

## Corporate bylaws

# PREVIEW

1. The bylaws are a more detailed set of rules for the governance of the corporation - a sort of "owners' manual" for the shareholders.

2. The bylaws are adopted by, and can be amended by, a majority of the board unless the Certificate otherwise specify. A greater-than-majority vote for amendment of the bylaws (whether by shareholders or the board of directors) may be used to protect minority interests

3. The definition of a quorum at a shareholders meeting has been expanded. The reference to treasury shares and shares held in a fiduciary capacity have been deleted from the definition of voting stock.

4. The form bylaws provide for telephone meeting.

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5. The bylaws will usually contain references to the:

- a. principal place of business of the corporation;
- b. meetings of shareholders (covering such subjects as notice of meetings, meeting times and places, voting, and the like);
- c. directors (number, qualifications, election, terms, removal, meetings, and the like);
- d. officers and agents (and their respective duties);
- e. stock certificates (issuance, payment, lost, stolen or destroyed certificates, and the like); and
- f. general provisions (dividends, accounts, books and records, seal, amendment of bylaws, and the like).

6. Control is affected by the bylaws in that, for example, the board of directors is governed by them. However, control will not be affected if the bylaws can be readily amended. Conversely, provisions affecting the method of amendment of the bylaws can be used to affect control (the Certificate are the overriding source of this control, however).

7. The formation of a small, "routine" corporation often involves a great deal of standard verbiage in the bylaws, much of which merely restates the applicable provisions of the Texas Business Organizations Code.

8. Bylaws usually require of the directors only two principal decisions: The choice of the corporation's bank and fiscal year. Article 8.6 of the long form circumvents one of these decisions by allowing the board to choose the bank at a later time. Many corporations do not select December 31 as their fiscal year because it may be advantageous for tax reasons to select

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another month, and because the corporation's accounts may have insufficient time at that time of year to completely review the corporate affairs and make a timely filing of the corporate federal tax return.

9. Corporate law allows one person to serve as both the president and secretary. It is, however, common practice among some practitioners to have the bylaws require that the Secretary and President be different persons.

10. The reason for this requirement is that the corporation may be better served by requiring two separate persons sign and approve Corporate Minutes, Resolutions and other actions which are signed by the secretary and president.

11. If only one person has both offices of Secretary and President, that person may be able to exercise greater control over the corporation than the other shareholders, officers or directors may desire.

12. There are situations where there is less concern for conflict of interest when the corporation is owned by one or more individuals. Then there may not be a reason to have two separate persons. In this situation, for convenience, it may then be desirable to have one person assume both offices of president and secretary.

13. Standard Form: The standard form corporate bylaws contains the following elements:

- a. Article 1 states the name of the registered office;
- b. Article 2 provides for shareholders' meetings, time of the annual meeting, notice of the annual meeting, requirements for holding special meetings, establishment of a quorum and voting rights, proxies, consent of absentees and actions without meetings;
- c. Article 3 provides for the powers of directors, number and qualifications of directors, election and term of office, vacancies, removal, place of meetings, regular and special meetings, quorum and actions taken without a board meeting, adjournment of meeting, conduct of meeting, compensation, and indemnification of directors;
- d. Article 4 provides for the title and appointment of officers, as well as the powers and duties of officers;
- e. Article 5 provides for the execution of instrument by directors;
- f. Article 6 provides for the issuance and transfer of shares;
- g. Article 7 provides for inspection of books and records;
- h. Article 8 provides for the amendment of the Bylaws.

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14. Long Form: The long form goes into more detail about the functions of the corporation and its officers; the long form is not required but is preferred by many corporate attorneys.

a. Long form bylaws such as those that follow should not be used for the professional corporation because the directors in a professional corporation are organized; other than that, the bylaws are the same or similar to the standard form bylaws in § 3:34.

b. The following items are included in the long form bylaws:

i. The purposes of incorporation;

ii. The address of the principal office;

iii. The board of directors and procedure for board of directors' meetings;

iv. Information applicable to the corporation's officers including the duties of the president, vice-president, secretary, treasurer, assistant secretaries and assistant treasurers;

v. Information applicable to shareholders; including the annual and special meetings, notice and quorum requirements, voting of shares and proxy requirements;

vi. Books and accounts of the corporation;

vii. Capital stock, stock certificates, transfers, issuance of certificates; dividends, records, dates and closings of the transfer books;

viii. Miscellaneous provisions, such as the fiscal year, corporate seal, waiver and notice provisions, resignation by directors, securities by other corporation, depositories, signing of checks, definitions;

ix. The corporate seal;

x. Voting requirements to pass amendments to the bylaws.

