

## 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.

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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.

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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.

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

**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 \_\_\_\_\_.

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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 \_\_\_\_\_.

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and the office address elsewhere is \_\_\_\_\_.

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:

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3. The business conducted in \_\_\_\_\_ County under such assumed name will be rendered 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

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Signature of officer

---

Notary's typed or printed name

My commission expires:

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[or Notary's Stamp]

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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

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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 his or her partnership, unless he or she was involved in the negligent act or aware 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 54 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.
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 of 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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Corporation information form

**PREVIEW**  
CORPORATION INFORMATION FORM

Client's name \_\_\_\_\_

Contact person \_\_\_\_\_

Type of business \_\_\_\_\_

Purpose of business \_\_\_\_\_

Date business to begin \_\_\_\_\_

Financial structure of business \_\_\_\_\_

Loans to be made to the corporation \_\_\_\_\_

Name of accountant \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Name of Insurance agent \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Referred By \_\_\_\_\_

Name of financial consultant \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Names of previous attorneys \_\_\_\_\_

Addresses \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

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State of incorporation \_\_\_\_\_

Name of corporation--1st choice \_\_\_\_\_

2nd choice \_\_\_\_\_

3rd choice \_\_\_\_\_

Date checked for availability \_\_\_\_\_

Application for reservation of corporate name required--

Yes \_\_\_\_\_ No \_\_\_\_\_

Registered agent's name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Principal place of business \_\_\_\_\_

Will the corporation use an assumed name certificate -- Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, assumed name to be used \_\_\_\_\_

Withdraw assumed name of unincorporated business -- Yes \_\_\_\_\_ No \_\_\_\_\_

Send Notice to creditors of incorporation for an ongoing business--

Yes \_\_\_\_\_ No \_\_\_\_\_

Publish notice in newspaper for incorporation of an ongoing business--

Yes \_\_\_\_\_ No \_\_\_\_\_

Counties to file assumed name in \_\_\_\_\_

File Assumed Name with secretary of state's office -- Yes \_\_\_\_\_ No \_\_\_\_\_

Fiscal or calendar year for corporation \_\_\_\_\_

Will corporation conduct business in other states -- Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, name of states and counties \_\_\_\_\_

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Names under business will be conducted \_\_\_\_\_

Subchapter S status -- Yes \_\_\_\_\_ No \_\_\_\_\_

Business location -- own \_\_\_\_\_ lease \_\_\_\_\_ assignment of lease \_\_\_\_\_

Preparation of lease \_\_\_\_\_

Name of landlord \_\_\_\_\_

Organizer's or incorporators' names \_\_\_\_\_

Addresses \_\_\_\_\_

Phone no. \_\_\_\_\_

Initial director's name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_

Initial director's name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_

Initial registered agent's name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_

Type of corporation -- profit \_\_\_\_\_ non-profit \_\_\_\_\_ limited liability \_\_\_\_\_

close corporation \_\_\_\_\_ regular stock corporation \_\_\_\_\_ Subchapter S \_\_\_\_\_

Period of duration -- perpetual \_\_\_\_\_ other \_\_\_\_\_

Corporate purposes:

General purpose clause \_\_\_\_\_

Specific purpose clause \_\_\_\_\_

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Capitalization -- common stock \_\_\_\_\_ number of authorized shares \_\_\_\_\_

Par value \$ \_\_\_\_\_ classes \_\_\_\_\_ preemptive rights \_\_\_\_\_

Full \_\_\_\_\_ limited \_\_\_\_\_ denied \_\_\_\_\_

Cumulative voting -- granted \_\_\_\_\_ denied \_\_\_\_\_

Other rights and preferences \_\_\_\_\_

Preferred stock \_\_\_\_\_ no. of shares \_\_\_\_\_ par value \$ \_\_\_\_\_

No par

Dollar par value \_\_\_\_\_

Par Value at \$ \_\_\_\_\_ - \_\_\_\_\_

Original Shareholders:

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_

Number of shares \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_

Number of shares \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_

Number of shares \_\_\_\_\_

Name \_\_\_\_\_  
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Address \_\_\_\_\_

Phone no. \_\_\_\_\_

Number of shares \_\_\_\_\_

Order Corporation minute book -- Yes \_\_\_\_\_ No \_\_\_\_\_

Type \_\_\_\_\_

Date ordered \_\_\_\_\_

Cost \$ \_\_\_\_\_

Bylaws -- long \_\_\_\_\_ short \_\_\_\_\_

Date and place for annual meeting of shareholders \_\_\_\_\_

Add to calendar each year -- Yes \_\_\_\_\_ No \_\_\_\_\_

Date and Place for special meeting of shareholders \_\_\_\_\_

Location \_\_\_\_\_

Who may call special meetings other than the President or Board of \_\_\_\_\_

Directors and holders of not less than 1/10 of the shares \_\_\_\_\_

Quorum requirements \_\_\_\_\_

Number of votes needed for action of which a quorum is required \_\_\_\_\_

Record Date for determination of shareholders entitled to vote or

Receive dividends \_\_\_\_\_

Proxy information for shareholders \_\_\_\_\_

Directors:

Number of directors \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

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Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone no. \_\_\_\_\_ Fax no. \_\_\_\_\_

Term of directors \_\_\_\_\_

Staggered terms, if desired \_\_\_\_\_

Qualifications for serving \_\_\_\_\_

Compensation \_\_\_\_\_

Meeting of directors

Annual meeting -- date \_\_\_\_\_ time \_\_\_\_\_

Place \_\_\_\_\_

Notice requirements \_\_\_\_\_

Regular meeting -- date \_\_\_\_\_ time \_\_\_\_\_

Place \_\_\_\_\_

Notice requirements \_\_\_\_\_

Special meeting -- date \_\_\_\_\_ time \_\_\_\_\_

Place \_\_\_\_\_

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Notice requirements \_\_\_\_\_

Quorum requirements for directors \_\_\_\_\_

**PREVIEW**

Officers:

President \_\_\_\_\_

Vice-President \_\_\_\_\_

Secretary \_\_\_\_\_

Treasurer \_\_\_\_\_

Qualifications \_\_\_\_\_

Compensation \_\_\_\_\_

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Organizational meeting:

Date \_\_\_\_\_ time \_\_\_\_\_

Place \_\_\_\_\_

Names of initial directors named in the Certificate of Formation (formerly called Articles of Incorporation) \_\_\_\_\_

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Names of persons to serve as directors (if different from the initial directors) \_\_\_\_\_

Date of filing Certificate of Formation with secretary of state \_\_\_\_\_

Name of the chairman of the organizational meeting \_\_\_\_\_

Name of the secretary of the meeting \_\_\_\_\_

Names of persons who were elected to serve as corporate officers:

President \_\_\_\_\_

Vice-President \_\_\_\_\_

Secretary \_\_\_\_\_

Treasurer \_\_\_\_\_

Corporate Chairman \_\_\_\_\_

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Other \_\_\_\_\_

**PREVIEW**

Compensation of officers \_\_\_\_\_

Bank information:

Name and address where bank account will be located:

Name \_\_\_\_\_

Address \_\_\_\_\_

Bank officer \_\_\_\_\_

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Account no. \_\_\_\_\_

Banking resolutions to be prepared or use bank standard form --

Yes\_\_\_\_\_ No\_\_\_\_\_

Name and corporate office of persons authorized to draw checks or make loans on the corporation's behalf \_\_\_\_\_

Purchase of stock/shares

Name \_\_\_\_\_

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Amount \_\_\_\_\_ no. of shares \_\_\_\_\_

Address \_\_\_\_\_

No. of shares purchased by each person \_\_\_\_\_

Health and accident plan -- Yes\_\_\_\_\_ No\_\_\_\_\_

1244 Stock Plan -- Yes\_\_\_\_\_ No\_\_\_\_\_

Maximum number of shares to be issued \_\_\_\_\_

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Consideration \_\_\_\_\_

Maximum number of shares to be received \_\_\_\_\_

Other \_\_\_\_\_

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Buy-sell agreement -- Yes\_\_\_\_\_ No\_\_\_\_\_

Employment or management agreement -- Yes\_\_\_\_\_ No\_\_\_\_\_

Compensation agreement -- Yes\_\_\_\_\_ No\_\_\_\_\_

Expense agreement -- Yes\_\_\_\_\_ No\_\_\_\_\_

Restrictive covenant agreement -- Yes\_\_\_\_\_ No\_\_\_\_\_

Retirement plan requested -- Yes\_\_\_\_\_ No\_\_\_\_\_

Wills, estate plan or financial planning -- Yes\_\_\_\_\_ No\_\_\_\_\_

Fee: \$\_\_\_\_\_

Special handling fee requested \$25

Regular mail \_\_\_\_\_ Other \_\_\_\_\_

**PREVIEW**

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# PREVIEW

## CORPORATE TEMPLATE

DATE  
DUE

DATE  
COMP

ITEM

_____	_____	Meet with client.
_____	_____	Attorney agreement.
_____	_____	Explain corporate form of business.
_____	_____	Pre incorporation agreement.
_____	_____	Complete corporation checklist.
_____	_____	_____ Call secretary of state to verify corporate name -- Yes _____ No _____
_____	_____	Reserve corporate name -- Yes _____ No _____
_____	_____	_____ Letter to client regarding formation of corporation and fee.
_____	_____	_____ Letter to client regarding operation of business as a corporation.
_____	_____	Letter to client regarding corporate responsibilities.
_____	_____	Notice of intent to incorporate ongoing business.
_____	_____	_____ Publish notice to incorporate ongoing business -- Yes _____ No _____
_____	_____	Draft certificate of formation.
_____	_____	_____ File the same with the secretary of state's office.
_____	_____	_____ Upon receipt of corporate charter from the secretary of state's office, prepare bylaws, stock certificates, corporate options, if desired, i.e., Section 1244 stock plan, medical reimbursement plan, Subchapter S election.
_____	_____	Set day and time for organizational meeting.

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PREVIEW

Hold organizational meeting.

Obtain bank authorization.

Issue stock certificates.

Complete and mail in application for employer's ID number.

Each year 30 days prior to date for annual meeting, send letters advising client of meeting date.

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§11.61 Form: Corporation/association worksheet

[Date]

### Certificate of Formation

Corporation's Name:

1st Choice \_\_\_\_\_

2nd Choice \_\_\_\_\_

3rd Choice \_\_\_\_\_

THIS DOCUMENT

Number of authorized shares: \_\_\_\_\_ Par \_\_\_\_\_ or No Par \_\_\_\_\_

Preemptive rights: Granted \_\_\_\_\_ Denied \_\_\_\_\_

Cumulative Voting: Granted \_\_\_\_\_ Denied \_\_\_\_\_

Registered agent name: \_\_\_\_\_

Address: \_\_\_\_\_

Initial board of directors:

Number of Directors:

Name

Address

THANK YOU

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\_\_\_\_\_  
\_\_\_\_\_  
**PREVIEW**

Organizers:

Name

Address

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

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

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If Association -- Principal address \_\_\_\_\_

Original shareholders:

Name

Address

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

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

**THIS DOCUMENT**

Order minute book \_\_\_\_\_

Date ordered \_\_\_\_\_

From whom \_\_\_\_\_

**First meeting of board**

Use one director minutes \_\_\_\_\_ Use multiple director minutes \_\_\_\_\_

Address of the corporation \_\_\_\_\_

Date of the first meeting of board \_\_\_\_\_ [date]

**THANK YOU**

Directors Present:

\_\_\_\_\_ Chairman of the meeting

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_ Chairman of the board

\_\_\_\_ President

\_\_\_\_ Vice-president

\_\_\_\_ Secretary

\_\_\_\_ Treasurer

**PREVIEW**

Who will own shares:

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Name	Number	Amount and manner of consideration
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Employment contracts:

Name	Salary	Bonus	Disability	Benefits	Fringe
_____	\$ _____	_____	_____	_____	_____
_____	\$ _____	_____	_____	_____	_____
_____	\$ _____	_____	_____	_____	_____
_____	\$ _____	_____	_____	_____	_____

Health and accident plan type:

\_\_\_\_ Group

\_\_\_\_ No group

\_\_\_\_ Percent limitation:

\_\_\_\_ Maximum salary

\_\_\_\_ Other criteria

**THANK YOU**

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Open bank account with: \_\_\_\_\_

Who may sign on account: \_\_\_\_\_

Assignment and bill of sale \_\_\_\_\_

\_\_\_\_\_ 1244 Plan

\_\_\_\_\_ Stock purchase agreement

Business location: \_\_\_\_\_

Own  
**PLEASE DO NOT COPY**  
Lease

\_\_\_\_\_ Assignment of lease \_\_\_\_\_

\_\_\_\_\_ Preparation of lease

Name of landlord \_\_\_\_\_

Client:

Names Address Phone  
**THIS DOCUMENT**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date commencing the operations \_\_\_\_\_

Purpose of business \_\_\_\_\_

Are any loans being made to corporation? yes \_\_\_\_\_ no \_\_\_\_\_

If yes, details: \_\_\_\_\_

Name of accountant \_\_\_\_\_

Name of insurance agent \_\_\_\_\_

Refined by  
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Fee quoted \_\_\_\_\_ Fee received \_\_\_\_\_

Promised date of completion \_\_\_\_\_

Is there a retirement plan? yes \_\_\_\_\_ no \_\_\_\_\_

If yes, details: \_\_\_\_\_

Qualifications in other states \_\_\_\_\_

Special Instructions to the typist \_\_\_\_\_

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Interviewed By \_\_\_\_\_

**THIS DOCUMENT**

**THANK YOU**

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**Form: Pre-incorporation agreement**

# PREVIEW

## PRE-INCORPORATION AGREEMENT

This agreement is made on \_\_\_\_\_, among [name], of [address], [name], of [address], and [name], of [address].

1. In consideration of the mutual promises, the parties hereto agree to form a corporation to be known as \_\_\_\_\_ Corporation under the laws of the State of Texas, within \_\_\_\_\_ days hereafter, for the purposes of engaging in the business generally of [specify].

2. The period of the corporation shall be perpetual.

3. The initial registered office of the corporation shall be at [address], and the name of the corporation's initial registered agent at that address shall be [name].

4. The Certificate of Formation of the corporation shall be substantially in the form and substance of attachment in Exhibit "A". It shall name the following as the initial directors of the corporation:

Name

Address

5. The first officers of the corporation shall be [name], President; [name], Treasurer, and [name], Secretary. Upon organization of the corporation the initial board of directors by the appropriate corporate resolution shall authorize and direct the officers to execute on behalf of the corporation an employment contract substantially in the form and the substance of the agreement attached as Exhibit "A".

6. The initial board of directors shall, at the organizational meeting, adopt bylaws for the corporation substantially in the form and of the substance of those attached as Exhibit "C".

