

S E P T E M B E R 2 0 0 2 E D I T I O N



A Publication by
Community Building with Attorney Resources

2201 Post Road, Suite 104 • Austin, Texas 78704 • www.texasbar.org

Published in collaboration with ACC Center for Community-Based & Nonprofit Organizations
www2.austinctc.edu/npo

Introduction

Our nonprofit legal toolkit was created for 501(c)(3) nonprofits in Texas to provide an overview of Texas and federal laws governing the day-to-day operations of nonprofit organizations. In addition, space is provided in the binder for nonprofits to keep their governing and other important legal documents. This toolkit should be helpful for both board members and executive directors.

As you will see, there are numerous different laws that govern the day-to-day operations of nonprofits, from federal tax law reporting requirements, to Texas workers' compensation laws. It is critical that both board members and executive directors become familiar with these laws and ensure that the nonprofit is in compliance with them. While this manual provides only a snapshot of some of the most relevant laws in areas where nonprofits commonly struggle, it should serve as a starting point in this direction.

By no means does this toolbook provide a comprehensive list of every law. The toolbook also does not include a discussion of the laws' applicability to every particular fact scenario. Moreover, laws governing nonprofits and interpretation of these laws by the courts are constantly changing. As a result, while every effort has been made to make these materials as accurate as possible, **these materials are not to be used as a substitute for the advice of an attorney. Persons reviewing this guide should not act upon the information without seeking professional legal counsel.**

This is our first edition of our nonprofit legal tool kit. We would appreciate your comments on issues that are unclear, suggested additions, and any other recommended changes. Please contact us with your feedback at txcbar@lact.org, or 512-447-7707, ext. 379.

We appreciate the support of the Center for Community-Based and Nonprofit Organizations at Austin Community College in helping to publish and distribute this toolkit. Additional resources of interest and use to nonprofit organizations can be found at the Center's web site at www2.austincc.edu/npo, in its quarterly web-based journal, Strategic Creativity (www.strategic-creativity.org), and via the Center's mostly free learning opportunities, which are posted on the web site. The Center's Director, Barry Silverberg, can be reached at (512) 223-7076 or bsilverberg@austincc.edu.

D'Ann Johnson
Legal Services Coordinator
Texas C-BAR
September 2002

Nonprofit Legal Toolkit

Table of Contents	Page
Section One: Overview of Legal Requirements	3
A. Legal Obligations of Texas Nonprofits	5
B. Legal Compliance Checklist	17
Section Two: Articles of Incorporation & Bylaws	23
A. Articles of Incorporation and Bylaws	25
B. Sample Form Articles of Amendment	27
C. Sample Form Restated Articles without Amendments	29
D. Sample Restated Articles with Amendments	31
E. Amending the Bylaws	33
F. Sample Bylaws for a Texas Nonprofit	35
Section Three: Minutes and Agendas	47
A. Overview	49
B. Sample Minutes	49
C. Sample Agenda	50
Section Four: Corporate Resolutions	51
A. Overview	53
B. Sample Corporate Resolutions	54
Section Five: Conflict of Interest and Procurement Policies	59
A. Conflicts of Interest	61
B. Sample Conflicts of Interest Policy	63
C. Sample Procurement Policy	66
Section Six: Federal Tax Matters	69
A. IRS 501(c)(3) Application and Exemption Letter	71
B. Public Disclosure Requirements	72
C. Donations	74
Section Seven: Reporting and Filing Requirements	77
A. IRS Reports	79
B. Texas Reports	81
Section Eight: Risk Management	85
Section Nine: Useful Resources on Nonprofit Management	93



SECTION: ONE

Overview of Legal Requirements

Overview of Legal Requirements for Texas Nonprofits

Nonprofits in Texas are subject to many laws and regulations. The main state law that nonprofits need to be familiar with is the Texas Non-Profit Corporation Act, which applies to all nonprofit corporations organized under Texas law. Other federal and state laws and local ordinances also apply to nonprofit organizations. The following is a summary of some of the most important legal obligations governing Texas nonprofits.

