

Certificate of Formation-Short Form

PREVIEW

1. After selection of a corporate name, the next step in forming a corporation is to prepare the Certificate of Formation.
2. The Texas Business Corporation Code (BOC) sections 3.005 through 3.007 sets forth the minimal information that must be contained in the Certificate which must then be signed by the Organizers.
 - a. See titles 1 and 2 of the Texas Business Corporations Code (BOC) for general information about profit corporations; see Title 1 Chapter 3, subchapter A of the BOC for the required provisions for the Certificate of Formation. Note the form used to be called Articles of Incorporation; that term has been replaced with the passage of the BOC which became effective 1/1/06.
3. The document used to form a corporation in Texas is the Certificate of Formation formerly known as articles of incorporation.
 - a. If the corporation is a profit as opposed to a non profit corporation, the same is governed by titles 1 and 2 of the Texas Business Organizations Code (BOC).
 - b. See title 1, chapter 3, subchapter A, of the BOC; it sets forth the provisions required or permitted to be contained in the certificate of formation.
4. The Texas secretary of state's office does not require the corporation to list the corporation's business or street address in the certificate of formation, note that other states require the address in the articles of incorporation or certificate of formation.
 - a. If the address is listed in the certificate and the corporation changes its address, the corporation may have to amend its certificate to reflect the change of address.
5. Major decisions that must be made before the filing of Certificate of Formation are:
 - a. The name of the corporation. The attorney should check with the Secretary of State's office to ascertain if the desired corporate name is available.
 - b. The duration. A corporation may exist perpetually unless its duration is provided for otherwise in the certificate of formation, see BOC section 3.003.
 - c. The purpose clause unless there is some reason to the contrary, a clause authorizing the "transaction of any and all lawful business" is preferred. In addition, a specific purpose clause identifying the business proposed to be done is recommended. Not only does such a provision "customize" the Certificate but it also removes any question as to whether the named purpose is contemplated.

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d. The authorized, aggregate number of shares and their par value. It is usually best to authorize more shares than will be initially issued to avoid the necessity of later amendments.

PREVIEW

Par value is usually a contrived concept. The Certificate of Formation must specify whether shares have a par value or are without a par value. If shares are to have a par value, the Certificate must specify the chosen value. Par value is the minimum price to be paid for shares purchased from the corporation.

To the extent the corporation does not actually receive the par value of each share issued, the "underpaid" shares are assessable for the difference by the corporation or its creditors. Shares without par value or with low (1 cent or 10 cent or \$1) par value are recommended, to allow the maximum flexibility in setting the offering price. Shares can be issued (and usually are) for more than par value. Where the issue price is above par value, the shares so issued are assessable until all of the issue price (not just the par value) has been received.

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e. The registered agent which may be an individual or an entity such as a corporation or a foreign entity that is registered to do business in Texas. The registered agent cannot be the corporation being incorporated- the corporation cannot be its own registered agent.

f. The street address of the initial registered office, which must be the business office of the designated registered agent where service of process may be personally served on the entity's registered agent during normal business hours and the name of the initial registered agent.

The registered office is the official "address" at which a representative of the corporation, the registered agent, can be reached. The state generally sends all official communications (for example, franchise tax report forms) to the registered agent. The registered agent is also the person authorized to receive service of process upon the corporation. See section 5.201 of the BOC for statutory references. Do not use a post office box or other service where personal service cannot be obtained.

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The registered office is not required to be the entity's principal place of business.

If the registered agent or office address changes, file a change of address with the secretary of state's office. File the change within 30 days of the new agent's appointment or move to then new address. Failure to maintain a registered agent and office may result in the involuntary termination of the corporation.

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The penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state is set forth in BOC section 21.802.

g. The number of initial directors and their respective names and addresses. There must be at least one director. A director must be a natural person and not a corporation or trust. The director does not have to be a Texas resident. The number of directors can be changed after incorporation in the manner provided in the bylaws.