7. Within fifteen (15) days following the organizational meeting of the initial board of the corporation, [name] and [name] shall pay to the corporation the following sums, and the directors shall authorize and direct the officers of the corporation to issue shares of the common stock of the corporation having a par value of \$[Amount] per share as follows:

Name

Consideration

No. of Shares

8. All costs and expenses, including attorney's fees, required for the formation and organization of the corporation, shall be advanced by [names], in proportion to their ownership of shares of the corporation, and shall be refunded to them by the corporation.

9. No party shall have the right to transfer or assign his interest in this agreement without the prior written consent of any other Party.

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10. If any party hereto is a partnership, corporation and/or trust, such party represents that this agreement, the transaction contemplated herein, and the execution and delivery hereof, have been duly authorized by all necessary partnership, corporate or trust proceedings and actions, including without limitation, the action on the part of the directors, if the party is a corporation. Certified copies of such corporate or other resolutions authorizing this transaction shall be delivered at execution.

11. Time is of the essence in this agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

12. The use of the neuter singular pronoun to refer to the Parties described herein shall be deemed a proper reference even though the Parties may be an individual, a partnership, a corporation, or group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this agreement apply in the plural sense where there is more than one party to this agreement, and to either corporations, partnerships or individuals, males or females, shall in all instances, be assumed as though in each case fully expressed.

13. This agreement shall be subject to and governed by the laws of the State of Texas. Any and all obligations or payments are due and payable at [address].

14. If any provision of this agreement shall, for any reason, be held violative of any applicable law, and so much of the agreement is held to be unenforceable, then the invalidity of a specific provision shall not be held to invalidate any other provisions, which other provisions shall remain in full force and effect unless removal of the invalid provisions destroys the legitimate purposes of this agreement, in which event this agreement shall be canceled.

15. This agreement shall represent the entire agreement by all the Parties except as otherwise provided herein, and it may not be changed except by written amendment duly executed by all parties hereto.

16. All notices or other communications required or permitted to be given pursuant to this agreement shall be in writing and shall be considered as properly given if mailed from within the United States by first class mail, postage prepaid, and addressed as follows: \_\_\_\_\_. A party may change the address for notice by giving notice of the change to the other parties in writing.

17. This agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

SIGNED, ACCEPTED AND AGREED TO on \_\_\_\_\_, by the undersigned parties who hereby acknowledge that they have read and understand this agreement and the attachments thereto and execute this agreement voluntarily and of their own free will.

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[Signature]

**PREVIEW**  
[Signature]

---

[Signature]

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## Application for a reservation of corporate name

# PREVIEW

1. Section 5.101 to 5.106 of the Texas Business Organizations Code (BOC)\* govern the reservation of corporate names for the following entities: corporation, professional association, cooperative association, limited liability company, limited partnership or other filing entity.

\*(The former citation was article 2.06 of the Texas Business Corporation Act).

a. A name may be reserved for 120 days.

b. The name may be renewed by filing a new application during the 30 day period preceding the expiration of the current reservation.

2. Section 5.402 of the BOC and the secretary of state's name availability rules provide that a proposed name cannot be reserved if it is the same as, deceptively similar to, or similar to that of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state.

a. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at [www.sos.state.tx.us/tac/index.html](http://www.sos.state.tx.us/tac/index.html).

b. The attorney can contact the secretary of state to provide a preliminary determination on name availability; call (512) 463-5555, dial 7-1-1 for relay services, or e-mail the name inquiry to [corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us).

c. A final determination cannot be made until the document is received and processed by the secretary of state. The attorney should not make financial expenditures or execute documents based on a preliminary determination.

d. The authorization to use a name or the issuance of a certificate of reservation or formation under a name does not authorize the use of a name in violation of another person's rights to the name.

f. The corporate name:

1. Must include one of the following words or abbreviations: Company, Corporation, Incorporated, Co., Corporation, Inc.,

2. May not include any word or phrase that implies a purpose not included in the Certificate of Formation,

3. A corporation and limited partnership cannot both use the same name if the only difference is the entity designation, i.e. Inc and LP.

For instance the following is not allowed:

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ABC, Inc. and ABC 1, LP

# PREVIEW

5. For instance the following is allowed:

ABC, Inc. and ABC 1, LP

3. The following abbreviations may be used for entity names:

a. For-profit Corporation: Corporation, Incorporated, Company, Limited Corp., Inc., Co., Ltd.

b. Nonprofit Corporation: Use of an organizational designation is not required for a nonprofit corporation.

c. Professional Corporation: The same as for-profit corporations as well as Professional Corporation or abbreviation P.C.

d. Professional Association: Professional Association, Association, Associated, Associates, Assoc., or Assn. P.A.

e. Cooperative Association: Cooperative, Coop, Co-Op

e. Limited Liability: Company, Limited Liability Company, Limited Company, L.L.C., L.C., Ltd., Co.

f. Professional Limited Liability: Company, Professional Limited Liability Company, P.L.L.C.,

g. Limited Partnership: Limited Partnership, Limited L.P., Ltd.

Note that abbreviations may be used with or without punctuation.

4. The attorney should check with the Secretary of State's office to ascertain if the desired corporate name is available.

5. State the type of entity in the reservation letter.

a. The form may be used to reserve all forms of business entities from corporations to limited partnerships, etc.

6. The filing fee for an application for name reservation is \$40.

a. The filing fee for the renewal of an existing name reservation is \$40.

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

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THANK YOU

**PREVIEW**

a. The form may be mailed to P.O. Box 13547, 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.

8. The applicant or applicant's attorney or agent must sign the application for name reservation.

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a. 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.

**THIS DOCUMENT**

**THANK YOU**

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Form: Application for a reservation of corporate name

**PREVIEW**

<b>APPLICATION FOR RESERVATION OR RENEWAL OF A CORPORATE NAME</b>	This space reserved for SOS office use
---	--

1. This application is [a new application or a renewal of a prior application].

[If the application is for a renewal of a prior application state the date and file number for the reservation being renewed: Date \_\_\_\_\_ File No. \_\_\_\_\_].

**PLEASE DO NOT COPY**

The applicant requests that the following entity name be reserved [or renewed] for a period of 120 days.

2. The entity name to be reserved or renewed is for a

[Select the appropriate entity: Domestic For-profit Corporation, Domestic Professional Corporation, Foreign Limited Liability Co., Foreign For-profit Corporation, Foreign Professional Corporation, Domestic Limited Partnership, Domestic Nonprofit Corporation, Professional Association, Foreign Limited Partnership, Foreign Nonprofit Corporation, Domestic Limited Liability Co., or Other]

**THIS DOCUMENT**

(The name must contain an appropriate organizational designation for the type of entity for which the name is to be reserved).

3. The applicant's name is [State the individual's or entities' name that is requesting the reservation].
4. The applicant's name and address is [Address include city, state and country].

A check in the amount of \$40 is enclosed for the filing fees.

The undersigned has executed this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument on:

**THANK YOU**

Date \_\_\_\_\_.

\_\_\_\_\_  
Signature of applicant, applicant's attorney or agent

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Filing Letter if mail form is mailed:

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

**PREVIEW**

Dear Intake Division:

Enclosed please find an application for a reservation of a corporate name.

I have enclosed a check for the filing fee in the amount of \$40.00.

[If special handling is requested, change the amount to include an additional \$25 for the special handling fee and state:

**PLEASE DO NOT COPY**

Special handling is also requested and the fee is enclosed.]

Your expeditious cooperation is appreciated and I thank you in advance.

Very truly yours,

[Name of attorney]

**THIS DOCUMENT**

**THANK YOU**

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Form to use for filing by fax:

# PREVIEW

FOR CUSTOMER USE ONLY (PLEASE PRINT OR TYPE)		
Cardholder Name:		
Address:		
City :	State:	Zip:
Phone No.: ( )	Fax No.: ( )	
TYPE DOCUMENT TO BE FILED:	ENTITY NAME(S):	
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%) of the total fees incurred.		* For information about LegalEase <sup>SM</sup> , call 1-800-253-5749
Card No.: - - -	Card No.: 5 0 0 6 7 9 - - -	
Expiration Date: / (MO/YR)	Client No.: Case No.:	
Signature:	Signature:	
	AMOUNT	BATCH
FILING FEE		NUMBER
EXPEDITED HANDLING FEE		
TOTAL AMOUNT	\$	

# LegalFormsForTexas.Com

Form letters regarding the formation of a corporation, services to be performed in forming a corporation and detailed long letter on how to operate a corporation- do's and don'ts in order to avoid losing your corporate protection.

**Form: Letter to client regarding performance of legal services in forming corporation**

[Date]

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS  
CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

[Client's name]

[Client's address]

Regarding: Legal services to be performed in connection with your corporation

Dear [Client's salutation]:

This letter is written to confirm the terms on which this firm has been retained by you to incorporate your business or to establish a corporation of the type previously discussed with you.

The following services will be performed by our firm in connection with the formation of the corporation:

1. Office conference concerning your incorporation.
2. Preparation of the Certificate of Formation document (that is the document that is used to form your corporation, it was previously known as Articles of Incorporation) and filing the same with the Secretary of State's office.

You have agreed to pay my firm \$[Amount] for the above legal services.

This fee does not include any other legal work including but not limited to:

1. Attending the organizational meeting.
2. Preparation of bylaws and minutes of the organization meeting.
3. The capitalization of the corporation and the issuance of stock. Note that the prior requirement of \$1000 capitalization has been eliminated.
4. Preparation of contracts or agreements among shareholders or.
5. Representation in day to day legal matters or any other legal work.

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OTHER LEGAL SERVICES:

# PREVIEW

You have not requested me to perform, nor have I agreed to do any work or legal research regarding setting up and running your business, licenses, state or federal rules or regulations, copyrights, trademarks, patents or searches concerning the same, pre incorporation agreements, employment contracts between officers and key employees of the corporation, Stock Purchase Agreements, Buy/Sell Agreements, Deferred Compensation Agreements, Pension or Profit sharing Plans, Assignments and Bills of Sale between shareholders and the corporation, Debentures, Promissory Notes, immigration, visas, or any other legal services.

If you desire my firm to perform any of the above legal services, then we should enter into an attorney fee agreement which sets forth the requested work and the agreed to fee.

Please sign and date this letter and return the signed original to my office. A copy of this letter is enclosed for your files.

# PLEASE DO NOT COPY

Very truly yours,

[Name of attorney]

Accepted and agreed to on \_\_\_\_\_.

\_\_\_\_\_  
[Name of client]

# THIS DOCUMENT

# THANK YOU

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Letter to client regarding formation of corporation

**PREVIEW**

[Date]

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS  
CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

[Client's name]

[Client's address]

Regarding: Information concerning your proposed incorporation.

Dear [Salutation]

**PLEASE DO NOT COPY**

Per our meeting, enclosed please find a summary of our discussion concerning incorporating your business.

The first consideration was 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.

After discussing the above mentioned business entities, you have informed me that you have chosen the corporate form as the most appropriate legal entity for your business.

We discussed the differences between a "close" and a standard corporation as well as the newer business entities: limited liability corporations and partnerships.

**THIS DOCUMENT**

We also discussed incorporating in Texas versus other states, such as Delaware. Finally we discussed the Texas Franchise tax and its effect on your proposed corporation.

After discussing the above issues, I recommended that you consult a qualified tax advisor to advise you regarding the following:

1. To determine if a "sub chapter S" election will be beneficial and,
2. To assist you in capitalizing your corporation and determining the stock structure, number of shares to be issued, whether the shares will be par or no par, and the cost per share.

**THANK YOU**

After you meet with your tax advisor, and gain the approval of your incorporation, I can assist you in issuing stock certificates. The charge for capitalizing your company and issuing stock is not included in the initial fee; it will be based on the agreed hourly rate, if you request me to perform those legal services.

Next you inform me that you have decided to form a (standard or close corporation). Now you should determine the name of the corporation.

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You have indicated that the corporate name you have chosen is [Proposed Corporation's Name].

# PREVIEW

We also discussed the steps required to form a Texas corporation which include the following:

1. Preparation of the Certificate of Formation and filing the Certificate with the Secretary of State's office in order to obtain a corporate charter,
2. Preparation of the corporate bylaws,
3. Organizing the corporation by holding an organizational meeting, or signing a Ratification in Lieu of holding the Organizational Meeting,
4. Capitalizing the corporation by the issuance of stock and imposing stock restrictions if desired,
5. Adopting corporate plans and resolutions including but not limited to a Section 1244 stock plan, medical or health care reimbursement plan, and
6. Preparation of shareholder and employee agreements.

The contents of the above mentioned documents may vary, depending upon the type of business which is sought to be incorporated and whether or not the corporation shall act as a general business or a "close" corporation.

A Texas close corporation allows the corporation to be managed as a partnership while still enjoying the benefits of corporate protection.

# THIS DOCUMENT

You have requested a [standard or close corporation]. Pursuant to your request, I shall prepare the Certificate of Formation and file the same with the Secretary of State's office.

At the time of filing, the filing fee must be paid. Additionally I recommend the payment of the special handling fee to expedite the filing of the incorporation.

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

We have also discussed the fact that 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.

# THANK YOU

After we have filed the Certificate, the Secretary of State will issue a corporate charter along with a charter number.

Thereafter 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

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initial board of directors accept the resignation of any directors who cannot continue and new directors may be appointed.

# PREVIEW

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.

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

1. Approval of the corporate bylaws, corporate minute book and corporate seal;
2. Establishment of bank accounts;
3. Election of officers and directors and terms of compensation for the officers and directors.
4. Approval of a Section 1244 stock plan and medical reimbursement plan;
5. Approval of initial employment contracts and/or management contracts; and
6. Approval of restrictions to the sale or transfer of corporate stock and/or corporate shareholder agreements.

If you have requested and paid the legal fees, I will attend the meeting to assist you in organizing the corporation and then I can prepare the organizational minutes thereafter for the appropriate signatures.

# THIS DOCUMENT

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

Please review the enclosed draft of your Certificate of Formation and make sure that I have spelled each person's name correctly. I was only given one address; if you desire other addresses placed in the Certificate for each individual, then please write the address down and I will have it typed into the Certificate.

# THANK YOU

If the Certificate meet with your approval, then please have each Organizer sign the Certificate and have their signature notarized. If you don't have a notary, my office can notarize the signatures if the person signs the document in the presence of one of my notaries.

Since you are the only person that I have had contact with at this point, please give copies of this letter to any other persons who will be joining the corporation with you.

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I consider only you to be my client at this point. If you believe that other persons are included in my representation, please advise me, so that we can clear up any misunderstandings.

**PREVIEW**

Please review the above and contact me if you have any questions regarding the preparation and formation of your corporation.