Corporate Governance Matters

- ◆ **Nonprofits must maintain a current registered office and registered agent for service of process.** The agent for service of process is the person who is supposed to be notified of a lawsuit or claim against the nonprofit. The agent is first designated in the nonprofit's original articles of incorporation filed with the Secretary of State. If a nonprofit fails to maintain a current registered office or agent, then anyone suing the organization may serve the Secretary of State instead. In that case, a judgment may be taken against the organization without its knowledge. If a nonprofit changes the agent's address or the registered agent, the nonprofit must notify the Secretary of State of the change by completing Form 401 or Form 408 and paying the applicable fees. See www.sos.state.tx.us for Form 401, Form 408, and all current requirements.
- ◆ **Nonprofits must have at least three members on the Board of Directors.** Vacancies should be filled in accordance with the articles of incorporation and the bylaws. If the articles and bylaws are both silent, the vacancies must be filled by a majority vote of the remaining directors.
- ◆ **The nonprofit must have at least two officers: a president and a secretary.** A nonprofit may have other officers. The president and the secretary cannot be the same person. The term of office cannot exceed **three** years. To exceed a term of a year, the articles of incorporation or bylaws must specify a term of up to three years. In the absence of a provision authorizing a specified term, the officers must be appointed or elected annually. Despite the state's limit on the length of a term, state law does not preclude officers from being reappointed for more than one term and, therefore, from serving more than three consecutive years. Churches are exempt from the above requirements.
- ◆ **Dividends and loans to directors are prohibited.** No part of the income of a nonprofit can be distributed to members, directors, or officers. However, if the directors provide services to the nonprofit, the directors may be paid a reasonable amount for the services. A nonprofit corporation is barred from making loans to its directors. Directors and officers

who approve a loan to a director are personally liable for the amount of the loan until it is repaid. Loans may be made to an employee if permitted by the bylaws and if the loan:

- is made to finance the employee's principal residence;
- does not exceed the employee's annual salary if made during the first year of employment; or
- does not exceed 50% of the employee's salary if made after the first year of employment.

◆ **Directors may not allow the distribution of assets if a nonprofit is insolvent or the distribution would make it insolvent, unless the nonprofit is paying a debt.** If directors violate this rule, they can be personally responsible for the value of the unpaid debts of the nonprofit. Directors may be protected if they acted in good faith and relied on the written opinion of an attorney for the nonprofit.

◆ **No proxy voting is allowed unless authorized.** A director may vote by proxy only if proxy voting is specifically authorized by the articles of incorporation or bylaws.

◆ **A board of directors cannot take actions without a meeting unless there is unanimous written and signed consent.** Consent sent by a director via telegram, fax, or similar transmission is regarded as a written consent. **Because the law requires a signature on the consent, the law is unclear as to whether consent sent by e-mail can count as proper consent.**

■ **Written consent must contain:**

- the specific action taken;
- the date; and
- signatures of the directors.

■ **Action with less than unanimous consent is allowed only if:**

- the articles of incorporation permit; and
- at least the same number of members, directors, or members of a committee agree to the action as necessary to take an action at a meeting.

■ **Other requirements for less than unanimous consent include:**

- prompt notice must be given to all directors who did not consent in writing; and
- consent is not effective unless, within 60 days of the date of the earliest dated consent, the written consent is delivered to the corporation in person or by certified mail.

■ **Telephone meetings are permissible if:**

- not restricted by the articles or bylaws; and

- all persons can hear each other concurrently.
- **Other remote electronic communication meetings are permissible if:**
 - not restricted by the articles or bylaws;
 - each member entitled to participate in the meeting consents; and
 - all persons can communicate concurrently with each other.
- ◆ **Contracts and transactions between the nonprofit and a director are prohibited under state law unless the following requirements are met:**
 - the material facts of the interest of the director are disclosed to the board, and the board in good faith and with ordinary care authorizes the transaction with majority vote of disinterested directors (even if this is less than a quorum);
 - the material facts of the interest of the director are disclosed to the board, and the contract or transaction is specifically approved in good faith and with ordinary care by vote of the disinterested directors; or
 - the transaction is fair to the corporation when it is authorized.

The IRS also prohibits insider transactions in which an insider benefits unreasonably. See Section Five for more information on conflicts of interest and a model conflicts of interest policy that provides additional protections for nonprofits in this area.

