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

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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

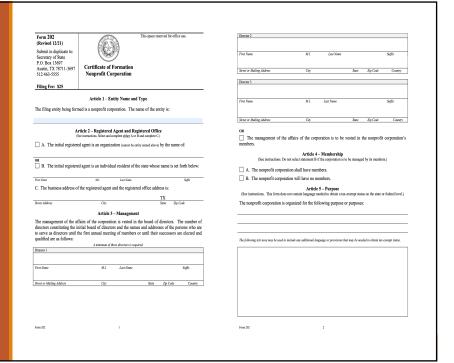
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Form 202 – Easy to Do!

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 addendun	n, if any, is incorporated herein by reference.	<u>.</u>	
	Organizer		
The name and address of t			
Name			
Street or Mailing Address	City	State Zip Code	
	Effectiveness of Filing (Select	t 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	
The following event of fac	t will clause the document to take	yerreet in the manner described below.	
	Execution		
appointment. The undersi provided as the name of entity. The undersigned si	igned also affirms that, to the be the filing entity does not falsely gns this document subject to the p udulent instrument and certifies u	as registered agent has consented to the set knowledge of the undersigned, the name y imply an affiliation with a governmental penaltics imposed by law for the submission under penalty of perjury that the undersigned	
Date:			
Date:	Signature of org	ganizer	

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