

Texas Business Organizations Code

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Texas Business Organizations Code

1. Effective Date
2. Texas Nonprofit Corporations Act
 - A. Key Differences
 - B. Key Similarities
3. Early Adoption
4. Updating Your Governing Documents



Effective Dates:

- Beginning January 1, 2010, TBOC governs nonprofits established before January 1, 2006
- TBOC immediately governs nonprofits established on or after January 1, 2006
- Is your nonprofit a new or long-standing organization?

Texas Nonprofit Corporations

Act:

- Key Differences from TBOC
 - TNPCA was self-contained
 - TBOC has central provisions governing all Texas entities and then separate chapter (Ch. 22) for nonprofits
 - TNPCA restricted nonprofit mergers



Texas Nonprofit Corporations

Act:

- Key Differences from TBOC
 - TBOC adds definition of “nonprofit entity” which includes
 - Nonprofit corporation defined in Ch. 22
 - Nonprofit association defined in Ch. 252
 - TBOC adds nonprofit purpose of “operating on a nonprofit cooperative basis”
 - Changes “Articles of Incorporation” to “Certificate of Formation”



Texas Nonprofit Corporations

Act:

- Key Differences from TBOC
 - TBOC allows nonprofits to halt and rewind a voluntary dissolution proceeding
 - TBOC adds modern definition of a “sale of all or substantially all of the assets”
 - TBOC says contracts between nonprofit and interested directors & officers are presumed valid if material facts disclosed and procedures followed

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Texas Nonprofit Corporations

Act:

- Key Similarities with TBOC
 - Fiduciary duties
 - Prohibition on loans to directors
 - Private foundation provisions
 - Director and member notices

Texas Nonprofit Corporations

Act:

- Key Similarities with TBOC
 - Charitable activities
 - Prohibition on dividend distributions
 - Financial statement availability
 - Nonprofit status report

Early Adoption of TBOC

- January 1, 2010 is effective date
- Adopt by following TNPCA's procedures for amending articles of incorporation
- If necessary, amend articles so that any provisions that do not comply with TBOC are updated
- File statement with Texas Secretary of State that nonprofit is electing to adopt TBOC
- If you do not early adopt, you must conform your certificate of formation to TBOC when you NEXT file an amendment to your certificate



Updating Your Governing Documents

- Since not too many key differences, changes may be minimal
- Review governing documents for citations to TNPCA code sections and update with TBOC code sections
- Review governing documents to update with current governance best practices
- Prepare board resolutions to approve and adopt changes

Conclusion:

QUESTIONS?