

TEXAS BUSINESS ORGANIZATIONS MANUAL



Austin 2013

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TEXAS BUSINESS ORGANIZATIONS MANUAL

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Contents

Letter from the President of the State Bar of Texas

Preface

How to Download This Manual

Introduction

Business Entities Generally

1 Formation and Filing with Texas Secretary of State; Ethics

Corporations

2 Organization

3 Ownership

4 Agreements

5 Conversion

6 Corporate Matters

7 Reorganization

8 Termination

9–20 reserved

Limited Liability Companies

21 Organizational Filings

22 Company Agreements

23 Conversion

24 Merger

25 Termination

Bibliography & Indexes

Bibliography

Statutes and Rules Cited

List of Forms by Title

Subject Index to Forms

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The State Bar of Texas is proud to present this first edition of the *Texas Business Organizations Manual*. For more than three decades, the State Bar has published books that offer Texas lawyers authoritative resources to improve their practices. This manual continues that tradition by providing attorneys with forms that address many of the day-to-day issues that arise in the formation and operation of various types of business organizations in Texas.

We sincerely thank Casey Barthel for her work in drafting the limited liability company agreement forms and acknowledge the earlier work of the Corporation Law committee of the Business Law section of the State Bar of Texas, which produced the *Texas Business Entities Forms Manual: Corporations*, the predecessor to this manual. The dedication and service of all of these individuals has resulted in a valuable contribution to the practice of law and a useful resource for Texas practitioners.

A handwritten signature in black ink, appearing to read "Lisa M. Tatum", followed by a long horizontal line.

Lisa M. Tatum
President, State Bar of Texas

Preface

The State Bar of Texas is pleased to publish the first edition of the *Texas Business Organizations Manual*. The manual is designed to provide practitioners with basic forms that address many of the issues that arise in the formation and operation of Texas corporations and limited liability companies. Of course, each of these forms is a template only and none of them is intended to be “one size fits all.” Accordingly, when using these forms, the attorney is cautioned to review them carefully and modify them as needed to meet the specific needs and particular circumstances of the client.

The digital version of this manual contains the complete text in word-searchable PDF format, along with word-processing forms. Custom toolbars accompany the word-processing forms and allow you to show, hide, print, and delete all instructional material in the forms as needed, whether you prefer to create forms on screen or print out a draft to work on paper. Other features include prompts to facilitate completing the forms.

We are also excited to announce that the *Texas Business Organizations Manual* now resides online as well as in print and downloadable form. The many advantages of an online subscription include search functions, hyperlinks to statutes, cases, and other online resources, and downloadable forms. Importantly, practitioners wishing to propose changes or edits to the manual will be able to contact the editorial committee at **books@texasbar.com** for quick review and ongoing edits.

We would like to acknowledge the Corporation Law committee of the Business Law section of the State Bar for its work in producing the *Texas Business Entities Forms Manual: Corporations*, the predecessor to this manual. We would also like to express our appreciation to Casey Barthel for her assistance in crafting the limited liability company agreement forms. Finally, we are indebted to the new editorial committee for its work in updating the manual.

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Introduction

The *Texas Business Organizations Manual* is organized into three main sections. The first section addresses business entities generally and contains commentary and forms that apply to a variety of entities. The second section includes commentary and forms specific to corporations, and the third section includes commentary and forms specific to limited liability companies. The attorney looking for information on limited liability companies, for example, should refer to both the first and third sections. Each chapter within each section contains a detailed table of contents. Following the three main sections is a fourth section containing a bibliography and a number of forms indexes.

§ 1 Commentary

Chapters 1, 2, and 21 contain commentary concerning business entities generally, corporations, and limited liability companies (LLCs), respectively. The chapter 1 commentary provides short synopses of the law, designed to serve as a primer to the basic matters involved in business entity formation and organizational filing requirements. This commentary is, at most, black-letter law and does not try to resolve questions in controversial areas. The chapter 2 commentary discusses reporting, merger, and conversion topics involving corporations, while the chapter 21 commentary addresses filing and formation issues specific to nonprofit and series LLCs. For the attorney experienced with business organizations law, this commentary is a reminder of some of the basics; for the attorney not so experienced with the law, it is a guide to the major matters that the attorney should consider when forming a business entity.

§ 2 Forms

The forms (except those promulgated by governmental agencies) were prepared by experts in the business law field, and great care has gone into their preparation. The forms represent the best thinking of the attorneys who prepared them. Perfection, however, is hard to achieve, and each attorney using these materials must

depend on his or her own expertise and knowledge of the law; there is no substitute in a particular case for the legal mind. Thus, care should be taken to ensure that any form used fits the specific situation.

