

HARRISON M. SMITH, ESQ.
HMS LAW
FORT WORTH, TX

ELAINE SOMMERVILLE, CPA
SOMMERVILLE & ASSOCIATES, P.C.
ARLINGTON, TX

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

UT LAW | CLE | TEXAS LAW

1



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 Formation”
 - The “birth certificate” – external document declaring that new legal entity was “born”
 - Public record that can be viewed by anyone with time and desire
- **Bylaws** (Generally not filed with the state)
 - The “rule book” – internal document that articulates general procedures regarding management and operations
- **Must meet state requirements** (Texas Business Organizations Code (TBOC))
 - Chapter 3 – formation and governance
 - Chapter 4 – filings
 - Chapter 22 – nonprofit corporations

2

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)	Supplemental Required Provisions for nonprofits (TBOC § 3.009)
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Statements regarding members • Number, names & addresses of directors constituting the initial board of directors OR 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

3

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

4

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Setting Up a Nonprofit: State Law and Organizational Issues and Considerations

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"