Very truly yours,

[Name of attorney]

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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Form: Letter to client regarding operating corporation and complying with corporate formalities

**PREVIEW**

[Date]

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

[Client's name]

[Client's address]

Regarding: Information concerning corporate responsibilities

Dear [Salutation]

**PLEASE DO NOT COPY**

Per our meeting, enclosed please find a summary of our discussion concerning corporate responsibilities which you must follow to maintain your corporate status. Failure to comply with corporate law and formalities can result in individual liability to the directors or shareholders if the "corporate veil is pierced."

This letter summarizes our meeting wherein I informed you of the importance of keeping timely and accurate corporate records and following the corporate formalities.

This letter also summarizes some of the basic powers, duties and obligations that should be considered in preserving and maintaining your status as a corporation so that you will better understand the corporate mode of business.

**THIS DOCUMENT**

Your incorporation has been approved by the secretary of state and you should now hold or have already held the corporation's organizational meeting.

Upon completing the organizational meeting, you are officially incorporated; however, in order to insure the continued existence of the separate corporate entity, the following considerations should be reviewed and observed by the corporation employees, shareholders and directors.

One of the principal advantages of conducting business in the corporate form is to limit or reduce your personal liability for corporate bills and debts. In some situations the officers, directors, and shareholders may be personally liable for the debts of the corporation regardless of the corporate form.

**THANK YOU**

When you begin business many creditors may not extend credit unless you sign a personal guaranty agreement. The agreement renders you personally liable for the corporation's debts. A guaranty agreement creates an express contract which makes you liable for the corporation's debts.

You can also become liable for the corporation's debts by implied actions or negligent conduct as follow:

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PREVIEW

If you disregard corporate formalities or commingle your personal interests with the corporation's assets or interests, you can open the door for an adverse party to "pierce the corporate veil" and render you personally liable for the corporation's debts. Consequently, you should never refer to your company as "my" business or "our" business. Such a statement could later be used against you as being a material representation that the business was a proprietorship or a partnership rather than a corporation.

Let us review all contracts and credit agreements prior to signing the same so that we can make sure they do not contain hidden personal liability representations or guaranties.

1. You should read and review the Certificate of Formation and Bylaws.
2. If the corporation will engage in retail or rental business, or perform taxable services it must obtain a sales tax permit from the controller and public accounts for each place of business within the state. A limited sales tax permit will not be issued until the applicant provides the controller with a bond or other security.
3. Depending on the type of business or activity that the corporation may be engaged in, it may be subject to certain state licensing requirements or be required to pay certain fees or occupational taxes.
4. The corporation should apply to the Internal Revenue Service for an employer identification number on the required Internal Revenue Service form.
5. Funds collected by the corporation for FICA (social security) and withholding taxes must be paid according to the provisions under the Internal Revenue Code of the persons who are responsible for the withholding and deposits will be held personally liable for nonpayment of the same. This liability is separate and distinct from the liability imposed upon the employer-corporation.
6. The State imposes a franchise tax on corporations for the privilege of doing business in this state. If your corporation fails to pay its annual franchise tax, your corporation will be subject to penalties and interest. Thereafter the corporation can forfeit its charter to do business in the state for said nonpayment.
7. You must obtain an Assumed Name Certificate if your corporation will be known as, or transact business under, any name other than the exact corporate name as stated on the certificate or Certificate of Formation. The Assumed Name Certificate must be filed with both the secretary of state and the county clerk's office of the county in which the corporation has its registered office as stated in the Certificate of Formation.
8. Depending upon your tax objectives, you may want to consider electing subchapter S Corporation status with the Internal Revenue Service so that the corporation may be taxed as a partnership rather than as a corporation. The Internal Revenue Service Form must be filed within seventy-five (75) days of the beginning of the business. It is advisable that the corporation S

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Election Form be submitted to the Internal Revenue Service by certified mail with return receipt requested.

# PREVIEW

## Qualifying for S Corporation Status

To obtain S Corporation status, a general, for-profit corporation must first be formed by filing Certificate of Formation with the Office of the Secretary of State.

Once the corporation has been formed, you must file IRS form 2553 with the IRS.(1) Please refer to the list below for general Federal requirements for qualifying as an S Corporation (6):

- \* A Corporation must first be filed at the state level

- \* Calendar Year Only-Corporations with fiscal years ending in a date other than December 31 must apply to the IRS for permission or under the provisions of IRS code section 444

- \* Maximum of 75 shareholders

- \* ALL shareholders must be either U.S. Citizens or Permanent Resident Aliens. Non-resident aliens are NOT acceptable

- \* The corporation must have issued only ONE class of stock

- \* No more than 25% of the corporation's gross income can be derived from passive investment activities

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Important Disclaimer: The discussion and examples provided herein are simple illustrations for informational purposes only. We strongly urge you to contact a licensed professional before making any decisions that could impact your tax liability.

9. In order to protect your status as a corporation, certain formalities should be observed concerning the compensation and remuneration paid to officers of the corporation. The board of directors should pay to its officers reasonable compensation. The Internal Revenue Service has the power to disallow deductions of the corporation for monies paid in excess of what is considered as "reasonable remuneration" paid to employees based on the employee's efforts and contributions to the corporation. Never pay a bonus to an employee who is also a shareholder and/or a director until the bonus is authorized by a resolution of the Board of Directors and reflected in the Minutes. The practice can raise questions concerning personal liability and invite Internal Revenue Service scrutiny. The Internal Revenue Service could argue that the payment was a dividend. Dividends are taxed twice, once to the corporation and once to the person receiving the money. The corporation cannot deduct as a business expense the dividend paid to a shareholder.

10. The corporation should not begin business until the corporation has received at least \$1,000 for the issuance of its shares. I would recommend that before execution of the shares of the corporation the board of directors file, in a resolution, the fact that the \$1,000 consideration has been received.

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11. You should hold an annual shareholders and directors' meeting as required by law. You should discuss and review the business activities which have transpired during the previous year at the annual meeting. Please contact this firm if you desire our assistance in helping you prepare the requisite corporation resolutions and minutes which should accompany the shareholders and directors' meetings, including the annual meeting.

12. Keep in mind the appropriate business for your corporation. As a general corporation, you may engage in a broad range of businesses. However, as a general corporation, you cannot legally engage in the following businesses: banking, trust company business, building and loan associations, insurance, railroad activities, cemetery business, abstract and title, and other ventures which require a special license. In order to incorporate a professional business, such as a doctor or dentist, you must be incorporated under the correct professional incorporation act.

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13. Corporate formalities. You should at all times do business under the corporate name exactly as specified in the Certificate of Formation and not deviate therefrom unless an appropriate assumed name certificate has been filed. Accordingly, letterhead, invoices and stationery should be ordered to reflect the full, correct corporate name.

14. Whenever a person signs on behalf of or for the corporation, he or she should add his or her title next to the signature so that it will be clear that he or she is acting as an agent of the corporation rather than in his or her individual capacity. For instance, if you sign a contract with just your name and do not state your relationship to the corporation next to your name in the contract, you may be held personally liable for the contract. A correct signature would be:

**THIS DOCUMENT**

By: \_\_\_\_\_  
[typed name], Vice President

15. Your bank and checking accounts should also reflect your corporate name. A new bank account should be opened in the name of the corporation. This should be accomplished easily by completing a corporate resolution which authorizes the corporation to open a bank account. Any loans or banking activities should be conducted in the name of the corporation rather than your name individually or you may become personally liable for said obligations. If a loan is made and the lender requires you to endorse or guarantee the loan personally, you should have the above action approved by the board of directors and reflect the approval in an appropriately drafted corporate resolution which is adopted and inserted into the minute book of the corporation. Likewise, all leases, contracts and other arrangements which you have regarding your present equipment, office premises and furniture should be handled in the same fashion. All important corporate transactions should be approved by the board of directors and adopted by the corporation pursuant to a properly prepared corporate resolution which is adopted and inserted into the corporate minute or record book. An example of items which should be approved by the board of directors includes such things as employment contracts, buy-sell agreements, profit sharing and pension plans, insurance agreements, major purchases and important decisions which could effect the capital structure or finances of the corporation.

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16. Compensation of employees: You should also establish reasonable salaries and/or compensation for all employees and directors of the corporation at meetings of the board of directors, again accompanied by a resolution and inserted into the corporate minute book.

17. Stock certificates: The board of directors should authorize the initial issuance of shares. A corporate resolution should be obtained which states the consideration to be paid for the shares and authorizes the purchase of the stock. Do not issue the shares until the correct and full purchase price has been paid.

18. The corporation and its shareholders may agree to impose restrictions on the shares of stock. If so, a stock agreement should be prepared and approved. The corporate capitalization, number of shares or method in transferring the shares, if different from existing restrictions, should be approved by the board of directors and reflected in the corporate minute book by appropriate resolution.

19. Corporate seal: We have provided you with a corporate seal which is in the corporate minute book. You may be required by third parties to use the corporate seal in executing corporate resolutions, loans and other documents.

20. Directors responsibilities: The directors control the policy of the corporation and delegate the implementation of the policy to the officers. A director may not delegate his or her authority for policy making decisions to the officers. Officers are responsible for payment of salaries, implementation of corporate policy, day-to-day management and operation of the corporation. Officers also are responsible for payment of payroll taxes. Nonpayment may result in personal, civil and/or criminal liability by the officers and the directors of the corporation. If the corporation loans money to any other directors of the corporation, you may be personally liable for the loan if it is not repaid. The directors have the absolute right to inspect all corporate books, records and documents at any time. If the directors do not exercise this right, they may held liable for negligence if the corporation suffers a loss, or its creditors suffer a loss by reason of failure to exercise due diligence in such matters.

21. Removal of officers: Officers may be removed at any time by the board of directors. However, directors may only be removed by the shareholders under the procedures allowed by law which can and do include the holding of a special meeting to vote on the removal of the director.

22. The directors, rather than the officers, have the sole power to declare dividends. Dividends will be paid pursuant to the director of the board of directors. For issuing shares or declaring dividends you should consult with your accountant to review the tax aspects of paying dividends especially if the recipients of the dividends are employees of the corporation in addition to being shareholders.

I hope the above summary will assist you in maintaining your status as a corporation. Please be advised that the above is a partial listing of some of the rights, responsibilities and duties of corporate participants. Let it in fact, provide a summary of all areas of management. If you have any questions, please call me.

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[Name of attorney]

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Corporate Formalities

# PREVIEW

To fully retain the benefits of incorporating, you must observe corporate formalities, even where the corporation is operated by a single shareholder / director/ officer.

To ensure you are maintaining corporate formalities, ask yourself the following questions:

	QUESTION	Yes or No
1.	Are meetings of the Board of Directors regularly scheduled and conducted? <b>PLEASE DO NOT COPY</b>	
2.	Are Shareholder meetings regularly scheduled and conducted?	
3.	Do such meetings adequately cover the business that is currently being conducted in the corporation? <b>THIS DOCUMENT</b>	
4.	Do meetings provide Shareholders and/or Directors with agendas and goals along with the necessary background information necessary to make an informed decision? Are these materials provided to the Shareholders and/or Directors in advance of the meeting?	
5.	Do Directors have a reasonable opportunity to add items of concern to the meeting's agenda before the directors meet? <b>THANK YOU</b>	
6.	Are agenda items decided upon; or, rather, are they postponed and advanced to future <b>LegalFormsForTexas.Com</b>	

	meetings?	<b>PREVIEW</b>	
7.	Does the meeting provide adequate time for Board members or Shareholders to discuss each agenda item?		
8.	Is each Director and/or Shareholder afforded a reasonable opportunity to discuss each issue?	<b>PLEASE DO NOT COPY</b>	
9.	Are Corporate Minutes of each meeting accurately recorded by the Secretary?		
10.	Does the Board meet with and/or receive direct reports from legal counsel, accountants, or other outside advisors? Are these reports included with the Corporate Minutes?	<b>THIS DOCUMENT</b>	
11.	Are the Corporate Minutes of Board meetings reviewed at subsequent meetings?		
12.	Are the Corporate Minutes amended or corrected for clarity and accuracy?	<b>THANK YOU</b>	
13.	Are the dissents to the Corporate Minutes duly recorded?		
14.	Do Board meetings adequately cover substantive policy issues involving the	<b>LegalFormsForTexas.Com</b>	

	corporation rather than only trivial or administrative details.	
15.	Is the Board Chairperson effective in conducting Board meetings?	

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## Certificate of Formation - Long 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.

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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.

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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.

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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.

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.

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.

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.

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](http://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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# PREVIEW

<b>CERTIFICATE OF FORMATION FOR -PROFIT CORPORATION</b>  <b>[CORPORATION'S NAME]</b>	This space reserved for SOS office use
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## 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.].

## 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 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 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 things as are 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.

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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.

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 corporation shall have authority to issue two (2) classes of shares, to be designated respectively, "preferred" and "common."

4.2 The total number of shares which the corporation is authorized to issue is [number] shares.

4.3 The number of preferred shares authorized is [number] shares without par value. The number of common shares authorized is [number] shares, which shares are also without par value.

4.4 All voting rights shall be vested in holders of common stock; at the election of directors, each common stockholder may vote in person or by proxy for as many persons as there are directors to be elected.

a. The preferences, privileges, restrictions and rights granted to or imposed on the respective series of shares are as follows:

4.5 The preferred shares authorized by these Certificate of Formation may be issued from time to time in series. The shares of each such series shall be subject to the provisions of this article and additional provisions with respect to each such series as shall be fixed by the board of directors.

4.6 All preferred shares of each series shall be of equal rank and identical, except as fixed by the board of directors as provided in this paragraph. Each share of each series shall be identical in all respects with the other shares of such series, except the date from which dividends thereon shall be cumulative, if such dividends are cumulative. The board of directors is hereby authorized and required to fix, in the manner and to the full extent provided and permitted by law, all provisions of the shares of each series not otherwise set forth in these Certificate and insofar as such provisions shall not be inconsistent with the provisions of this paragraph applicable to all series of the preferred shares, but not limited to:

a. The distinctive designation of all series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the board of directors in its resolution creating such series) or decreased (but not below the number of shares then then outstanding) from time to time by resolution of the board of directors;

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b. The annual rate of dividends payable on the shares of all series, the date from which dividends shall be cumulative on all shares of any series issued prior to the record date for the first dividend on shares of such series and the dividend rights applicable to the shares of all series;

c. The redemption price or prices, if any, for the shares of each, any or all series;

d. The obligation, if any, of the corporation to maintain a sinking fund for the periodic redemption of shares of any series and to apply the sinking fund to the redemption of such shares;

e. The amount payable on shares of each series in the event of any voluntary liquidation, dissolution or winding up of the affairs of the corporation;

f. The right, if any, of the holders of shares of each series to convert such shares into common shares and the terms and conditions of such conversion; and,

g. Any voting rights in respect of matters other than those for which voting rights are specifically provided herein, and any other preferences, and relative, participation, optional, or any other special rights, qualifications limitations, or restrictions.

