

Incorporation of a Non-Profit Organization

The following excerpts were downloaded from the Texas Secretary of State's website. The information documented below is subject to change by the Texas Secretary of State. Therefore, for the most up-to-date version of this information, please go to

<http://www.sos.state.tx.us>

A non-profit corporation is created by filing certificate of formation with the secretary of state in accordance with the Texas Business Organizations Code ("BOC"). "Non-Profit corporation" means a corporation no part of the income of which is distributable to members, directors, or officers [BOC, Section 22.001(5)].

Two copies of the Certificate of Formation Nonprofit Corporation, Form 202, should be submitted to the secretary of state for filing. The filing fee for a non-profit corporation is \$25.00.

The secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy of the document was provided for such purpose. The incorporator will need to order a "certified copy" of the certificate of formation to submit with the federal tax-exemption paperwork.

TAX EXEMPTION

Not all non-profit corporations are entitled to exemption from state or federal taxes. The secretary of state, however, does not make such determinations.

You should consult the Internal Revenue Service (IRS) prior to filing the articles to determine what provisions must be included in the articles for the corporation to be exempt from federal taxes. IRS Publication 557, titled "How to Apply for Recognition of Exemption for an Organization," describes the rules and procedures for non-profit organizations requesting exemption. The publication can be obtained from either the IRS or the Government Printing Office.

A non-profit corporation may be exempt from the payment of state franchise taxes if its purposes fall within one of the exemptions listed in the Texas Tax Code, Chapter 171, Subchapter B. Questions on exemption procedures should be addressed to:

Comptroller of Public Accounts
Tax Assistance
Exempt Organizations Section
Austin, Texas 78774-0100
(512) 463-4600 or (800) 252-1381
TDD: (800) 248-4099 or (512) 463-4621

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ARTICLES OF INCORPORATION FOR A NON-PROFIT CORPORATION

The secretary of state has promulgated *Form 202* (Certificate of Formation for a Nonprofit Corporation) to meet statutory requirements and facilitate filings with the office. Use of this form is permissive. *Form 202* (Certificate of Formation for a Nonprofit Corporation) is available on the secretary of state website at http://www.sos.state.tx.us/corp/forms_boc.shtml and can also be completed on-line through **SOSDirect**.

“Forming a Nonprofit Tax-Exempt Corporation in Texas” published by the 2010 Texas C-Bar is available on the secretary of state website at http://www.sos.state.tx.us/corp/nonprofit_org.shtml. This publication explains the basic steps in forming a nonprofit corporation and obtaining tax-exempt status from the state of Texas and the federal government.

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Selection or completion of a form found on this web site is the responsibility of the user and the user's attorney. The forms and information provided by the secretary of state are not intended to provide legal advice or to substitute for the advice of an attorney. If you have specific legal questions, consult your attorney.

EXECUTION REQUIREMENTS AND FEE

1. The articles should be signed by ALL the incorporators.
2. If a person signs a document which the person knows is false in any material respect with the intent that the document be delivered to the secretary of state to be filed on behalf of a corporation, the person has committed an offense. The offense is a Class A misdemeanor.
3. Two copies of *Form 202* should be submitted to the secretary of state.
4. There is a \$25 filing fee for all non-profit corporations
5. If two copies of *Form 202* were not filed with the secretary of state, the incorporator will need to order a “certified copy” of the certificate of formation to submit with the federal tax-exemption paperwork. The certified copy may be ordered for a fee of \$15 plus \$1 per page.

COMMON ERRORS CAUSING REJECTION OF A PROPOSED FILING

Common errors include:

1. failure to properly execute the documents;
2. failure to state that the corporation is a non-profit corporation; or
3. the designation of less than three directors.

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ARTICLES OF AMENDMENT FOR A NON-PROFIT CORPORATION

Articles of amendment may be filed to add, delete, or alter provisions of the articles of incorporation using *Form 403* (Certificate of Correction). A corporation may amend its articles of incorporation to correct only those statements that contains an inaccurate or erroneous statement, was defectively or erroneously signed, sealed, acknowledged or verified, the governing law authorizes or requires to be included in the original filing instrument. A certificate of correction may not alter, add, or delete a statement that by its alteration, addition or deletion would have caused the secretary of state to determine that the filing instrument did not conform to the requirements of applicable law at the time of filing. *Form 403* (Certificate of Correction) is available on the secretary of state website at http://www.sos.state.tx.us/corp/forms_boc.shtml and can also be completed on-line through **SOSDirect**.

After the secretary of state files the certificate of correction, the filing instrument is considered to have been corrected on the date of the original filing except where a person is adversely affected by the correction, the filing instrument is considered to have been corrected on the date the certificate of correction is filed.

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EXECUTION REQUIREMENTS AND FEE

1. The certificate of correction must be signed by a person authorized to sign the certificate of formation.
2. If a person signs a document which the person knows is false in any material respect with the intent that the document be delivered to the secretary of state to be filed on behalf of a corporation, the person has committed an offense. The offense is a Class A misdemeanor.
3. There is a \$15 filing fee.