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## **Setting Up a Nonprofit: State Law and Organizational Issues and Considerations**

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## Formation Documents – Building Blocks

Formation documents are the primary building blocks for any nonprofit

#### **Certificate of Formation**

Also known as "Articles of Incorporation" or "Certificate of

The "birth certificate" – external document declaring that new legal entity was "born"

Public record that can be viewed by anyone with time and

#### **Bylaws** (Generally not filed with the state)

The "rule book" – internal document that articulates general procedures regarding management and operations

<u>Must meet state requirements</u> (Texas Business Organizations Code (TBOC))

Chapter 3 – formation and governance

Chapter 4 – filings

Chapter 22 – nonprofit corporations

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## State Requirements – Formation Docs

#### **REQUIREMENTS DEPEND ON JURISDICTION!**

E.g., TBOC Chapter 3 governs formation of nonprofits in Texas

Required Provisions for all entities	
(TBOC § 3.005)	

- · Type of entity being formed
- Purposes for which the entity is being formed
- Period of duration, if not formed to exist perpetually
- · Registered agent and address
- · Mailing address of entity
- · Name and address of each organizer

## Supplemental Required Provisions for nonprofits (TBOC § 3.009)

- Statements regarding members
- Number, names & addresses of directors constituting the initial board of directors <u>OR</u> a statement that the management is vested solely in the nonprofit's members
- A statement that the nonprofit is to be authorized on its winding up to distribute the nonprofit's assets in a manner other than as provided by the TBOC

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# State Requirements – Governance



#### **REQUIREMENTS DEPEND ON JURISDICTION!**

- In addition to state requirements for formation documents, states may have additional requirements for nonprofit
- In absence of bylaws, these provisions govern procedures and operations of nonprofit
- E.g., TBOC Chapter 22 governs governance of nonprofits in Texas
- Board and officers
  - Number of directors and officers (at least three directors, one president, and one secretary); same person cannot be both the president and secretary; must be natural persons, but may be known by other titles
  - Elections, appointments, authority, terms, etc.
- Meetings requirements at least an annual meeting
- Corporate acts by vote or written approval
- Fundamental business transactions
- Winding up and dissolving nonprofit
- Examination of books and records
  - Members have right to inspect
- Certain nonprofits must make books and records available to public

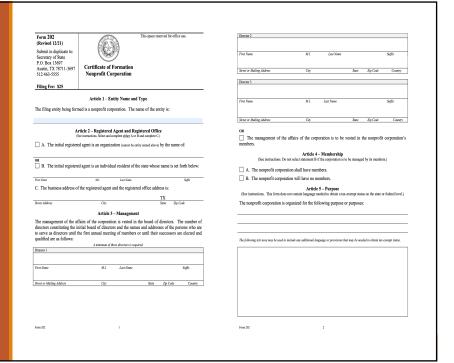
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### Form 202 – Easy to Do!

Texas Secretary of State promulgated Form 202 which is a form Certificate of Formation

- Drafted to meet <u>minimal</u> statutory filing requirements.
- Plug and play form with stepby-step instructions that easily creates a nonprofit organization
- Often used by nonprofits that feel the need to "DIY" in an attempt to save on professional fees

Question: should nonprofits use this or too good to be true?



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## Form 202 – All is Not What It Seems

This easy form fails virtually all federal exemption requirements

- Purpose requirements
- Dissolution requirements
- Political activity prohibitions
- Private inurement prohibitions

RESULT: a Texas nonprofit corporation is formed that cannot qualify for federal exemption

NOTE: a filed and accepted Form 202 Certificate of Formation only creates a nonprofit corporation in Texas, not a tax-exempt organization.

(Provide the mailing address to which state franchise tax correspondence should be sent.)			
Mailing Address	City	State Zip Code Country	
	Supplemental Provisions/I (See instructions.)		
Text Area: [The attached addendur	n, if any, is incorporated herein by reference.		
	Organizer		
The name and address of t			
Name			
Street or Mailing Address	City	State Zip Code	
	Effectiveness of Filing (Select	either A, B, or C.)	
passage of time. The 90th	s effect upon the occurrence of a t day after the date of signing is:	future event or fact, other than the  effect in the manner described below:	
The following event of fac	a will cause the document to take	effect in the manner described below.	
	Execution		
		s registered agent has consented to the st knowledge of the undersigned, the name	
provided as the name of entity. The undersigned si	udulent instrument and certifies u	penalties imposed by law for the submission nder penalty of perjury that the undersigned	
provided as the name of entity. The undersigned si of a materially false or fra	udulent instrument and certifies u	penalties imposed by law for the submission	
provided as the name of entity. The undersigned si of a materially false or fra is authorized to execute th	udulent instrument and certifies u	penalities imposed by law for the submission nder penalty of perjury that the undersigned	

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First appeared as part of the conference materials for the 2024 Nonprofit Organizations Fundamentals session "Setting Up a Nonprofit: State Law and Organizational Issues and Considerations"