#### 4.7 Preference.

a. The holders of the preferred shares of each series, in preference to the holders of the common shares, shall be entitled to receive dividends out of any funds legally available therefore as and when declared by the board of directors at the rate for such series as fixed in accordance with the provisions this document payable semiannually on the last day of December and June, respectively, in each year, with respect to the semiannual period ending on such respective payment date, except that the first dividend on such initial issue of any series of preferred shares shall be payable on the semiannual dividend payment date next succeeding the expiration of 180 days after the date any shares of such series are issued.

b. No dividend shall be paid on, or declared or set apart for, any share of preferred shares for any semiannual dividend period unless at the same time a like, proportionate dividend for the same semiannual dividend period, ratably in proportion to the respective annual dividend rates fixed therefore, shall be paid on, or declared and set apart for, all preferred shares of all series then issued and outstanding and entitled to receive such dividend.

c. In no event, so long as any preferred shares shall be outstanding, shall any dividend, whether in cash or property, be paid or declared, nor shall any distribution be made on any of the common shares, nor shall any common shares be purchased or otherwise acquired for value by the corporation, unless and until all dividends on the preferred shares of all series for all past semiannual dividend periods and for the then current semiannual period shall have been paid or declared and a sum sufficient for the payment thereof set apart, and unless the corporation shall not be under any obligation for any period with respect to the sinking fund, if any, to be used for the redemption of any series of preferred shares. The



foregoing provisions of this subparagraph, shall however, not prohibit a dividend on common shares in exchange for, or through application of the proceeds of the sale of common shares.

#### 4.8 Voluntary dissolution.

a. In the event of any voluntary dissolution, liquidation or winding up of the affairs of the corporation, then, before any distribution or payment shall be made to the holders of the common shares, the holders of the preferred shares shall be entitled to be paid in full the respective amounts fixed in accordance with the provisions this document, together with accrued dividends to such distribution payment date, whether or not earned or declared.

b. In the event of any involuntary liquidation, dissolution or winding up of the affairs of the corporation, then, before any distribution or payment shall be made to the holders of the common shares, the holders of the preferred shares shall be entitled to be paid in full an amount equal to \$1.00 per share, together with accrued dividends to such distribution or payment date, whether or not earned or declared.

c. If, on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the corporation, the assets of the corporation are insufficient to permit full payment to the preferred shareholders as herein provided, then the holders of any series of the preferred shares shall share ratably in any distribution of assets in proportion to the full amounts to which they would otherwise be respectively entitled.

d. If, on any liquidation, dissolution or winding up of the affairs of the corporation, payment shall have been made in full to the holders of the preferred shares, as provided in subparagraph a or b above, then the remaining assets and funds of the corporation shall be distributed ratably to the holders of the common shares of the corporation.

e. Neither the consolidation or merger of the corporation, nor the lease or conveyance of all or substantially all of its assets, shall be deemed a liquidation, dissolution or winding up of the affairs of the corporation within the meaning of this paragraph.

#### 4.9 Redemption.

a. The preferred shares of any series may be redeemed, in whole or in part, at the option of the corporation, by the vote of its board of directors, or, in case of any one or more series, under any sinking funds or other requirement for redemption of any such series fixed by the board of directors pursuant to the provisions of document upon the following additional conditions:

i. If less than all of the preferred shares of any series is to be redeemed, redemption shall be made in such amount and by such method, either by lot or by pro rata, and subject to such provisions of convenience, as shall from time to time be determined by the board of directors.

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ii. Notice of any proposed redemption shall be mailed by the corporation, postage prepaid, not less than twenty (20) days, nor more than fifty (50) days, prior to the date fixed for redemption, to each holder of record of such preferred shares to be redeemed at his address as the same shall appear on the books of the corporation. The notice of redemption shall state the class or series of shares or part of any class or series of shares to be redeemed, the date fixed for redemption, the redemptive price and the place at which the shareholders may obtain payment of the redemptive price upon surrender of their respective share certificates.

iii. If the corporation shall deposit on or prior to the date fixed for the redemption of any such preferred shares, with one or more banks or trust companies, each having capital and surplus of at least \$[Amount] and doing business in \_\_\_\_\_, \_\_\_\_\_ County, Texas, or any bank or trust company in the United States duly appointed and acting as transfer agent of the corporation, as a trust fund for the benefit of the respective holders of such preferred shares to be redeemed, sum sufficient to redeem such preferred shares called for redemption with irrevocable instructions and authority to any one of such depository banks or trust companies to deliver, in the name of the corporation, the notice of redemption thereof (or to complete such delivery if theretofore commenced) and to pay on or after the date fixed for such redemption, to the respective holders of such preferred shares, as evidenced by a list of such holders certified by the president or vice-president and the secretary or any assistant secretary, the redemption price thereof upon the surrender of the certificates representing the preferred shares so called for redemption, then from and after the time of such deposit (although prior to the date fixed for redemption) such preferred shares so called for redemption shall be deemed to be redeemed. Dividends on those shares shall cease to accrue after the date fixed for redemption and the deposit shall be deemed to constitute full payment of the preferred shares to the respective holders thereof. The preferred shares shall no longer be deemed to be outstanding, and the holders thereof shall cease to be stockholders with respect to such preferred shares and shall have no rights with respect thereto, except only the right to receive from such bank or banks or trust company or companies payment of the redemption price of such preferred shares without interest, upon surrender of the certificates representing the preferred shares called for redemption. Money deposited for redemption and unclaimed at the end of six (6) years shall be repaid to the corporation; and, thereafter, the holders of the preferred shares called for redemption shall look only to the corporation for payment.

iv. No redemption or purchase of any shares of any series of preferred shares shall be made unless full cumulative dividends if any, on all shares of all series of preferred shares then outstanding which are not to be redeemed or purchased, to the end of the then current dividend period, shall have been paid or declared and set apart for payment and unless funds sufficient to meet all matured obligations of the corporation with respect to all sinking funds or retirement funds for all series of preferred shares have been set aside.

v. All preferred shares of any series acquired or redeemed through the operation of any sinking fund or retirement funds, if voluntarily redeemed, shall be retired and canceled, and none of the shares shall thereafter be reissued.

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b. Any sinking funds required by the board of directors in pursuant to the provisions of this document in connection with the redemption of the preferred shares of any series shall be created and maintained as follows:

The corporation shall set aside in cash out of monies legally available therefore after all dividends on outstanding preferred shares shall have been fully paid, or provision for the payment made through the last preceding semiannual dividend period, on the same date each year, called "payment date," a percentage (the date and percentage to be fixed by the board of directors in the resolutions requiring the creation of a sinking fund) of the par value of the total number of preferred shares previously issued. If, on any payment date, the funds legally available for such purpose shall be insufficient to discharge the sinking fund requirements in full, then funds to the extent legally available therefore shall be set aside for the sinking fund.

c. To the extent that the sinking fund requirements provided remain unsatisfied, they shall not be cumulative.

4.10 Preferred shares shall be issued as fully paid, non assessable shares and not otherwise.

## 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

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[Names and Addresses of Directors, include the country]

# PREVIEW

## 9. INDEMNIFICATION

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.

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.

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## 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

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:]

# THIS DOCUMENT

## 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 \_\_\_\_\_.

# THANK YOU

\_\_\_\_\_  
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.

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.

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

4. To pay filing fee must a debit system account, contact the Secretary of State's office at (512) 435-5604. 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: <i>(if different than Address above)</i>	EXPEDITED HANDLING REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> NO  <i>(Additional charge of \$25 for expedited service)</i>	
SELECT PAYMENT TYPE AND PROVIDE REQUESTED INFORMATION		
Charge to: Secretary of State Client ID No.: <i>(if applicable)</i>		
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%) of the total fees incurred.	* For information about LegalEase <sup>SM</sup> , call 1-800-253-5749	
Card No.:     -     -     -	Card No.: 5 0 0 6 7 9 -     -     -	
Expiration Date:   /   (MO/YR)	Client No.:     Case No.:	
Signature:	Signature:	
<b>THIS DOCUMENT</b>		
	AMOUNT	BATCH NUMBER:
FILING FEE	<b>THANK YOU</b>	
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**  
Enclosed please find duplicate original of the Certificate of Incorporation 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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## Corporate bylaws-Longer form standard 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 meetings.

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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 prepared 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. PURPOSES

1.1 The purposes for which this Corporation is incorporated are those set forth in the Certificate of Formation.

### 2. PRINCIPAL OFFICE

2.1 The place where the principal business of the corporation will be transacted is [address], or such other place as designated by the board of directors.

2.2 The corporation may also have other offices at such other places or locations within or without the State of Texas as the board of directors, upon resolution, may determine.

2.3 The registered office of the Corporation and its initial registered agent are as set forth in the Certificate of Formation.

### 3. BOARD OF DIRECTORS

3.1 Number and Qualifications of Directors. The corporate powers, business and property of the association shall be conducted, controlled and managed to the extent authorized by law and by the Certificate of Formation and these Bylaws by a board of [number] directors.

a. Number of Directors. The number of directors shall be \_\_\_\_\_ but the number of directors may be increased or decreased (provided such decrease does not shorten the term of any incumbent director) from time to time by amendment to the Bylaws of the corporation, provided however, that the number of directors shall never be less than \_\_\_\_\_.

b. The whole board of directors shall consist of [number] members who need be neither a resident of the State of Texas nor a shareholder of the corporation. The directors shall be elected at the annual meeting of the shareholders, and each shall serve until [his or her] successor shall have been elected and qualified. 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 an annual or special meeting of shareholders.

3.2 Election of Directors. At the first annual meeting of the members of this corporation, directors shall be elected to succeed the incorporation directors. Each director shall hold office until the next annual meeting of shareholders and until [his or her] successor shall have been

elected and qualified. All directors shall be elected by secret ballot, and the nominees receiving the greatest number of votes shall be elected.

3.3 Vacancies. Whenever a vacancy occurs in the board of directors other than from the expiration of a term of office, the remaining directors shall appoint a shareholder of the corporation to fill the vacancy for the remaining unexpired term of office.

3.4 Board Meetings. A regular meeting of the board of directors shall be held without call or notice immediately after and at the same place as the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, either within or without the State of Texas, for the holding of additional regular meetings without other notice than such resolution.

3.5 Special Board Meetings. Special meetings of the board shall be held upon call of the president or upon the written request of at least [number] members of the board. Notice of any special meeting shall be given at least [number] days previous thereto by written notice delivered personally or mailed to each director at this business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice of such meeting.

3.6 Quorum. A majority of the number of directors fixed by Paragraph 3.1 of this Article shall constitute a quorum for the transaction of business at any meeting of the board of directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

3.7 Depository. The board of directors shall have the power from time to time to select one or more banks to act as depositories of the funds of the association, to determine the manner of receiving, depositing, and disbursing the funds of the association, the form of checks to be used, and the person or persons who shall be authorized to sign such checks.

3.8 Employees. The board of directors shall have the power to employ or to authorize the employment of a president and such other officers and employees as may be deemed necessary, to prescribe the duties thereof, and to fix their compensation.

3.9 Bonds. The board of directors may require all officers, employees and agents of the corporation handling funds or property belonging to or in the possession or under the control of the corporation to furnish the corporation with a satisfactory bond of indemnity, indemnifying the corporation and its members against any fraudulent, dishonest or unlawful act on the part of such officers and employees. Such bonds shall be furnished by a responsible bonding company and shall be approved by the board of directors.

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3.10 Removal. The directors of the corporation, and each of them, may be removed from office from time to time and at any time with or without cause, by the shareholders entitled to vote, at any meeting thereof at which a quorum is present, by the vote of a majority of the votes of the shareholders present in person or by proxy and entitled to vote thereat; and any vacancy or vacancies in the board resulting therefrom may be filled by the remaining directors, though less than quorum, or by the shareholders, whichever shall first act thereon.

3.11 Offices and Records. The directors may have or establish one or more offices of the corporation and keep the books and records of the corporation, except as otherwise provided by statute, in such place or places in the State of Texas or outside the State of Texas, as the board of directors may from time to time determine.

3.12 Presumption of Assent. A director of the corporation who is present at a meeting of the board of directors at which a motion or any corporate matter is taken shall be presumed to have assented to the action unless such person's dissent shall be entered in the minutes of the meeting before adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right of dissent shall not apply to a director who voted in favor of such action.

3.13 Compensation. Directors, as such, shall not be entitled to receive any fixed sums or stated salaries for their services, but, by resolution of the board, a fixed sum and reasonable expenses of attendance at the meetings of the board, may be provided and allowed, provided that nothing herein contained shall, or shall be construed so as to, preclude any director from serving the corporation in any other capacity or receiving compensation therefore. Members of special or standing committees may be allowed a fixed sum and expenses of attendance, if any, at committee meetings.

3.14 Non-liability of Directors and Officers in Certain Cases. No director or officer or member of the executive committee shall be liable for acts as such if executed from liability under any present or future provision or provisions of the Texas Business Organizations Code; and, in addition, to the fullest extent now or hereafter permitted by the Texas Business Organizations Code, each officer or director or member of the executive committee shall, in the discharge of any duty imposed or power conferred upon [him or her] by the corporation, be fully protected if, in the exercise of ordinary care, such officer, director, or member of the executive committee acted in good faith and in reliance upon the written opinion of any attorney of the corporation, the books of account or reports made to the corporation by any of its officials or by an independent certified public accountant, or by an appraiser selected with reasonable care by the board of directors or by such committee, or in reliance upon other records of the corporation.

3.15 Indemnification of Directors and Officers. Each director, officer, former director, and former officer of this corporation and each person who may have served at its request as a director or officer of another corporation in which it owned shares of capital stock or of which is a creditor, shall be and hereby is, indemnified by the corporation against liabilities imposed upon such director or officer and against expenses actually and reasonably incurred in connection with any claim made against such person or in his defense of any action, suit, or proceeding to which such person is or may be made a party by reason of being or having been such director or

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PREVIEW

officer, and against such sums as independent counsel selected by the board of directors shall deem reasonable payment made in settlement of any such claim, action, suit, or proceeding primarily with a view of avoiding expenses of litigation; provided, however, that no director or officer shall be indemnified with respect to matters as to which that person shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in performance of duty, or with respect to any matters which shall be settled by the payment of sums which counsel selected by the board of directors shall not deem reasonable payment, made primarily with a view to avoiding expenses of litigation, or with respect to matters for which such indemnification shall be in addition to, but shall not exclude, any other rights to which directors or officers may be entitled.

#### 4. OFFICERS

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4.1 Principal Officers. The officers of the corporation shall be chosen by the board of directors. The officers shall be a president, a secretary, a treasurer, and such number of vice-presidents, and such number of assistant secretaries and assistant treasurers, as the board may from time to time determine or elect. Any person may hold two or more offices at the same time, except that the president and secretary shall not be the same person.