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h. The Certificate of Formation is signed by an organizer, formally called the incorporator. The organizer does not have to be a Texas resident. The organizer may be an individual over 18 years of age or another corporation or entity. There must be at least one Organizer, and the Organizer must sign the Certificate. Usually the attorney for purposes of convenience acts as the Organizer. The Texas Business Corporation Code (BOC) section 3.004 sets forth requirements for the organizer.

i. A provision regarding preemptive rights. Effective September 1, 2003, Texas law defaults to a denial of pre-emptive rights, consequently the certificate of formation should state whether or not pre-emptive rights are given or denied.

Preemptive rights in effect grant existing shareholders of a corporation the right to purchase any additional shares issued by the corporation. The rights are equivalent to a "right-of-first-refusal." Without such rights, a shareholder may find his percentage of ownership involuntarily diluted by a majority of the board. In closely held corporations, preemptive rights are important in protecting minority shareholders. In large publicly held corporations, preemptive rights are impractical and are customarily denied.

Without a compelling reason to the contrary, most attorneys deny preemptive rights.

j. A provision granting or denying cumulative voting in the election of directors.

"Cumulative voting" makes minority representation on the board of directors more likely by allowing a minority shareholder to cast as many votes as the number of shares he or she owns multiplied by the number of positions to be filled, and to distribute his or her votes among as many (or as few) candidates as he or she wishes. With "straight" or "non-cumulative" voting, a majority of shares could elect all directors. Effective September 1, 2003, Texas law defaults to a denial of cumulative voting.

k. Tax considerations:

1. The corporation must comply with federal income tax laws, file income tax returns, etc and obtain a federal employer identification number EIN. Call 800.829.3676 or visit the IRS website at www.irs.gov for more information.

m. Texas corporations are subject to the Texas Franchise tax. Contact the Texas Comptroller of Public Accounts for questions or assistance with franchise tax issues. Call 800.252.1381.

n. A provision for indemnification of officers and directors and for insurance for such indemnification.

o. Provisions electing statutory "close corporation" status and shareholder management or any other provisions which may be regulated by shareholder agreement in a statutory close corporation.

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The standard form of Certificate of Formation may be used for a simple corporation. It includes the name of the corporation, duration, purpose, capitalization, stock structure (common stock only), preemptive rights, cumulative voting prohibition, issuance of stock, name and address of registered office and agent, number of directors, and name of the Organizer.

6. The initial capitalization of \$1000 has been eliminated in the statutes.
7. The filing fee for forming a new corporation is \$300.
8. The form, if mailed must be submitted in duplicate along with the filing fee.
 - a. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered in person to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701.
 - b. If a document is transmitted by fax, credit card information must accompany the transmission.
 - c. On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.
9. The organizer must sign the certificate.
 - a. A person commits an offense under section 4.008 of the BGC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.
 - b. Certificate of Formation no longer require the Organizer's signature to be notarized.

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Certificate of Formation - Short form

PREVIEW

1. This form is used for a standard for profit corporation.

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PREVIEW

CERTIFICATE OF FORMATION FOR -PROFIT CORPORATION

This space reserved for SOS office use

[CORPORATION'S NAME]

1. NAME

1.1 The entity being formed is a for-profit corporation. The name of the corporation is [Corporation's Name]. The name must contain the one of the following: Company, Corporation, Incorporated or an abbreviation of the words i.e. Inc. or Co].

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2. DURATION

2.1 The period its duration is perpetual [or such other duration such as a stated number of years].

3. PURPOSES

3.1 The purpose or purposes for which the corporation is organized are for the transaction of any or all lawful business which corporations may engage in under the laws of Texas including but not limited to the following:

a. To carry on any business or any other legal [lawful] activity to that the Board of Directors may decide.

b. To acquire, own, use, convey and otherwise dispose of and deal in real property or any interest therein.

c. To manufacture, buy, sell and generally deal in goods, wares and merchandise of every class and description, both real and personal and tangible.

d. To buy, rent, sell, manufacture, produce, assemble, distribute, repair and service any and all products or services in which the company desires to engage.

e. To do such other thing as may be incidental to the foregoing or desirable in order to accomplish the purpose for which the corporation was formed.

f. To have and exercise all rights and powers that are now or may hereafter be granted to a corporation by law.