15. 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.

When using electronic transmissions for notice, it must be with the approval of the shareholder and should not attempt to provide notice by electronic transmission if the sender must use alternative means of notice.

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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.

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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# PREVIEW

## BYLAWS

### 1. REGISTERED OFFICE

1.1 The registered office of the corporation is located at [address], and the name of the registered agent of the corporation at such address is [name].

### 2. SHAREHOLDERS MEETINGS

#### 2.1 Annual Meetings:

The annual meetings of the shareholders shall be held at the registered office of the corporation, or any other place within or without this State, as may be designated for that purpose from time to time by the Board of Directors.

#### 2.2 Time of Annual Meetings:

The annual meetings of the shareholders shall be held each year at [time] on the first Monday of [specify month]. If this day falls on a legal holiday, the annual meeting shall be held at the same time on the next following business day thereafter.

#### 2.3 Notice of Meeting:

Notice of all meetings of shareholders shall be given in writing to shareholders entitled to vote by the President or Secretary or by the officer or person calling the meeting, or, in case of his neglect or refusal, or if there is no person charged with the duty of giving notice, by any Director or shareholder. The notice shall be given to each shareholder, either personally or by prepaid mail, addressed to the shareholder at his address appearing on the transfer books of the corporation. Notice [may – may not ] be given by any other means provided for by statute and approved by the Board of Directors and Shareholders.

(a) Notice of any meeting of shareholders shall be sent to each shareholder entitled thereto not less than ten (10) nor more than sixty (60) days before the meeting, except in the case of a meeting for the purpose of approving a merger or conversion agreement, in which case the notice must be given not less than twenty (20) days prior to the date of the meeting.

(b) Notice of any meeting of shareholders shall specify the place, date, and hour of the meeting. The notice shall also specify the purpose of the meeting if it is a special meeting, or if its purpose, or one of its purposes, will be to consider a proposed amendment of the Certificate of Formation, to consider a proposed reduction of stated capital without amendment, to consider a proposed merger or conversion, to consider a voluntary dissolution or the revocation of a voluntary dissolution by act of the corporation, or to consider a proposed disposition of all, or substantially all, of the assets of the corporation outside of the ordinary course of business.

(c) When a shareholders' meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty (30) days, it is not necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which the adjournment is taken.

(d) Subject to the notice provisions required by these Bylaws and by the Business Corporation Act, shareholders may participate in and hold a meeting by means of conference telephone or similar communications equipment by which all persons participating can hear each other. Participation in such a meeting shall constitute presence in person at such meeting, except participation for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(e) Any notice required by law or by these Bylaws may be waived by execution of a written waiver of notice executed by the person entitled to the notice. The waiver may be signed before or after the time stated in the notice.

## 2.4 Special Meetings:

Special meetings of the shareholders for any purpose or purposes whatsoever may be called at any time by the President, or by the Board of Directors, or by any two (2) or more Directors, or by any one or more shareholder, holding not less than one-tenth (1/10) of all the shares entitled to vote at the meeting.

## 2.5 Quorum:

A majority of the voting shares constitutes a quorum for the transaction of business. Business may be continued after a withdrawal of enough shareholders to leave less than a quorum.

## 2.6 Voting:

Only persons in whose names shares appear on the share records of the corporation on the date on which such notice of the meeting is mailed shall be entitled to vote at such meeting, unless some other day is fixed by the Board of Directors for the determination of shareholders of record. Each shareholder is entitled to a number of votes equal to the number of Directors to be elected, multiplied by the number of shares which [he or she] is entitled to vote. Voting for the election of Directors shall be by voice unless any shareholder demands a ballot vote before the voting begins. Shareholder voting may be given by any other means provided for by statute and approved by the Board of Directors and Shareholders.