Books and Records

- ◆ **Nonprofits must keep correct and complete books and records.** All nonprofits must maintain the following information at the registered or principal office of the nonprofit in Texas:
 - names and addresses of members, if any, entitled to vote;
 - minutes of meetings of members, Board of Directors, and any committees having the authority of the Board of Directors; and
 - complete books and records of accounts.
- ◆ **Nonprofits that receive contributions from sources outside their membership in excess of \$10,000 during a fiscal year must maintain additional documents and make them available to the public.** These additional documents include:
 - **True and accurate financial records.** Records should have full and correct entries, including income and expenditures in accordance with generally accepted accounting principals. The records must be kept at the registered or principal office of the nonprofit in Texas for at least three years after the close of the fiscal year.

- **Nonprofits must prepare a report of financial activity of the nonprofit for the preceding year.** Nonprofits must prepare or approve an annual report that must include a statement of support, revenue and expenses, changes in fund balances, a statement of functional expenses, and balance sheets for all funds. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants.
- **Members of the public may copy these documents during normal business hours.** Nonprofits do not have to disclose the names of members or contributors. The nonprofit may charge for the reasonable expense of preparing a copy of a record or report. Failure to maintain financial records, prepare an annual report, or make the records available to the public is a Class B misdemeanor under state law. There are additional penalties under federal law. **Note:** IRS rules also require that the three most recent annual information returns (Form 990) be available for public inspection. For more information on public disclosure requirements, see Section Six.
- ◆ **Nonprofits with members must allow any member to examine and copy books and records.** A member must make a demand to examine the books and records in writing and state the purpose of the demand. The member or a member's agent, attorney, or accountant may examine the books at any reasonable time and for any proper purpose. The cost of copying is borne by the member. The Attorney General of Texas may also inspect all the books and records of the nonprofit.
- ◆ **Nonprofits with employees must keep extensive records in accordance with numerous employment laws.** Nonprofits are subject to different employment laws depending on the number of full- and part-time employees each nonprofit has. Record-keeping requirements vary under each law. A good rule of thumb is to keep all payroll information, including time cards, sick and other leave, overtime, and payment history for at least four years. Keep records of work-related injuries and illnesses for at least five years.
- ◆ **Nonprofits with more than four employees must keep records in accordance with the Texas Unemployment Compensation Act.** A nonprofit is also required under this law to keep job descriptions for paid employees. The records must be kept for four years.

Federal Tax Matters for 501(c)(3) Organizations

- ◆ **Nonprofits are subject to fundraising requirements.**
 - **Not all payments to charitable organizations are deductible.** In order for a

donation to be deductible, the amount of the deduction must not exceed the value of items or services given in return for the donation. If something is given in return for the donation, the deductible donation is the difference between the value of the donation and the value of the item received in return. See Section Six for more information on charitable contributions.

- **Provide donors with signed receipts for any contribution over \$250.** Donors giving more than \$250 in a single contribution need a written acknowledgment from a nonprofit to claim the donation on their individual income tax return. For more information, see Section Six.
- **Some types of income exposes the nonprofit to taxes and may cause the IRS to revoke the nonprofit's exemption.** Nonprofits are not taxed on donations or dividends and interest earned on investments. Nonprofits, however, may be taxed on what the IRS calls "unrelated business income," which is income from:
 - a trade or business,
 - regularly carried on, which,
 - is not substantially related to the nonprofit's exempt purpose.

The federal tax on unrelated business income is called Unrelated Business Income Tax ("UBIT"). UBIT may be generated from activities such as selling unrelated products to raise money, advertisements, and hyperlinks to businesses from a nonprofit's web site. For more information on UBIT, see IRS Publication 598, available at www.irs.gov.