4.2 Additional Officers. The board may appoint such other officers, agents, and factors as it shall deem necessary.

4.3 Terms of Officers. Each officer shall hold office until a successor shall have been duly elected and qualified or until death or until resignation or removal in the manner hereinafter provided.

THIS DOCUMENT

4.4 Removal. Any officer or agent or member of the executive committee elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

4.5 Vacancies. A vacancy in the office of any officer may be filled by the vote of a majority of the directors then in office for the unexpired portion of the term for the person with respect to which a vacancy has occurred, in each instance.

THANK YOU

4.6 Powers and Duties of Officers. The officers so chosen shall perform the duties and exercise the powers expressly conferred or provided for in these bylaws, as well as the usual duties and powers incident to such office, respectively, and such other duties and powers as may be assigned to them from time to time by the board of directors or by the president.

4.7 Chairman of the Board. The board of directors may select from among its members a chairman of the board who may, if so selected, preside at all meetings of the board of directors and approve the minutes of all proceedings thereat, and who shall be available to consult with and advise the officers of the corporation with respect to the conduct of the business and affairs of the corporation.

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**PREVIEW**

4.8 The President. The president, subject to the control of the board of directors, shall be the chief executive officer of the corporation and shall have general executive charge, management, and control of the affairs, properties, and operations of the corporation in the ordinary course of its business, with all such duties, powers, and authority with respect to such affairs, properties, and operations as may be reasonably incident to such responsibilities: the president may appoint or employ and discharge employees and agents of the corporation and fix their compensation; make, execute, acknowledge, and deliver any and all contracts, leases, deeds, conveyances, assignments, bills of sale, transfers, releases, and receipts, any and all mortgages, liens, and hypothecations, and any and all bonds, debentures, and notes, and any and all other obligations and encumbrances and any and all other instruments, documents, and papers of any kind or character for and on behalf of and in the name of the corporation; and, with the secretary or an assistant secretary, may sign all certificates for shares of the capital stock of the corporation. The president shall also perform such other duties and have such additional authority and powers as from time to time may be assigned to or conferred upon the president by the board of directors.

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4.9 Vice-Presidents. In the absence of the president or in the event of the president's disability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice-president shall perform such other duties as from time to time may be assigned by the president or by the board of directors of the corporation. Any action taken by a vice-president in the performance of the duties of the president shall be conclusive of the absence or inability to act of the president at the time such action was taken.

**THIS DOCUMENT**

4.10 Treasurer. The treasurer shall have custody of all the funds and securities of the corporation which come into [his or her] hands. When necessary or proper, the treasurer may endorse on behalf of the corporation, for collection, checks, notes, and other obligations and shall deposit the same to the credit of the corporation in such bank or banks or depositories as shall be selected or designated by or in the manner prescribed by the board of directors. The treasurer may sign all receipts and vouchers for payments made to the corporation, either alone or jointly with such officer as may be designed by the board of directors. Whenever required by the board of directors, the treasurer shall render a statement of the cash account. The treasurer shall enter or cause to be entered, punctually and regularly, on the books of the corporation to be kept by the treasurer or under the treasurer's supervision or director for that purpose, full and accurate accounts of all moneys received and paid out by, for, or on account of the corporation. The treasurer shall at all reasonable times exhibit such books and accounts and other financial records to any director of the corporation during business hours. The treasurer shall have other powers and duties as may be conferred upon or assigned by the board of directors. The treasurer shall perform all acts incident to the position of treasurer subject always to the control of the board of directors, and shall, if required by the board of directors, give a bond for the faithful discharge of the duties in a form and amount as the board of directors may require.

**THANK YOU**

4.11 Assistant Treasurer. If a treasurer, the assistant treasurer shall have the usual powers and duties pertaining to such office, together with such other powers and duties as may be conferred upon

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or assigned by the board of directors. The assistant treasurer shall have and exercise the powers of the treasurer during that officer's absence or inability to act.

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4.12 Secretary. The secretary (1) shall keep the minutes of all meetings of the board of directors and the minutes of all meetings of the shareholders, in books provided for that purpose, (2) shall attend to the giving and servicing of all notices, (3) may sign with the president or a vice-president in the name of the corporation and/or attest the signature of either to all contracts, conveyances, transfers, assignments, encumbrances, authorizations, and all other instruments, documents, and papers, of any and every description whatsoever, of or executed for or on behalf of the corporation and affix the seal of the corporation thereto, (4) may sign with the president or a vice-president all certificates for shares of the capital stock of the corporation and affix the corporate seal of the corporation thereto, (5) shall have charge of and maintain and keep or supervise and control the maintenance and keeping the stock certificate books, transfer books and stock ledgers and such other books and papers as the board of directors may authorize, direct, or provide for, all of which shall at all reasonable times be open to the inspection of any director, upon request, at the office of the corporation during business hours, (6) shall in general perform all the duties incident to the secretary, and (7) shall have such other powers and duties as may be conferred upon or assigned by the board of directors; subject always to the control of the board of directors.

4.13 Assistant Secretaries. Each assistant secretary shall have the usual powers and duties pertaining to such office, together with such other powers and duties as may be conferred upon or assigned by the board of directors or the secretary. The assistant secretaries shall have and exercise the powers of the secretary during that officer's absence or inability to act.

**THIS DOCUMENT**

4.14 Securities of One Corporation. The president or any vice president or secretary or treasurer of the corporation shall have power and authority to transfer, endorse for transfer, vote, consent, or take any other action with respect to any securities of another issuer which may be held or owned by the corporation and to make, execute, and deliver any waiver, proxy, or consent with respect to any such securities.

## 5. SHAREHOLDERS

5.1 Annual Meeting. The annual meeting of the shareholders shall be held on the first Tuesday, in [address], in each year, at [time] if not a legal holiday, and if a legal holiday, then at the same hour of the day on the next succeeding business day.

**THANK YOU**

a. The annual meeting shall be held for the purpose of electing directors and for the transaction of any and all such other business as may properly be brought before or submitting to this meeting. Any and all business of any nature or character whatsoever may be transacted, and any action may be taken thereon, at any annual meeting, except as otherwise provided by law or by these Bylaws.

b. Each annual meeting of the shareholders, respectively, shall be held at the registered office of the corporation, or at such place within or without the State of Texas as may be determined by the board of directors. However, any annual meeting may be held at any place

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within or without the State of Texas designated in a waiver or waivers of notice signed by, or in the aggregate signed by, all of the shareholders.

5.2 Special Meeting. Special meetings of the shareholders shall be held at such time and place within or without the State of Texas as may be determined by the board of directors or as designated in a waiver or waivers of notice signed by, or in the aggregate signed by, all of the shareholders.

a. Special meetings of the shareholders of any purpose or purposes, unless otherwise prescribed by statute or by law or by the Certificate of Formation of the corporation, may be called by the president or by a vice-president or by the board of directors or by the then holders of at least ten percent (10%) of the then issued and outstanding voting shares of the capital stock of the corporation entitled to be voted at such meeting, and shall be called by the president or secretary at the request in writing of a majority of the board of directors at the request in writing of shareholders owning as much as twenty-five percent (25%) in amount of the entire capital stock of the corporation, or of any class if there be more than one class, issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

5.3 Notice of Shareholder's Meeting. Written or printed notice stating the place, day and hour of each meeting of the shareholders, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days no more than fifty (50) days before the date of the meeting either personally or by mail, by or at the direction of the president, a vice-president, the secretary, or the officer or person or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the shareholder at their respective addresses appearing in the stock transfer books of the corporation.

5.4 Quorum of Shareholders. The holders of \_\_\_\_\_ percent (\_\_\_\_\_% ) of the shares issued and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of shareholders for the transaction of business except as otherwise provided by statute or by the Certificate of Formation. The vote of the holders of \_\_\_\_\_ percent (\_\_\_\_\_% ) of the shares entitled to vote and thus represented at a meeting at which a quorum is present shall be that of the shareholders' meeting, unless the vote of a greater number is required by law, the Certificate of Formation, or these Bylaws.

5.5 Adjournments of Annual and Special Meetings of the Shareholders. If the holders of the amount of stock necessary to constitute a quorum shall fail to attend any meeting of the shareholders in person or by proxy, and entitled to vote thereat, may adjourn any such meeting from time to time without notice, other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall be present at the particular meeting or at any adjournment or adjournments thereof, in person or by proxy. The holders of a majority of the votes of the shareholders present, in person or by proxy, and entitled to vote at any meeting, may also adjourn any annual or special meeting of the shareholders from time to time and without notice (other than by announcement at the meeting) of the time and place at which the meeting will reconvene, until the transaction of any and all business submitted or proposed to be



submitted to such meeting or any adjournment or adjournments thereof shall have been completed. At any such adjourned meeting at which a quorum is present, in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally notified or called.

5.6 Meetings of the Shareholders. The president of the corporation, or in the event of the president's absence, omission, or refusal to so act, a vice-president of the corporation, shall call each meeting of the shareholders to order and shall act as chairman of such meeting.

a. The Secretary of the Corporation, or in the event of the Secretary's absence, omission, or refusal to act, an assistant secretary, shall act as secretary of each meeting of the shareholders. If for any reason whatever neither the secretary nor an assistant secretary acts or will act as secretary of the meeting of shareholders, then the chairman of the meeting or, if the chairman fails to do so, the shareholders present, either in person or by proxy, and entitled to vote thereat may by majority vote appoint any person to act as secretary of the meeting and such person shall act as secretary of the meeting.

5.7 Attendance and Proxies. Each shareholder entitled to vote at the particular shareholders' meeting may attend such meeting and vote in person or may attend such meeting by proxy, and vote on such proxy, appointed by instrument in writing subscribed by the shareholder or by such shareholder's duly authorized agent or attorney-in-fact and filed with the Secretary of the Corporation before or at the time of the particular meeting, and the attendance or the vote at any such meeting of a proxy of any such shareholder so appointed shall for all purposes be considered as the attendance or vote in person of such shareholder. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer period is expressly provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for a period of more than eleven (11) months.

5.8 Voting of Shares. At each meeting of the shareholder, each outstanding share, regardless of class, standing in the shareholder's name on the stock and transfer books and records of the Corporation, and entitled to vote thereat, shall be entitled to vote one (1) vote and excepting only as may be otherwise provided or required by laws, on each matter submitted to a vote at such meeting, unless the voting rights of the shares of any class or classes are increased, limited, or denied by the Certificate of Formation as permitted by law. Treasury shares, shares of the Corporation's own stock owned by another corporation the majority of the voting stock of which is owned or controlled by the Corporation, and shares of its own stock held by a corporation in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time.

a. At each election for directors by the shareholders, every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares of the capital stock of the Corporation owned by such shareholder for each of as many candidates as are to be elected and for whose election such shareholder has a right to vote, subject to any variation in voting rights per share which may be set out in the Certificate of Formation.

(Cumulative voting of shares of capital stock of the Corporation is as provided in the Certificate of Formation of the Corporation.)

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5.9 Voting of Shares Owned by Another Corporation. Shares of stock of this Corporation standing in the name of another corporation, domestic or foreign, on the books and records of this Corporation and having voting rights may be voted by such officers, agent, or proxy as the Bylaws of such other corporation may authorize, or, in the absence of such authorization, as the Board of Directors of such other corporation may determine, subject to such provisions of the Texas Business Organizations Code, as may be applicable in any instance.

5.10 Shares Held by Fiduciaries, Receivers, Pledges. Shares held by an administrator, executor, guardian, or conservator may be voted by such person so long as such shares forming a part of an estate are in the possession and forming a part of the estate being served by such person, either in person or by proxy, without a transfer of such shares into such person's name. Shares standing in the name of a trustee may be voted by such trustee, either in person or by proxy, but no trustee shall be entitled to so vote unless such shares shall have been transferred into the Trustee's name as trustee. Shares standing in the name of a receiver on the books and records of this Corporation may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without such shares being transferred into such receiver's name, if appropriate authority so to do be contained in an appropriate order of the Court by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such share until such shares have been transferred on the books and records of the Corporation into the name of the pledgee, unless in the transfer of the pledgor on the books and records of the Corporation, the pledgor shall have expressly empowered the pledgee to vote such shares, and thereafter the pledgee shall be entitled to vote the share so transferred.

5.11 Decisions at Meetings of Shareholders. At all meetings of the shareholders all questions, business, and matters, except those the nature of deciding which is otherwise expressly governed by the Texas Business Organizations Code or by the Certificate of Formation or by these Bylaws, shall be decided by the vote of the holders of \_\_\_\_\_ percent (\_\_\_\_\_% ) of the shareholders of the corporation present in person or by proxy, and entitled to vote, a quorum being present. All voting shall be by voice except that upon the determination of the officer or person presiding at the meeting the voting may be voted upon by use of ballots. In the event any business, question, or matter is so voted upon by ballot, then each ballot shall be signed by the shareholder voting or by such voter's proxy and shall state the number of shares so voted.

5.12 List of Shareholders. A complete list of shareholders entitled to vote at each shareholders' meeting or any adjournment thereof, arranged in alphabetical order, with the address of and a number of shares held by each, shall be prepared by the Secretary and kept on file at the registered office of the Corporation and subject to inspection by any shareholder.

5.13 Record Date. The Board of Directors shall have the power to close the stock transfer books of the Corporation or, in lieu thereof, to fix a record date for the determination of the shareholders entitled to notice of or to vote at any meeting of the shareholders and at any adjournment or adjournments thereof and to fix a record date for any other purpose or purposes as provided in Section 6.06 of Article V of the Bylaws.

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5.14 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 comments are filed with the Secretary of the Corporation.

## 6. BOOKS, DOCUMENTS AND ACCOUNTS

6.1 The Board of Directors shall have power to keep the books, documents, and accounts of the Corporation outside the State of Texas, except that a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each, shall be kept at its registered office or principal place of business or at the office of its transfer agent or registrar and the original or a duplicate stock ledger shall at all times be kept within the State of Texas.

6.2 Open to Inspection. All books and records provided by statute shall be open to inspection by the shareholders. The directors may examine such books and records at all reasonable times.

## 7. CAPITAL STOCK

7.1 Stock Certificates. The certificates for shares of the capital stock of the Corporation shall be in such form as shall be approved by the Board of Directors. They shall be consecutively numbered and shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and the number of shares. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the President, or a Vice-President, and the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares such person owns in the Corporation with the seal of the Corporation or a facsimile thereof impressed or printed thereon. Where any such certificate is countersigned by a transfer agent, or registered by a registrar, either of which is other than the Corporation itself or an employee of the Corporation, the signatures of the President or Vice-President and the Secretary or Assistance Secretary upon a certificate may be facsimiles, engraved or printed. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used or placed on any such certificate or certificates shall have ceased to be such officer or officers of the Corporation, whether because of death, resignation, or otherwise, before such certificate is, or such certificates are, issued, such certificate or certificates or whose facsimile signature or signatures have been used thereon was or were such officer or officers at the time of issuance thereof, and with the same effect as if [he or she] or they were such officer or officers at the date of issuance thereof.