A number of basic forms in this manual were prepared by the staff of the Texas Secretary of State's office. These forms are designed to meet statutory requirements and to facilitate filings with the office; use of the forms is permissive. Before using these forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us/corp/forms_boc.shtml or by calling (512) 463-5555. These and many other forms are freely available at that site in online-fillable versions, and many may be filed online through SOSDirect.

1. Optional content

Within major sections of the text of forms, optional paragraphs or items are usually identified by boxed instructions. Because the manual can cover only relatively common situations, language needed to address an atypical issue in a particular case may not appear in the form. The user must take care both to eliminate language appearing in the form that is not appropriate for the particular case and to add any language needed for the particular case that does not appear in the form.

2. Typeface conventions

Two typefaces are used in the forms. Material in Times Roman (like most of this page) is appropriate for inclusion in a finished form. In contrast, Arial type is used for boxed instructions. When Arial type is used within the form itself (rather than in a box), it appears in **boldface** for emphasis.

3. Bracketed material

Several types of bracketed material appear in the forms.

Choice of terms. In a bracketed statement such as “[a majority/two-thirds],” the user must choose between the terms or phrases within the brackets. The choices are separated by forward slash marks. Alternative letters or phrases may also be indicated by the use of brackets. For example, “proxy[ies]” indicates a choice between the words “proxy” and “proxies.”

Optional words. In a phrase such as “[Preformation] Common Stock Subscription,” the user must determine whether to include the word “Preformation.”

Substitution of terms. In a bracketed statement such as “[**name of corporation**],” the user is to substitute the name of the corporation rather than typing the bracketed material verbatim.

Instructions for use. Material such as “[**include if applicable: . . .**]” and “[**describe item to be considered**]” provides instructions for completing the finished form and should not be typed verbatim in the document.

Subtitles. The titles of some forms are followed by a bracketed subtitle that is not to be typed as part of the form title. In the title “Plan of Conversion [Corporation to General Partnership],” for example, the bracketed words simply distinguish the form from another similarly titled form in the same chapter for ease of reference.

4. Blank lines

Signature lines appear as blank lines. Spaces for dates, times, and amounts that would be filled in *after* the document is prepared also appear as blank lines. (If an actual date, time, or amount should be inserted in the form when it is prepared, “[**date**],” “[**time**],” or “[**\$[amount]**]” appears instead.)

5. Language in boxes

Language in boxes is not to be typed in the finished document but constitutes instructions, usually either telling the user whether to use the form language following the box, describing what information should be included at that point in the finished document or attached to it, or providing cautionary reminders about use of the form language.

6. Form numbers

Forms are numbered in sequence within each chapter. All forms begin with the number of the chapter, which is followed by a hyphen and the number of the form within the chapter. One form in chapter 2 consists only of clauses to be inserted in other forms. In this instance the clauses are numbered in sequence using the form number, followed by the number of the clause—for example, clause 2-10-1 in form 2-10. This system is used to permit future expansion of any chapter without requiring the rearrangement of the entire manual.

§ 3 Page Numbers

Page numbers are consecutive for both commentary and forms within each chapter. Commentary pages begin with the number of the chapter, followed by the number of the page within the chapter. Forms begin with the number of the form, followed by the number of the page within the form. This system is used to permit revisions within any chapter or form without renumbering the pages in the remaining chapters.

§ 4 Digital Download

The digital download version of the *Texas Business Organizations Manual* contains the entire text of the manual as a single PDF file that is searchable and hyperlinked to allow for easy, rapid navigation to topics of interest. Also included are electronic versions of all State Bar of Texas—copyrighted forms from the manual as editable Word files as well as printable or downloadable PDF files of forms available from the Texas Secretary of State’s office, linked from the main PDF file for easy retrieval.

Caveat: Note that the Word forms included in the digital download contain instructional language as hidden text. Be aware that this language will be included in your completed forms unless you specifically delete it.

For more information about the digital download including usage notes, see the material following the “How to Download This Manual” tab in this manual.

§ 5 Corrections and Updates

In drafting the manual, the authors and editors devoted a great deal of effort to making it error free, but it undoubtedly contains some errors. We would appreciate your pointing out any errors you find in the manual as well as any revisions you believe are advisable. Please mail any corrections or suggestions to the following address:

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Periodic updating of the manual is planned to reflect changes in the law. It is also expected that, over time, additional topics will be covered and the scope of coverage of existing topics will be expanded. We welcome your suggestions about new topics that you would find helpful. Please send your suggestions to the address shown above.