- ◆ **Nonprofits are subject to restrictions on use of funds.**
 - **A nonprofit must use funds derived from tax-exempt donations to accomplish the charitable purposes stated in the nonprofit's articles and bylaws.**
 - **A nonprofit may not redirect the use of funds donated or raised for one purpose to a different purpose.** If a nonprofit wants to redirect such funds, it must obtain permission from the donors or file suit seeking permission in court and give notice to the Attorney General.
 - **Lobbying and political activity are restricted.** A 501(c)(3) nonprofit is prohibited from engaging in partisan political activity for or against a candidate. Do not endorse candidates. Lobbying is not completely prohibited, but a nonprofit cannot spend a substantial part of its activities on lobbying. The definition of "substantial part" is complex. Lobbying may include talking to a legislator or providing testimony on legislation. For more information, see "Worry Free Lobbying for Nonprofits," by the

Alliance for Justice, available at www.afj.org.

- **An employee or contractor may not receive a salary or payment that exceeds the value received by the nonprofit.** The IRS's "Excess Benefits Rule" restricts the use of funds to improperly benefit an individual who has a significant influence or relationship with the nonprofit, such as employees or directors. An excess benefits transaction occurs when an economic benefit provided by the nonprofit exceeds the value received by the nonprofit. The penalties for such transactions include tax liability, interest, and loss of tax-exempt status. For more information, see www.rodentia.com\nporegulation\accounting.html#expenses_excess_benefits.
 - **Monitor activities of any project for which the nonprofit agrees to serve as a fiscal sponsor.** When a nonprofit agrees to become a fiscal sponsor of another nonprofit, the IRS will consider the two nonprofits to be one legal entity. Each can be held responsible for the actions of the other. For more information on fiscal sponsors, see www.genie.org.
- ◆ **Nonprofits are subject to restrictions on changes to the organization.**
- **Any material change in the organization may lead to revocation of tax exempt status.** If the nonprofit wants to significantly change its purpose, activities, or method of operation, review the nonprofit's original Form 1023 (exemption application) to determine whether the new purpose and activity were mentioned in the application. If they are included, there is probably no need to file a new application with the IRS. If not included, the IRS may require the nonprofit to get a new determination letter. A nonprofit should also review its articles of incorporation and bylaws. If the new purpose and activity are not authorized by these documents, they must be amended. **Note:** If a nonprofit transacts business beyond the scope of the purposes listed in its articles of incorporation, the Texas Attorney General can sue the nonprofit for involuntary dissolution.
 - **Notify the IRS of changes in the name, articles of incorporation, and bylaws of the nonprofit.** If a nonprofit changes its name, articles, or bylaws, the nonprofit should notify the IRS exempt organizations manager for Texas at IRS, Exempt Organizations, 1100 Commerce, Dallas, Texas 75242, (214)767-1490 or (877) 829-5500, or send the updated information with the nonprofit's next Form 990.
 - **Changes in proposed budgets may affect public charity status.** The IRS classifies a nonprofit as a public charity on the basis of budget information supplied when the nonprofit applied to receive its 501(c)(3) status as a public charity. If the level of

public support that enabled the nonprofit to qualify as public charity changes substantially, the nonprofit could be reclassified as a private foundation. For more information, see Section Six.

- **Notify the IRS of a change in the nonprofit's accounting period.** If the nonprofit wants to change its fiscal year, it must file IRS Form 1128 by the 15th day of the 5th month following the close of the new fiscal year. **Example:** Current fiscal year runs from January 1 to December 31; new fiscal year to run from October 1 to September 30. Form 1128 is due on February 15th of the following year.

State Tax Matters

- ◆ **Pay sales and use taxes or obtain a sales tax exemption from the Texas Comptroller.** A nonprofit is exempt from paying sales and use tax on certain items only if it applies for an exemption and receives a letter from the Texas Comptroller stating that the organization is exempt from paying the taxes. The Comptroller does not have an application form. Instead, a nonprofit must send a written request to the Tax Policy Division, Exempt Organizations Section, Texas Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528, with the following information:
 - ➔ detailed description of the activities conducted;
 - ➔ copy of the articles of incorporation;
 - ➔ copy of the letter from the IRS granting an exemption; and
 - ➔ any other information requested by the Comptroller.

To obtain an exemption from a retailer from whom the nonprofit is purchasing items, the nonprofit must present a sales tax exemption form. Forms can be downloaded from the Comptroller's web site at www.cpa.state.tx.us.

