

## General Information for Establishing a Non-Profit Corporation

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*This essay discusses statutory filing requirements based upon relevant statutory provisions. This form and the information provided are not substitutes for the advice and services of an attorney or tax specialist.*

- A Non-Profit Corporation (N-P-C) is a formally established Legal Entity like a person or a general corporation. This entity enjoys special status that the others do not. As a consequence of being established under the non-profit corporation rules, this corporation follows specific rules and restrictions. First among these is the ownership. No person may claim ownership of the N-P-C. Furthermore, the assets of the N-P-C may not be distributed to individuals even upon dissolution. In addition, the N-P-C must not be established for the private benefit of an individual. This does not mean that an employee cannot be paid by the N-P-C but that there are specific rules to follow in making any such payments. These rules are implemented by the Internal Revenue Service either by statute (Article 46 of the US Code) or through Treasury Regulations and rulings.
- The most common section of the Revenue Code regarding N-P-C's is § 501. Many people have heard of 501c3 nonprofit corporations and understand these to be very special. Indeed they are, but §501(c)3 is not the part that authorizes a company to be considered a non-profit. §501(a) sets out the guidelines for qualifying as a non-profit corporation. Just because you do not expect to make a profit does not mean you qualify. Your organization must fit somewhere within the revenue code.

- **Completing the proper forms –**

**(Example: Form 202-Articles of Incorporation Pursuant to Article 3.02 Texas Non-Profit Corporation Act)**  
This form is used to establish the Non-Profit Corporation in the State of Texas. Once the corporation has been established. A copy of this form is available in Adobe Acrobat format or in WordDOC format in the TXco Folder. Once the Secretary of State files this Articles of Incorporation, the Corporation then applies for an Employer Identification number even if it does not intend on hiring employees. This is accomplished through the Internal Revenue Service by filing form SS-4. It is important to have this on file before submitting the application for Recognition of Exemption Form 1023 to the IRS.

Answering the questions of these forms must be completed by the incorporators, the directors, or an employee or authorized agent of the corporation. If an authorized agent files on behalf of the corporation and is not employed by the corporation, that agent must also have a power of attorney on file with the Internal Revenue Service. Form-filing agencies may complete the forms, however, the information must be provided by the corporation (by way of an intake interview) and the corporation must in turn file the completed forms.

- **Article 1—Corporate Name:** Note that the Texas Administrative Code regulates what a company can choose as a name. “If the name chosen is the same as or deceptively similar to, or similar to the name of an existing corporation, limited partnership, or limited liability company, 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). You may request that the secretary of state provides a preliminary determination on “name availability.” **A final determination cannot be made until the document is received and processed by the secretary of state. The pre-clearance of a name or the issuance of a certificate of incorporation under a name does not authorize the use of a name in violation of another person’s rights to the name, therefore, do not make any financial transactions until the final determination has been made.**

Going back to the Dental Laboratory example, the fact that they are regulated by the TX Board of Dental Examiners helps by showing us who is already registered. The corporation can then safeguard

itself from a deceptively similar name and speed its processing. Dental Laboratories are a regulated business in the State of TX and require special licensing. Refer to the forms for applying to the Board of Dental Examiners for details.

- **Article 2—Registered Agent and Registered Office:** The corporation however may not be designated to serve as its own registered agent. This must be a natural citizen or a corporation already registered within the state. A True address must be supplied here, sorry, no Post Office Boxes.

- **Article 3—Management:** You must choose the managers just as you would with a fortune 500 company.

- **Article 4—Organizational Structure:** Whether the organization is member-based or not and whether there are different rights associated with different types of members can have an effect on the type of non-profit status. The corporation must indicate in the articles of incorporation whether the corporation is to have members. The Corporation does not need to provide membership specifics in the Articles of Incorporation, this is reserved for the internal By-Laws.

- **Article 6—Purpose:** Article 6 must contain a **specific** statement of a lawful purpose. A lawful purpose may be a charitable, benevolent, religious, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, or agricultural purpose; or the conduct of a professional, commercial, industrial or trade association. **The secretary of state will not accept general language such as “any or all lawful purposes.”** Define the corporation’s purpose carefully, as this will determine how it will qualify as a non-profit corporation (if at all). The corporation may use the IRS guidelines found in §501 to assist it.

**Here is an excerpt from the incorporation instructions of a TX Non-Profit Corporation. This places some adjustments on the general rule that N-P-C assets may not be distributed.**

- **Supplemental Provisions:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions. Please note that if the corporation is to be authorized upon its dissolution to distribute its assets in a manner other than the manner described in article 6.02(3) of the Texas Non-Profit Corporation Act (which refers in part to the distribution of assets for tax-exempt purposes to organizations exempt under section 501(c)(3) of the Internal Revenue Code of 1986 and related statutes), the articles of incorporation must contain a statement describing the manner of distribution of the corporation’s assets.

- **Incorporator:** Only one incorporator is required for the formation of a corporation. An incorporator may be a natural person 18 years of age or older, or any corporation, partnership, or other entity; there are no residency requirements for an incorporator.

- **Tax Exemption:** Corporations organized under the Texas Non-Profit Corporation Act DO NOT automatically qualify for exemption from federal and state taxes. Before granting a tax exemption, the Internal Revenue Service (IRS) requires that the articles of incorporation contain certain provisions. Non-profit corporations also are subject to state franchise taxes. If the corporation qualifies to be exempt, an application for exemption ALSO STILL is made to the Exempt Organizations Section, Comptroller of Public Accounts, Austin, Texas 78774-0100. Note this is the Texas Comptroller (Tax Issues) not the Secretary of State. Registering as a corporation is separate from being recognized as a tax Exempt organization.