and the county in which the principal place of business is located, if such county is different from the county of the registered office. [Bus & Com C Section 50.11].

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3. Any business desiring to market or advertise under a name that is different from its legal or corporate name is also required to file an assumed name certificate in the office of the county clerk of each county in which the business intends to operate.

4. The certificate must set forth the name under which the business is to be conducted, the name and address of each owner, and the length of time, not to exceed 10 years, that the assumed name will be used. The period of use may be extended beyond 10 years by filing renewal applications.

5. All assumed name certificates must be signed before a notary and must be filed in each county where the assumed name will be used.

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6. Any corporation that regularly conducts business or renders professional services in Texas under an assumed name must comply with the assumed name procedures.

7. Unincorporated businesses or professions must file assumed name certificates in each county where business premises are maintained [see Bus & Com C Section 36.10].

8. If no business premises are maintained in any county, then the certificate is filed in each county where the entity conducts business or renders professional services.

9. Filing an assumed name certificate does not give the registrant the right to use a name when this use would be contrary to the common law or statutory law of unfair competition, unfair trade practices, or common law copyright [Texas Business & Commerce Code Section 36.17].

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Form: Assumed names and assumed name certificates for an unincorporated business or profession

# PREVIEW

## ASSUMED NAME RECORDS

### CERTIFICATE OF OWNERSHIP FOR UNINCORPORATED BUSINESS OR PROFESSION

State of Texas  
County of \_\_\_\_\_

NOTICE: "CERTIFICATES OF OWNERSHIP" are valid for a period not to exceed 10 years from the date filed in the county clerk's office [Business & Commerce Code sec. 36.13]. This certificate, properly executed, is to be filed immediately with the county clerk.

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#### NAME IN WHICH BUSINESS IS OR WILL BE CONDUCTED

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

Period (not to exceed 1 year) during which assumed name will be used: \_\_\_\_\_

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Business is to be conducted as a:

- Proprietorship
- Sole Practitioner
- Joint Stock Company
- General Partnership
- Limited Partnership
- Joint Venture
- Real Estate Investment Trust

Other: [specify]

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CERTIFICATE OF OWNERSHIP

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I/We, the undersigned, are the owner(s) of the above business, and my/our name(s) and address(es) given is/are true and correct, and there is/are no ownership(s) in this business other than those listed below.

[List names and addresses of owners and leave space for signatures of each person listed].

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by

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\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:  
\_\_\_\_\_

[or Notary's Stamp]

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# PREVIEW

## ASSUMED NAME CERTIFICATE FOR INCORPORATED BUSINESS OR PROFESSION

State of Texas  
County of \_\_\_\_\_

I, \_\_\_\_\_, President of \_\_\_\_\_, a [specify state] corporation, for the purpose of complying with section 36.11 of the Texas Business and Commerce Code, do certify the following facts:

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1. The assumed name under which the business or professional service is or is to be conducted or rendered is \_\_\_\_\_.
2. The name of the incorporated business or profession as stated in its Certificate of Formation or comparable document is \_\_\_\_\_, and the charter number or certificate of authority number, if any, is \_\_\_\_\_.
3. The state, country, or other jurisdiction under the laws of which it was incorporated is \_\_\_\_\_, and the address of its registered or similar office in that jurisdiction is \_\_\_\_\_.

# THIS DOCUMENT

4. The period, not exceeding ten years, during which the assumed name will be used is \_\_\_\_\_.
5. The corporation is a [business corporation or nonprofit corporation or professional corporation or professional association or other type of corporation (specify), or other type of incorporated business, professional, or other association or legal entity (specify)].
6. If the corporation is required to maintain a registered office in Texas, the address of the registered office is \_\_\_\_\_ and the name of its registered agent at such address is \_\_\_\_\_.

The address of the principal office [if not the same as the registered office] is \_\_\_\_\_.

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7. If the corporation is not required to or does not maintain a registered office in Texas, the office address in Texas is \_\_\_\_\_; and if the corporation is not incorporated, organized, or associated under the laws of Texas, the address of its place of business in Texas is \_\_\_\_\_ and the office address elsewhere is \_\_\_\_\_.

# PREVIEW

8. The county or counties where business or professional services are being or are to be conducted or rendered under such assumed name are: [if applicable, use the designation all or all except \_\_\_\_\_].

\_\_\_\_\_  
[Name and title]

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by

**PLEASE DO NOT COPY**

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:  
\_\_\_\_\_

[or Notary's Stamp]

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Form: Assumed names and assumed name certificates for a partnership

**PREVIEW**  
ASSUMED NAME CERTIFICATE FOR A PARTNERSHIP

State of Texas  
County of \_\_\_\_\_

We, the undersigned partners of \_\_\_\_\_, a partnership, for the purpose of complying with the Assumed Business or Professional Name Act (Chapter 36, Title 4, of the Business and Commerce Code of the State of Texas) do certify the following facts:

1. The name under which the partnership will conduct and transact business is

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2. The true and full names and addresses of the partners conducting or transacting such business are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The business conducted in \_\_\_\_\_ County under such assumed name will be entered by the general partnership.