- ◆ **Obtain a seller's permit and resale certificate if selling goods subject to the Texas sales tax.** Generally, exempt groups must obtain sales tax permits and collect and pay sales tax on all items they sell. **Exceptions:**
 - Up to two, one-day rummage sales or auctions each year.
 - One annual banquet if the banquet:
 - ➔ is not professionally catered;
 - ➔ is not held in a restaurant, hotel, or other similar place of business;
 - ➔ is not in competition with a retailer required to collect tax; and
 - ➔ the food is prepared, served, and sold by members of the organization.

This exception does not apply to the sale of alcoholic beverages.
 - Up to four sales each year (lasting a total of 20 days) of items made and sold by

senior citizen groups (persons 65 and over).

- Membership dues and fees.
 - Publications.
- ◆ **Pay property taxes or obtain an exemption in a timely manner from the county tax assessor's office.** Property taxes are assessed on both real estate and equipment owned by a nonprofit, unless the nonprofit applies and qualifies for an exemption from the county tax assessor's office. Exemption forms may be obtained at www.window.state.tx.us/taxinfo/taxforms/50-115.pdf.

Other State Legal Matters

- ◆ **Do not hold unauthorized charitable raffles, which are considered gambling under the Texas Penal Code.** A nonprofit may not hold a raffle unless it meets each of the following requirements:
- it is a membership organization that has been in existence for at least 3 years as a 501(c)(3) nonprofit;
 - it does not distribute any of its income to its members, officers, or governing body;
 - it does not devote a substantial part of its activities to influence legislation; and
 - it does not participate in any political campaign.

A qualified nonprofit may hold only **two** raffles a year; the raffles cannot be at the same time. Raffle tickets must contain certain language required by law. The total value of the prizes purchased for the raffle cannot be over \$50,000. There is no limit on the value for donated items. The prize cannot be money. The organization must have each raffle prize in its possession or must post a bond for the full amount of the value of the prize with the county clerk of the county where the raffle will be held. The nonprofit may not compensate anyone for organizing a raffle or selling tickets. **Penalty:** Conducting an unauthorized raffle is a Class A misdemeanor. Participating in an unauthorized raffle is a Class C misdemeanor. **Suggestion:** Because the requirements of charitable raffles are tricky and the penalties for violations are severe, seek legal advice before holding a raffle. For more information, see the Texas C-BAR Resource Center at www.texasbar.org.

- ◆ **File a 9.01 Report with the Secretary of State.** Approximately every four years, the Secretary of State's office sends to nonprofits a 9.01 report (Form 802) for the nonprofit to complete and return to the Secretary of State. This report is sent to the nonprofit's registered agent. On this report, the nonprofit must provide the names and addresses of

the corporate officers, the address of the corporation's principal office, and the name and address of the agent for service of process.

- ◆ **Obtain charitable solicitation permits from selected cities in Texas.** Texas does not require persons soliciting on behalf of nonprofit organizations to register with the state, but several cities do impose such requirements. Check with your city or local chamber of commerce to determine whether there is a requirement in your area.
- ◆ **Notify the Attorney General of any lawsuit in which the nonprofit is involved.** This notification is required for all lawsuits in which the nonprofit is a plaintiff or defendant. The Attorney General can choose to intervene in a case if she decides that it is in the public interest.
- ◆ **File amendments to the articles of incorporation with the Secretary of State.** Any changes to the name of the nonprofit or other provisions of the articles must be filed in duplicate along with a \$25 fee.
- ◆ **File changes of a registered agent or agent's address with the Secretary of State.** Changes should be filed using the Secretary of State's form, available at www.sos.state.tx.us. The fee is \$5.
- ◆ **Notify the Secretary of State if the nonprofit dissolves.** Nonprofits that voluntarily dissolve must provide the Secretary of State with two copies of the Articles of Dissolution (Form 603) and a filing fee of \$5.

Employment Law Matters

- ◆ **Comply with laws affecting employers.** Nonprofits are subject to all employment laws in the same manner as for-profit companies. Nonprofits must comply with wage, anti-discrimination laws, and other laws applicable to employers. Some of the laws to be on the lookout for are listed below.
- ◆ **Register for unemployment compensation if the nonprofit has more than 4 employees for at least 20 weeks during the year.** A nonprofit may elect to pay reimbursements instead of contributions to the unemployment compensation commission. The election must be made within 45 days after the Texas Workforce Commission notifies the employer that it is subject to the unemployment compensation laws. For more information see, www.twc.state.tx.us.

