

Certificate of Formation for a Limited liability company

PREVIEW

1. A LLC is formed by filing Certificate of Formation by an organizer.
2. An organizer is the person who signs the Certificate of Formation and files the same with the Secretary of State's Office.
3. The Certificate of Formation is similar to Certificate of Formation/Articles of Incorporation for a corporation and must contain the following:
 - a. The name of the LLC,
 - b. The LLC's period of duration, which cannot exceed thirty (30) years (a corporation's duration may be perpetual),
 - c. The purpose for which the LLC is organized which can include the transaction of any and all lawful business which LLC's may be organized for under the Texas Limited Liability Company Act,
 - d. State the LLC's principal place of business,
 - e. State the LLC's registered agent and initial registered office address,
 - f. State the organizer's name and address,
 - g. A statement of whether the company is to be managed by a manager, managers, or its' members. It must also state the names and addresses of the initial managers or members, whichever one will be responsible for managing the company,
 - h. The Certificate of Formation may also include an indemnification provision similar to the ones contained in Certificate of Formation/articles of incorporation,
4. The Certificate of Formation excludes the following statements which are found in Certificate of Formation/articles of incorporation:
 - a. No reference need be made to the number of shares which will be issued,
 - b. Or whether the same are par or no par,
 - c. Likewise, there is no requirement for a statement as to the value of the shares,
 - d. There is no requirement that a statement be made in the Certificate of Formation that the company will not begin conducting business until a required amount of capital, i.e. a thousand dollars, has been contributed,

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e. LLC's are not required to state the limitations on pre-emptive rights of shareholders nor are LLC's required to address the issue of cumulative voting.

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Drafting the Certificate of Formation

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Certain basic statements must be set forth in the Certificate of Formation. The following information should be listed in the articles:

1. the name of the limited liability company,
2. the period of duration,

[Under the prior law, the period was limited to 30 years from the date of filing; now the company's duration may be perpetual like a standard corporation.]

3. the purpose for which the company was formed,

4. the name of the company's initial registered agent,

5. addresses of the following persons:

- a. the address of the company's principal place of business in Texas,
- b. the company's initial registered agent in Texas, and
- c. the initial managers.

6. a statement as to whether the company will be managed by the members or manager(s). The author prefers to have the LLC managed by a manager rather than the members. This may afford greater liability protection.

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Matters to be included in the Certificate of Formation

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1. The name of the limited liability company,
2. The period of its duration,
3. The purpose for which the limited liability company is formed,
4. The address of company's principal place of business in Texas,
5. The name and address of the company's initial registered agent in Texas,
6. A statement as to management of the company.
 - a. The company may be managed by a manager(s) or its members. If the company will be managed by managers, then the document should state that the company will be so managed.
 - b. The statement should list the names and addresses of managers who are to serve until the first annual meeting of members or until their successors are elected,
 - c. If the management is reserved to the members, then list their names and addresses.
7. Any other provisions, not inconsistent with law, which the members elect to set out for the regulation of the internal affairs of the company.

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Filing the Certificate of Formation and steps taken thereafter to organize the LLC

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1. The Certificate of Formation must be signed by the organizer and then filed with the Secretary of State's Office.
2. The original and a copy of the Certificate of Formation should be filed along with the \$300 filing fee at the Secretary of State's Office.
3. As with corporations, the practitioner may use the special handling service of the Secretary of State for a fee of twenty-five dollars (\$25).
4. If the Certificate of Formation is approved by the Secretary of State's Office, the LLC will be issued a Certificate of Organization, which is similar to the Certificate of Incorporation issued to a corporation.
5. Thereafter, the LLC must be organized with an initial meeting like a corporation.
6. To complete the organization of the LLC the members should meet and agree to a Company Agreement formerly known as "operating agreement or regulations" and reduce the same to writing.
7. The managers named in the Certificate of Formation may adopt an initial company agreement for the LLC.
8. The company agreement, like a partnership agreement can contain provisions for the rules and management of the LLC as long as the same are not inconsistent with law or the Certificate of Formation.
9. The company agreement may include the following:
 - a. The purpose for which the LLC has been organized,
 - b. The names of the members and their capital contribution,
 - c. The way in which the LLC will be managed,
 - d. The powers and duties of the managers,
 - e. The specific rules of the LLC as to how the business will be operated,
 - f. How decisions will be made,
 - g. How expenses will be incurred,
 - i. How profits and/or losses will be distributed
 - j. Rules concerning the transferability of membership interests,

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k. The procedure and fees for dissolution or termination of the LLC.

