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by Anna Maria Mendez

## Nonprofit corporations vs. Nonprofit associations

	<i>Nonprofit Corporations</i>	<i>Nonprofit Unincorporated Associations</i>
<i>Liability</i>	<p>Since the nonprofit corporation is a legal entity in itself, members and directors are protected in those roles from personal claims for the corporation's breach of contract or tortious act or omission (though they may still be personally liable for their own acts).</p> <p>The Nonprofit Corporation Act sets forth the circumstances under which a nonprofit corporation director may be indemnified for lawsuit expenses depending on the nature and outcome of the lawsuit. A nonprofit <i>must</i> indemnify a director against reasonable expenses if the director was successful in defending the lawsuit. Nonprofit <i>may</i> indemnify a director who is not wholly successful if director acted in good faith and reasonably believed the conduct was within the best interest of the corporation. Nonprofit <i>may</i> indemnify a director in a criminal case if director had no reason to believe his conduct was unlawful.</p> <p>The Charitable Liability and Immunity Act (Tex. Civ. Prac. &amp; Rem. Code §84) grants volunteers that serve charitable organizations immunity from civil liability under certain circumstances. The Act defines "charitable organization" as any <i>corporation</i>, foundation, community chest, or fund that is exempt from federal income tax (and listed as 501(c)(3) or (c)(4)).</p>	<p>Texas Uniform Unincorporated Nonprofit Association Act provides that members of nonprofit associations are not liable for a breach of the association's contracts or for a tortious act or omission <i>merely</i> because the person is a member.</p> <p>The Unincorporated Association Act does not specifically authorize indemnification for fines, liability, attorney's fees, etc. for a director of an association, so nonprofit associations must take affirmative steps to create and impose these rules.</p> <p>According to the language of the Charitable Liability and Immunity Act, in order for its volunteers to be benefit from the immunity the Act offers, a nonprofit association must be a bona fide religious, charitable, educational, etc. organization, must not participate in any political campaign, and <i>must normally receive more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees.</i></p>
<i>Tax Exempt Status</i>	<p>Must file 1023 application for exemption (though some like churches and organizations having annual gross receipts no more than \$5000 need not even apply). Must have an exempt purpose, must have an EIN, and along with the application the organization must send articles of organization, financial data, and a description of activities, purpose,</p>	<p>Same requirements for corporations as well as associations.</p> <p>*Note that for an association or corporation to qualify under §501(c)(3) of the IRS Code, its articles of association or incorporation must contain certain language (suggested language in IRS Publication 557).</p>

	standards, and procedures.  Unrelated business earnings taxed at corporate income tax rates.	Unrelated business earnings taxed at corporate income tax rates.
<i>Powers as a legal entity</i>	By definition a corporation is an organization formed by the laws of the state that acts as a “person” to carry on business (or other activities). The corporation has the power to sue or be sued, purchase, lease, acquire, hold, and transfer property in its own name, etc.	The Nonprofit Association Act gives nonprofit associations powers similar to corporations. A nonprofit association can acquire, hold, and transfer an estate or interest in real or personal property, and can be the beneficiary of trusts, contracts, or wills. A nonprofit association may also sue or be sued.
<i>Formation, Records, and Reporting Requirements</i>	<p>Nonprofit Corporation Act governs formation; sets forth requirements for number of directors required, voting rights of directors and members, meeting procedures, notice requirements, and officers and duties. Articles of Incorporation must be filed with the Secretary of State.</p> <p>The corporation must keep “correct and complete” books and account records and minutes of all board, committee, and member proceedings and must keep a record of the names and addresses of voting members (information to be available to members on demand). If the corporation raises more than \$10,000 a year it must maintain full and correct financial records for each transaction in accordance with generally accepted accounting practices, and the board must prepare an annual report of the corporation’s financial activity.</p> <p>Financial activity reports must be filed with the IRS at the close of each fiscal year unless the corporation has annual gross receipts less than \$25,000.</p>	<p>Very few formation requirements. The Nonprofit Association Act defines a nonprofit association as an association with at least three members “joined by mutual consent for a common, nonprofit purpose” and provides for two discretionary filings. Articles of association are not required to be filed with the Secretary of State.</p> <p>Associations are required to keep “correct and complete” account records for at least 3 years after the end of each fiscal year. These records must be made available to members on request. If needed, the attorney general may inspect and make copies of these records and other documents to determine if the association has violated state law.</p>
<i>Nonprofit Postage Rates</i>	<p>Since the postal service examines the organization’s primary purpose and financial conditions to determine if it is eligible for Nonprofit Standard Mail Rates, the organization’s status as a corporation or association does not matter.</p> <p>Any organization must send articles of incorporation or association (or other formative papers) as well as present evidence of nonprofit status, which may consist of an exemption letter from the IRS or, alternatively, a financial statement from an independent auditor.</p>	<p>Same requirements for corporations as well as associations.</p> <p>For more information, visit the United States Postal Service FAQ page on Nonprofit Mail Rates: <a href="http://www.usps.com/mailingonline/nonprofit_faq.htm">http://www.usps.com/mailingonline/nonprofit_faq.htm</a></p>