- ◆ **Comply with workers' compensation insurance laws.** Provide all employees with notice of whether the nonprofit has insurance coverage.
- ◆ **Post required employment law posters in the workplace.** Most of the posters are available on the Texas C-BAR website.
- ◆ **Nonprofits with 15 or more employees must have a drug abuse policy in place.** For more information, see www.twcc.state.tx.us.
- ◆ **For more information on employment law requirements, see the Texas C-BAR Resource Center at www.texasbar.org.**

Duties of the Board of Directors

- ◆ **The Board of Directors manages the affairs of the nonprofit, unless limited by the articles of incorporation or bylaws.**
- ◆ **Directors are required to perform their duties:**
 - **In good faith.** Good faith is shown by honesty and faithfulness to duties and obligations and whether there is an intent to take advantage of the nonprofit.
 - **With ordinary care.** Ordinary care is the use of good judgment and common sense. Directors should devote a reasonable amount of time and attention to their responsibilities, attend meetings, and review and understand material submitted to them. They should ask questions, if necessary, to obtain enough information to fulfill their responsibilities. Ordinary care may differ from director to director based on their background and experience and the role they play in the organization.
 - **In the best interest of the nonprofit.** A director acts in the best interest of the nonprofit if the director reasonably believes that the action will benefit the nonprofit. The director should have a proper motive and base the belief on sufficient information. Hindsight is not the test, even if the action turns out badly, as long as the action was taken with the best interest of the nonprofit in mind at the time the vote was made to approve the action.

Protections for Directors

- ◆ **Reliance on certain information prepared by others.** In performing a duty, a director may in some cases rely on information prepared by certain other persons. If the director is acting in good faith and with ordinary care, she may rely on information, reports, financial statements, and other data prepared by another director or an employee of the organization, a board committee of which the director is not a member, legal counsel, accountants, or other professionals and experts. The director is not protected from liability if she has knowledge that makes the information unreliable.

- ◆ **Delegation of Investment Authority.** The board of directors has no liability arising from any action taken or omitted by an investment advisor who invested the funds of the nonprofit if the board acted in good faith and with ordinary care in selecting the advisor.

- ◆ **A nonprofit may pay for or indemnify a director for legal expenses.** Sometimes a person is sued simply because the person is or was a director of a nonprofit. A nonprofit must indemnify the director (pay the director's costs of legal expenses) in some circumstances and may do so in others.
 - A nonprofit **must** indemnify a director against reasonable expenses incurred in a lawsuit filed against the director if the director was successful in defending the lawsuit.

 - A nonprofit **may** indemnify a director who is not wholly successful in a civil lawsuit for legal expenses if the director conducted himself in good faith and reasonably believed the conduct was in the best interest of the nonprofit.

 - A nonprofit **may** indemnify a director for expenses in a criminal case, if the director had no reason to believe that his conduct was unlawful.

 - A nonprofit **may** prepay the legal expenses if the director affirms in writing that he met the appropriate standard of conduct to qualify for indemnification.

 - A nonprofit **may not** indemnify a director if the director:
 - engaged in wilful or intentional misconduct; or
 - received an improper personal benefit.

 - A nonprofit may provide the above discretionary protections for directors only if such indemnification is authorized by the nonprofit's articles of incorporation, bylaws, corporate resolution, or agreement.

- ◆ **Insurance and other protections.** A nonprofit may provide additional protection for directors by providing director's and officer's liability insurance. For more information, see Section Eight.

Legal Compliance Checklist for 501(c)(3) Nonprofits

Based in part on materials prepared by the National Economic Development & Law Center, 2201 Broadway, Suite 815, Oakland, CA 94612; 510-251-2600; fax 510-251-0600; www.nedlc.org

The following checklist is distributed for informational purposes only and should not be construed as legal services to any organization or individual. The checklist should be used as a starting point for a nonprofit to evaluate whether it is following Texas and federal reporting requirements and laws. Some of the items listed below are not mandated by law but are sound business practices an organization should follow to help ensure that the organization avoids problems. There are numerous other laws and reporting requirements that a nonprofit may have to comply with which are not included in this checklist.