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4. The name, \_\_\_\_\_, under which partnership will conduct and transact business, will be used from [date].

IN TESTIMONY WHEREOF, we have set our hands this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Partner  
**THANK YOU**  
\_\_\_\_\_  
Partner

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_

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# PREVIEW

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:  
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## Partnership information and forms

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1. The following comments and forms provide basic information on Texas partnership law and some sample forms.

2. General partnerships differ significantly from limited partnerships in the following principal ways:

a. There is general liability of all partners.

b. The death, withdrawal, or bankruptcy of a partner in a general partnership causes the dissolution of the partnership, which is not necessarily true of a limited partnership.

c. An interest in a general partnership is not considered a security, while an interest offered by a limited partnership is considered a security subject to compliance with federal and state securities laws.

3. A General partnership is preferred if all the proposed partners intend to be actively involved and engaged in management and operation of the partnership business. The limited partnership agreement is most appropriate if it is desired to provide the favorable tax benefits of a partnership plus limited liability to investors who wish to invest in a venture but who do not have time to become actively involved in its day to day operations.

4. In a general partnership all of the partners have the right to be involved in the day to day affairs and management of the partnership. They share in the profits according to the terms of their partnership agreement, and are liable for partnership debts.

5. Limited partnerships restrict the partnership's business management to the general partners, and afford the limited partners limited liability so that they are not liable for the partnership's debts or liabilities.

6. Family limited partnerships are a specific type of limited partnership designed to protect and manage family assets. These partnerships are used in advanced estate planning and asset protection.

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## Differences between limited liability companies, partnerships and registered limited liability partnerships

**PREVIEW**

1. There are several important difference between limited liability companies, (LLC) partnerships and registered limited liability partnerships( RLLP). A LLC shields its members from LLC obligations in much the same manner as a limited partnership shields its limited partners from the limited partnership's debts. A LLC may afford more protection to its members than a limited partnership affords to its limited partners.

2. A limited partnership affords greater protection to the limited partners than is afforded to members of a registered limited liability partnership. In a limited partnership, the general partner (which may be a corporation) has unlimited liability and exposure for the limited partnership's debts and obligations. Members in a LLC have no such exposure.

3. Generally, the limited partners are not liable for the limited partnership's debts and obligations unless they have actively engaged in the management of the business. On the other hand, a registered limited liability partner may participate in the management or control of the partnership business and still enjoy the limited liability afforded by the RLLP.

4. A general partner and a RLLP partner are liable for general partnership debts and obligations, however, a RLLP partner is not liable for the negligence or malpractice of other registered limited liability partners in the partnership, unless he or she was involved in the negligent act or a part of the negligent act. A partner in a general partnership is liable for all other partner's actions in the partnership even if he or she had nothing to do with the negligent action.

5. LLC's must pay a franchise tax, whereas general partnerships, limited partnerships, and registered limited liability partnerships do not pay the Texas franchise tax.

6. The attorney should review the consequences and affect of the franchise tax before choosing a limited liability company, partnership, limited partnership, or registered limited liability partnership.

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**How to choose between limited liability companies, partnerships, and registered limited liability partnerships**

# **PREVIEW**

1. RLLP's allow pre-existing partnerships to enjoy similar benefits to those afforded LLCs. Due to the tax consequences of disbanding a partnership and then forming a new entity, i.e. a LLC, many pre-existing partnerships will prefer to chose the RLLP form rather than the LLP form. An RLLP has many of the same benefits of a LLC but avoids the tax consequences of changing the organization of a pre-existing partnership.
2. For example large law firms that desire the benefits of an LLC but do not want to form a LLC due to the tax consequences can form a RLLP.

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## Procedure to form a corporation

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1. The first consideration is to decide whether the business entity should be formed as a corporation, (close or regular), limited liability corporation, limited partnership, partnership, limited liability partnership or sole proprietorship.

2. The second step is to reserve the corporate name, then prepare the Certificate of Formation, formerly known as “articles of incorporation” and file the certificate with the Secretary of State's office in order to obtain a corporate charter.

a. The Certificate of Formation sets forth basic information concerning the corporation and its capital structure.

3. The third step is to prepare the corporate bylaws.

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4. The fourth step is to organize the corporation by holding an organizational meeting, or signing a Ratification in Lieu of holding the Organizational Meeting.

a. The corporation must be organized pursuant to an organizational meeting of the initial board of directors. This is the time and place where the corporation is actually organized. The initial board of directors accept the resignation of any directors who cannot continue and new directors may be appointed.

b. The board of directors must choose officers and approve corporate bylaws, which set forth the rules, regulations and restrictions under which the corporation shall operate. The board should also ratify, (if necessary) contracts, agreements and other corporate business which is at hand.

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c. At this meeting the following items are usually discussed and approved:

i. Approval of the corporate bylaws, corporate minute book and corporate seal;

ii. Establishment of bank accounts;

iii.. Election of officers and directors and terms of compensation for the officers and directors.

iv. Approval of Section 404 stock plan and medical reimbursement plan;

v. Approval of initial employment contracts and/or management contracts; and

vi. Approval of restrictions to the sale or transfer of corporate stock and/or corporate shareholder agreements.