7.2 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by the laws of the State of Texas and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate, or by that person's attorney or attorneys-in-fact, legal representative, or legal representatives, duly and lawfully authorized in writing, and upon the surrender of the certificate therefore, which shall be canceled before the new certificate, or certificates in the aggregate, for a like number of shares shall be issued.

7.3 Registered Holders. The Corporation shall be entitled to treat the person in whose name any share or stock or any warrant, right, or option is registered as the owner thereof for all



purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share, warrant, right or option of the part of any other person, whether or not the Corporation shall have notices thereof, save any may be expressly provided otherwise by the laws of the State of Texas.

7.4 New Certificates. The Corporation may, in its sole discretion, issue a new certificate for shares of its stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the Board of Directors may, in its discretion, require the owner of the lost or destroyed certificate, or the owner's legal representative or representatives, to give the Corporation such statement under oath or other evidence of such loss or destruction as the Board may desire, and a bond in form, amount, and with such surety or sureties as the Board of Directors may prescribe or determined, and sufficient, in the sole judgment of the Board, to indemnify and protect the Corporation against any and all claims, liabilities, costs, and expenses that may be made or asserted against it or which it may suffer or incur or pay, on account of the alleged loss of any such certificate or the issuance of such new certificate. A new certificate may be issued without requiring any bond when in the sole discretion of the Board, it is proper so to do.

7.5 Dividends. The Board of Directors may declare dividends if, as, and when the Board deems expedient and as may be permitted by law and under the provisions of the Texas Business Organizations Code. Before declaring any dividend there may be reserved out of the earned surplus such sum or sums as the Board of Directors from time to time, in the absolute discretion of the directors, deems proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends, or for such other purposes as the Board may deem conducive to the interests of the Corporation, and the Board may abolish any such reserve in the manner in which it was created.

7.6 Record Dates and Closing of Transfer Books. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors of the Corporation may provide that the stock transfer books shall be closed for a period but not to exceed, in any case, fifty (50) days. If the stock transfer books shall be closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books the Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty (50) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholder entitled to receive payment of a dividend, the date on which the notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

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7.7 Regulations. The Board of Directors shall have power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer, and registration or the replacement of certificates for shares of the capital stock of the Corporation.

## 8. MISCELLANEOUS PROVISIONS

8.1 Fiscal Year. The fiscal year of the Corporation shall be such as the Board of Directors shall, by resolution, provide or establish or such as the President shall determine subject to approval of the Board.

8.2 Seal. The seal of the Corporation shall be in form as the Board of Directors shall prescribe, and may be used by causing it or a facsimile thereof to be impressed, or affixed, or printed, or reproduced or in any other manner.

8.3 Notice and Waiver of Notice. Whenever any notice whatever is required to be given to any shareholder or director under the provisions of the Texas Business Organizations Code or under the provisions of these Bylaws or the Certificate of Formation of this Corporation, the notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person or persons entitled thereto at their post office addresses, respectively, as same appear on the books or other records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing, but the notice shall also be deemed to be on the day of such mailing, but the notice shall also be deemed to be sufficient and to have been given and received if given in any other manner or by any other means authorized or provided for elsewhere in these Bylaws. A waiver or waivers of notice, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

8.4 Resignations. Any director or officer may resign at any time. Each such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by either by the Board of Directors or the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

8.5 Securities of Other Corporations. The President or any Vice-President of the Corporation shall have power and authority to transfer, endorse for transfer, vote, consent, or take any other action with respect to any securities or another issuer which may be held or owned by the Corporation and to make, execute, and deliver any waiver, proxy, or consent with respect to any such securities.

8.6 Depositories. Funds of the Corporation not otherwise employed shall be deposited from time to time in such banks or other depositories as either the Board of Directors or the President or the Treasurer may select to approve.

8.7 Signing of Checks, Notes, etc. In addition to and cumulative of, but in nowise limiting or restricting, any other provision or provisions of these Bylaws which confer any authority relative thereto, all checks, drafts, and other orders for the payment of money or monies out of funds of

the Corporation and all notes and other evidences of indebtedness of the Corporation shall be signed on behalf of the Corporation, in such manner and by such officer or officers, person or persons, as shall from time to time be determined or designated by or pursuant to resolution or resolutions of the Board of Directors; provided, however, that if, when, after, and as authorized or provided for by resolution or resolutions of the Board of Directors the signature or signatures of any such officer or officers, person or persons, may be facsimile or facsimiles, engraved or printed, and shall have the same force and effect and bind the corporation as though such officer or officers, person or persons, had signed the same personally, and, in event of the death, disability, removal, or resignation of any such officer or officers, person or persons, as though and with the same effect as if such death, disability, removal, or resignation had not occurred.

8.8 Persons. Wherever used or appearing in these Bylaws, the singular shall include the plural wherever appropriate.

8.9 Laws and Statutes. Wherever used or appearing in these Bylaws, the words "law", "laws", "statute", and "statutes", shall mean and refer respectively, to laws and statutes, or a law or a statute, of the State of Texas, to the extent only that such is or are expressly applicable, except where otherwise expressly stated or the context requires that such words not be so limited.

## 9. AMENDMENTS

9.1 These Bylaws may be amended or altered at any regular or special meeting of the members by the affirmative vote of a minimum of fifty percent (50%) of the holders of the common stock present and voting. No amendment to the Bylaws shall be passed, however, unless notice in writing to the effect that the same will be voted upon has been mailed to the address of each holder of common stock of the Corporation.

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

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

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**THANK YOU**

\_\_\_\_\_  
Director

\_\_\_\_\_  
President

ATTEST:

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Secretary  
**PREVIEW**  
[Affix corporate seal]

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**THANK YOU**

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## Notice and call of organizational meeting of board of directors

# PREVIEW

1. The organization of the corporation can be carried out by either:
  - a. an actual meeting of the directors named in the Certificate (in which case, either proper notice or a written waiver of notice signed by all directors is required); or
  - b. a written consent signed by all directors, adopting resolutions covering all of the subjects that would otherwise be covered at a meeting and reflected in the minutes. Such a consent in lieu of a meeting is proper
2. Either proper notice must be given for the meeting or a waiver of notice of the meeting must be signed by all parties who are allowed to attend the meeting.

# PLEASE DO NOT COPY

  - a. You can use the following form entitled Notice and call of organizational meeting of board of directors.
3. This document is designed to comply with the requirements of the Texas Business Organizations Code which requires notice of the date, time and place of the organizational meeting for the board of directors. It should be inserted in the corporate minute book with the minutes of the organizational meeting.

# THIS DOCUMENT

# THANK YOU

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Form: Notice and call of organizational meeting of board of directors

**PREVIEW**  
**NOTICE AND CALL OF ORGANIZATIONAL  
MEETING OF BOARD OF DIRECTORS**

The undersigned person, constituting the sole Director named in the Certificate of Formation of [Corporation], calls the organizational meeting of the Board of Directors to be held at [time] on the \_\_\_\_\_, at [address], for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting.

Dated: \_\_\_\_\_

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Director

**THIS DOCUMENT**

**THANK YOU**

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**Waiver of notice of organizational meeting of board of directors**

**PREVIEW**

1. The organization of the corporation can be carried out by either:
  - a. an actual meeting of the directors named in the Certificate (in which case, either proper notice or a written waiver of notice signed by all directors is required); or
  - b. a written consent signed by all directors, adopting resolutions covering all of the subjects that would otherwise be covered at a meeting and reflected in the minutes. Such a consent in lieu of a meeting is proper
2. Either proper notice must be given for the meeting or a waiver of notice of the meeting must be signed by all parties who are allowed to attend the meeting.
  - a. You can use the following form entitled Notice and call of organizational meeting of board of directors.

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Form: Waiver of notice of organizational meeting of board of directors

**PREVIEW**

**WAIVER OF NOTICE OF ORGANIZATIONAL  
MEETING OF THE DIRECTORS**

1. The undersigned, members of the Board of Directors of \_\_\_\_\_ Corporation, which constitutes the entire board named in the Certificate of Formation of \_\_\_\_\_ Corporation, hereby agree and consent that the Organization Meeting of the Directors shall be held on the date and at the time and place stated herein and accordingly, we hereby waive any and all notice requirements of such meeting and any adjournment thereof.

2. The meeting shall be held at .

3. The date of the meeting is .

4. The time of the meeting is .

5. The purpose of the meeting is:

[Purpose].

Dated: \_\_\_\_\_.

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**THANK YOU**

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## Organizational meeting of the board of directors

**PREVIEW**

1. After drafting and filing the Certificate of Formation and preparing the Bylaws, the next step in the formation of a corporation is to hold the organizational meeting of the Board of Directors.

2. The following are typical subjects covered in an organizational meeting or consent:

a. acceptance of the Certificate and Certificate of Incorporation;

b. adoption of the Bylaws;

c. election of officers and setting of compensation;

d. approval of the corporate seal;

e. adoption of form(s) of certificate(s) to represent the various classes of shares (note that "uncertified" shares are now permissible ;

f. adoption of an Internal Revenue Code Section 1244 stock plan;

g. issuance of shares;

h. adoption of a banking resolution;

i. reimbursement of any organizational expense to individuals;

j. ratification of any pre-incorporation agreements;

k. election of Subchapter S tax treatment, if desired; and

l. approval of any assumed names to be used by the corporation.

3. The organization of the corporation can be carried out by either:

a. an actual meeting of the directors named in the Certificate (in which case, either proper notice or a written waiver of notice signed by all directors is required); or

b. a written consent signed by all directors, adopting resolutions covering all of the subjects that would otherwise be covered at a meeting and reflected in the minutes. Such a consent in lieu of a meeting is proper

4. Either proper notice must be given for the meeting or a waiver of notice of the meeting must be signed by all parties who are allowed to attend the meeting. See the forms entitled

Notice and Call of Organizational Meeting of Board of Directors and Waiver of Notice of Organizational Meeting of Board of Directors.

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**THIS DOCUMENT**

**THANK YOU**

Form: Minutes of the organization meeting of board of directors

# PREVIEW

## MINUTES OF THE ORGANIZATION MEETING OF THE BOARD OF DIRECTORS

### 1. TIME AND PLACE OF MEETING

1.1 The organizational meeting of the Board of Directors of \_\_\_\_\_ Corporation, a Texas Corporation (Corporation), was held at [address], on the \_\_\_\_\_ day of \_\_\_\_\_ at [time] pursuant to the call of the majority of the Directors named in the Certificate of Formation. Each person named as an Initial Director in the Certificate of Formation was present, accepted [his or her] office, and commenced [his or her] duties assigned to him by the Corporation or the person resigned as a Director prior to the date and time of this Organizational Meeting.

1.2 Present were \_\_\_\_\_, constituting a full membership of the Board.

### 2. TEMPORARY OFFICERS

2.1 [name] was unanimously chosen temporary Chairman, and [name] was unanimously chosen temporary Secretary of the meeting.

### 3. NOTICE AND CALL OF MEETING

3.1 Each Director waived notice of the time, place and purpose of the meeting as evidenced by [his or her] signature to the Waiver of Notice which is appended to the Corporate Minute Books. Thereafter the Secretary presented and read a Notice and Call of the Meeting signed by all of the directors named in the Certificate of Formation, which was ordered filed in the Corporate Minute Book.

### 4. CERTIFICATE OF INCORPORATION

4.1 The Chairman then advised that the Certificate of Formation of the Corporation had been filed in the office of the Secretary of State of the State of Texas on \_\_\_\_\_, and a Certificate of Incorporation was issued on the same day. The Certificate had been mailed to the Organizer's address and was presented at the meeting. Thereafter the Certificate were then reviewed by the Directors and upon Motion duly made, seconded and unanimously adopted, the Certificate of Formation of the Corporation were accepted and approved.

On Motion made, seconded and unanimously adopted it was:

Resolved that the Certificate of Formation which have been filed or approved by the Secretary of State's office of the State of Texas be adopted and approved and the Secretary of the Corporation shall insert the Certificate in the Corporate Minute Book.

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5.1 The Chairman presented Bylaws which had been drafted and prepared by [name], the Corporation's Legal Counsel, for the regulation and management of the affairs of the Corporation. The Bylaws were reviewed and adopted by the Directors on Motion duly made, seconded and unanimously adopted, it was:

Resolved that the Bylaws submitted to and reviewed at this meeting be adopted as the Bylaws of the Corporation and the Secretary shall insert the Bylaws in the Corporate Minute Book.

## 6. ELECTION OF OFFICERS

6.1 The following persons were nominated as officers of the Corporation to serve until their respective successors are chosen and qualify:

President:

Vice-President:

Treasurer:

Secretary:

6.2 Ballots being duly cast by the directors, the Chairman announced that the named persons had been unanimously elected to the offices set before the respective names and were to assume the duties and responsibilities fixed by the Bylaws. The Officers shall hold office until the first Annual Meeting of the Shareholders or until such special meeting of the Shareholders or Board of Directors shall supersede this election.

6.3 The Chairman of the Board of Directors then took the chair, and the Secretary immediately assumed the discharge of those duties. Each of the other officers thereafter accepted [his or her] office and commenced their duties as assigned to them by the Corporation and as stated in the Corporate Bylaws.

## 7. ELECTION OF DIRECTORS

7.1 The Secretary then presented to the Meeting the resignation of all of the Initial Directors of the Corporation and it was ordered that the resignation be filed with the Minutes of the Meeting.

7.2 Thereafter, it was resolved that the resignation of the Initial Directors as presented to the Meeting was approved and accepted and that it was to take effect at the close of the Organizational Meeting.

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7.3 The Chairman then stated that nominations were in order for the election of Directors of the Corporation to hold such office until the first such Annual Meeting of the Shareholders and until their successors shall be elected and shall qualify.

7.4 Accordingly, the following persons were nominated as Directors of the Corporation: [specify]; and upon ballots being duly cast the Chairman announced that the named persons had been unanimously elected to Directors of the Corporation and that their respective names be placed in the Corporate Minute Book and that immediately thereafter they should assume the duties and responsibilities fixed by the Bylaws of the Corporation.

7.5 Since no further nominations were made, the nominations were closed and the votes were taken. After the votes had been counted, the Chairman declared that the named nominees were elected Directors of the Corporation. The Chairman then stated that the newly elected Directors would assume their responsibilities immediately.