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10. It is advisable for the members to sign the Company Agreement so they will be bound by contract similar to the way a partner is bound by the partnership agreement.

11. The Texas Miscellaneous Corporation Laws Act Art 1302-7.07 and the Texas Revised Limited Partnership Act Art 6132a-1, §18:1304, have eliminated the requirement to file documents which have original signatures. The above statutes provide for the filing of any photostatic or facsimile copy of a signed instrument required or authorized to be filed with the Secretary of States office under any provision of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, The Texas Limited Liability Company Act, and the Texas Revised Limited Partnership Act.

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12. The Secretary of State's office maintains a plain paper facsimile machine for the receipt of documents and messages. The Secretary of State's fax number is (512) 463-5709. 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. If the applicable fees are not received on the same date as the transmission, the document will be returned without filing.

13. Corporate Limited Liability Company, Limited Partnership, and Registered Limited Liability Partnership documents bearing rubber stamp signatures of the person authorized to by statute to sign the document will satisfy the signature execution requirements.

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Form: Certificate of Formation

CERTIFICATE OF FORMATION FOR A LIMITED LIABILITY COMPANY

[LIMITED LIABILITY COMPANY'S NAME], L.C.

I, the undersigned natural person, am acting in the capacity as an organizer of a limited liability company. I hereby adopt the following Certificate of Formation for a Texas limited liability company per the Texas Business Organizations Code.

ARTICLE 1. COMPANY NAME & ADDRESS

- 1.1 The type of entity being formed is a Texas Limited Liability Company.
- 1.2 The name of the Limited Liability Company is [Limited Liability Company's Name].
- 1.3 The address of the limited liability company's principal place of business in this state is:
- [Client's address]
[Client's city], [Client's state] [Client's zip code]

ARTICLE 2. DURATION

- 2.2 The period of its duration is perpetual unless the company dissolves in accordance with its Company Agreement or by a law stating the maximum time so allowed, whichever time is greater.

ARTICLE 3. PURPOSES

- 3.1 The purpose for which this limited liability company is organized is to transact any or all lawful business for which limited liability companies may be organized for 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 allowed by law.
 - b. To acquire, own, use, convey and otherwise dispose of and deal in real or personal 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 purposes for which this company was formed.

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f. To have and exercise all rights and powers that are now or may hereafter be granted to a limited liability company 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 limited liability company by the laws of the State of Texas.

3.3 The limited liability company may in its Company Agreement confer powers, not in conflict with law, upon its manager(s) and members in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by statute.

ARTICLE 4. NAME & ADDRESS OF INITIAL REGISTERED AGENT

4.1 The name of the Limited Liability Company's initial Registered Agent is

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[Name of initial Registered Agent].

4.2 The address of the Limited Liability Company's initial Registered Office is:

[Address of initial Registered Office].

ARTICLE 5. INITIAL MEMBERS

5.1 The initial number of members are two.

5.2 The name and address of the persons who will serve as the initial members until the first meeting of the members or until their successors are elected and qualified are:

THIS DOCUMENT

[Clients' names]

[Clients' addresses]

[Clients' city], [Clients' state] [Clients' zip code]

ARTICLE 6. MANAGEMENT

6.1 The company shall be managed by a manager or managers. [insert members if members shall manage the company instead of a manager or managers].

6.2 The name(s) and address(es) of the person(s) who are to serve as the initial manager(s) until the first annual meeting of its members or until successors are elected and qualified are:

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[Name(s) and address(es) of the manager(s) or the initial members].

ARTICLE 7. INDEMNIFICATION

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7.1 To the extent permitted by law, no manager of the Company shall be liable to the Company or its members for monetary damages for an act or omission in the manager's capacity as manager.

7.2 To the extent permitted by law, the Company shall indemnify any present or former manager, member, officer, employee, his or her heirs, executors and administrators, or agent of the Company against judgment, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with a proceeding in which the person is or was a manager, member, officer, employee, or agent of the company.

7.3 Indemnification is being given since the manager(s) will be requested to act by the limited liability company, for and on behalf of the limited liability company's benefit.

7.4 Indemnification shall not be exclusive of other rights to which the manager(s) may be entitled.

7.5 The manager(s) shall be entitled to the fullest indemnification allowed by the current law or as may be amended hereafter.

