

Texas Nonprofit Corporations

1. What is a nonprofit corporation?

A “nonprofit corporation” is a corporation no part of the income of which is distributable to members, directors, or officers. A nonprofit corporation is created by filing a certificate of formation with the secretary of state. A nonprofit corporation may be created for any lawful purpose, which purpose must be stated in its certificate of formation.

2. Is a nonprofit corporation a tax-exempt entity? If not, how do I become tax-exempt?

A Texas nonprofit organization—whether a corporation or an unincorporated association—is not automatically exempt from federal or state taxes. To become exempt, the organization must meet certain requirements and apply with both the IRS and the Texas Comptroller of Public Accounts.

To learn more about the rules and procedures for obtaining federal tax-exempt status, read [IRS Publication 557](#), “*Tax-Exempt Status for Your Organization*.” Questions about federal tax-exempt status can be directed to:

[IRS](#)
Exempt Organizations Section
(877) 829-5500

To learn more about the rules and procedures for obtaining state tax-exempt status, read the [FAQs](#) published by the Texas Comptroller of Public Accounts. Exemption from Texas state taxes is determined by the Texas Comptroller of Public Accounts. Questions about state tax-exempt status can be directed to:

[Texas Comptroller of Public Accounts](#)
Exempt Organizations Section
(800) 252-5555 or (512) 463-4600
[email](#)

3. How do I form a “501(c)(3)” corporation?

The designation “501(c)(3)” refers to a specific federal tax provision only. If you need information regarding a federal tax provision or a tax provision impacts your certificate of formation, you should contact your own tax counsel, attorney, or the [IRS](#). The secretary of state’s Form 202 meets minimum state law requirements but does *not* include any additional statements that the IRS might require for tax-exempt status.

4. I’m filing a certificate of formation for a nonprofit corporation, and I have to decide whether the corporation will have members. What is a member?

Many nonprofits use the term “member” synonymously with “supporter” or “donor.” Separate from this fundraising use, however, the Texas Business Organizations Code provides for a nonprofit corporation with a formal membership structure. Pursuant to section [1.002\(53\)](#) of the Texas Business Organizations Code, a “member” of a nonprofit corporation is “a person who has membership rights in the nonprofit corporation under its governing documents.” Members of a nonprofit corporation are similar to shareholders of a for-profit corporation in that both members and shareholders may have significant

rights with respect to internal corporate governance. Unlike shareholders, however, members of a nonprofit corporation are typically not owners and are not issued stock. When forming a nonprofit corporation, you must determine whether the corporation will have members, and if so, who will govern the corporation—the members, a board of directors, or both.

A nonprofit corporation is presumed to have members. If you are forming a nonprofit corporation without members, the certificate of formation must include a statement to that effect.

5. Can one person be the sole director and officer of a nonprofit corporation?

No. The Texas Business Organizations Code requires a nonprofit corporation to have at least three directors, one president, and one secretary. The same person cannot be both the president and secretary. Officers and directors must be natural persons, but may be known by other titles.

6. Can a nonprofit corporation pay a salary to its officers, directors and/or employees?

Yes. Any corporation may pay reasonable compensation for services rendered to the corporation. Note that the Secretary of State does not determine what is considered reasonable compensation. A paper presented in 1993 at the IRS Continuing Education Program for Exempt Organization Specialists discusses reasonable compensation. This paper is available on the [IRS web site](#) (PDF, 116kb).

7. Can a nonprofit corporation give political contributions?

There are restrictions on political contributions by nonprofit corporations. For information, on this topic, you may wish to contact your private attorney, the [Texas Ethics Commission](#), (512) 463-5800, the [Federal Election Commission](#), and the [IRS](#). You may also wish to review Title 15 of the [Texas Election Code](#).

8. Who has authority to investigate the activities of a nonprofit corporation?

The [Texas Attorney General](#) has statutory authority to (1) investigate charities that operate as nonprofit corporations, and (2) inspect the books and records of all corporations, including nonprofit corporations. The secretary of state has no such authority. Additionally, the [IRS](#) can revoke a nonprofit corporation's tax exemption for violations of federal tax laws.

9. Are the books and records of a nonprofit corporation available for inspection?

Section [22.351](#) of the Texas Business Organizations Code gives a member of a nonprofit corporation, on written demand, the right to examine and copy the corporation's books and records. The member, or the member's agent, accountant, or attorney, may examine and copy these records at any reasonable time and for a proper purpose. Section [22.352](#) also requires a nonprofit corporation to maintain financial records in accordance with generally accepted accounting principles; the board of directors is required to prepare or approve an annual financial report for the preceding year.

