

# Business & Law Newsletter

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## THE NEW TEXAS BUSINESS ORGANIZATIONS CODE: WHAT IS IT AND HOW DOES IT APPLY TO YOU?

**FOR MORE INFORMATION ON THIS TOPIC, PLEASE CONTACT:**



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On January 1, 2006, the Texas Business Organizations Code (the "TBOC") became effective. The TBOC codifies various Texas entity governing laws, including:

- Texas Business Corporation Act
- Texas Non-Profit Corporation Act
- Texas Limited Liability Company Act
- Texas Revised Partnership Act
- Texas Revised Limited Partnership Act
- Texas Professional Corporation Act
- Texas Professional Association Act
- Texas Miscellaneous Corporation Laws Act
- Texas Real Estate Investment Trust Act
- Texas Cooperative Association Act
- Texas Uniform Unincorporated Nonprofit Association Act

**Did the Underlying Laws Change?** Generally speaking, the provisions of the TBOC are consistent with existing Texas law. However, a few substantive changes in the law have been made.

**Does the TBOC Apply To My Entity?** All new Texas entities formed on or after January 1, 2006 are subject to and governed by the TBOC. All entities formed before January 1, 2006 may elect early adoption of the TBOC by filing an early adoption statement with the Texas Secretary of State, but all entities will automatically become subject to the TBOC on January 1, 2010. All entities should consider using the new TBOC terminology in their contracts and governing documents.

**How Is the TBOC Organized?** The TBOC is organized in a "hub" (Title 1) and "spoke" (Titles 2-8) format. Title 1 (the hub) contains standardized definitions and procedures relating to formation, meetings, voting and indemnification that apply to all Texas entities. Titles 2 through 7 (the spokes) contain supplemental provisions that are targeted to specific types of entities such as corporations, limited liability companies and partnerships. Title 8 contains the miscellaneous and transition provisions of the TBOC. The TBOC is intended to be more user-friendly than the previous "patchwork" of various entity statutes.

**What Are the New Terms?** Title 1 of the TBOC contains many new defined terms that apply to all types of entities. A few examples of these terms are:

- "Entity" – either a Domestic Entity or a Foreign Entity.
- "Filing Entity" – a domestic corporation (for profit or non-profit), a limited partnership, a limited liability company, a professional association, a cooperative or a REIT. A Filing Entity is formed by filing a Certificate of Formation with the Texas Secretary of State.
- "Certificate of Formation" – replaces current formation documents such as Articles of Incorporation for a corporation, Articles of Organization for a limited

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liability company, and a Certificate of Limited Partnership for a limited partnership. It is used for all forms of Filing Entities.

- “Governing Documents” – includes the Certificate of Formation and all other documents or agreements that govern the internal affairs of a Domestic Entity or Foreign Entity.
- “Company Agreement” – replaces Regulations for limited liability companies. A Company Agreement is one of the Governing Documents (along with the Certificate of Formation) of a limited liability company.
- “Governing Authority” – those persons authorized by the TBOC and the Governing Documents to manage the affairs of the Entity. This includes a board of directors of a corporation, the general partners of a general partnership, the general partners of a limited partnership, the managers of a manager-managed limited liability company, the members of a member-managed liability company, and the trust managers of a REIT. The term does not include an Officer acting as an officer.
- “Owners” and “Members” – correspond to ownership interests or membership interests in an Entity. For-profit corporations, real estate investment trusts and partnerships have Owners. Non-profit corporations, unincorporated non-profit associations have Members. Limited liability companies and professional associations have both Members and Owners and these terms are used interchangeably in these kinds of entities.
- “Officer” – an individual elected, appointed or designated as an officer of an Entity by the Governing Authority under the Governing Documents.
- “Fundamental Business Transaction” – means a merger, an exchange of membership or ownership interests, a conversion, or a sale of all or substantially all of an Entity’s assets.
- “Fundamental Action” – means for for-profit corporations, nonprofit corporations and real estate investment trusts, respectively, an amendment to the Certificate of Formation, voluntary Winding Up, revocation of a voluntary decision to Wind Up or cancellation of an event requiring Winding Up, or the reinstatement of a Terminated entity.
- “Winding Up” – the process of liquidating the Entity’s assets, paying its debts and distributing its remaining assets after discharge of its debts.
- “Termination” – the cessation of existence of a Filing Entity by the filing of a Certificate of Termination upon the completion of the Winding Up process. ■

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