3.2 The foregoing shall be construed as objects, purposes and powers, and enumeration thereof shall not be held to limit or restrict in any manner the powers hereafter conferred on this corporation by the laws of the State of Texas.

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3.3 The corporation may in its bylaws confer powers, not in conflict with law, upon its directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by statute.

4. AUTHORIZED SHARES

4.1 The total number of shares which the corporation has authority to issue is [amount and par or no par, i.e. 100,000 shares at a par value of one dollar per share].

5. PREEMPTIVE RIGHTS

5.1 The shareholders of this corporation shall [have or not have] the preemptive right to subscribe to any and all issues of shares and securities of this corporation.

6. CUMULATIVE VOTING

6.1 The shareholders [shall or shall not] have the right of cumulative voting.

7. REGISTERED AGENT AND ADDRESS

7.1 The name of the corporation's initial Registered Agent is:
[Name]. [If the registered agent is not an individual but is a corporation or other entity state the type of entity]

7.2 The address of the corporation's initial registered office is: address. [State a street, building or rural route. Do not use a post office box since that is not sufficient to satisfy the service of process requirements].

8. INITIAL DIRECTORS

8.1 The number of directors constituting the initial board of directors is [Number of Directors] (_____), and the names and addresses of the persons who are to serve as initial directors until the first annual meeting of the shareholders or until their successors are elected and qualified are:

[Names and Addresses of Directors, include the country]

9.1 The corporation shall indemnify every director or officer, his or her heirs, executors and administrators, against expenses actually and reasonably incurred by him or her, as well as any amount paid upon a judgment, in connection with any action, suit or proceeding, civil or criminal, to which he or she may be made a party to by reason of having been a director or officer of the corporation.

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9.2 This indemnification is being given since the directors will be requested to act by the corporation, for the corporation's benefit.

9.3 The indemnification shall not be exclusive of other rights to which the director may be entitled.

10. SUPPLEMENTAL PROVISIONS

10.1 No contract or other transaction between the corporation and any other corporation shall be affected by the fact that one or more of the directors or officers of this corporation is interested in or is a director or officer of such other corporation.

11. DATE THE FILING IS EFFECTIVE
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11.1 This document becomes effective [when the document is filed by the secretary of state, at a later date, which is not more than ninety (90) days from the date of signing, the following date _____, upon the occurrence of a future event or fact, other than the passage of time or _____]. The following event or fact will cause the document to take effect in the manner described below:]

12. ORGANIZER

12.1 The name and address of the Organizer is [name and address of Organizer].

For the purpose of forming a corporation under the laws of the State of Texas, I, the undersigned Organizer of this corporation, have signed this Certificate of Formation subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument on _____.

Organizer

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Fax filing & original signatures

PREVIEW

1. The Secretary of State's office maintains a plain paper facsimile machine for the receipt of documents and messages.
2. The Secretary of State's fax number is (512) 463-5709.
3. If a document is to be submitted to the office by facsimile transmission, it requires either the simultaneous receipt of the filing fee, or the delivery of any applicable fees by the close of the same business day.
4. If the applicable fees are not received on the same date as the transmission, the document will be returned without filing.

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Payment of filing fees

PREVIEW

1. Filing fees are set forth in Section 402.002 of the Texas Business Organizations Code (BOC) Filing fees may be paid by personal check, firm check, a client's check, cashier's check, money order, credit card, or debit system account. When filing documents by facsimile transmission, fees may be paid by credit card so that the fees will be paid on the same date as the transmission. The Secretary of State's office does not accept cash.

2. Credit card charges. The Secretary of State's office accepts Visa and MasterCard credit cards. The fees are subject to a transaction charge of 2.7% of total fees incurred. The 2.7% processing cost fee is subject to change and should be verified on a regular basis to see if fee has increased.