Nonprofits should regularly assess their compliance with the following legal formalities:

◆ Monitoring by the Board

- The corporation furnishes each director and officer with a copy of the corporation's articles of incorporation and bylaws.
- The corporation assigns the responsibility for meeting all filing and reporting requirements to appropriate directors and staff.
- The board or a board committee regularly determines that all filing and reporting requirements have been met in a timely manner, or that appropriate and timely corrective action has been taken.

◆ Personnel/Employment

- The corporation has applied for and been assigned a federal identification number by the Internal Revenue Service (IRS).
- The corporation complies with the reporting requirements of the Texas Workforce Commission, including the filing of Form C-1 and, if required, quarterly wage reports along with the payment of unemployment insurance tax.
- The corporation withholds federal income taxes and federal social security and medicare taxes from taxable wages paid to employees, pays the employer share of taxes, and deposits all such funds in a timely manner and with the appropriate IRS forms.
- The corporation maintains personnel records for at least four years.
- The corporation obtains a completed IRS Form I-9 and Form W-4 from all new employees.

- The corporation furnishes each employee with a completed IRS Form W-2 by January 31 for the previous calendar year.
- The corporation files quarterly wage reports (IRS Form 941) with the IRS.
- The corporation posts or provides to its employees the required employment notices, including notices and posters required by the Texas Workers' Compensation Commission, Texas Payday Law, EEOC, OSHA, and US Department of Labor. See www.twc.state.tx.us/ui/lablaw/posters.html for a list of required posters.
- The corporation complies with wage and hours laws (including the Fair Labor Standards Act and Texas Payday Act), workplace safety laws, and nondiscrimination laws (including Title VII and the Americans with Disabilities Act).
- The corporation complies with its employee benefit plan requirements.
- The corporation has adopted an updated personnel policy manual and complies with the personnel policies and procedures contained in the manual.
- The corporation complies with the IRS rules governing the status of independent contractors, prepares proper documentation of all independent contractor agreements, and reports compensation to independent contractors on IRS Form 1099 MISC.
- The corporation provides to each employee from whom the corporation did not withhold any income tax a notice about the Earned Income Tax Credit, by providing the employee with IRS Notice 797.

◆ Federal Tax and Financial Filings and Reports

- The corporation files annual tax information returns (IRS Form 990 or 990-EZ). If the corporation has unrelated business income, it files IRS Form 990-T.
- The corporation obtains an annual financial audit from an independent auditor and, if required by federal funding sources, the corporation obtains an A-133 audit.
- The corporation engages legal counsel to conduct an annual review of its past year's operations and coming year's proposed operations to identify any conflicts and inconsistencies with the information previously provided to the IRS, and for an opinion on whether the corporation is or will be engaged in unrelated business activity.
- The corporation complies with IRS disclosure, substantiation, and reporting requirements for charitable contributions received.
- The corporation observes the IRS prohibition on political campaign activities.
- For corporations within the IRS advance ruling period, the corporation conducts an annual review to determine its compliance with public charity status requirements and obtains a final ruling on its public charity status from the IRS in a timely manner.
- The corporation observes the limitations on lobbying activities and maintains appropriate records to document its lobbying expenditures and activities.
- If the corporation lobbies and utilizes the 501(h) election, it makes appropriate filings with the IRS to comply with lobbying registration, disclosure, and reporting requirements.
- If the corporation has an employee benefit plan, the corporation makes annual benefit plan filings (IRS Form 5500) as required.

◆ Other Filings and Reports

- The corporation has applied for and maintains the appropriate property tax exemptions with the county assessor.
- The corporation files Form 9.01 with the Secretary of State every four years.
- The corporation has obtained a nonprofit mailing permit to use special bulk postal rates.