7.6 A Manager(s) shall be liable to limited liability company for the following actions :

a. A breach of his or her duty of loyalty to the limited liability company, or its members.

b. An act or omission taken in bad faith and constituting a breach of the Manager's duty to the limited liability company.

c. To be liable hereunder the manager(s) must have acted in a grossly negligent, malicious or intentional manner as those terms are defined at law.

d. A transaction in which the manager benefits to the detriment of the limited liability company or its members.

e. An action which the manager is liable at law for which an indemnification is not allowed.

7.7 Non Unanimous Consent: Any action required to be taken at any annual or special meeting of the managers or members of the company, and any action which may be taken at any annual or special meeting of members or managers, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers or the members, as the case may be, having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all managers or members, as the case may be, entitled to vote on the action were present and voted.

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ARTICLE 8. SUPPLEMENTAL PROVISIONS AND MISCELLANEOUS

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

ARTICLE 9 ORGANIZER

9.1 The name and address of the organizer is:

[Name and address of the organizer].

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10.1 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:]

Signature Clause:

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

THIS DOCUMENT

Organizer

[There is no requirement for notarization, however some attorneys still prefer to have the document notarized.]

State of Texas
County of _____

This instrument was acknowledged before me on _____ by _____

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_____.

Signature of officer

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Notary's typed or printed name

PREVIEW My commission expires: _____

[or Notary's Stamp]

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[Add this provision if the LLC is being organized as a professional limited liability company]

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ARTICLE 9. PROFESSIONAL SERVICE

9.1 The company is a professional limited liability company. The professional service that the company shall render is: [state the service i.e. law].

[Optional additional provisions to include in the Articles]

ARTICLE 10. CAPITAL & ADDITIONAL MEMBERS

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10.1 Initial capital:

a. The Limited Liability Company will not commence business until it has received [amount] for the issuance of its Certificates of Membership Interest consideration consisting of money, labor done, a promissory note, or property received.

10.2 Additional Capital:

a. Members [shall or shall not] be required to make additional contributions to the capital of the company.

10.3 Additional members:

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a. Additional members shall be admitted upon the written consent of _____ all the members.

ARTICLE 11. VOTING

11.1 Each percentage of membership interest has one (1) vote on each matter on which the membership interest is entitled to vote.

11.2 Cumulative voting is not allowed.

11.3 There are no preemptive rights on behalf of any Member.

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ARTICLE 12. INITIAL COMPANY AGREEMENT

12.1 The initial Company Agreement will be adopted by the Managers.

12.2 The powers to alter, amend, or repeal the Company Agreement or adopt a new Company Agreement is vested in the Manager, subject to repeal or change by action of the Member.

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ARTICLE 13. MAJORITY VOTING

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13.1 With respect to any matter, other than the election of the Managers, for which the affirmative vote of the holders of a specified portion of the membership interest entitled to vote is required by the Texas Limited Liability Company Act, and notwithstanding that such Act may require a portion of the membership interest entitled to vote that exceeds that specified in this Article, the act of the Members on that matter shall be the affirmative vote of the holders of a majority of the membership interest entitled to vote on that matter, rather than the affirmative vote otherwise required by such Act.

ARTICLE 14. COMPANY ACTIONS

14.1 Any action required by the Texas Limited Liability Company Act, and any amendments thereto, shall be taken at any annual or special meeting of Members of the Limited Liability Company.

14.2 Or any action which may be taken at any annual or special meeting of Members of the Limited Liability Company, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of membership interest having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all membership interest entitled to vote on the action were present and voted.

14.3 Any such written consent must be dated, signed and delivered in the manner required by, and shall be effective for the period specified by the Texas Limited Liability Company Act, and any amendments thereto, and the taking of any such action by written consent shall be subject to satisfaction of all applicable requirements of such Act.

14.4 Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

ARTICLE 15. RESTRICTIONS ON ITS TRANSFERABILITY

15.1 The membership interest of the Limited Liability Company will be subject to restrictions on its transferability as set out in the Company Agreement of the Limited Liability Company, which Company Agreement will be kept with the records of the Limited Liability Company.

15.2 The Limited Liability Company will provide a copy of the Company Agreement without charge to any record holder of a membership interest upon written request addressed to the Limited Liability Company at its principal business office or its registered agent's address.

ARTICLE 16. CONTINUITY OF BUSINESS

16.1 All of the remaining members of the Company may agree to continue the business upon the death, retirement, resignation, expulsion, bankruptcy or other withdraw of a member.

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Form: Filing letter to the secretary of state's office

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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:

Enclosed please find duplicate originals of the Certificate of Formation for the above-named limited liability company and a check for \$300, the required amount for the filing fees.

[Add, if desired: I have also enclosed a check in the amount of \$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,

[Attorney's name]
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