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d. You must hold your organizational meeting to adopt the bylaws, confirm the directors, elect officers, pay the required capitalization fee, issue stock certificates and conduct any

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other required business. If you do not hold your organizational meeting, and complete the required paper work (minutes and bylaws) your incorporation will not be complete. Consequently all corporate actions could be subject to contest and you and the other directors/shareholders may be personally liable for all corporate/business obligations.

5. The fifth step is to capitalize the corporation by the issuance of stock and imposing stock restrictions if desired.

6. You may also consider adopting corporate plans and resolutions including but not limited to a Section 1244 stock plan, medical or health care reimbursement plan, and preparation of shareholder and employee agreements.

7. In Texas, the process of incorporating a going business requires the filing of certain additional notices in addition to filing the Certificate of Formation with the Secretary of State's office.

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**Tips for meeting with clients:**

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1. Meet with the client to review and discuss:
  - a. Advantages and disadvantages of incorporation,
  - b. Whether entity should be a statutory close corporation, limited liability corporation, or partnership,
  - c. Making an initial Subchapter S election for tax reasons,
  - d. Available shareholder agreements.
2. Reserve the corporate name.
3. Consider the use of a pre-incorporation or shareholders' agreement.
4. If incorporating an existing business without a substantive change of firm name:
  - a. Give notice of the incorporation once a week for at least four weeks in some newspapers published in the county in which the principal business office of the firm is located; until such notice has been fully published, shareholders remain personally liable for the firm's debts, despite incorporation.
  - b. File appropriate certificates terminating use of prior assumed name in all counties in which assumed name certificate had previously been filed. Assumed name certificates filed with the Secretary of State's office do not have to be notarized, however certificates filed with county clerks must still be acknowledged.
5. Comply with any applicable bulk transfer provisions, if applicable.
6. Draft the certificate of formation and bylaws, then file the certificate with the secretary of state's office and pay the applicable filing fee and first year's franchise tax.
7. After receipt of the approved certificate of formation, order corporate record book and stock certificates.
8. Hold the corporate organizational meeting and adopt an Internal Revenue Service 1244 plan if desired. Note that the prior requirement of an initial capitalization of \$1,000 is no longer required.
9. Prepare the organizational minutes and any waiver.
10. Close old business accounts with the Texas Employment Commission and open new accounts.

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- a. Transfer the experience rating.
11. Change insurance policies to the corporation.
12. Close sales tax permit account and obtain a new permit.
13. File an application for employer identification number (SS-4).
14. Obtain a novation from creditors or lending institutions on:
- a. Debts,

b. Loans,  
c. Obligations.

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15. Obtain consents or assignments on all contracts and leases.
16. If Subchapter S is desired, file the appropriate election within the required time period.
17. Review the wills and estate plans of the corporate officers.
18. Corporations are subject to the Texas state franchise tax. The tax is administered by the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381.
19. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or view the the Internal Revenue Service's website at [www.irs.gov](http://www.irs.gov).

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**Statutory authority**

# PREVIEW

1. For statutory authority to incorporate a business in Texas see titles 1 and 2 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A governs the formation of profit corporations. (note the Texas Business Corporation Act Arts 1.1-11.1. has been replaced).

Business Law Section of the State Bar of Texas and the Office of the Texas Secretary of State.

a. The BOC codified the provisions of the prior law found in the Texas Business Corporation Act (TBCA), Texas Non-Profit Corporation Act (TNPCA), Texas Miscellaneous Corporation Laws Act (TMCLA), Texas Limited Liability Company Act (TLLCA), Texas Revised Limited Partnership Act (TRLPA), Texas Real Estate Investment Trust Act (TREITA), Texas Uniform Unincorporated Nonprofit Associations Act (TUUNAA), Texas Professional Corporation Act (TPCA), Texas Professional Associations Act (TRPA), the Texas Revised Partnership Act (TRPA), the Cooperative Associations Act (CAA), and other provisions of the Texas laws that governed domestic business entities.

b. The BOC became effective January 1, 2006.

c. The BOC does not apply to entities that existed on January 1, 2006 unless the entity expressly elects after January 1, 2006 to adopt the BOC as its governing statute. The code applies thereafter on January 1, 2010. The BOC applies and governs all new entities that are formed after January 1, 2006.

2. The statutory requirement for initial capitalization of \$1000 has been eliminated. The corporation must still be adequately capitalized however the requirement of 1,000 is no longer required.

3. Electronic transmissions may now be utilized to carry out corporate functions. This includes notice, voting, proxies and meetings. This is reflective of the expanded use of teleconferencing, internet conferencing/communication, and facsimiles.

a. When using electronic transmissions for notice, it must be with the approval of the shareholder and should two attempts to provide notice by electronic transmission fail, the sender must use alternative means of notice.

b. When the corporation receives information by electronic transmission, as in voting and proxies, the corporation must require that within an accompanying electronic transmission there is information whereby the corporation can authenticate the identity of the sender.

c. The use of electronic transmission for meetings will still require that the minutes of the meetings can be reduced to written form.

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