## 8. APPROVAL OF FORM OF STOCK CERTIFICATE

8.1 A form of the Corporation's stock certificate was presented, and upon Motion duly made and adopted, was approved. On Motion duly made, seconded and unanimously adopted, it was:

Resolved that the Stock Certificate submitted to and reviewed by the Directors of this Meeting be adopted as the Official Stock Certificate of the Corporation and the Secretary shall insert the specimen copy in the Corporate Minute Book.

## 9. CORPORATE MINUTE BOOK

9.1 The Secretary presented a Corporate Minute Book of the Corporation containing a copy of the Certificate of Formation, Resignation of Initial Directors, if any, Notice or Waiver of Notice of Organizational Meeting, Specimen and Specimen Stock Certificate. On Motion duly made, seconded and unanimously adopted, it was:

Resolved that the Minute Book presented to the Directors of this Meeting by the Secretary be approved and adopted under the action of the Secretary in copying or inserting the Certificate of Formation and Certificate of Incorporation, Bylaws and Stock Certificate Specimen be approved and ratified. It is further resolved that the Secretary is hereinafter instructed to authenticate the Corporate Minute Book to retain care, control and custody of the Minute Book and to insert the Minutes of this Meeting and any, other and all Meetings or proceedings of the Shareholders and Directors as required by law and the Corporation's Bylaws.

Resolved that the Corporate Record Book including the Share Transfer Ledger being hereby be adopted as the Record Book and Share Transfer Ledger of the Corporation for all purposes.

10. ANNUAL MEETING OF THE SHAREHOLDERS

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10.1 The Chairman announced that a time for an Annual Meeting of the Shareholders must be selected. On a Motion duly made and seconded, it was resolved that the Annual Meeting of the Shareholders should be held during the last month of the Corporation's fiscal year at a time and place to be determined by the Board of Directors. Notice of the meeting shall be sent to Shareholders and Directors as established in the Corporation's Bylaws.

## 11. ISSUANCE OF SECTION 1244 STOCK

11.1 The President stated the advantages of qualifying the Corporation's stock under Section 1244 of the United States Internal Revenue Code. He explained that subject to certain limitations, Section 1244 permits ordinary, as opposed to capital, loss treatment for loss on the Corporation's stock when an individual Shareholder sells or exchanges [his or her] stock at a loss or if the stock becomes worthless.

11.2 It was unanimously agreed that the adoption of Internal Revenue Code Section 1244 Stock Plan would be advantageous to the Corporation's Shareholders and therefore make it more attractive to potential investors and purchasers.

11.3 The Chairman thereafter presented the following Section 1244 Stock Plan:

- a. The Section 1244 Stock Plan shall become effective after the same is adopted by the Board of Directors.
- b. The Corporation will be authorized to issue and offer under the Section 1244 Stock Plan no more than 1,000,000 shares of the common stock at a price as the Board of Directors shall determine.
- c. Corporation shall offer and issue shares under the Section 1244 Stock Plan only while the Plan is effective. The Plan shall be effective for a period of at least two years less one day after the effective date of the adoption of the Plan unless sooner withdrawn or terminated by the Board of Directors or disqualified by law.
- d. While the Plan is effective, the Corporation shall not offer or issue any stock except as stated under the Section 1244 Stock Plan.
- e. The stock sold under the Section 1244 Stock Plan shall only be issued for cash or other property which has been received and accounted for by the Corporation.
- f. The Corporation shall have its Counsel review the requirements for qualification under Section 1244 in order to insure that the Corporation has complied with the requirements.

Upon Motion duly made, seconded, and unanimously adopted, it was:

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Resolved that the Internal Revenue Code Section 1244 Stock Plan as presented and outlined above at this meeting shall be adopted by the Corporation and the Officers of the Corporation are authorized and directed to do all things necessary to adopt and carry out the Section 1244 Stock Plan.

## 12. ISSUANCE OF STOCK

12.1 The President then stated that the Corporation was authorized to sell [number] shares of stock. The Secretary then presented to the Meeting the written proposal from \_\_\_\_\_, and addressed to the Corporation.

12.2 The Proposal stated that the Corporation had received offers to purchase [number] shares of its authorized shares at a cash consideration price of \_\_\_\_\_ Dollars \$[Amount] per share. [List the name of the person and amount of shares desired to purchase]

12.3 Upon Motion duly made, seconded and unanimously adopted the above stated Stock Purchase Offers were accepted, and it was:

Resolved that [number] shares of the Corporation's authorized shares shall be issued to [proposed stockholder's name] for consideration of \_\_\_\_\_ Dollars \$[Amount] per share.

Thereafter, the Corporation received payment for the stock certificates. Payment was accepted and recognized, the certificates were immediately issued, delivered and accepted.

## 13. COMMENCING BUSINESS

13.1 The Corporation is now able to commence and transact business and incur indebtedness in the State of Texas as stated in the Certificate of Corporations.

## 14. ADOPTION OF ACCOUNTING PERIOD

14.1 The Chairman then stated that an annual accounting period should be chosen and designated by the Board. Upon Motion duly made, seconded and unanimously adopted the following resolution was adopted, it was:

Resolved, that the annual accounting period of the Corporation shall be taken under advisement by the Corporation's accountant, who will report back to the Board of Directors at a subsequent meeting, at which time the accounting period shall be determined.

## 15. APPOINTMENT OF GENERAL COUNSEL TO THE CORPORATION

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15.1 The President then announced that the Corporation needed to retain legal counsel to represent the Corporation in its legal affairs. Accordingly, on Motion duly made, seconded and unanimously adopted, it was:

Resolved that the law firm of [name] be appointed General Counsel of the Corporation and be authorized in that capacity to form any and all legal representation required by the Corporation and as directed by the Officers, and Directors of the Corporation.

## 16. BUSINESS EXPENSES BY OFFICERS

16.1 The Chairman then advised that the officers, directors and employees of the corporation may be required to expend monies for expenses in the performance of their job duties. The expenditure of the funds may be necessary to promote the business of the corporation. Accordingly, the Corporation shall prepare and adopt an employee expense reimbursement plan whereby the directors, officers and employees shall be reimbursed for the monies so expended on behalf of the corporation.

16.2 Pursuant to the plan, the directors, officers and employees shall be required personally to pay certain necessary business expenses including but not limited to the following: education expenses, entertainment and promotion expenses, automobile and transportation expenses, continuing education programs, membership in civic and/or fraternal organizations and any and all other items of reasonable and necessary business expenses which the person shall deem necessary to promote the corporation's business.

16.3 The director, officer or employee shall be reimbursed for the expenses upon proper presentation of receipts which conform to Internal Revenue Code Regulation requirements applicable to employee expense reimbursements.

Resolved that the Corporation shall prepare and adopt an Employee Expense Reimbursement plan whereby directors, officers and employees may be reimbursed for expenses incurred in the ordinary and necessary business in the performance of their duties for and on behalf of the Corporation.

## 17. SALARIES OF OFFICERS

17.1 The Chairman then stated that the corporation was entitled to enter into an employment contract between the Corporation as the employer and its key employees. Upon Motion duly made, seconded and carried, the following resolution was adopted:

Resolved that the Board of Directors hereby approves and adopts the above described power; the President is hereby authorized to execute the contract on behalf of the Corporation.

## 18. EMPLOYEE MEDICAL PLAN

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18.1 A Health and Accident Plan was presented whereby the Corporation would provide accident, health, and other medical and disability insurance coverage for key employees of the Corporation. Thereupon on Motion duly made and carried, it was:

Resolved that the Health and Accident Plan presented to this meeting be and it hereby is adopted and that the President is authorized to execute the document on behalf of the Board of Directors.

## 19. DIRECTOR'S FEES

19.1 On Motion duly made, seconded and unanimously adopted it was resolved that each Director in attendance at any meeting of the Board shall receive a fee for [his or her] attendance. The fee shall be determined by the Board and shall be commensurate with Director's fees paid by other corporations in the same or similar business as the Corporation.

## 20. RESOLUTION AUTHORIZING OFFICERS TO ENTER INTO AGREEMENTS ON BEHALF OF THE CORPORATION

20.1 The President thereafter informed the Directors the Corporations may from time to time need to enter into Lease Agreements, Contracts, Service Agreements or other binding obligations on behalf of the Corporation for the use of office space, storage space, equipment, furniture, fixtures, office machinery, computer, word processing equipment or other business items that the Corporation may need. The President then proposed to the Board that the President and Vice-President be allowed to negotiate and enter into the agreements and binding obligations on behalf of the Corporation subject to the same being consistent and reasonable and of the type ordinarily entered into by corporations in the same or similar business as the Corporation. After consideration and discussion and upon Motion duly made, seconded and unanimously adopted, it was:

Resolved that the President of the Corporation and/or Vice-President of the Corporation be and are hereby authorized and directed to negotiate and enter into Contracts, Leases or other binding obligations on behalf of the Corporation as long as the agreements are reasonable and of the type ordinarily entered into by companies of the same or similar business as the Corporation.

## 12. OPENING OF BANK ACCOUNTS

21.1 The Chairman then stated that it was necessary to provide a depository for the funds of the Corporation and authorize those who may withdraw them on behalf of the Corporation and otherwise act in connection with such bank account. Thereupon, on Motion duly made, seconded and carried, the following resolution was adopted:

Resolved that certain officers are authorized and directed to locate a suitable banking institution and to execute such signature cards and other documents in connection with such bank account as may be necessary for a suitable and certain to the adoption of any

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resolutions required by the bank, such resolutions being attached as part of these minutes and hereby adopted.

**PREVIEW**

## 22. ADOPTION OF A SEAL

22.1 The Secretary presented at the Meeting the Corporate Seal, which has been ordered and obtained, the Seal being designed in accordance with the Corporation's Bylaws. On Motion duly made, seconded and unanimously adopted, it was:

Resolved that the Corporate Seal, an impression of which is affixed hereto, be approved and adopted as the Corporate Seal of \_\_\_\_\_ Corporation.

[Affix corporate seal]

**PLEASE DO NOT COPY**

## 23. MEETING OF THE DIRECTORS

23.1 Upon Motion duly made, seconded and carried, it was:

Resolved that an office of the Corporation be established and maintained at [address], and that meetings of the Board of Directors from time to time may be held either at such office in the City of \_\_\_\_\_ or elsewhere, as the Board of Directors shall from time to time order.

## 24. ORGANIZATION FEES

24.1 The Chairman here considered a resolution authorizing payment of organizational expenses on the corporate income tax return. The following motion was made and carried:

Whereas, the Internal Revenue Code authorizes an election to amortize certain organization expenditures ratably over a period of 60 months or more; and

Whereas, the Corporation has agreed to pay such organizational expenses and will expend sums in so doing; be it

Resolved that the Treasurer of the Corporation is hereby authorized and directed to pay the expenses incident to and necessary for the organization of this Corporation; and be it further

**THANK YOU**

Resolved that, effective for the Corporation's first taxable year, the Corporation adopt a system of amortizing ratably over a period of 60 months all organizational expenditures which can be so treated under the Internal Revenue Code.

## 25. SERVICE OF PROCESS

25.1 Upon Motion duly made, seconded and carried, it was:

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Resolved that for the purpose of authorizing the corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for this corporation to transact business, the proper officers of this corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and, under the corporate seal, to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the corporation to transact business therein.

## 26. ADJOURNMENT OF MEETING

26.1 Upon Motion duly made, seconded and unanimously carried, the meeting was adjourned.

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

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Director

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

[Affix corporate seal]

# THANK YOU

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Form: Certificate of corporate resolution

# PREVIEW

## CERTIFICATE OF CORPORATE RESOLUTION

I, \_\_\_\_\_, the Secretary of \_\_\_\_\_ Corporation, do hereby certify that a duly constituted meeting of the board of directors of the Corporation was held at the office of the Corporation on \_\_\_\_\_.

The following resolutions stated hereunder were duly and legally adopted by the unanimous consent in writing of the board of directors, which unanimous consent was and is in the form required by and in conformity with the Bylaws and the Certificate of Formation of the corporation and that the same has not been amended, altered, rescinded or appealed and is now in full force and effect.

# PLEASE DO NOT COPY

We further certify that the following persons are the officers and directors of the corporation:

[list directors]

[list officers]

The corporation has all requisite corporate powers and is in compliance with all governmental regulations and has or will have obtained in a timely fashion all necessary license, permits and qualification and/or documentation necessary to carry out the hereinbelow described corporation resolutions:

# THIS DOCUMENT

To the best information, belief and knowledge of the undersigned, there are no legal pleadings, complaints, actions or legal proceedings pending or threatened against the corporation before any court, legislative body or administrative agency whatsoever which would prohibit or adversely affect the ability of the corporation to perform and carry out the following described corporate resolutions.

The undersigned individuals have the authority to make for and on behalf of the corporation the representations contained herein and do so as the act and deed of the corporation.

Furthermore, since the date of incorporation if any acts or transaction have been taken or made for and on behalf of the corporation by its officers and directors, if the acts are not reflected in the minutes contained in the minute book of the corporation, it is therefore the intent and desire that the board of directors should ratify and ratify the action of the officers and directors by appropriate resolutions contained herein if necessary. It is therefore:

# THANK YOU

RESOLVED that the acts and transactions of the officers and directors of the corporation which have been taken or made prior to the date of this meeting of the board of directors are hereby ratified and approved.

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RESOLVED that the corporation has passed a resolution authorizing its president and secretary to borrow on behalf of the corporation or assume a debt owed on the following

described real property, funds in the amount of \$[Amount] from [name], and the funds shall be used for the purchase or acquisition of the following described real property: [insert legal description].

All of the funds to be derived by the corporation from this loan or assumption are to be used by the corporation exclusively for the purposes set forth herein, the purposes being:

[describe purposes].

The corporation is duly resolved that the corporation authorizes [name], President and [name], Secretary to execute any and all documents to be delivered at the time of closing in connection with the purchase of the above described property, including but not limited to the creation, issuance and delivery of the property. All such documents executed and delivered by the corporation in connection with the loan or assumption shall be valid and binding obligations of the corporation in accordance with the terms of such documents, including but not limited to promissory notes, deeds with vendor's liens, deeds of trust, and any and all such other documents as may be reasonably and necessarily to consummate the transaction. Furthermore, the documents do not violate any provisions of the corporation's bylaws or Certificate of Formation, or any contracts, agreements or regulations to which the corporation is subject, nor will the same constitute a breach or default under any mortgage, deeds of trust, loan or credit agreement or other instrument to which the corporation is a party or by which it may be bound or affected.

We do further certify that the above and foregoing is a true and correct copy of the resolution passed by the board of directors of the corporation at the meeting of the board, duly and legally called in accordance with its bylaws, the meeting being held on \_\_\_\_\_, all members of the board either being present or having waived notice of the meeting, and all voting was unanimously in favor of the adoption of the resolution and that the resolution has not been repealed, amended or canceled, and it is still in full force and effect.