## 2.7 Proxies:

Every person entitled to vote or execute consents may do so either in person or by written proxy executed in writing by the shareholder or [his or her] duly authorized attorney in fact. Proxies [may - may not] be given by any other means provided for by statute and approved by the Board of Directors and Shareholders.

## 2.8 Consent of Absentees:

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No defect in the calling or noticing of a shareholders' meeting will affect the validity of any action at the meeting if a quorum was present, and if each shareholder not present in person or by proxy signs a waiver of written notice, consent to the holding of the meeting, or approval of the minutes, either before or after the meeting, and such waivers, consents or approvals are filed with the corporate records or made a part of the minutes of the meeting.

## 2.9 Action Without Meeting:

Action may be taken by the shareholders without a meeting if each shareholder entitled to vote signs a written consent to the action and such consents are filed with the Secretary of the corporation. The consent [may not be given by any other means provided for by statute and approved by the Board of Directors and Shareholders].

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## 3. DIRECTORS

### 3.1 Powers:

The Directors shall act only as a board and an individual Director shall have no power as such. All corporate powers of the corporation shall be exercised by, or under the authority of, and the business and affairs of the corporation shall be controlled by the Board of Directors, subject, however, to such limitations as are imposed by law, the Certificate of Formation or these Bylaws as to actions to be authorized or approved by the shareholders. The Board of Directors may, by contract or otherwise, give general or limited or special power and authority to the officers and employees of the corporation to transact the general business, or any special business, of the corporation, and may give powers of attorney to agents of the corporation to transact any special business requiring such authorization.

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### 3.2 Number and Qualification of Directors:

The authorized number of Directors of this Corporation shall be [number]. The Directors need not be shareholders of this corporation or residents of Texas. The number of Directors may be increased or decreased from time to time by amendment to these Bylaws but no decrease shall have the effect of shortening the term of any incumbent Director. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election at any annual meeting or at a special meeting of the shareholders called for that purpose.

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### 3.3 Election and Term of Office:

The Directors shall be elected annually by the shareholders entitled to vote, and shall hold office until their respective successors are elected, or until their death, resignation, or removal.

### 3.4 Vacancies:

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Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a single remaining Director. The shareholders may elect a Director at any time to fill a vacancy not filled by the Directors.

### **3.5 Removal of Directors:**

The entire Board of Directors or any individual Director may be removed from office with or without cause by vote of the holders of a majority of the share entitled to vote for directors, at any regular or special meeting of such shareholders.

### **3.6 Place of Meetings:**

All meetings of the Board of Directors shall be held at the principal offices of the corporation or at such place within or without the State as may be designated from time to time by a resolution of the Board or by written consent of all the members of the Board.

### **3.7 Regular Meetings:**

Regular meetings of the Board of Directors shall be held, without call or notice, immediately following each annual meeting of the shareholders of this corporation, and at other such times as the Directors may determine.

### **3.8 Special Meetings--Call and Notice:**

Special meetings of the Board of Directors for any purpose shall be called at any time by the President or, if [he or she is absent or unable or refuses to act, by any Vice President or any two Directors. Written notices of the special meetings, stating the time, and in general terms the purpose or purposes thereof, shall be mailed or telegraphed or personally delivered to each Director not later than the day before the day appointed for the meeting. Notice [may – may not ] be given by any other means provided for by statute and approved by the Board of Directors and Shareholders.

### **3.9 Quorum:**

Unless otherwise provided in the Certificate of Formation, for any matter to be presented, the holders of a majority of the shares entitled to vote at the meeting, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of the holders of less than one-third (1/3) of the shares entitled to vote at the meeting and thus represented at such meeting. The vote of the holders of a majority of the shares entitled to vote on, that voted for or against or expressly abstained with respect to the matter at the meeting and thus represented at a meeting at which a quorum is present shall be the act of the shareholders' meeting, unless the vote of a greater number is required by law, the Certificate of Formation or the Bylaws.