3. The transaction charge is assessed for the credit card transaction. To make payments by credit card, a completed credit card payment form must be sent with the transmission, or submit the following information along in writing. This can be included in the facsimile transmission.:

- a. The credit card to be used
- b. The account number,
- c. The expiration date,
- d. The signature of the card holder,
- e. The total fees charged and

f. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

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When submitting a filing instrument by fax, credit card information must accompany the transmission

Expedited Processing

A cover letter or cover sheet should accompany the filing instrument or order request and provide a daytime phone number and contact name. The cover must specifically request expedited processing. The document/order request will be processed by close of business on the business day following the day of receipt. Expedited processing is not provided for trademark documents.

THANK YOU

Expedited Processing Fee per document	25.00
Expedited Processing Fee per certified copy/certificate of status or fact	10.00

4. To pay filing fees by debit system account, contact the Secretary of State's office at (512) 435-3604. Debit fees are paid through an automated clearing house, a debit

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system account established between the account applicant and the financial institution under contract with the Secretary of State's office.

PREVIEW

5. Texas Secretary of State SOS Direct

Online access to the business entity and UCC databases is available through SOS Direct . The fees associated with an SOS Direct account are the fees imposed for a document filing, for copies and certificates ordered, and inquiries submitted.

The cost of an inquiry is \$1.00 per name searched. The \$1.00 fee is not charged when the search is made when ordering copies/certificates or when making a document filing. There are no monthly subscription fees. For more information, call (512) 475-2755 or visit the SOS web site at www.sos.state.tx.us

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Payment of filing fees and fax filing

PREVIEW

1. Facsimile filings are now accepted as well as payment of filing fees by credit cards. See the above sections for a discussion of the Secretary of State filing procedures, fees, and forms:
2. The following form may be used to pay fees by a credit card.

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PREVIEW
FOR CREDIT CARD USE ONLY (PLEASE PRINT OR TYPE)

Cardholder Name:
Address:

City : State: Zip:

Phone No.: () Fax No.: ()

TYPE DOCUMENT TO BE FILED: ENTITY NAME(s):

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SHIP TO ADDRESS: (if different than Address above) EXPEDITED HANDLING REQUESTED: YES NO
(Additional charge of \$25 for expedited service)

SELECT PAYMENT TYPE AND PROVIDE REQUESTED INFORMATION

Charge to: Secretary of State Client ID No.: (if applicable)

Charge to: VISA® MasterCard® Discover® Charge to: LegalEaseSM

* Fees paid by credit card are subject to a convenience fee (currently 2.7%) on the total fees incurred. * For information about LegalEaseSM, call 1-800-253-5749

THIS DOCUMENT

Card No.: - - - Card No.: 5 0 0 6 7 9 - - -

Expiration Date: / (MO/YR) Client No.: Case No.:

Signature: Signature:

	AMOUNT	BATCH NUMBER:
FILING FEE		
EXPEDITED HANDLING FEE		
TOTAL AMOUNT	\$	

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Filing letter to secretary of state

PREVIEW

1. The filing letter accompanies the Certificate of Formation along with the required filing fee.
2. These are collectively sent to the Secretary of State's office. Filing fees for the Certificate of Formation must be paid at the time the Certificate are filed.
3. For an additional fee, the Secretary of State's office will afford the Certificate special handling which expedites the incorporation process.
4. The fee generally assures that the Certificate are filed the same day, that they are received by the Secretary of State's office and that the Secretary of State's office will call the attorney to advise the exact date of filing and charter number.

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Form: Filing letter to secretary of state

PREVIEW
[Date]

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

Dear Intake Division:

PLEASE DO NOT COPY
Enclose please find duplicate original of the Certificate of Information for the above-named corporation and a check for [amount of filing fee i.e. \$300] from the Organizer in the required amount for the filing fees.

[Add, if desired: I have also enclosed a check for \$25 to cover the costs for special handling.]

Your expeditious cooperation is appreciated. Thank you in advance for your assistance and cooperation.

Very truly yours

THIS DOCUMENT
[Attorney Name]

THANK YOU

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