◆ Liability Protection

- The corporation understands the policy limits of insurance policies, including: the events covered, exclusions, amount of coverage, deductibles, whether policies are “occurrence” or “claims made” policies, and any gaps in coverage.
- The corporation maintains appropriate commercial general liability insurance, with reasonable exclusions and limitations, with coverage for the acts and omissions of the organization and its employees and volunteers in the amount of at least \$500,000 for each person, \$1,000,000 for each single occurrence for death or bodily injury, and \$100,000 for each single occurrence for injury to or the destruction of property.
- The corporation maintains appropriate bonding for those persons who handle its funds, with reasonable limitations and exclusions.
- The corporation maintains, as applicable, errors and omissions or other professional liability insurance, with reasonable exclusions and limitations.
- The corporation maintains appropriate director's and officer's liability insurance, with reasonable exclusions and limitations, or annually reviews the affordability of such insurance.
- The corporation maintains appropriate property and automobile insurance, with reasonable limitations and exclusions.
- The corporation maintains appropriate workers' compensation insurance, with reasonable limitations and exclusions.
- The corporation maintains appropriate employment practices liability coverage, with reasonable limitations and exclusions.
- The corporation has copies of executed waivers of liability for volunteers and clients.
- The corporation has adopted policies and procedures to modify risks and monitors their implementation.
- The corporation promptly advises insurance companies of facts that could give rise to claims in accordance with notice provisions of the policies.

◆ Operations

- The corporation has selected a bank after comparing and negotiating rates and fees.
- The corporation has authorized at least two persons as check signers.
- The corporation appropriately invests its assets that are held for investment.
- The corporation maintains an up-to-date copy of its articles of incorporation, bylaws, 501(c)(3) tax exemption application and determination letter, and franchise tax exemption letter from the Texas Comptroller and keeps a copy at its principal office.

- The corporation maintains a seller's permit from the Texas Comptroller for items it sells.
- The corporation maintains on record with the Texas Secretary of State a current name and address for its registered agent.
- The corporation has obtained a sales tax exemption from the Texas Comptroller.
- The corporation has obtained other federal, state, or local licenses as required for its activities.
- The corporation prepares and maintains for at least three years adequate and correct books and records of account, including records relating to all income and expenditures, and prepares or approves an annual report of financial activity.
- The corporation, unless it falls under a state statutory exception, makes all of its financial records available to members of the public for inspection.
- The corporation prepares and maintains minutes of board, committee, and member meetings for a minimum of three calendar years following the end of the fiscal year.
- The corporation maintains copies of notices of board and member meetings, written waivers of notice, consents to votes taken without a meeting, and approvals of all minutes.
- The corporation maintains copies of written director and officer resignations, proxies, and similar documents.
- The corporation maintains an alphabetized list of members (if any), with name, address, and class of membership.
- The corporation makes available for public inspection a copy of its federal tax exemption application, IRS tax exemption determination letter, and IRS Forms 990 from the previous three years, and provides a copy on request.
- The corporation complies with its bylaws, including the provisions on the terms of directors, election of officers, quorums, and obtaining approval for certain actions. The corporation holds all meetings it is required to hold and provides proper notice of meetings.
- The corporation has at least three directors, and has two different directors serving as president and secretary.



Transactions

- The corporation maintains a procurement policy to ensure that purchases are at a fair market value or are otherwise favorable to the corporation and, if applicable, the corporation complies with federal procurement standards.
- The corporation maintains a financial system that requires receipt of written invoices prior to payment for any services or goods.
- The corporation conducts appropriate investigations to ascertain that loans, leases, and other transactions are at fair market value or are otherwise favorable to the corporation.
- The corporation prepares appropriate documentation in support of all transactions with directors, officers, or other insiders, and to demonstrate the reasonableness of all compensation.
- The corporation has adopted a conflict of interest policy for transactions and meets all requirements for approval of transactions involving a conflict of interest including transactions with corporations under its control.

- The corporation engages legal counsel to review proposed contracts and agreements, corporate obligations to perform acts that might jeopardize its tax exempt status, and whether there are appropriate safeguards to assure that corporate funds granted to other organizations are being used for tax exempt purposes.
- The corporation receives the benefits of, and meets its obligations under, all leases, loans, contracts, partnerships, joint ventures, and similar agreements.
- If the corporation is the fiscal agent for another organization, it monitors the other organization's performance and compliance with all corporate formalities.

