

**Certificate of Formation for non-profit corporation - Software exchange group**

**PREVIEW**

1. After selection of a corporate name, the next step in forming a corporation is to prepare the Certificate of Formation formerly known as “Articles of Incorporation”. The Certificate of Formation allows a corporation to be formed under the Texas Non-profit Corporation Act for the purposes stated therein.

2. The Certificate of Formation are similar to the previous forms with the exception of the statement that the corporation is operated for non-profit purposes.

3. A non-profit corporation's Certificate must prohibit the distribution of net earnings to shareholders of the corporation.

4. One Organizer and three directors are required as a minimum.

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5. Senate Bill 731 amends the Texas non-profit corporation act negating the liability of an officer in a nonprofit corporation where the officer’s conduct was exercised in good faith, with ordinary care and in the manner that the officer reasonably believed to be in the best interests of the corporation. The amendment provides the same protection to officers that are afforded to directors.

6. Electronic transmissions may 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. This should be addressed in the Certificate of Formation for these areas by either including them as authorized options or not including them.

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7. 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.

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

9. 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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10. The Texas Business Corporation Code (BOC) sets forth the minimal information that must be contained in the Certificate which must then be signed by the Organizers.

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.

11. Main organizers that must be named are the filer of Certificate of Formation and a

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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.

c. 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.

d. 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.

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 this 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.

f. 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.

g. 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](http://www.irs.gov) for more information.

h. The form, if mailed must be submitted in duplicate along with the filing fee.

i. 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.

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ii. If a document is transmitted by fax, credit card information must accompany the transmission.

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i. 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.

j. The organizer must sign the certificate.

k. A person commits an offense under section 4.008 of the BOC 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.

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l. Certificate of Formation no longer require the Organizer's signature to be notarized.

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**PREVIEW**

<p><b>CERTIFICATE OF FORMATION NONPROFIT CORPORATION</b></p> <p>[CORPORATION'S NAME]</p>	<p>This space reserved for SOS office use</p>
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**1. TYPE OF CORPORATION AND NAME**

1.1 The entity being formed is a nonprofit corporation. The name of the corporation is [Corporation's Name].

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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 nonprofit 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:

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- a. To carry on any nonprofit business or any other legal or 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 do such other things as are incidental to the foregoing or desirable in order to accomplish the purpose for which the corporation was formed.
- d. To have and exercise all rights and powers that are now or may hereafter be granted to a corporation by law.

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3.2 The corporation shall also:

- a. Provide an organization for owners of personal computers to meet together in a regular meeting whereby they may exchange ideas, knowledge and experience.

c. Provide training and sharing of computer experience for its members including, but not limited to, formal and informal education and/or seminars in computer applications hardware and software.

d. Provide an organization for the promotion of communication with other computer user groups.

e. Receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations herein set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, literary or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under the Internal Revenue Code and its Regulations as they now exist or as they may be amended.

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f. No part of the net earnings of the corporation shall inure to the benefit of any director of the corporation, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no director or officer of the corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation. No substantial part of the activities of the corporation shall be carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

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g. The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to tax on undistributed income imposed by applicable provisions of the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

h. The corporation shall not engage in any act of self-dealing as defined in the Internal Revenue Code or corresponding provisions of any subsequent provisions of any subsequent federal tax laws.

i. The corporation shall not retain any excess business holdings as defined in the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

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j. The corporation shall not make any investments in such manner as to subject the corporation to tax per the requirements of the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

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k. The corporation shall not make any taxable expenditures as defined in the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

l. Notwithstanding any other provision of these Certificate of Formation, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation of the Internal Revenue Code and its Regulations as they now exist or as they may be amended.

m. Upon dissolution of the corporation or the winding up of its affairs, the assets of the corporation shall be distributed exclusively to charitable, religious, scientific, testing for public safety, literary, or educational organizations which would then qualify under the provisions of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

n. Provide an opportunity for members to associate together in special interest groups which focus on a narrow or specialized computer application, to assist members in acquiring computer hardware, software and technology.

3.3 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.

3.4 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. EARNINGS

4.1 No part of the net earnings of the non-profit corporation shall inure to the benefit of or be distributed to its members, trustees, directors, officers or other private persons with the exception that the corporation is empowered to pay necessary and reasonable compensation and expenses for services rendered and to make payments and distributions in furtherance of the corporation's purposes.

4.2 The corporation's primary purpose shall not be used for the promotion of propaganda including, but not limited to, lobbying or influencing legislation and the corporation, however, may engage in legislative activities to the extent permitted by law. Furthermore, the corporation shall not engage in activities which are disallowed under the Internal Revenue Code and its regulations as they now exist or may be hereinafter amended.

4.3 The corporation is a non profit corporation and does not contemplate pecuniary gain or profit and is organized solely for non-profit purposes.

4.4 Upon the dissolution of the corporation or the winding up of its affairs, the assets of the corporation shall be distributed to another non-profit organization engaged in similar activities

and with similar purposes after all liabilities and obligations have been paid in full and are discharged and all assets subject to a condition upon transfer are conveyed according to said condition.

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**5. REGISTERED AGENT AND ADDRESS**

5.1 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]

5.2 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]

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**6. INITIAL DIRECTORS**

6.1 The number of directors constituting the initial board of directors is [Number of Directors at least 3 ] (\_\_\_\_\_), 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]

**7. INDEMNIFICATION**

7.1 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.

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

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

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8.1 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:]

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9 ORGANIZER

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

# PREVIEW

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

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

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](http://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):	
<b>PLEASE DO NOT COPY</b>		
SHIP TO ADDRESS: (if different than Address above)	EXPEDITED HANDLING REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> 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: <input type="checkbox"/> VISA® <input type="checkbox"/> MasterCard® <input type="checkbox"/> Discover®	Charge to: <input type="checkbox"/> LegalEase <sup>SM</sup>	
* Fees paid by credit card are subject to a convenience fee (currently 2.7%) on the total fees incurred.	* For information about LegalEase <sup>SM</sup> , call 1-800-253-5749	
<b>THIS DOCUMENT</b>		
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 Incorporation for the above-named corporation and a check for [ amount of filing fee i.e. \$25.00] 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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