### **3.10 Board Action Without Meeting:**

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Any action required or permitted to be taken by the Board of Directors, may be taken without a meeting, and with the same force and effect as a unanimous vote of Directors, if all the members of the Board shall individually or collectively consent in writing to such action.

### **3.11 Adjournment – Notice:**

A quorum of the Directors may adjourn any Directors' meeting to meet again at a stated day and hour. Notice of the time and place of holding such an adjourned meeting need not be given to absent Directors if the time and place is fixed at the meeting adjourned. In the absence of a quorum, a majority of the Directors present at any Directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

### **3.12 Conduct of Meetings:**

The President or, in [his or her] absence, any Director selected by the Directors present, shall preside at meetings of the Board of Directors. The Secretary of the corporation, or in [his or her] absence, any person appointed by the presiding officer, shall act as Secretary of the Board of Directors.

### **3.13 Compensation:**

Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by resolution by the Board.

### **3.14 Indemnification of Directors and Officers:**

The Board of Directors may authorize the corporation to pay expenses incurred by, or to satisfy a judgment or fine rendered or levied against present or former Directors, officers, or employees of this corporation.

## **4. OFFICERS**

### **4.1 Title and Appointment:**

The officers of the corporation shall be a President, a Secretary, a Treasurer, and such other officers as the Board of Directors shall from time to time determine. Any two offices, except President and Secretary, may be held by one person. All officers shall be elected by and hold office at the pleasure of the Board of Directors, which shall fix the compensation and tenure of all officers.

### **4.2 Powers and Duties of Officers:**

The officers of the corporation shall have the powers and duties generally ascribed to the respective offices, and such additional authority or duty as may from time to time be established by the Board of Directors.

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## 5. EXECUTION OF INSTRUMENTS

5.1 The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the corporation.

## 6. ISSUANCE AND TRANSFER OF SHARES

### 6.1 Certificates for Paid and Unpaid Shares:

Certificates for shares of the corporation shall be issued only when fully paid.

### 6.2 Share Certificates:

The corporation shall deliver certificates representing all shares to which shareholders are entitled, which certificates shall be in such form and device as statement that the corporation is organized in Texas, the name in which it is issued, the number and class of shares and series, and the par value or a statement that the shares are without par value. The certificates shall be signed by the President or a Vice President and the Secretary or an Assistant Secretary, which signatures may be in facsimile if the certificates are to be countersigned by a transfer agent or registered by a registrar, and the seal of the corporation shall be affixed thereto. The certificates shall contain on the faces or backs such recitations or references as are required by law.

### 6.3 Replacement of Certificates:

No new certificates shall be issued until the former certificate for the shares represented thereby shall have been surrendered and canceled, except in the case of lost or destroyed certificates for which the Board of Directors may order new certificates to be issued upon such terms, conditions and guarantees as the Board may see fit to impose, including the filing of sufficient indemnity.

### 6.4 Transfer of Shares:

Shares of the corporation may be transferred by endorsement by the signature of the owner, his agent, attorney, or legal representative, and the delivery of the certificate. The transferee in any transfer of shares shall be deemed to have full notice of, and to consent to, the bylaws of the corporation to the same extent as if [he or she] had signed a written assent thereto.

## 7. RECORDS AND REPORTS

### 7.1 Inspection of Books and Records:

All books and records provided for by statute shall be open to inspection of the shareholders from time to time and to the extent expressly provided by statute, and not otherwise. The Directors may examine such books and records at all reasonable times.

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7.2 The Board of Directors may close the transfer books in their discretion for a period not exceeding fifty (50) days preceding any meeting, annual or special, of the shareholders, or the day appointed for the payment of a dividend.

## 8. AMENDMENT OF BYLAWS

### 8.1 Amendment of Bylaws:

The power to alter, amend or repeal these bylaws is vested in the shareholders, but such power may be delegated to the Directors.

#### Signatures and Attestation

Adopted by the Board of Directors on \_\_\_\_\_.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director  
**THIS DOCUMENT**

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

[Affix corporate seal]

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