Additionally, section [22.353](#) requires certain nonprofit corporations to make all records, books, and annual reports of financial activity available to the general public for inspection and copying. However, section [22.353](#) does not apply to (1) corporations that solicit funds only from their members; (2) corporations that do not intend to solicit and do not actually receive contributions in excess of \$10,000 during a fiscal year from sources other than their members; (3) proprietary schools; (4) religious institutions; (5) trade associations or professional associations whose principal income is from dues and

member sales and services; (6) insurers; or (7) alumni associations of public or private institutions of higher education.

Under certain circumstances, a nonprofit corporation's books and records are also available to the public under the Texas Public Information Act (chapter 552 of the Government Code). Section 552.003(1)(A) of the Public Information Act defines "governmental body" to include the "part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." For more information on the Public Information Act, please contact the Attorney General; the secretary of state cannot provide advice regarding the application of the Public Information Act to a particular nonprofit corporation.

10. How can I obtain a copy of the bylaws, tax exempt filings or other documents for a nonprofit organization?

If the entity is organized as a Texas nonprofit corporation, you may obtain a copy of the certificate of formation or other filing documents maintained by the secretary of state by contacting our records team at corpcert@sos.texas.gov or 512-463-5555. The documents may also be viewed and copies ordered through SOSDirect.

The secretary of state does not maintain the bylaws or tax exempt filings of any nonprofit organization. Some organizations that have obtained tax-exempt status from the Internal Revenue Service are required to make certain documents available to the public. Bylaws may be available if included as part of the organization's application for exemption. For more information, please visit the IRS website. The secretary of state's office cannot assist you in obtaining these documents.

Texas Nonprofit Corporation Periodic Reports

1. I received a notice from the secretary of state about filing a "periodic report." What is this report? Is this required annually?

A nonprofit corporation is required by law to file an informational report not more than once every four years upon request by the secretary of state. The report provides information regarding the corporation's registered agent and registered office, and the names and addresses of its current officers and directors, and is required regardless of the corporation's tax status. BOC § 22.357.

Once requested, the report must be completed and filed with the secretary of state to avoid involuntary termination of a domestic corporation or revocation of the registration of a foreign corporation. BOC § 22.364.

2. Why am I receiving notices about filing a periodic report? I am no longer affiliated with this corporation.

The secretary of state sends official notices to the corporation through the current registered agent and registered office address. If a periodic report notice was addressed to you, it is because your name and address appear as the corporation's registered agent and registered office and the corporation has not designated or appointed a new registered agent.

3. The report I received contains inaccurate pre-printed information. How can I change it?

Although you cannot change the entity's name, file number, or jurisdiction of formation, you can change or update the following pre-printed information on the report by simply crossing it out and filling in the correct information:

- The registered agent name;
- The registered office address; and
- The names, addresses, and titles of persons named as officers and directors of the corporation.

To change its legal name, the corporation must file a certificate of amendment with the secretary of state or an amendment to its registration. See Form 424 ([Word 135kb](#), [PDF 129kb](#)) or Form 406 ([Word 100kb](#), [PDF 306kb](#)), as applicable.

4. Can I file a periodic report even if the secretary of state has not requested one?

Yes. Although a nonprofit corporation is not required to notify the secretary of state of changes to officer or director information at the time of the change, a nonprofit corporation may file a periodic report even if the secretary of state has not asked for one. However, filing a voluntary report does *not* affect your duty to timely file a report when one is requested by the secretary of state.

5. What happens if I don't file the periodic report?

A nonprofit corporation that fails to file the periodic report within 30 days from the date that the report is sent by the secretary of state forfeits its right to transact business in Texas. BOC § 22.360. A nonprofit corporation that has forfeited its right to transact business cannot maintain any action, suit, or proceeding in any Texas court; however, the corporation may still defend any action or suit. The forfeiture does not impair the validity of any contract. The corporation may relieve itself of the forfeiture by simply filing the periodic report within 120 days of the date of mailing of the notice of forfeiture. If the corporation fails to file the report within this 120-day period, the secretary of state will involuntarily terminate the existence of the Texas nonprofit corporation or revoke the foreign nonprofit corporation's registration to transact business in Texas, as applicable. BOC § 22.364.

6. If a nonprofit corporation has been involuntarily terminated or had its registration revoked for failure to file its periodic report, can it be reinstated?

Yes. So long as the entity would otherwise continue to exist, the entity can reinstate at any time by filing the required report together with the maximum filing fee of \$25. See Form 802 ([Word 146kb](#), [PDF 119kb](#)). Please note, however, that the secretary of state must determine whether the corporation's name is still available before the required periodic report can be filed and the entity reinstated. Consequently, additional filings and fees may need to be submitted together with the periodic report when the name of the corporation is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration on file with the secretary of state.