Affiants hereby recognize and acknowledge that [name] is hereby relying on this certificate and resolution in connection with the making of [loan or sale of property or as the case may be] and but for the warranties, representations and covenants stated herein of the Affiant, [name], would not enter into such transaction and that all such warranties, representations and covenants herein made shall survive the closing of the above described transaction and shall inure to the benefit of [name], its successors and assigns.

In witness whereof, we have signed as President and Secretary, respectively, of the corporation and have attached hereto the official seal of the corporation on \_\_\_\_\_.

\_\_\_\_\_  
President

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\_\_\_\_\_  
Secretary

[You may want to notarize the form, it is not required to be notarized however some financial and other institutions prefer the form notarized]

**PREVIEW**

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]

**THIS DOCUMENT**

**THANK YOU**

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Form: Consent of directors to a corporate resolution - Short form

# PREVIEW

## CONSENT OF DIRECTORS

The undersigned, being all the members of the Board of Directors of \_\_\_\_\_  
Corporation, a Texas corporation, by this consent hereby adopt the following resolutions:

Resolved, that [state the corporate resolution].

Dated: \_\_\_\_\_

# PLEASE DO NOT COPY

Director

\_\_\_\_\_  
Director

[You may want to notarize the form; it is not required to be notarized however some financial  
and other institutions prefer the form notarized]

State of Texas

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

# THIS DOCUMENT

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

\_\_\_\_\_.

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

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

# THANK YOU

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

[or Notary's Stamp]

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**Letter advising client of action taken to form and organize corporation without holding formal organizational meeting of board of directors**

**PREVIEW**

1. This letter can be sent to the client to make sure that the organizational minutes are signed and completed.

**Form: Letter advising client of action taken to form and organize corporation without holding formal organizational meeting of board of directors**

[date]

MEMORANDUM TO CLIENTS

**PLEASE DO NOT COPY**  
**ATTORNEY-CLIENT COMMUNICATION. THIS DOCUMENT AND ITS**  
**CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

Regarding: Ratification and Consent in Lieu of Organizational Meeting

Dear [Client name]:

Enclosed please find a Ratification and Consent in Lieu of an Organizational Meeting for your corporation and your corporate bylaws.

Please review the same and make sure they are correct and then sign in the appropriate places. if you have any questions please call me. You should also periodically review the letter we sent you regarding your responsibilities as a corporate officer to make sure that corporate books, minutes, records, meetings, and other corporate formalities are held on a timely basis and performed correctly so that you will be able to preserve your corporate formalities. If you need my assistance in preparation of any corporate minutes, meetings, or notices, please contact me. We will be happy to assist you. Unless we receive a request from you regarding future legal assistance on your corporation we will presume that you are handling the same yourself and have not requested any further action from myself or my firm.

Very truly yours,

**THANK YOU**

Name of attorney

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**Organizational meeting of the board of directors by a Ratification and consent in lieu of a meeting of shareholders**

**PREVIEW**

1. After drafting and filing the Certificate of Formation and preparing the Bylaws, the next step in the formation of a corporation is to hold the organizational meeting of the Board of Directors.

2. The following are typical subjects covered in an organizational meeting or consent:

a. acceptance of the Certificate and Certificate of Incorporation;

b. adoption of the Bylaws;

c. election of officers and setting of compensation;

d. approval of the corporate seal;

e. adoption of form(s) of certificate(s) to represent the various classes of shares (note that "uncertified" shares are now permissible ;

f. adoption of an Internal Revenue Code Section 1244 stock plan;

g. issuance of shares;

h. adoption of a banking resolution;

i. reimbursement of any organizational expenses to individuals;

j. ratification of any pre-incorporation agreements;

k. election of Subchapter S tax treatment, if desired; and

l. approval of any assumed names to be used by the corporation.

3. The organization of the corporation can be carried out by either:

a. an actual meeting of the directors named in the Certificate (in which case, either proper notice or a written waiver of notice signed by all directors is required); or

b. a written consent signed by all directors, adopting resolutions covering all of the subjects that would otherwise be covered at a meeting and reflected in the minutes. Such a consent in lieu of a meeting is proper.

4. A notice or waiver of notice of a meeting is not required when the following form is used.

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Form: Ratification and consent in lieu of an organizational meeting of board of directors

**PREVIEW**  
**RATIFICATION AND CONSENT IN LIEU OF**  
**AN ORGANIZATIONAL MEETING**

1. The undersigned members of the Board of Directors of \_\_\_\_\_, Inc., hereinafter referred to as "Board," consent to and ratify the action which was taken to organize the corporation as herein stated.

2. The Certificate of Formation were filed on \_\_\_\_\_. The Secretary of State of the State of Texas issued a formal Certificate of Incorporation on that date. The Certificate of Incorporation and an approved copy of the Certificate of Formation has been inserted in the corporate minute book.

3. The Bylaws which regulate the conduct of the corporation's business and affairs have been duly prepared by [attorney]. The Bylaws have been examined by the authorized agents of the corporation and have been adopted and inserted in the corporate minute book.

4. The Directors have been authorized to issue, from time to time, the authorized shares of capital stock of the corporation as specified in the Certificate of Formation for money paid and actually acquired by the corporation, upon such terms as the Board of Directors, in its discretion, may determine.

5. Furthermore, the Board adopted the following corporate seal. An impression of said seal is herein.

[Imprint Corporate Seal]

6. The Board likewise approved a certificate for shares, a copy of which is annexed to this consent, and a corporate record book including a share transfer book for the corporation.

7. The following persons have been appointed officers of \_\_\_\_\_, Inc., to serve for a period of one year, or until their successors are appointed or elected:

President:

Vice-President:

Secretary:

Treasurer:

8. The Board thereafter authorized the treasurer to open a bank account with [name] which is located at [address]. A resolution to authorize the corporation to open a bank account was adopted. A copy of the bank resolution was inserted in the record book.

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**THANK YOU**

9. A true and correct copy of each of the following papers referred to in the above ratification and consent is appended hereto.

- a. Certificate of Incorporation and Certificate of Formation;
- b. Specimen share certificates;
- c. Resolution designating depository of funds; and,
- d. Bylaws.

This resolution shall have the same force and effect as if adopted at an organizational meeting of the board of directors as if the same had been duly called, noticed and held under section 21.059 of the Texas Business Organizations Code.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
[Signature]

**THIS DOCUMENT**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
Secretary

**THANK YOU**

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**Plan to offer section 1244 shares of common stock**

**PREVIEW**

1. One way a corporation can raise capital is to sell shares of its stock.
2. The procedure must be approved by the board of directors and then appear in writing.
3. The form should comply with the requirements of Internal Revenue Service Code Section 1244 which enables the shareholders to take advantage of favorable tax treatment.

**Form: Plan to offer section 1244 shares of common stock**

**PLAN TO OFFER SHARES OF COMMON STOCK FOR SALE**

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WHEREAS, the Board of Directors deems it advisable and in the best interests of the Corporation to offer for sale and issue shares of common stock in the total amount of not more than One Hundred Thousand and 00/100 Dollars (\$ 100,000.00) in a manner such that in the hands of qualified stockholders such shares of stock will receive the benefits of Section 1244 of the Internal Revenue Code, as amended, and

WHEREAS, the Corporation is a "small business corporation" as defined in Section 1244(c)2, in that:

**THIS DOCUMENT**

The sum of the aggregate amount which may be offered under this plan, plus the aggregate amount of money and other property received by the corporation for shares of common stock as a contribution to capital and as paid in surplus, does not exceed One Million and 00/100 Dollars(\$1,000,000.00).

WHEREAS, there is not now outstanding any prior offering of the Corporation to sell or issue any of its stock,

**THANK YOU**

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the proper officers of the Corporation are hereby authorized and directed to offer, sell and issue as many shares of common stock and at such prices, payable in cash or other property (other than stock and

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securities) as from time to time they deem to be in the best interests of the Corporation, subject to the following:

**PREVIEW**

(a) In no event shall the total amount of cash and the value of property, received for shares of common stock, exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00).

(b) This offer to sell and issue shares of common stock shall terminate one (1) day less than two (2) years from the date this plan is approved and adopted by the Board of Directors of the Corporation. If the Corporation shall make a subsequent offering of shares of common stock or securities convertible into common stock prior to the expiration date as set forth above, this plan shall terminate on the date of the subsequent offering.

This plan shall be interpreted and construed in such manner as will enable it to qualify as a plan meeting the requirements of Section 1244 of the Internal Revenue Code as amended, and as will enable the shares of common stock issued thereunder to qualify as "Section 1244 stock," as defined in the section.

Dated: \_\_\_\_\_

**THIS DOCUMENT**

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

Approved and adopted by the Board of Directors on \_\_\_\_\_.

**THANK YOU**

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# PREVIEW

1. One advantage of incorporating is that it permits a corporation to adopt a plan for reimbursement of the medical expenses incurred by officers and employees. This plan allows the corporation to reimburse all covered employees with pretax dollars for all of their covered medical expenses.
2. Under Item 3b of the Medical Care Reimbursement Plan, the plan pays only if the expenses sought to be recovered are not reimbursed under an insurance policy provided by the corporation or the employee.
3. The attorney should seek the assistance of a tax practitioner to verify that the client's plan complies with current Internal Revenue Service provisions.

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**THANK YOU**

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**PREVIEW**  
MEDICAL REIMBURSEMENT PLAN  
OF [NAME] CORPORATION

1. BENEFITS

The Corporation shall reimburse all eligible employees for expenses incurred by themselves and their dependents, as defined in Internal Revenue Code Section 152, as amended, for medical care, as defined in Internal Revenue Code Section 213(e), as amended, subject to the conditions and limitations as herein set forth. It is the intention of the corporation that the benefits payable to eligible employees under this plan shall be excluded from their gross income pursuant to Internal Revenue Code, Section 105, as amended.

2. ELIGIBILITY

Any full time employee working in excess of 30 hours per week and who has been employed for a period of 30 days shall be eligible for coverage.

3. LIMITATIONS

(a) The Corporation shall reimburse any eligible employee no more than \$ 150,000 in any fiscal year for medical care expenses.

(b) Reimbursement or payment provided under this Plan shall be made by the Corporation only in the event and to the extent that such reimbursement or payment is not provided under any insurance policy or policies, whether owned by the Corporation or the employee, or under any other health and accident or wage continuation plan. In the event that there is such an insurance policy or plan in effect, providing for reimbursement in whole or in part, then to the extent of the coverage under such policy or plan, the Corporation shall be relieved of any and all liability hereunder.

4. SUBMISSION OF PROOF

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Any eligible employee applying for reimbursement under this Plan shall submit to the Corporation, at least quarterly, all bills for medical care, including premium notices for accident or health insurance, for verification by the Corporation prior to payment. Failure to comply herewith, may at the discretion of the Corporation, terminate such eligible employee's right to the reimbursement.

5. DISCONTINUATION

This Plan shall be subject to termination at any time by vote of the board of directors of the Corporation, provided, however, that medical care expenses incurred prior to such termination shall be reimbursed or paid in accordance with the terms of this Plan.

6. DETERMINATION

The president shall determine all questions arising from the administration and interpretation of the Plan except where reimbursement is claimed by the president. In such case determination shall be made by the board of directors.

Adopted by the Board of Directors on \_\_\_\_\_ [date].

\_\_\_\_\_  
Secretary

**THANK YOU**

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**Health and accident plan**

# **PREVIEW**

1. The plan is similar to the medical care reimbursement plan, except that it provides for pretax reimbursement of expenses to employees for disability income coverage in addition to reimbursement of medical care expenses.

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**THANK YOU**

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# PREVIEW

## HEALTH AND ACCIDENT PLAN

### 1. THE PURPOSE OF THE PLAN

The undersigned, a Corporation organized under the laws of the State of Texas, referred to as the "Company," establishes this Health and Accident Plan, referred to as the "Plan," for the benefit of its employees to reward its employees for past loyalty to the Company and improve working conditions by removing the worries of the expense of certain medical care, disability and accident and health insurance premiums from the Employees' minds.

### 2. BENEFITS PAYABLE UNDER THE PLAN

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#### a. Reimbursement for medical care expenses

(i) Effective the execution date of this Plan, the Company will reimburse at least quarterly any Employee of the Company, who is employed by the Company on a full time basis, for all expenses incurred by such Employee for the medical care his or her spouse, and his or her dependents. A Employee shall be considered as employed on a full-time basis for the purposes of this Plan if he or she customarily works at least nine (9) months in each year and thirty (30) hours in each week. Expenses for medical care include all amounts paid for hospital bills, doctors and dental bills, drugs and premiums on accident or health insurance, including hospitalization, surgical, and medical insurance. Dependents include any member of such Employee's family over one-half (1/2) of whose support is furnished by such Employee.

## THIS DOCUMENT

(ii) The Company may, in its discretion, pay any or all of the above defined expenses directly in lieu of making reimbursement therefore. In such event, the Company shall be relieved of all further responsibility with respect to that particular medical expense.

(iii) The reimbursement to or the payment on behalf of any one Employee, including his or her spouse and his or her dependents, shall not exceed an annual amount of twenty-five percent (25%) of gross annual wage.

#### b. Reimbursement for disability income coverage

## THANK YOU

(i) The Company shall provide reimbursement for disability income insurance coverage for all Employees as defined in this plan. The insurance premiums provided by the Company shall purchase benefits not to exceed fifty percent (50%) of the Employee's annual income.

### 3. OTHER INSURANCE

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a. Reimbursement under this Plan shall be made by the Company only in the event and to the extent that such reimbursement or payment is not provided for under any insurance policy or policies, whether owned by the Company or the Employees, or under any other Health and Accident or Wage Continuation Plan. In the event that there is such a policy or plan in effect, providing for reimbursement or payment in whole or in part, then to the extent of the coverage under such policy or plan the Company shall be relieved of any liability hereunder.

4. PURPOSE

a. It is the intention of the Company that benefits payable under this Plan shall be eligible for exclusion from the gross income of the Employees covered by this Plan.

5. COVERAGE

a. Any person hereafter becoming a Employee of this Company employed on a full-time basis, shall be eligible for the benefits provided under this Plan. A copy of this Plan shall be given to all present and future Employees of this Company, who are employed on a full-time basis.

6. TERMINATION AND AMENDMENT OF THE PLAN

a. The Board of Directors may at any time and from time to time amend the plan in such respects as it shall be deemed advisable in order that the Plan shall conform to the provisions of the Internal Revenue Code, which exclude the payments required by the Company hereunder from the gross income of the employee or to conform to any change in the law. The Plan may be terminated by the Board of Directors at any time and on giving at least thirty (30) days written notice of such termination to each employee who may receive benefits under this Plan.

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

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director  
**THANK YOU**

\_\_\_\_\_  
President

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\_\_\_\_\_  
Secretary

**PREVIEW**

[Affix corporate seal]

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