

**Form 203—General Information
(Certificate of Formation – Professional Corporation)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A professional corporation is a corporation that is formed for the purpose of providing a professional service that by law a for-profit or nonprofit corporation is prohibited from rendering. A “*professional service*” means any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state. A professional corporation is governed by title 1, chapters 20 and 21 of title 2, and chapters 301 and 303 of title 7 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of a professional corporation and sets forth the provisions required or permitted to be contained in the certificate of formation.

Title 7, chapter 301 establishes certain restrictions and requirements regarding ownership and management of a professional corporation. Only a professional individual licensed to practice the same professional service as the professional corporation may be a governing person or managerial official of a professional corporation. Also note that a professional corporation cannot be formed for the practice of medicine (BOC § 301.003(3)). If the purpose of the entity is to provide medical services, the professional may form either a professional association or a professional limited liability company.

Taxes: Professional corporations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a corporate name and organizational designation. The entity name must comply with the provisions of chapter 5 of the BOC and the administrative rules on entity name availability adopted by the secretary of state. Chapter 5 of the BOC requires that the entity must be distinguishable in the records from the name of any existing domestic or foreign filing entity, any fictitious name under which a foreign filing entity is registered to transact business in this state, or any name reservation or registration filed with the secretary of state. In addition, the entity name may not contain any word or phrase that by its inclusion in the name: 1) indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue, or 2) falsely implies that the entity is affiliated with a governmental entity. If the entity name does not comply with these provisions, the document cannot be filed.

The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. If the entity name does not meet the standard for availability, the document

will not be filed. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.

Pursuant to section 5.060 of the BOC, the name of a professional entity must not be contrary to a statute or regulation that governs a person who provides a professional service through the professional entity, including a rule of professional ethics. Contact the state agency or examining board exercising control over the profession to determine whether the name chosen complies with statutory and regulatory requirements governing the profession.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The corporation cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Directors:** *This form is not drafted for use in forming a close corporation or a corporation that is to be managed by a shareholders agreement.* A minimum of one director is required. A director must be a natural person who is licensed to provide the same professional service to be rendered by the professional corporation; there are no residency requirements for directors.

Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., JD, RN, Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Authorized Shares:** Shares represent ownership interest in the corporation. The total number of shares that the corporation will have authority to issue must be provided in article 4. Select and complete option A if the shares are to have a stated par value or select option B if the shares are without a stated par value.

Option A—Par Value: “Par value” means the stated dollar amount assigned to a share. In general terms, it represents the minimum stated amount for which each share shall be issued. For example, if the corporation has authorized a total of 1,000 shares of common stock of \$1 par value and if payment for the share is to be made in cash, the corporation must receive at least \$1 for each share issued. Do not state that the shares have \$0 par value if the shares are to be without a stated par value (i.e., option B).

Option B—No Par Value: Shares that are designated as having no par value may be issued for an amount of consideration determined by the board of directors.

- **Article 5—Purpose:** The certificate of formation of a professional corporation must state the type of professional service to be provided by the professional entity. Pursuant to section 2.004 of the BOC, a professional entity may engage in only one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional corporation that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

The state agencies exercising regulatory control over professions to which the joint practice provisions apply continue to exercise regulatory authority over their respective licenses.

- **Initial Mailing Address:** *Effective January 1, 2022*, the certificate of formation of a filing entity must provide the initial mailing address for the entity. The initial mailing address is the address that will be used by the Comptroller of Public Accounts for sending tax information and correspondence to the entity. The initial mailing address may be a post office box or street address.
- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a Texas professional corporation exists perpetually unless provided otherwise in the certificate of formation. If formation of a corporation with a stated period of duration is desired, use the “Supplemental Provisions/Information” section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of a professional corporation. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer. The organizer is not required to be licensed to perform the professional service for which the entity is formed.
- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state

the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file with the secretary of state a statement regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as “in existence” on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a professional corporation is **\$300**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee if submitting the document by mail or by courier delivery. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697 or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file- stamped copy of the document, if a duplicate copy was provided as instructed.

Need Faster Delivery and Processing? Use our SOSUpload system to electronically submit a PDF copy of the completed and executed document. When submitting a document through SOSUpload, do not include a copy of these instructions, a duplicate copy of the document, payment information, or personal identifying information (PII). Inclusion of this information may lead to a rejection of the document. For more information on SOSUpload, please call (512) 463-5555; email corpinfo@sos.texas.gov; or visit <https://direct.sos.state.tx.us/lef/index.aspx>

- **FYI:** A corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the corporation. In addition, section 21.802 of the BOC provides a penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state. To be timely, the filing must be made by the corporation before the 30th day after the change.

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